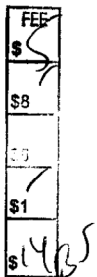


3575803 BK 4026 PG 632
Yavapai County, Arizona
Patsy Jenney-Colon, Recorder
04/30/2003 02:23P PAGE 1 OF 2
RANCH AT PRESCOTT
RECORDING FEE 5.00
SURCHARGE 8.00
POSTAGE 1.00



WHEN RECORDED RETURN TO:

The Ranch at Prescott
P.O. Box 471
Prescott, AZ 86302-0471

**AMENDMENT TO DECLARATION OF COVENANTS CONDITIONS AND
RESTRICTIONS FOR MYSTIC HEIGHTS, UNIT IX
IN THE RANCH AT PRESCOTT**

This Amendment to the Amended Unit Declaration for The Ranch at Prescott Unit IX is made this 30 day of April 2003, by Bullwhacker Associates, an Arizona limited partnership (the Declarant).

RECITALS

- A. This Amendment supercedes the Declaration of Covenants Conditions and Restrictions for Mystic Heights Unit IX in The Ranch at Prescott, recorded in Book 3972 page 445, and they are hereby made and declared to be null and void
- B. A Second Amended and Restated Declaration of Covenants Conditions and Restrictions for the Ranch at Prescott (the Declaration) was recorded in Book 2950 page 430 Records of Yavapai County, Arizona to establish a general plan for the development, sale, lease and use of the master planned community known as The Ranch at Prescott.
- C. Terms used in this Amendment without definition shall have the meanings given to such terms in the Declaration.
- D. Section 2.2 of the Declaration grants the Declarant the right to Annex and subject to the Declaration all or any portion of the Additional Property which includes Lots M1 through M54, The Ranch at Prescott Unit IX, according to the Plat recorded in Book 46 of Maps and Plats, pages 3-4, records of Yavapai County, Arizona (the Annexed Property).
- E. Declarant desires to annex and subject the Annexed Property to the Declaration.
- F. The Declarant is the owner of all of the lots annexed hereunder, and the Declarant desires to add certain restrictions with respect to the design and construction of Residential Units and other improvements to be constructed on the Lots annexed to the Declaration hereunder.

AMENDMENT

NOW THEREFORE, Declarant declares as follows:

1. Pursuant to Section 2.2 of the Declaration, Declarant hereby annexes and subjects the Annexed Property to the Declaration. The annexation of the Annexed Property shall be effective upon the recording of this Amendment with the County Recorder of Yavapai County, Arizona.

2. Residential Construction. All residential design must be approved by the Architectural Committee of The Ranch at Prescott. The Master Design Guide Lines will be used with following exceptions:


a. A minimum square footage of eighteen hundred square feet on the level with a two car garage is permitted.

b. Exterior construction must be masonry or stucco construction. Roofs must be concrete tile or equivalent. Flat roofs may be used with approval of the Architectural Committee.

c. Exterior colors are to be basic earth tones. Landscape aggregate will be of volcanic origin similar in color to site material and as approved by the Architectural Committee.

In witness whereof, Declarant has executed this Declaration as of the 30 day of April 2003.

Bullwhacker Associates, an Arizona limited partnership
Lee, LTD., General Partner

By: 

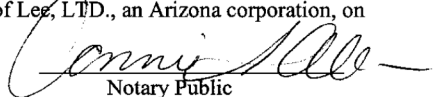
J.N. Lee, President

STATE OF ARIZONA)
) SS
County of Yavapai)

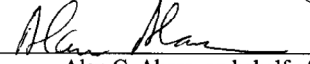


30th This instrument was acknowledged before me, the undersigned officer, on this day of April, 2003, By J.N. Lee, President of Lee, LTD., an Arizona corporation, on behalf of the corporation.

My Commission expires: 12/2/2005




Notary Public

Approved by: 

Alan C. Abare, on behalf of Yavapai Title Agency, Inc., Trustee

WHEN RECORDED, RETURN TO:

The Ranch at Prescott
P. O. Box 471
Prescott, Arizona 86302

 INSTRUMENT # 9474935
OFFICIAL RECORDS OF
YAVAPAI COUNTY
MARGO M. CARSON
REQUEST OF:
THE RANCH AT PRESCOTT
DATE: 12/30/94 TIME: 15:10
FEE: 37.00 SC: 4.00 FT: 1.00
BOOK 2950 PAGE 430 PAGES: 037

BK	FEE
	42
MAP	\$1
PCL	\$5
	\$1
	42

SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RANCH AT PRESCOTT



BOOK 2950 PAGE 430

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
THE RANCH AT PRESCOTT**

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**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

FOR

THE RANCH AT PRESCOTT

This Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for The Ranch at Prescott is made this ____ day of _____, 1994, by Bullwhacker Associates, an Arizona limited partnership (the "Declarant"), and The Ranch at Prescott Homeowners Association, an Arizona nonprofit corporation (the "Association").

RECITALS

A. An Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Ranch at Prescott was recorded in Book 2653, commencing at page 653, and re-recorded in Book 2657, commencing at page 305, records of Yavapai County, Arizona (collectively, the "Amended and Restated Declaration"), amending and restating the Master Declaration of Restrictive Covenants for All Lots of Single Family Residential Units of The Ranch at Prescott recorded in Book 1906, commencing at page 102, records of Yavapai County, Arizona, which established a general plan of development for the master planned community known as The Ranch at Prescott.

B. Declarant represents and is entitled to cast more than sixty-seven percent (67%) of the total votes in the Association.

C. The Declarant and the Association desire to amend and restate the Amended and Restated Declaration in the manner set forth herein.

NOW, THEREFORE, the Amended and Restated Declaration is amended and restated to read as follows:

ARTICLE 1

DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

BOOK 2650 PAGE 435

1.1 "**Additional Property**" means any real property, together with the Improvements located thereon, described on Exhibit B attached hereto.

1.2 "**Annual Assessment**" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.3 "**Architectural Committee**" means the committee of the Association to be created pursuant to Section 5.10 of this Declaration.

1.4 "**Architectural Committee Rules**" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration, as amended or supplemented from time to time.

1.5 "**Areas of Association Responsibility**" means (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association; and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

1.6 "**Articles**" means the Articles of Incorporation of the Association, as amended from time to time.

1.7 "**Assessment**" means an Annual Assessment or Special Assessment.

1.8 "**Assessment Lien**" means the lien created and imposed by Article 6 of this Declaration.

1.9 "**Assessment Period**" means the period set forth in Section 6.5 of this Declaration.

1.10 "**Association**" means The Ranch at Prescott Homeowners Association, an Arizona nonprofit corporation, and its successors and assigns.

1.11 "**Association Rules**" means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as amended from time to time.

1.12 "**Board**" means the Board of Directors of the Association.

1.13 "**Bylaws**" means the Bylaws of the Association, as amended from time to time.

1.14 "**Common Area**" means (i) Tracts A, C, D and E and a portion of Tract B, The Ranch at Prescott Unit III, according to the plat recorded in Book 26 of Maps and Plats, page 27, records of Yavapai County, Arizona; (ii) Tracts B through G, inclusive, The Ranch at Prescott Unit IV, according to the plat recorded in Book 27 of Maps, page 39, records of Yavapai County, Arizona; (iii) Tracts A, B, C and D, The Ranch at Prescott Unit V, according to the plat recorded in Book 28 of Maps and Plats, pages 35-38, records of Yavapai County, Arizona; and (iv) all land, together with all Improvements situated thereon which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

1.15 "**Common Expenses**" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.16 "**Declarant**" means Bullwhacker Associates, an Arizona limited partnership, and any Person to whom the Declarant may expressly assign any or all of its rights under this Declaration by an Instrument recorded with the County Recorder of Yavapai County, Arizona.

1.17 "**Declaration**" means this Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions, as amended from time to time.

1.18 "**First Mortgage**" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

1.19 "**First Mortgagee**" means the holder or beneficiary of any First Mortgage.

1.20 "**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 improvements of every type and kind.

1.21 "**Lessee**" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

1.22 "**Lot**" means a portion of the Project designated as a lot on a Plat and, where the context indicates or requires, any Residential Unit, building, structure or other Improvements situated on the Lot.

1.23 "**Maintenance Standard**" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.24 **"Member"** means any Person who is a Member of the Association.

1.25 **"Owner"** means the record owner, 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. § 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 contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

1.27 **"Plat"** means, individually and collectively, (i) the plat of The Ranch at Prescott Unit One recorded in Book 25 of Maps, page 21, records of Yavapai County, Arizona, and all amendments, supplements or corrections thereto; (ii) the plat of The ranch at Prescott Unit III recorded in Book 26 of Maps and Plats, page 27, records of Yavapai County, Arizona, and all amendments, supplements and corrections thereto; (iii) the plat of The Ranch at Prescott Unit IV recorded in Book 27 of Maps, page 39, records of Yavapai County, Arizona, and all amendments, supplements and corrections thereto; (iv) the plat of The Ranch at Prescott Unit V recorded in Book 28 of Maps and Plats, pages 35-38, records of Yavapai County, Arizona, and all amendments, supplements and corrections thereto; (v) the plat of The Ranch at Prescott Unit VI recorded in Book 30 of Maps and Plats, pages 23-26, records of Yavapai County, Arizona, and all amendments, supplements and corrections thereto; and (vi) any subdivision plat recorded against any Additional Property annexed pursuant to Section 2.2 of this Declaration and all amendments, supplements and corrections thereto.

1.28 **"Property" or "Project"** means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon, and all real property, together with all Improvements located thereon, which is annexed and subjected to this Declaration by the Declarant pursuant to Section 2.2 of this Declaration.

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

1.30 "**Purchaser**" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.31 "**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.

1.32 "**Resident**" means each individual occupying or residing in any Residential Unit.

1.33 "**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.

1.34 "**Single Family**" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related who constitute a single family unit.

1.35 "**Special Assessment**" means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

1.36 "**Unit Declarations**" means the Unit Declarations recorded in Book 1911, commencing at page 115, in Book 2113, commencing at page 810, in Book 2268, commencing at page 440, and in Book 2262, commencing at page 256, records of Yavapai County, Arizona, and any Unit Declaration that may be recorded pursuant to Section 2.2 of this Declaration, as such Unit Declarations may be amended from time to time.

1.37 "**Visible From Neighboring Property**" means, with respect to any given object, that such object is or would be visible from any part of such neighboring property.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 **Property Initially Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value, appearance and desirability of the Project. Declarant declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. All of the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the Property and be binding upon all future Owners, grantees, purchasers, assignees, lessees and transferees of all or any part of the Property. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, 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, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, 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, prohibitive 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 Annexation of Additional Property.

2.2.1 At any time on or before the date which is fifteen (15) years after the date of the Recording of this Declaration, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person. The annexation of all or any portion of the Additional Property shall be affected by the Declarant Recording a Unit Declaration containing; (i) the legal description of the Additional Property being annexed; (ii) a statement that such portion of the Additional Property is annexed and subjected to this Declaration; (iii) a description of any portion of the Additional Property being annexed which will be Common Area; and (iv) such additional covenants, easements or restrictions as the Declarant may deem appropriate for the Additional Property being annexed. Unless a later effective date is set forth in the Unit Declaration annexing all or any part of the Additional Property, the annexation shall become effective upon the Recording of the Unit Declaration.

2.2.2 Declarant makes no assurances as to the exact number of Lots which shall be added to the Project by annexation or if all or any portion of the Additional Property will be annexed.

2.2.3 The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The property annexed by the Declarant pursuant to this Section 2.2 need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property.

2.3 **Disclaimer of Representations.** Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) any Property subject to this

Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

ARTICLE 3

USE RESTRICTIONS

3.1 Architectural Control.

3.1.1 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.2 No Improvement (including, but not limited to, trees, plants, shrubs, rock, grass or other landscaping improvements) shall be constructed or installed on any Lot without the prior written approval of the Architectural 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 Lot, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his Lot, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with any fee payable pursuant to Section 3.1.5 of this Declaration and all supporting information, plans and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, the Owner requesting approval shall submit to the Architectural Committee a second written request for approval of the application previously submitted by such Owner. If the Architectural Committee fails to disapprove the application within ten (10) days after receipt of the second written request for approval of the application, the Architectural Committee will be deemed to have approved such application and the requirements of this Section shall be deemed to have been complied with by such Owner. However, the approval of any application submitted by an Owner pursuant to this Section by reason of the failure of the Architectural Committee to timely disapprove the application shall not relieve such Owner from the obligation to comply with all other provisions of this Declaration. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.1.3 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.4 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.1.5 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.6 All improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

3.1.7 The provisions of this Section do not apply to, and approval of the Architectural 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.

3.1.8 The approval required of the Architectural Committee pursuant to this Section 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.

3.1.9 The approval by the Architectural 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 Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.1.10. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this Section if the Architectural Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Architectural Committee Rule; (iii) the proposed construction,

installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable; or (v) the proposed construction, installation, addition, alteration, repair, change of other work is otherwise not in accord with the general plan for the Project.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee may be kept or maintained on a Lot but must be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of six months without the prior written approval of the Architectural Committee.

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

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

3.5 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee.

3.6 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.

3.7 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property.

3.8 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other property.

3.9 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 or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

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

3.11 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) 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. The terms "business" and "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: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.12 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that dogs, cats, parakeets or similar household birds not to exceed a total of two (2) may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All dogs, cats or birds permitted under this Section shall be confined to an Owner's Lot except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. No dog, cat or bird permitted by this Section shall be allowed to make an unreasonable amount of noise, annoy or disturb any Owner or Resident, or become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained on any Lot without the prior written approval of the Architectural Committee. Upon the written request of any Owner, Lessee or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular dog, cat or bird is a nuisance or making an unreasonable amount of noise or annoying or disturbing any Owner or Resident. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

3.13 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except 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 such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

3.14 Signs. No signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except: (i) signs required by legal proceedings; (ii) residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee; and (iii) one (1) "For Sale" sign provided the size, color, design, message content, location and type has been approved in writing by the Architectural Committee.

3.15 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other

than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.16 Trucks, Trailers, Campers and Boats. No truck, mobile 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 any Lot or Common Area or on any street without the prior written approval of the Architectural Committee, except for: (i) the temporary parking of a motor home or similar vehicle on the paved portion of a Lot for the purpose of loading or unloading not to exceed a period of more than forty-eight (48) hours within any seven (7) day period; (ii) boats and vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; or (iii) trucks or vans not exceeding seven (7) feet in height and eighteen (18) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind which are parked in garages or on driveways situated on a Lot.

3.17 Motor Vehicles. Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot, street or other property in the Project, and no inoperable vehicle may be stored or parked on any such Lot, street or other property. No automobile or other motor vehicle shall be parked on any road or street in the Project.

3.18 Towing of Vehicles. The Board shall have the right to have any truck, mobile 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 cost and 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, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in their Declaration for the collection of Assessment.

3.19 Variances. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that: (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete; and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

3.20 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.

3.21 Garages and Driveways. Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

3.22 Rooftop Air Conditioners Prohibited. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building.

3.23 Basketball Goals and Backboards. No basketball goal or backboard shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

ARTICLE 4

EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Sections 4.3 and 4.4 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.12 of this Declaration.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation; provided, however, the Association may not suspend an Owner's or Resident's right of ingress and egress under Section 4.1.3 of this Declaration.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

4.1.3 Each Owner and Resident shall have an easement over and across the streets which are part of the Common Area for the purpose of ingress and egress to and from the Owner's Lot and public streets and highways. This easement shall be for the benefit of the Owner or other Resident of the Lot and their respective families, tenants, guests, invitees, agents and contractors.

4.2 **Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or 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 erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed by the Declarant or as approved by the Board.

4.3 **Declarant's Use for Sales and Leasing Purposes.** 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, identification or directional signs on the Common Area or on the Lots owned by Declarant while the Declarant is selling Lots. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate. No provision of this Declaration shall be construed or deemed to limit or prohibit any act of the Declarant or any of its employees, agents or contractors with respect to the construction, completion, marketing, sale or leasing of Lots. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.4 **Declarant's Easements.** Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant 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 Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

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

4.5.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

4.5.3 For correction of emergency conditions in one or more Lots;

4.5.4 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;

4.5.5 For inspection of the Lots 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.

ARTICLE 5

THE ASSOCIATION: ORGANIZATION: MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and 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 shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, by a Lessee of the Owner, by any Resident of the Owner's Lot or by any contractor or agent of the Owner.

5.3 The Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; (ii) minimum standards for the maintenance of Lots; or (iii) the health, safety or welfare of the Owners

and Residents. In the event of any conflict or inconsistency between this Declaration and the Association Rules, the Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

5.4 Personal Liability. No member of the Board or of any 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 or entity, 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, 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 wilful or intentional misconduct.

5.5 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.

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

5.7 Classes of Members and Voting Rights. The Association shall have the following two classes of membership:

(i) **Class A.** Class A members are 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 (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant shall be a Class A member so long as the Declarant owns any Lot.

(ii) **Class B.** The Class B member shall be the Declarant. The Class B member shall be entitled to fifteen (15) votes for each Lot owned and fifteen (15) votes for each dwelling unit that could be constructed on any part of the Additional Property owned by Declarant which has not been annexed and subjected to this Declaration under the master plan for The Ranch at Prescott approved by the City Council of the City of Prescott, Arizona, as amended from time to time. The Class B membership shall cease and be converted to Class A membership on the earlier of the date on which the votes entitled to be cast by the Class A members equals or exceeds the votes entitled to be cast by the Class B member or the date on which the Declarant notifies the Association in writing that it relinquishes its Class B membership.

5.8 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 or entity 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 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.

5.9 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 to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

5.10 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lot, that specified actions of the Architectural Committee, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee may promulgate architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size of Residential Units; (ii) architectural design; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; (vii) the activities of contractors or others constructing or altering Improvements situated on Lots including, but not limited to, the hours during which such work may be performed; (viii) the type, wattage, design and location of exterior lights; and (ix) perimeter and screen wall design and appearance. The Architectural Committee shall have the right to adopt standards and guidelines requiring a greater

minimum square footage for a Residential Unit than the minimum square footage required under a Unit Declaration. Such guidelines and standards regarding the size of Residential Units may require that the square footage of a Residential Unit be compatible with the square footage of existing Residential Units in the Project or in a specified part of the Project. In the event that the Architectural Committee Rules adopted by the Architectural Committee with respect to the minimum square footage of Residential Units require a greater minimum square footage than is required under a Unit Declaration, the Architectural Committee Rules shall control and the Residential Unit must comply with the minimum square footage requirements set forth in the Architectural Committee Rules. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

5.11 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 Documents are corrected.

5.12 Conveyance of Common Area. No part of the Common Area shall be conveyed by the Association to any Person for any purpose unless the conveyance is approved by Owners representing more than two-thirds (2/3) of the votes represented in person or by proxy at a meeting of the Members.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. 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 to the Association in accordance with this Declaration. Until the termination of the Class B membership in the Association, all costs and expenses incurred by the Association in the performance of its obligations under the Project Documents shall be paid by Declarant, and no Annual or Special Assessments shall be levied against any Lot. After the termination of the Class B membership in the Association, all Lots shall be subject to Annual and Special Assessments as provided in this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, 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 shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest

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 also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2 Annual Assessments.

6.2.1 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 the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 **Rate of Assessment.** The amount of the Annual Assessment for each Lot shall be the amount obtained by dividing the total budgeted expenses of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots at the time the Annual Assessment is levied by the Board.

6.4 **Special Assessments.** The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.5 **Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence when the Lots become subject to Assessment as provided in Section 6.6 of this Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.6 Commencement Date of Assessment Obligation. All Lots shall be subject to Annual or Special Assessments as provided in this Declaration after the termination of the Class B membership in the Association.

6.7 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the 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 installment thereof is or will be due and of 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 but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.8 Effect of Nonpayment of Assessments: Remedies of the Association.

6.8.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest 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, or any installment of an Assessment, within five days after such payment was due.

6.8.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all fines levied against the Owner of the Lot; (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (v) any amounts payable to the Association pursuant to Section 7.3 or 7.4 of this Declaration; and (vi) any other amounts that are payable to the Association by an Owner pursuant to this Declaration. The Recording of this Declaration constitutes record notice and perfection of the Assessment 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 or street address 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, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any

number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien against a Lot, the Association may assess against the Owner of such Lot a lien fee in such amount as is established from time to time by the Board.

6.8.3 The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any first mortgage or first deed of trust. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

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

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

6.9 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating that all Assessments, interest, and other fees and 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 charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.10 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas and public right-of-way and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds under the laws of the State of Arizona or such municipality's charter.

6.11 Surplus Funds. The Association 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 Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

6.12 Transfer Fee. 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.

ARTICLE 7

MAINTENANCE

7.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of all Areas of Association Responsibility. No Owner or other Person (other than the Association) shall construct or install any Improvements on the Areas of Association Responsibility or modify or remove any Improvements situated on the Areas of Association Responsibility without the prior written approval of the Board.

7.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, landscaping and other Improvements situated on the

Owner's Lot, except for any portion of the Lot which is an Area of Association Responsibility. 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 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 Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.4 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 quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, 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 and payment of such amounts shall be secured by the Assessment Lien.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage. The Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board. 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 Areas of Association Responsibility

and all other portions of the Project which the Association is obligated to maintain under this Declaration;

8.1.2 Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, 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.

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

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

8.1.5 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) 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; (ii) 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; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) 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; (v) statement of the name of the insured as the Association; and (vi) for policies of hazard insurance, a standard mortgage 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;

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

8.3 **Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Common Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

8.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9

GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for by law or in equity. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If the Association retains an attorney with respect to a violation of the Project Documents, then all attorney fees incurred by the Association, whether or not suit is filed, shall be payable to the Association on demand by the Owner and any other Person who violated the Project Documents.

9.2 Term; Method of Termination. This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County

Recorder of Yavapai County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 Amendments.

9.3.1 Until the termination of the Class B membership in the Association, this Declaration may only be amended by the Declarant which may amend this Declaration without the consent or approval of any other Owner.

9.3.2 After the termination of the Class B membership in the Association, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Owners representing more than sixty-seven percent (67%) of the total votes in the Association, except for amendments made pursuant to Subsection 9.3.3 of this Declaration.

9.3.3 So long as the Declarant owns any Lot, the Declarant, and thereafter, the Board, may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

9.3.4 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

9.3.5 Any amendment approved pursuant to Subsection 9.3.2 of this Declaration or by the Board pursuant to Subsection 9.3.3 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Yavapai County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Unless a later effective date is provided for in the amendment, any such amendment shall be effective upon the Recording of the amendment. Any amendment made by the Declarant pursuant to Subsection 9.3.1 or 9.3.3 of this Declaration shall be executed by the Declarant and shall be recorded with the County Recorder of Yavapai County, Arizona.

9.4 **Interpretation.** Except for judicial construction, 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 benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this

Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

9.5 Severability. Any determination by any 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.

9.6 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the 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.

9.7 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.

9.8 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance with shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

9.9 Laws, Ordinances and Regulations.

9.9.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the

Board or the Architectural Committee with respect to certain actions 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 an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

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

9.10 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

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

9.12 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 or to be used in determining the intent of context thereof.

9.13 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in 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.

9.14 Initial Declaration and Amended and Restated Declaration Superseded. The Amended and Restated Declaration (as defined in the Recitals set forth on page 1 of this Declaration) superseded the Initial Declaration (as defined in the Recitals on page 1 of this Declaration) in its entirety and the Initial Declaration ceased to be of any force and effect upon the Recording of the Amended and Restated Declaration. This Declaration shall supersede the Amended and Restated Declaration in its entirety and, therefore, upon the Recording of this Declaration, the Amended and Restated Declaration shall be of no further force and effect. This Declaration shall not affect the validity or enforceability of any of the Unit Declarations; provided, however, that in

the event of any conflict or inconsistency between any of the Unit Declarations and this Declaration or between any Unit Declaration and the Architectural Committee Rules, this Declaration and the Architectural Committee Rules shall prevail.

9.15 Certification by Association. The Association, by executing this Declaration, certifies that the Class B membership in the Association has not yet terminated and that the Declarant represents and is entitled to cast more than sixty-seven percent (67%) of the total votes in the Association.

BULLWHACKER ASSOCIATES, an Arizona limited partnership

By: Lee, Ltd., an Arizona corporation,
general partner

By: [Signature]

Its: PRESIDENT

THE RANCH AT PRESCOTT HOMEOWNERS ASSOCIATION, an Arizona nonprofit corporation

By: [Signature]

Its: PRESIDENT

State of Arizona)
) ss.
County of Yavapai)

Acknowledged before me this 30 day of December, 1994, by Jim N Lee, the President of Lee, Ltd., an Arizona corporation, general partner of Bullwhacker Associates, an Arizona limited partnership, on behalf of the partnership.

[Signature]
Notary Public

My Commission Expires:

My Commission Expires Nov. 1, 1997

SEAL

State of Arizona)
) ss.
County of Yavapai)

Acknowledged before me this 30 day of December, 1994, by
Jim N Lee, the President of The Ranch at Prescott
Homeowners Association, an Arizona nonprofit corporation, on behalf of the corporation.

Dennis M. Harris
Notary Public

My Commission Expires:

My Commission Expires Nov. 1, 1997

SEAL



EXHIBIT A

DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

Lots 1 through 79, The Ranch at Prescott Unit One, according to the plat recorded in Book 25 of Maps, page 21, records of Yavapai County, Arizona.

Lots 80 through 198 and Tracts A, B, C, D and E, The Ranch at Prescott Unit III, according to the plat recorded in Book 26 of Maps and Plats, page 27, records of Yavapai County, Arizona.

Lots 199 through 340 and Tracts B through G, inclusive, The Ranch at Prescott Unit IV, according to the plat recorded in Book 27 of Maps, page 39, records of Yavapai County, Arizona.

Lots 341 through 502 and Tracts A, C and D, The Ranch at Prescott Unit V, according to the plat recorded in Book 28 of Maps and Plats, pages 35 through 38, records of Yavapai County, Arizona.

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EXHIBIT B

LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

Parcel I:

Lots One (1), Two (2), Five (5), Six (6), Seven (7), East Half Northwest Quarter, West Half Southeast Quarter, Southeast Quarter Southwest Quarter of Section 31, Township 14 North, Range 1 West, G&SRB&M, Yavapai County, Arizona.

Parcel II:

The Boulder Patented Mining Claim, U.S. Survey No. 1194, Township 14 North, Range 1 West.

Parcel III:

Tract 37, Section 6, Township 13 North, Range 1 West, G&SRB&M, Yavapai County, Arizona.

Parcel IV:

Tract 39, Section 6, Township 13 North, Range 1 West, G&SRB&M, Yavapai County, Arizona.

Parcel V:

Lots One (1), Two (2), Three (3), South Half Northeast Quarter, Southeast Quarter Northwest Quarter, Southeast Quarter, East Half Southwest Quarter, Section 1, Township 13 North, Range 2 West, G&SRB&M, Yavapai County, Arizona.

Except for EXHIBIT A to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Ranch at Prescott.

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