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BIRD SONG LLC RES 45.00 4034306

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RES 4034306



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RES 4034306

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE NORTH FORTY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE NORTH FORTY is made and entered into as of March 23, 2006, by Bird Song, L.L.C., an Arizona limited liability company authorized to do business in Arizona (the "Declarant"), Beneficiary under Chicago Title Insurance Company Subdivision Trust No. 36013.

WITNESSETH:

WHEREAS, the Declarant is the owner of certain property located in the County of Yavapai, State of Arizona, which is more particularly described as follows:

Lots 1-31, NORTH FORTY, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, recorded in Book 57 of Maps, Pages 81 - 83.

NOW, THEREFORE, the Declarant hereby declares that all of the Property described herein shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, and liens, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on and inure to the benefit of all parties having or acquiring any right, title, or interest in the Property or any part thereof, their heirs, successors or assigns.

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ARTICLE 1

DEFINITIONS

- 1.1 "**Additional Property**" means any other real Property, together with the Improvements situated thereon, which is subsequently made subject to this Declaration by amendment thereto.
- 1.2 "**Architectural Control Committee**" means the Architectural Control Committee of the Association to be created pursuant to Section 5.1 of this Declaration.
- 1.3 "**Architectural Control Committee Rules**" means the rules and guidelines adopted by the Architectural Control Committee pursuant to Section 5.2 of this Declaration, as amended or supplemented from time to time.
- 1.4 "**Articles**" means the Articles of Incorporation of the Association, as amended from time to time.
- 1.5 "**Assessable Property**" means each Lot.
- 1.6 "**Assessment**" means a charge as described in Section 4.1.
- 1.7 "**Assessment Lien**" means the lien created and imposed by Section 4.1.
- 1.8 "**Association**" means the North Forty Homeowners Association, an Arizona nonprofit corporation, to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.
- 1.9 "**Association Rules**" means the rules adopted by the Board pursuant to Section 3.3 of this Declaration, as amended or supplemented from time to time.
- 1.10 "**Board**" means the Board of Directors of the Association.
- 1.11 "**Bylaws**" means the Bylaws of the Association, as amended from time to time.
- 1.12 "**Declarant**" means Bird Song L.L.C., and any Person to whom it may expressly assign any or all of its rights under this Declaration by a recorded instrument.
- 1.13 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions, as amended or supplemented from time to time.
- 1.14 "**Development Plan**" means the Development Plan for the Project as approved by the City of Prescott, Arizona, as the plan may be amended from time to time.
- 1.15 "**Entrance Signs**" means the area described in Section 7.6 of this Declaration.
- 1.16 "**Improvement**" means any building, fence, wall, or other structure or any swimming



pool, road, driveway, parking area or any trees, plants, shrubs, grass, or other landscaping of any type or kind.

1.17 "**Lessee**" means a third party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot, including an assignee of a lease or a sublessee. As used herein, a "third party" is any Person who is not an Owner.

1.18 "**Lot**" means a portion of the Project intended for independent ownership and use, and designated as a Lot on the Plat, and, where the context indicates or requires, shall include any building, structure, or other Improvements situated on the Lot.

1.19 "**Member**" means any Person who is an Owner of a Lot.

1.20 "**Occupant**" means any Person other than an Owner who occupies or is in possession of a Lot, or any portion thereof or building or structure thereon, whether as a Lessee or otherwise, other than on a merely transient basis (and shall include, without limitation, a Resident).

1.21 "**Owner**" means the record Owner, including Declarant, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a Purchaser under a contract for the conveyance of real Property subject to the provisions of A.R.S. Section 33-741, *et. seq.* Owner shall not include a Purchaser under a purchase contract and receipt, escrow instructions, or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. Section 33-801, *et. seq.*, the Trustor shall be deemed to be the Owner. In the case of Lots, the fee simple title to which is vested in a Trustee pursuant to a subdivision trust agreement or similar instrument, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.22 "**Person**" means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental agency or subdivision, or other legal or commercial entity.

1.23 "**Plat**" means the plat of The North Forty recorded in Book 57, Page 81-83 records of Yavapai County, Arizona, and all amendments, supplements and corrections thereto.

1.24 "**Property**" or "**Project**" means the real property described on the Plat as Lots 1 through 31, inclusive, together with all Improvements situated thereon, and all real Property and all Improvements situated thereon which are annexed and subjected to this Declaration pursuant to Section 2.1 of this Declaration.

1.25 "**Project Documents**" means this Declaration, the Articles, Bylaws, the Association Rules, and the Architectural Control Committee Rules.



1.26 "**Purchaser**" means any Person, other than the Declarant, who by means of voluntary transfer becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to the Declarant for use as a model in conjunction with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.27 "**Recording**" means placing an instrument of public record in the office of the County Recorder of Yavapai County, Arizona, and "**Recorded**" means having been so placed of public record.

1.28 "**Resident**" means each natural person occupying or residing in a Residential Unit.

1.29 "**Residential Unit**" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.30 "**Roadways**" means the streets in the Project as set forth on the Plat.

1.31 "**Single Family**" means a group of one or more natural persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.32 "**Visible From Neighboring Property**" means, with respect to any given object, that such object is or would be visible to a Person six feet tall, standing at ground level on any part of any adjoining Lot or Roadway.

ARTICLE 2

DEVELOPMENT PLAN

2.1 Property and Owners Subject to the Declaration As the Property has been subdivided into various Lots, and it is intended that the Property so subdivided shall be sold and conveyed to Purchasers, Declarant hereby declares that all the Property subject hereto is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved, or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement, and sale of the Property, and is established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property and every part thereof. All of this Declaration and any amendments hereto shall run with all of said Property for all purposes and shall be binding on and inure to the benefit of and be enforceable by the Declarant, the Association, all Owners and their successors in interest. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a



general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that:

- (a) the Project will be completed in accordance with the plans for the Project as they exist on the date that this Declaration is recorded,
- (b) any Property subject to this Declaration will be committed to or developed for a particular use or for any use,
- (c) any Property not now subject to this Declaration will be subjected to the provisions hereof,
- (d) the use of any Property subject to this Declaration will not be changed in the future, or
- (e) the covenants contained in this Declaration are presently or in the future will be valid or enforceable.

Nothing contained in this Declaration and nothing which may be represented to a Purchaser by real estate brokers or agents representing the Declarant or any other party shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any Property subject to this Declaration or any Additional Property. Any Owner acquiring a Lot in reliance on one or more of the covenants set forth in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring any Lot agrees that the Declarant shall have no liability therefor.

2.3 Changes to the Development Plan. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Development Plan with respect to any Property owned by the Declarant in any way which the Declarant desires, including, but not limited to, changing the nature and extent of the uses to which the Property may be devoted.

ARTICLE 3

THE ASSOCIATION

3.1 Formation. The Association shall be a nonprofit Arizona corporation charged with the



duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Control Committee Rules, this Declaration shall prevail.

3.2 Board of Directors and Officers. The business of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles or the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board has the power, but not the obligation, to contract with independent contractors or managing agents who have professional experience in the management of residential developments similar to the Project, to perform all or part of the duties and responsibilities of the Association. As long as there is any Class B membership, the Board members and officers will be appointed by the Declarant.

3.3 Rules and Regulations. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to:

- (a) minimum standards for the maintenance of Lots,
- (b) all aspects of the Association's rights, activities and duties,
- (c) the health, safety or welfare of the Owners, Lessees and Residents, or
- (d) any other subject within the jurisdiction of the Association.

In the event of any conflict between this Declaration and the Association Rules and Regulations, this Declaration shall prevail.

3.4 Personal Liability. No Member of the Board, the Architectural Control Committee, or any other committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct. The Association shall indemnify its committee members, Directors and officers when acting on behalf of the Association to the full extent permitted by law, except for willful misconduct and bad faith acts or omissions.

3.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

3.6 Membership. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming an Owner thereof, be a Member of the



Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Lot and may not be separately assigned, transferred or conveyed.

3.7 Voting Classes. The Association shall have two classes of voting membership, as follows:

(a) Class A. The Class A members shall be all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A Member shall be entitled to one vote for each Lot owned by such Member.

(b) Class B. The Class B member shall be the Declarant. The Declarant, as the sole Class B member, shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B membership shall cease and be converted to Class A memberships, on the date of the happening of the first of the following events:

- (i) January 1, 2020,
- (ii) When the Declarant notifies Association in writing that it relinquishes its Class B membership, or
- (iii) When the Declarant owns fewer than three (3) Lots.

3.8 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively be presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

3.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of said Lot. A transfer of Ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

3.10 Voting By Mail. Unless the Project Documents require otherwise, when Directors are to be elected or any other matter is submitted to a vote of the Members, such vote may be conducted by mail as provided in the Bylaws or as determined by the Board and applicable statute.



3.11 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due, or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Document are corrected.

3.12 Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

3.13 Records. The Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws and Association Rules. The Declarant shall be under no obligation to make its own books and records available for inspection by any Owner or other person.

3.14 Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles, Bylaws and Association Rules; provided, however, no such delegation to a professional management company or otherwise shall relieve the Association of its obligation to perform any such delegated duty.

ARTICLE 4

COVENANT FOR ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties. The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, Fines and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges, and all costs, including but not limited to reasonable attorneys' fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and, subject to applicable law limiting such lien, shall be a continuing lien upon the Lot against which the Assessment was made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fees, charges, fines and penalties, together with interest, late charges, and all costs, including but not limited to reasonable attorneys' fees incurred by the Association in enforcing the Project Documents and collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the Assessment became due. The



personal obligation for delinquent Assessments shall not pass to the successors in interest of the Owner unless expressly assumed by them.

4.2 Purpose of Assessments. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all common expenses and to perform its duties and obligations under the Project Documents, including, but not limited to, promoting the recreation, health, safety and welfare of the Residents of the Property, for the improvement and maintenance of the Entrance Signs, and the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each Assessment Period, shall assess against each Lot an Assessment.

4.3 Notice of Assessments. The Board shall give notice of the Assessment to each Owner at least thirty (30) days prior to the commencement of the Assessment Period, but the failure to give such notice shall not affect the validity of the Assessment, nor relieve any Owner from its obligation to pay the Assessment. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year.

4.4 Maximum Annual Assessments. The maximum annual Assessment shall be determined as follows:

(a) Until January 1 of the calendar year immediately following the conveyance of the first Lot to a Purchaser by the Declarant, the maximum annual Assessment for each Lot shall be Four Hundred Dollars (\$400.00) per year.

(b) From and after January 1 of the calendar year immediately following the conveyance of the first Lot to a Purchaser by the Declarant, the Board may, without a vote of the membership of the Association, increase the maximum annual assessment during each fiscal year of the Association by ten percent (10%).

(c) After January 1 of the calendar year immediately following the conveyance to a Purchaser of the first Lot by the Declarant, the maximum annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to section 4.4(b) above only with the approval of Members representing at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by absentee ballot at a meeting duly called for such purpose.

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

4.5 Supplemental Assessments. In the event the Board shall determine that its funds budgeted or available in any fiscal year are or will become inadequate to meet all expenses of the Association, for any reason, including without limitation, nonpayment of Assessments by the members, it shall determine the approximate amount of such inadequacies for such fiscal year and prepare a supplemental budget and may levy a supplemental Assessment against each lot in such amount as the Board deems necessary in order to obtain the amount of such inadequacies. Notice of any such supplemental Assessment shall be given to each owner. The supplemental Assessment shall be paid on such dates and in such installments as may be determined by the Board. No supplemental Assessment shall be levied by the Board until such Assessment has been approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be



cast by the Members who are voting in person or by absentee ballot at a meeting duly called for such purpose.

4.6 Special Assessments. In addition to the annual and supplemental Assessments, the Association may levy, in any Assessment Period, a special Assessment applicable only to that fiscal year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement of the Entrance Signs, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that, unless otherwise provided herein, any such special Assessment shall have approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by the Members who are voting in person or by absentee ballot at a meeting duly called for such purpose.

4.7 Lot Specific Assessments. Lot specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot specific Assessments.

4.8 Notice and Quorum for Any Action on Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.4, 4.5 or 4.6 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called the presence of Members, in person or by absentee ballot, entitled to cast sixty percent (60%) of all the votes of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.9 Uniform Rate of Assessment. Annual, supplemental and special Assessments must be fixed at a uniform rate for all Lots owned by Class A Members.

4.10 Rate of Assessment. Subject to the provisions of Section 4.4 and 4.11, the amount of the annual Assessment to be levied against each Lot owned by a Class A Member shall be equal to the total amount of the Common Expenses of the Association divided by the total number of Lots owned by Class A Members. As used herein the term "Common Expenses" means expenditures made by or financial liabilities of the Association, together with reasonable allocations to a reserve fund.

4.11 Declarant Subsidy and Alternate Assessment for Declarant.

(a) So long as the Declarant is the Class B Member, Lots owned by the Declarant shall not be subject to any Assessment, annual, supplemental and/or special, but in lieu thereof and not in addition thereto, the Declarant shall be required to pay to the Association the difference between the cost of operating and administering the Association including a



reasonable allocation to a reserve fund and the income from Assessments. The subsidy required of the Declarant under this paragraph may be in the form of cash or "in-kind" contributions of goods or services, or in any combination of the foregoing. Any such "in-kind" contributions shall be valued at their then fair market value as determined by the Declarant. When the Class B Membership ceases in accordance with Section 3.7 of this Declaration, the Declarant shall no longer be required to subsidize the costs of operating and administering the Association, but all Lots owned by the Declarant shall be subject to an alternate assessment as described in Section 4.10(b) below.

(b) At such time as the Declarant ceases to be the Class B Member, the annual Assessment, special Assessment, or supplemental Assessment charged to the Declarant for each Lot owned by the Declarant shall be equal to twenty-five percent (25%) of the amount of any such Assessment charged to the other Class A Members, and the computation of the amount of the Assessment for non-Declarant owned Lots shall be made based upon such prorata payment allocation.

4.12 Billing and Collection Procedures. Assessments shall be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for making Assessments and for the billing and the collection of Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any portion thereof is or will be due and the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

4.13 Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties: Remedies of the Association.

4.13.1 Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within thirty (30) days after the due date of the Assessment, fee, charge, fine or penalty shall bear interest at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty within thirty (30) days after such payment was due.

4.13.2 As set forth in Section 4.1, the Association shall have a lien on each Lot for all Assessments, fee, charge, fine or penalty levied against the Lot and for all other fees and charges payable to the Association by the Owner of the Lot pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Association Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description of the Lot against which the Notice of Lien is recorded, and the amount claimed to be past due as of the



date of the recording of the Notice, including interest, recording fees, and reasonable costs incurred in attempting to collect said lien, including but not limited to attorneys' fees.

4.13.3 Subject to applicable statutes, the Assessment Lien shall have priority over all liens or claims except for tax liens for real property taxes, assessments in favor of any municipal or other governmental body, and the lien of any first deed of trust or first mortgage.

4.13.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, fines, reasonable attorneys' fees court costs, collection costs, and all other sums payable to the Association have been paid in full.

4.13.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, fee, charge, fine or penalty, together with interest, fines, reasonable attorneys' fees, court costs, collection costs, and any other sums due to the Association in any manner allowed by law, including, but not limited to:

(a) without notice or demand, bringing an action at law against the Owner personally obligated to pay the delinquent Assessments, fee, charge, fine or penalty, and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments, fee, charge, fine or penalty, or

(b) without notice or demand, bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, encumber and convey any and all Lots purchased at such sale.

4.14 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable time thereafter, shall issue to such Member or other Person a written certificate stating that all Assessments, interest, and other fees or charges have been paid with respect to any specified Lot as of the date of such certificate, or if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charge must be paid before the certificate will be issued. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters stated therein as against any bona fide Purchaser of, or lender on, the Lot in question.

4.15 Surplus Funds. The Board shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Assessment in the succeeding year if a surplus exists from a previous year, and the Association may carry forward from year to year such surplus as Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

4.16 Maintenance of Reserve Fund. Out of the annual Assessments, the Association shall establish and maintain a reserve fund for the periodic maintenance, repair and replacement of Improvements to the Project and such Improvements on the Lots as the Association is obligated



to maintain under the provisions of this Declaration, the Articles, Bylaws or Association Rules and Regulations. The Board shall use its best efforts to maintain the balance in this reserve fund at fifty percent (50%) or more of the amount the Board determines is adequate to fund the reserve expenditures.

4.17 Fines and Penalties. In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The Board shall establish the amount of the fine or penalty for each violation.

4.18 Transfer, Refinance and Disclosure Fees. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Assessment Lien established pursuant to Section 4.1.

4.19 Borrowing Power. The Board may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate.

ARTICLE 5

ARCHITECTURAL CONTROL

5.1 Architectural Control Committee The Association shall have an Architectural Control Committee as a committee of the Board, which Architectural Control Committee shall consist of between three (3) and five (5) regular members as determined from time to time by the Board of Directors. None of such members shall be required to meet any specific criteria for membership, including being an architect or being a member of the Board of Directors of the Association. So long as Declarant is the Class B Member of the Association, the Declarant shall have the sole right to appoint and remove the members of the Architectural Control Committee. At such time as the Declarant is no longer the Class B Member, the Board of Directors shall appoint, remove and replace the members of the Architectural Control Committee in its sole discretion.

5.2 Scope of Guidelines. The Architectural Control Committee shall, with the approval of the Board of Directors, promulgate architectural guidelines, standards, rules and procedures to be used in rendering its decisions. The Architectural Committee Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation. Such guidelines, standards, rules and procedures may include, without limitation, provisions regarding:



- (a) the size of the Residential Units,
- (b) architectural design, with particular regard to the complementary design with the theme of the Project, surrounding structures, and the local topography,
- (c) placements of Residential Units and other Improvements,
- (d) exterior color schemes, finishes, and materials,
- (e) landscaping design, content and conformance with the character of the Lot and the Property and permitted and prohibited plants,
- (f) fence design and appearance, and
- (g) procedures to be followed in the review and approval process by the Architectural Control Committee.

The decision of the Architectural Control Committee shall be final on all matters submitted to it pursuant to this Declaration.

5.3 Liability. None of the Architectural Control Committee, the Board, or any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of

- (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective,
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications, or
- (c) the development of the Property or of any Lot.

5.4 Waiver. The approval by the Architectural Control Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval. The Architectural Control Committee's interpretations may change as committee members and local customs change, and the committee may disapprove new applications for items previously approved; however, standards shall be applied to all Lots in a nondiscriminatory manner.

5.5 Prior Approval. No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee. No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Control Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including, but without limitation, the exterior color scheme of any part of a Lot or any Improvements located thereon, shall be made or done without the prior written approval of the Architectural Control Committee. All Improvements constructed on Lots shall be of new construction, and no building or other structures shall be moved from other locations onto any Lot. Any Owner desiring approval of the Architectural Control Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement on a Lot shall submit to the Architectural Control Committee a written request for approval specifying in detail the nature and features of the proposed Improvement, along with plans, specifications,



and any other information which the Architectural Control Committee may request, together with any fee for review which may be established by the Board. Only a complete set of plans will be accepted. The plans must be approved by the Architectural Control Committee before they are sent to the City of Prescott for a building permit, and sent to the City of Prescott immediately after approval so that the City of Prescott can respond in time for construction to start within the time specified in the approval by the committee. The Architectural Control Committee must review and approve the plans in the event the City of Prescott makes any changes. In the event that the Architectural Control Committee fails to approve or disapprove a complete application for approval within forty-five (45) days after the application and fee were submitted, this Section will be deemed to have been complied with and written approval of the Architectural Control Committee will not be required as to such plans; provided, however, any subsequent changes to such plans shall require another application to the Architectural Control Committee.

5.6 Grounds for Disapproval. The Architectural Control Committee may, in its sole discretion, disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Control Committee pursuant to this Article. The bases for such disapproval may include, but are not limited to, if the Architectural Control Committee determines, in its sole discretion, that the proposed construction, installation, addition, alteration, repair, change or other work:

- (a) would violate any provision of this Declaration,
- (b) does not comply with any Architectural Control Committee Rule,
- (c) is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Control Committee but not yet completed,
- (d) is not aesthetically acceptable,
- (e) would be detrimental to or adversely affect the appearance or property values of the Project, or
- (f) is otherwise not in accord with the general plan of development for the Project.

5.7 Time for Completion. Upon receipt of approval from the Architectural Control Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall begin to perform, construct, or make the addition, alteration, repair, change or other work approved by the Architectural Control Committee within six (6) months of the date of such approval, and shall diligently pursue such work so that it is completed within twelve (12) months from issuance of a building permit by the City of Prescott, or within such other time as may be prescribed by the Architectural Control Committee. In the event Owner shall fail to begin to perform, construct, or make the addition, alteration, repair, change or other work approved by the Architectural Control Committee within six (6) months of the date of such approval, such approval shall be deemed terminated, and the Owner must thereupon reapply to the Architectural Control Committee for approval. A copy of the building permit shall be submitted to the Architectural Control Committee before construction shall commence.



5.8 Changes to Plans. Any change, deletion or addition to the plans and specifications approved by the Architectural Control Committee, including plans deemed approved as a result of the Architectural Control Committee's failure to act, must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

5.9 Exception. The provisions of this Article do not apply to, and approval of the Architectural Control Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant on any Lot or any other portion of the Property, provided, however, that the Declarant shall comply with all applicable laws, statutes, ordinances and regulations as to the construction of such Improvements.

5.10 Other Approvals. The approval by the Architectural Control Committee pursuant to this Article shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule or regulation. The approval by the Architectural Control Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Control Committee, the Board or the Association as to the quality of such construction, installation, addition, alteration, repair, change or other work, nor that said work complies with any applicable building codes, or any other federal, state, or local law, statute, ordinance, rule, or regulation.

5.11 Meetings. The Architectural Control Committee shall hold regular meetings as determined appropriate by the committee members. A quorum for such meetings shall consist of two of the members of the committee and the affirmative vote of the greater of (i) two of the members or (ii) a majority of the members who are at the meeting, shall be necessary for any decision of the Architectural Control Committee. The Architectural Control Committee shall keep and maintain a record of all actions taken at its meetings.

5.12 Fee. The Architectural Control Committee may charge a reasonable processing fee to defray its costs in considering any requests for approvals submitted to it. The appropriate fee shall be paid at the time the request for approval is submitted. The fee structure as established from time to time shall be set forth in the Architectural Control Committee Rules.

5.13 Building Permits. No Owner shall apply for a building permit issued by the City of Prescott for any Improvement to be erected on any Lot until the Architectural Control Committee has approved the plans for such Improvement.

5.14 Deposit. The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Control Committee, pay to the Association a deposit in an amount determined by the Architectural Control Committee to be used by the Association to remove any construction debris from a Lot that is allowed to accumulate in violation of this Declaration or to repair any damage to the Property. The Architectural Control Committee shall also have the right to determine which portion, if any, of the deposit will be nonrefundable based upon the Owner's failure to meet its obligations in



regard to the construction of the Improvements. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements, the removal of all construction debris from the Lot, and the repair of any damage to the Property occasioned by such construction.

ARTICLE 6

USE RESTRICTIONS

6.1 Land Use Classifications. The purposes for which Lots within the Project may be used shall be determined by the land use classification of the Lots as established by the Plat. All Lots within the Project shall be deemed to be classified for "Single Family Residential Use".

6.2 Residential Use. "Single Family Residential Use" shall consist of detached Residential Units designed for use and occupancy by a Single Family. No trade or business shall be conducted on any Lot classified for Single Family Residential Use except that an Owner or other Resident of a Lot may conduct a business activity on a Lot so long as:

- (a) the business activity conforms to all applicable zoning ordinances and requirements for the Lot,
- (b) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board,
- (c) the business activity is not apparent or detectable by sight, sound or smell outside the Residential Unit, and
- (d) the business activity does not involve Persons coming onto the Lot or the door-to-door solicitation of Owners or other Residents in the Project.

The terms "business" or "trade" as used in this Section shall be construed to have 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 provider's family, and for which the provider 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 in fact does generate a profit, or,
- (c) a license is required for such activity.

The leasing of a Lot, along with its Improvements, shall not be considered a trade or business within the meaning of this Section.

6.3 Restriction on Lot Changes. No Lot shall be further subdivided or separated into smaller Lots by any Owner. Without the prior written consent of the Architectural Control Committee, no portion or interest less than all of any such Lot shall be conveyed or transferred by any Owner. No further covenants, restrictions, conditions, or easements shall be recorded by any



Person except Declarant against any Lot without prior written approval from the Architectural Control Committee. No applications for rezoning, variances or use permits shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Control Committee and the proposed use otherwise complies with this Declaration. With the prior written consent of the Architectural Control Committee, the Owner of two or more contiguous Lots may replat such Lots by filing the appropriate documentation with the City of Prescott to combine such Lots into one Lot. Upon the approval of such replat by the City of Prescott, such replatted Lots shall be deemed to be one Lot for all purposes under this Declaration.

6.4 Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary structure of any kind, shall be used for a residence, either temporary or permanent. Temporary buildings, construction trailers and/or other structures used during the construction of Improvements approved by the Architectural Control Committee shall be removed immediately upon completion of construction, and in no event shall such temporary structures remain on the Property longer than twelve months without the prior written approval of the Architectural Control Committee.

6.5 Nuisances and Care of Properties. All Lots shall be at all times kept free of rubbish and litter, as to present a tidy appearance. During a prolonged absence, the owner of each Lot will arrange for the care of his Lot during such absence. No rubbish or debris of any kind shall be placed or allowed to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof, or to the Occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. The Board in its sole discretion shall have the right to determine the existence of any such nuisance

6.6 Construction Activities. If carried out in compliance with all applicable Association Rules, Architectural Committee guidelines and laws, normal construction activities and parking in connection with the building of Improvements shall not be considered a nuisance or otherwise prohibited by this Declaration. During normal construction activities and the building of Improvements, Lots shall be kept in a reasonably neat and tidy condition. Trash and debris shall not be permitted to accumulate. The provisions of Sections 6.7, 6.8, 6.9 and 6.10 shall not apply to the construction activities of the Declarant.

6.7 Machinery and Equipment. Subject to applicable statutes, no machinery or equipment of any kind, commercial vehicle, no vehicle in excess of 6,500 pounds gross weight shall be placed, parked, operated or maintained on paved or unpaved parking areas upon or adjacent to any Lot, except:

- (a) such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction (during the period of construction) of a building, appurtenant structures, or other Improvements, or for limited temporary parking for loading or unloading,
- (b) lawn and garden equipment, provided they are housed in a building and not



Visible from Neighboring Property or street when not in use, and

(c) that which the Declarant or the Association may require for the operation or maintenance of the Project.

6.8 Motor Vehicles. Except for emergency vehicle repair, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other Property in the Project except wholly inside a garage, and no inoperable vehicle may be stored or parked on a Lot, street, or other Property in the Project. Motorcycles, mopeds, mini-bikes, trail bikes, all-terrain vehicles, or other similar vehicles shall not be operated on the Property (except for loading or unloading) except on paved streets, and then only if the vehicle is equipped and licensed to be street legal, and such vehicles shall be equipped with a muffler in good working order that is in constant use to prevent excessive or unusual noise.

6.9 Trucks, Trailers, Campers and Boats. Subject to applicable statutes, no commercial truck, motor home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on or adjacent to any Lot, street, or other portion of the Property; provided, however, this provision shall not apply to (a) pickup trucks equal to or less than one-ton of capacity and mini-motor homes not exceeding seven feet in height and eighteen feet in length which are used on a regular and recurring basis for basic transportation, (b) utility trailers temporarily parked during daylight hours while actively being used in work projects provided that such parking does not create a hazard, (c) trucks such as delivery trucks and moving vans temporarily parked during daylight hours while actively being used for their intended purposes, (d) recreational vehicles temporarily parked in the Owner's driveway during daylight hours when preparing for or returning from a trip, (e) recreational vehicles parked in an Owner's driveway for not more than a total of two consecutive nights per week nor more than four nights in any calendar month solely for the purpose of loading, unloading or cleaning the vehicle or (f) recreational vehicles of guests of Residents parked in an Owner's driveway for not more than two consecutive nights while visiting the Owner.

6.10 Towing of Vehicles. The Board shall have the right to have any truck, motor home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner or Lessee, then any amounts payable to the Association shall be secured by an Assessment Lien against the Owner's Lot, and the Association may enforce collection of such amounts in the same manner provided for in the Declaration for the collection of Assessments.

6.11 Garages. Each Residential Unit must include a minimum of a double car garage. No garage or other building shall be erected on any Lot prior to the construction of the Residential Unit. One detached out-building is allowed on each Lot, with prior approval by the Architectural Control Committee. Except as permitted pursuant to rules and regulations adopted



from time to time by the Board of Directors, vehicles of all Owners and Residents shall be kept in garages. Without the prior written approval of the Architectural Control Committee, garage space shall not be converted into any use (such as a recreational room or storage) which would prevent its use as a parking space for the number of vehicles it was designed to contain.

6.12 Size limit. No Residential Unit on any Lot shall contain fewer than two thousand two hundred (2200) square feet of total livable space with a minimum of one thousand eight hundred (1800) on the ground floor, excluding the garage.

6.13 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Control Committee. No provision of this Declaration shall be deemed to prohibit the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Control Committee. Notwithstanding the foregoing, utility meters and similar equipment may be placed on outside building walls when necessary to comply with any requirements or regulations of any public or private utility or governmental agency, provided that reasonable efforts shall be made to avoid placing any such meter or equipment on the outside front wall of a Residential Unit or other Improvement facing the street and such meters and similar equipment are adequately screened so as not to be Visible from Neighboring Property.

6.14 Roof Materials. No combustible material may be used for roofing on any Improvement.

6.15 Overhead Encroachments. No tree, shrub or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise encroach upon any sidewalk, street, or pedestrian way from ground level to a height of eight (8) feet without the prior approval of the Architectural Control Committee.

6.16 Landscaping and Care of Properties. Each Owner of a Lot must submit a landscaping plan to the Architectural Control Committee with the plans for the Residential Unit. A revised landscape plan may be resubmitted within three (3) months from completion of the construction of the Residential Unit. The installation of the approved landscaping shall be completed within nine (9) months of completion of Residential Unit. Each Owner shall maintain all landscaping on his Lot, including but not limited to trees, shrubs, hedges, ground coverings and plantings of any kind, neatly trimmed, properly maintained, and free of trash, weeds, and other unsightly material. Bare soil scaring left after construction of residences or roadwork that is unsightly or represents an erosion risk must be landscaped with approved rock material, plantings or other suitable methods approved by the Architectural Control Committee within the landscaping time limit. Irrigated roadside plantings, if any, that are originally provided by the Declarant with each Lot must be connected to the Lot owner's irrigation system when construction of the Residential Unit is finished. Each Lot owner is responsible for the maintenance of all landscaping on his Lot, including without limitation the planting provided by the Declarant. Diseased trees must be treated and dead trees removed as soon as possible. During construction of Improvements all efforts must be made by the Lot owner to preserve and protect the trees on



his Lot not approved for removal by the Architectural Control Committee.

6.17 Fences. Unless used to create spaces of privacy, child protection, animal control, or architectural effect as determined in each case by the Architectural Control Committee, fencing shall not be used to define limits of property ownership. Plans must show length, height, design, materials used, finishes, and color. These plans must be submitted to and approved by the Architectural Control Committee. Fences must comply with the requirements of the Architectural Control Committee Rules.

6.18 Sight Distance at Intersections. No wall, hedge or shrub planting which obstructs sight lines at elevations two (2) feet above the Property Roadways shall be permitted to remain on any corner Lots within the triangular area formed by the street property lines and a line connecting them at points fifty (50) feet from the property lines, or in the case of a rounded property corner from the intersection of the street property lines extended. No tree shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

6.19 Trash Containers and Collection. No garbage, trash or other waste shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Architectural Control Committee. No substance, animal thing or material shall be kept that will emit a foul or obnoxious odor, or cause any notice that might disturb the peace, quiet, comfort or serenity of the occupants of the surrounding property. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make same 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 Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

6.20 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Property.

6.21 Antennas. Subject to applicable statutes, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, but not limited to satellite or microwave dishes, shall be erected, used or maintained on any Lot without the prior written approval of the Architectural Control Committee. Permanently erected ham radio towers shall not be permitted. All ham radio towers must be of the electrically or automatically raised type and must be lowered when not in use.

6.22 Noise Control. Any vibration, noise, sound or disturbance that is objectionable due to intermittence, beat, frequency, shrillness, or loudness is prohibited.

6.23 Windows and Coverings. No window of any Residential Unit shall at any time be covered with aluminum foil, bed sheets, newspapers or any other like materials. Only proper drapes, blinds or shutters will be allowed as window coverings in any Residential Unit. Prior to installation of any reflective materials for use on any building on the Property, approval and consent must be obtained from the Architectural Control Committee.



6.24 Climate Control Units. Rooftop climate control units are not permitted. No window mounted climate control units are permitted.

6.25 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

6.26 Animals. No animals, birds, fowl, poultry, or livestock, shall be kept, bred or raised on any Lot, other than a reasonable number of generally recognized house or yard pets, and then only if they are kept thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, and no unsanitary conditions or odors shall be permitted to exist. Dogs shall be kept within structures or fences or on secured leashes. All dogs shall be leashed when on property not owned or occupied as a tenant or guest by the dog's owner. Notwithstanding the foregoing, no pets may be kept on or in any Lot which, in the opinion of the Board, result in an annoyance to other Owners or Occupants in the vicinity. Any such decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

6.27 Fire/Building Repair. No Improvement on any Lot shall be permitted to fall into disrepair, and each such Improvement shall be at all times kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed by a fire, act of God, or other event, then, subject to obtaining required approvals required by this Declaration, the damage shall be immediately repaired or rebuilt or the Improvement shall be demolished.

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

6.29 Leasing of Lots.

(a) Any agreement for the lease of all or any portion of a Lot must be in writing and must be for a period of twelve months or more. Any agreement for lease must be expressly subject to the Project Documents. Any violation of the Project Documents shall be a default under the lease. All Owners of Lots that are leased or subleased hereby grant to the Association a power of attorney to enforce against the Lessee the provisions of the Project Documents and to enforce against the Lessee those provisions of such leases or subleases that relate to violations by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors of the Project Documents or the lease agreement (except those provisions that relate to the payment of rent.) The power of attorney granted hereby authorizes the Association to take any lawful action to enforce the Project Documents and the lease agreement, including, without limitation, bringing actions at law or in equity and to recover, from the Owner and/or the Lessee against whom any enforcement effort or action is brought, the costs of enforcing the terms of the Project Documents and the lease or sublease with respect to violations thereof by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors. The "costs of enforcing" shall include properly levied fines and penalties, penalty late fees and interest, costs of collection (including legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action), attorneys' fees, court costs, property



damage, etc.

(b) The Owner of the leased Lot shall remain liable for compliance with the Project Documents and shall be responsible for any violations thereof by his Lessee or his Lessee's family or guests. Each Owner shall provide a copy of the Project Documents to his Lessee. By becoming a Lessee, each Lessee agrees to be bound by the Project Documents and recognizes the right and power of the Association to evict the Lessee for any violation of the Project Documents.

(c) No more than fifteen percent (15%) of the Lots of the Association may be leased at any given time to a Third Party. The Board shall be entitled to reject any proposed lease, and to deny the Owner submitting such proposed lease the right to lease his Lot pursuant thereto, if the Board determines in good faith that the leasing of such Lot pursuant to the proposed lease would result in the violation of the limitation imposed by this Section. For the purpose of this Section, "Third Party" shall be defined as any Person who is not an Owner. All proposed lease agreements (including lease renewals) must be submitted to the Association no less than thirty (30) days prior to execution thereof by the Owner. At such time, the Owner shall also submit a "tenant registration form" to the Association for each existing tenant/lease, in a form prepared by the Board. The Association may charge a reasonable review and processing fee for the review of the lease and tenant registration form. If an Owner fails to provide the "tenant registration form" to the Association as required above, the Association may impose reasonable monetary penalties as determined by the Board, in addition to other remedies available under this Declaration and Arizona law. In such case, the Board may also suspend an Owner's ability to lease his Lot for a period of twelve (12) months. This rental restriction provision takes precedence over any inconsistent language in the Articles or Bylaws or Association Rules. In case of hardship, an Owner may apply for a hearing before the Board for temporary or special variances from the leasing restrictions imposed by this Section. The Board may make the determination of the existence of a hardship in its sole discretion exercised on a case-by-case basis.

6.30 Other Uses, Activities and Facilities. The Association Rules may contain restrictions, limitations, rules and regulations governing any additional uses, activities, Improvements or facilities on a Lot or within the Project that are (i) Visible From Neighboring Property or (ii) that are deemed by the Association to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents. The following are some, but not all of the uses, activities, Improvements or facilities that may be governed by the Association Rules: animals; construction and maintenance activity; antennas; trash containers and collection; clothes drying facilities; signs; flags and flagpoles; basketball, tetherball and volleyball standards; motor vehicles; parking; trucks, trailers, campers and boats; towing of vehicles; garages and driveways; rooftop air conditioners; solar energy devices; sport courts; lighting; amplifiers; window treatments; garage sales; and noise. The foregoing list is not intended to be exhaustive. The Association Rules are intended to be responsive to the changing needs of the Project and the desires of the Association's Members.

6.31 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file

with the county or municipality in which the Project is located.

6.32 Declarant's Exemption. No provision in this Declaration shall be construed to limit or restrict Declarant's right to construct, develop and market Improvements on any and all Lots in the Project, in any manner deemed appropriate by Declarant.

ARTICLE 7

EASEMENTS

7.1 Owners' Easements of Enjoyment.

7.1.1 Every Owner or Lessee, and any person residing with such Owner or Lessee, shall have a right and easement of enjoyment in and to the Roadways in the Project which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to dedicate, convey, transfer or encumber the Roadways.
- (b) The right of the Association to regulate the use of the Roadways through the Association Rules.

7.2 Right of Entry. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

- (a) for inspection of the Lots except for the interior portions of any completed Residential Unit in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;
- (b) for inspection, maintenance, repair and replacement of the Entry Signs accessible only from such Lots;
- (c) for correction of emergency conditions in one or more Lots;
- (d) for the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;
- (e) for inspection of the Lots except for the interior portions of any completed Residential Unit (i) in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot, or (ii) to satisfy the disclosure requirements, if any, of applicable law.

7.3 Declarant's Easements.

7.3.1 The Declarant shall have the right and an easement on and over the Property for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. The Declarant shall have the right and an easement upon, over and through the Lots as may be reasonably necessary for the purpose of discharging the obligations or exercising the



rights granted to or reserved by the Declarant under this Declaration, including without limitation the construction and maintenance of sidewalks and lighting constructed by the Declarant in the development of the Project. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

7.3.2 The Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs in the project while the Declarant is selling Lots. The Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant in such number, of such size and in such locations as Declarant deems appropriate.

7.4 Utility Easement. There is hereby created an easement upon, across, over and under the Lots for reasonable ingress, egress, installation, replacing, repairing, of maintaining of all utilities, including but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in and under roofs and exterior walls of the Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Property except as initially developed and approved by the Declarant or thereafter approved by the Board and by the City of Prescott. This easement shall in no way affect any other recorded easements on the Property.

7.5 Drainage Easements and Maintenance.

7.5.1 There is hereby created an easement for drainage of ground and surface water on, over and across each Lot, Roadway right-of-way and the Property, which shall be appurtenant to, burden or benefit each Lot, right-of-way or Property. With the prior written approval of the Architectural Control Committee, each Owner shall, at its own expense, design and construct drainage ways and channels on its Lot, and, as needed, maintain the same in proper condition and free from obstruction. Subject to the provisions of Section 8.4, each Owner shall be responsible for maintaining the integrity of any drainage easements within his Lot. Drainage easements conform to natural or man-made watercourses. These watercourses will require periodic maintenance to convey on-site or off-site discharges. Periodic maintenance will include, without limitation, the removal of earth and/or vegetative material that has built up in the easement since the approval of the Plat.

7.5.2 The Association shall have the right, after ten (10) days notice to an Owner, except in the case of emergency (in which case the Association shall have immediate right of access), to repair and otherwise maintain the drainage easement or channel on said Owner's Lot, which the Association, acting through its Board, determines has not been maintained by the Owner in compliance with this section. All costs and expenses, including reasonable attorneys' fees, shall be borne by the Owner, and shall be paid to the Association upon demand, plus interest at an annual rate of twelve percent (12%) from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an Assessment, and collected in like manner as Assessments under this Declaration.



7.5.3 In the event in the opinion of the Public Works Director of the City of Prescott the drainage easements on a Lot are not adequately maintained by the Owner of such Lot, then the City of Prescott shall have the authority to enter the Lot and to cause the necessary maintenance to be done and shall have the further authority to pass on to the Lot Owner all the costs of said maintenance.

7.6 Entrance Signs Easement. The Association and to its successors and assigns, shall have a perpetual non-exclusive easement over, on and across the portions of Lots 1, 4, 5 and 13 lying within the areas designated on the Plat as the Sign Easement Area (the "Sign Easement Area") for the limited purposes of the erection and maintenance of entrance signs and all walls, fencing, landscaping and other related structures and utilities (together, the "Entrance Signs") as determined appropriate by the Association from time to time in its sole discretion. The exact location in the Sign Easement Area and the style of the Entrance Signs shall be as determined from time to time by the Association in its sole discretion. This easement granted to the Association shall include, without limitation, the right of the Association and its agents to enter upon the Sign Easement Area at any time, and from time to time, to construct and maintain the Entrance Signs. The Owners of Lots 1,4,5 and 13 shall not take any action, including, without limitation, erecting or maintaining any sign, fence or other obstruction or structure on the Sign Easement Area, that will prevent or otherwise interfere with the Association's exercise of the rights granted to it pursuant to this Section.

ARTICLE 8

MAINTENANCE

8.1 Lots. Each Owner shall be responsible for maintaining his Lot. Each Owner shall be responsible for maintaining, repairing or replacing any and all buildings, Residential Units, landscaping or other Improvements situated on his Lot. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Control Committee. No yard equipment, woodpiles or storage area may be maintained so as to be Visible From Neighboring Property. Beginning at such time as the Board determines in its sole discretion and continuing thereafter, each Owner shall assume and be responsible for maintaining, repairing and replacing all lighting, monuments, landscaping and irrigation systems constructed, installed and/or planted by the Declarant or its agent in the Roadway easement area of the Owner's Lot.

8.2 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or value of the surrounding Lots or other areas of the Property, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event that an Owner of a Lot is failing to perform any of its obligations under this Declaration, then the Board may make a finding to that effect, specifying the particular violation(s) which exist, and



pursuant thereto give notice to the offending Owner that, unless corrective action is taken within thirty (30) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said thirty (30) day period of time the requisite corrective action has not been taken, then the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand, or payments of such amounts shall be secured by the Assessment Lien.

8.3 Entrance Signs. The Association will be responsible for the maintenance and repair of the Entrance Signs, if any, erected by the Association on the Sign Easement Area.

8.4 Water Detention Areas. The Association will be responsible as noted on the final Plat for the maintenance and repair of any fences, drains, overflow drains and associated landscaping constructed, installed and/or planted by the Declarant or its agent in the areas designated as detention areas on the final Plat notwithstanding the fact that such detention areas are located within any Lot of the Property. Adequate schedules for inspection by the Association of the drain pipes for debris shall be maintained, and all detention areas kept cleaned by the Association. In the event in the opinion of the Public Works Director of the City of Prescott the detention areas are not adequately maintained by the Association, then the City of Prescott shall have the authority to enter the Lot on which the detention area is located and to cause the necessary maintenance to be done and shall have the further authority to pass on to the Association all the costs of said maintenance.

ARTICLE 9

INSURANCE

9.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

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

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

9.1.3 Workmen's compensation insurance to the extent necessary to meet the



requirements of the laws of Arizona;

9.1.4 Directors and officers liability insurance in an amount to be determined by the Board;

9.1.5 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

9.1.6 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

- (a) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;
- (b) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;
- (c) That the coverage afforded by such policy shall not be brought into contribution or pro-rata with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;
- (d) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;
- (e) Statement of the name of the insured as the Association; and
- (f) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

9.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 9.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

9.4 Payment of Insurance Proceeds. With respect to any loss to the Entrance Signs covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The proceeds shall be disbursed for the repair or restoration of the damage to the Entrance Signs.

9.5 No Liability. None of the Association, any Board member or the Declarant shall be liable to any person if any risks or hazards are not covered by the insurance obtained by the Association



or if the amount of the insurance is not adequate.

ARTICLE 10

GENERAL PROVISIONS

10.1 Costs of Enforcement. Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 6.1.

10.2 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents, or by a proceeding at law or in equity, and, in such proceeding, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees and court costs incurred by the prevailing party in the action. Failure of the Association or of any Owner to enforce any violation of the Project Documents shall not be deemed to constitute a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the non-prevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

10.3 Term. This Declaration shall be effective upon the date of its recordation and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After said date, this Declaration, along with any amendments hereto, shall be automatically extended for successive periods of ten (10) years each.

10.4 Amendment or Termination. This Declaration may be amended or terminated at any time by (i) the Declarant, without the consent of any other Owners, prior to the termination of its status as a Class B Member and (ii) the written approval or the affirmative vote, or any combination thereof, of the Owners representing not less than seventy-five percent (75%) of the Lots. Notwithstanding the foregoing, so long as the Declarant owns one or more Lots, any amendment to this Declaration must have the prior written approval of the Declarant. The Declarant, so long as it is a Member of the Association, and, thereafter, the Board, may amend this Declaration without the consent of any other Owner to correct any error or inconsistency in the Declaration. If the necessary votes and approvals are obtained, then the Board shall cause any amendment to or termination of this Declaration to be recorded in proper form with the County Recorder of Yavapai County, Arizona, duly signed by the President or Vice President of the Association and attested by the Secretary of the Association, with their signatures acknowledged. Thereupon, any amendment shall be given full force and effect. Upon termination, this Declaration and the covenants contained herein shall be of no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

10.5 Interpretation. Except for judicial construction, during such time as the Declarant is a Class B Member, the Declarant shall have the exclusive right to construe and interpret the



provisions of this Declaration, and commencing the date that the Declarant ceases to be a Class B Member, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and Property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Control Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall prevail. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Control Committee Rules, the Bylaws shall prevail.

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

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

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

10.9 Laws, Ordinances and Regulations. The covenants, conditions and restrictions set forth in this Declaration are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve any Owner or other Person from the obligation to also comply with all applicable laws, ordinances, and regulations. Any violation of an applicable law, ordinance or regulation pertaining to the ownership, occupation or use of any property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

10.10 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot may incorporate this Declaration by reference; but, regardless of whether any such reference is made in any deed or instrument, all of the provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his heirs, personal representatives, successors and assigns.

10.11 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only, and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof.




10.12 Notices. If notice of any action or proposed action by the Board or any committee thereof or of any meeting thereof is required by the Project Documents or by applicable law to be given to any Owner, Lessee or Resident, then, unless otherwise specified herein, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper of general circulation within Yavapai County. This Section shall not be construed to require that any notice be given if not otherwise required, and shall not prohibit satisfaction of any notice requirement in any other manner.

10.13 Gender and Number. Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words used in the singular shall include the plural, and words used in the plural shall include the singular.

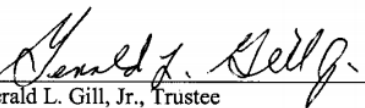
10.14 Property Held in Trust. Except as otherwise expressly provided in this Declaration, any and all portions of the Property, including any annexed Property, which are now or hereafter held in a subdivision or similar trust or trusts, a beneficiary of which trust is Bird Song L.L.C. or an affiliate, successor or assign thereof, shall be deemed for all purposes under this Declaration to be owned in fee by Bird Song L.L.C., or its affiliate, successor, or assign, if applicable. No conveyance, assignment or other transfer of any right, title, or interest in or to any of the Property by Bird Song L.L.C., or its affiliate, successor or assign, to any such trust, or the trustee thereof, or to any affiliate, successor or assign of Bird Song L.L.C., shall be deemed for purposes of this Declaration to be a sale of such Property, or any right, title or interest therein.

CHICAGO TITLE INSURANCE COMPANY,
as Trustee under Trust No. 36013


Trust Officer

Bird Song L.L.C.,
an Arizona Limited Liability Company, as "Declarant".

By: The Gill Family Trust, dated September 21, 1993, as amended,
the managing member of Bird Song, L.L.C.

By: 
Gerald L. Gill, Jr., Trustee

By: 
Annette E. Gill, Trustee



STATE OF ARIZONA)
) ss
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this 20th day of June, 2006, by Rebecca L. Middlemore the Trust Officer of Chicago Title Insurance Company, Trustee under Trust No. 36013, on behalf of the Trust.

Brandy Craton
Notary Public
My Commission expires: Aug. 7, 2009

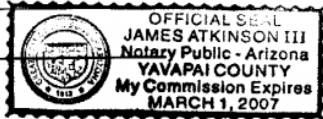


SEAL

STATE OF ARIZONA)
) ss
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this 23 day of March 2006, by Gerald L. Gill, Jr. and Annette E. Gill, the trustees of The Gill Family Trust, dated September 21, 1993, as amended, the Managing Member of Bird Song, L.L.C., an Arizona Limited Liability Company.

[Signature]
Notary Public
My Commission Expires: _____



SEAL

FEE
\$5
\$8
\$5
\$1
\$14

dm Trust 353034

Recorded at the request of:
James D. Atkinson

When recorded mail to:
James D. Atkinson
1550 Plaza West Drive
Prescott, AZ 86303

B: 4782 P: 224 12/10/2010 05:00:31 PM AMND
Ana Wayman-Trujillo
OFFICIAL RECORDS OF YAVAPAI COUNTY \$14.00
PIONEER TITLE AGENCY INC 2010-4432931

B: 4782 P: 224 12/10/2010 05:00:31 PM AMND
\$14.00 Page: 1 of 4 2010-4432931
[Barcode]

**FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE NORTH FORTY**

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions and Restrictions for The North Forty ("First Amendment") is made effective as of the date of its recording in the Official Records of Yavapai County, Arizona.

WITNESSETH:

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions for The North Forty was recorded July 12, 2006 in Book 4415, Page 224, of the Official Records of Yavapai County, Arizona (the "Declaration"), and

WHEREAS, pursuant to the Section 10.4 of the Declaration, the Declaration may be amended by the Declarant, without the consent of any other Owners, prior to the termination of its status as a Class B Member, and

WHEREAS, the status of the Declarant as a Class B Member has not been terminated as of the date of the recording of this First Amendment, and

WHEREAS, by executing this First Amendment to the Declaration, the undersigned Declarant and Pioneer Title Agency, Inc. as Trustee of Trust 353034 intend to amend the Declaration as hereinafter set forth.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Article 5 of the Declaration is hereby amended to add a new section, Section 5.15, entitled Building Envelope which shall provide as follows:

5.15 The Building Envelope. Each Lot contains a building envelope as designated by the Declarant and as depicted on the Plat (each, a "Building Envelope"). No modifications to the Building Envelope on an individual Lot will be permitted, except by approval of the Architectural Control Committee and the City of Prescott. The Architectural Control Committee shall have the discretion to grant its approval of such modifications under such

terms and conditions as it in its sole discretion deems appropriate.


2. Section 6.12 of Article 6 of the Declaration is hereby amended in its entirety to provide as follows:

6.12 Size limit. No Residential Unit on any Lot shall contain fewer than two thousand (2000) square feet of total livable space with a minimum of one thousand eight hundred (1800) on the ground floor, excluding the garage.

3. Except as specifically modified by this First Amendment, the Declaration shall remain in full force and effect in accordance with its terms. In the event of any conflict or inconsistency between the terms of this First Amendment and the Declaration, the terms of this First Amendment shall control. Capitalized terms used but not specifically defined in this First Amendment shall have the meanings prescribed in the Declaration.

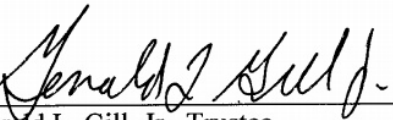
IN WITNESS WHEREOF, the Declarant and Pioneer Title Agency, Inc. as Trustee of Trust 353034 have executed this First Amendment on December 31st, 2010.

PIONEER TITLE AGENCY, INC.
as Trustee under Trust No. 353034

By: 
Trust Officer

Bird Song L.L.C.,
an Arizona Limited Liability Company, as "Declarant".

By: The Gill Family Trust, dated September 21, 1993, as amended,
the managing member of Bird Song, L.L.C.

By: 
Gerald L. Gill, Jr., Trustee

By: 
Annette E. Gill, Trustee



STATE OF ARIZONA)
) ss
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this 10th day of December 2010, by Brenda Martinez, the Trust Officer of Pioneer Title Agency, Inc., Trustee under Trust No. 353034, on behalf of the Trust.

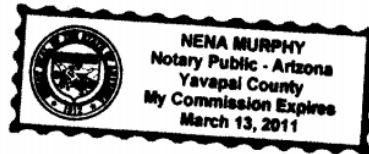
Tisha Ridder
Notary Public
My Commission expires: 11 20 2014



STATE OF ARIZONA)
) ss
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this 3rd day of December 2010, by Gerald L. Gill, Jr. and Annette E. Gill, the trustees of The Gill Family Trust, dated September 21, 1993, as amended, the Managing Member of Bird Song, L.L.C., an Arizona Limited Liability Company.

Nena Murphy
Notary Public
My Commission Expires: 3-13-11



CONSENT TO FIRST AMENDMENT
TO
DECLARATION OF CONVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE NORTH FORTY

KNOWN ALL MEN BY THESE PRESENTS; THAT WHEREAS,

Country Bank is Trustee of that certain Deed of Trust recorded February 16, 2006, as Book 4365, page 266, records of Yavapai County, Arizona, in which are Bird Song, L.L.C., an Arizona limited liability company, Trustors, and, Country Bank is Beneficiary,


AND WHEREAS,

Country Bank, as Beneficiary, desires to consent to First Amendment to Declaration of Covenants, Conditions and Restrictions for the North Forty.

NOW THEREFORE, the undersigned, as Beneficiary, does hereby consent to the First Amendment to Declaration of Covenants, Conditions and Restrictions for the North Forty. and agree that any sale made under the provisions of said Deed of Trust shall be subject to said Amendment and this consent.

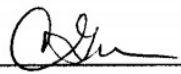
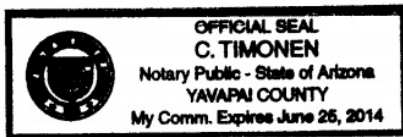
Dated: December 8, 2010

Country Bank



STATE OF ARIZONA }
 } ss.
County of Yavapai }

This instrument was acknowledged before me this 10th day of Dec, 2010 by
Ryan Glennan as VP for Country Bank.



Notary Public
My commission expires: 6.25.14