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Pinetop, AZ 85935

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SIERRA SPRINGS RANCH**

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SIERRA SPRINGS RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2005, by Sierra Springs Development, Inc., an Arizona corporation (herein called "Declarant").

RECITALS

A. Declarant is the record owner of that certain real property situated in Navajo County, Arizona, described in the Plat recorded in the office of the Navajo County Recorder in Book \_\_\_ of Maps, Pages \_\_\_\_\_ (the "Property").

B. Declarant desires to submit and subject the Property, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which comprise a part of the "Property" as hereinafter defined), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein.

C. Declarant desires that the Property be developed as a residential community to be known as "Sierra Springs Ranch". Regarding the Water System, said described Property shall consist of fifty-one (51) customers, fixed or potential.

D. Declarant deems it desirable to establish covenants, conditions and restrictions applicable to the Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property.

E. It is desirable for the efficient management of the Property to create an owners association and to delegate to it the powers of (i) managing, maintaining and administering the Common Areas within the Property, (ii) administering and enforcing these covenants, conditions and restrictions and (iii) collecting and disbursing funds pursuant to the assessments and charges hereinafter created and performing other acts provided for in this Declaration or which generally benefit its Members, the Property, and the owners of any interests therein.

F. The Sierra Springs Ranch Owners Association, Inc., an Arizona nonprofit corporation, has been incorporated under the laws of the State of Arizona for the purpose of exercising the foregoing powers and functions.

G. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests

subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property.

## DECLARATIONS

NOW, THEREFORE, Declarant, for the purposes above set forth, declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association and each member of the Association.

### 1. DEFINITIONS

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of the term capitalized.

1.1 "Articles". The Articles of Incorporation of the Association, as they may be amended from time to time.

1.2 "Assessments". Include the following:

1.2.1 "Regular Assessment". The amount that is to be paid by each Owner as the Owner's Proportionate Share of the Common Expenses of the Association.

1.2.2 "Special Assessment". The amounts that are to be paid by Owners pursuant to Section 6.

1.3 "Association". The Sierra Springs Ranch Owners Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

1.4 "Association Rules". The rules and regulations adopted by the Board.

1.5 "Board". The Board of Directors of the Association.

1.6 "By-laws". The By-laws of the Association adopted in accordance with the Articles, as the By-laws may be amended from time to time.

1.7 "Common Areas". All real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners. The term may include, without limitation, private roads, recreational facilities, entry features, signage, landscaped medians, lakes, watercourses, water system, and wetlands, as well as hiking, walking and bicycle trails.

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

1.9 “Declarant”. Sierra Springs Development, Inc., an Arizona corporation, its successors and assigns, or any Person to whom Declarant’s rights hereunder are hereafter assigned in whole or in part by recorded instrument, or any Mortgagee of Declarant that acquires title to or succeeds to the interest of Declarant in any Lot or other portion of the Property by reason of the foreclosure (or conveyance in lieu of foreclosure) or trustee’s sale under the Mortgage of said Mortgagee. The term “Declarant,” as used herein, shall include not only the named Declarant but also any of the foregoing successors, assigns, assignees of right(s) and Mortgagees. An assignment by recorded instrument of all of Declarant’s rights shall vest in the assignee all of Declarant’s rights hereunder on the same terms that they were held by Declarant hereunder. An assignment by recorded instrument of part of Declarant’s rights shall vest in the assignee the specific Declarant’s right(s) named in the instrument of assignment on the same terms that they were held by Declarant hereunder. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Declarant’s rights, or a sharing of those rights with any Designated Builder, shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of Declarant’s rights hereunder.

1.10 “Declaration”. This instrument, as amended from time to time.

1.11 “Default Rate of Interest”. An annual rate of interest equal to the greater of (i) 15% per annum or (ii) 4% plus the prime rate announced by Bank One, Arizona, NA (and charged to its largest and most creditworthy customers), but in no event greater than the highest lawful rate of interest. If Bank One, Arizona, NA should cease doing business or no longer announce its prime rate as described above, the Board may compute interest based upon the announced prime rate of any other bank doing business in Arizona. If banks should cease announcing prime rates, the Board may elect to use 15% as the Default Rate of Interest, or may specify the rate, in lieu of the prime rate, for purposes of the computation hereunder that the Association would reasonably have to pay to borrow money at the time.

1.12 “Design Guidelines”. The architectural standards and design guidelines from time to time adopted by the Board or, prior to the Transition Date, Declarant, pursuant to Section 11.3.

1.13 “Design Review Committee”. The committee provided for in Section 11.

1.14 “Designated Builder”. A Person that constructs or causes the construction of dwelling units on one or more Lots within the Property for sale to Retail Purchasers and that Declarant elects, in its sole and absolute discretion, to name as a “Designated Builder” in a written notice delivered to the Association. In any written notice naming a Designated Builder, Declarant shall specify what rights, privileges, obligations

and exemptions of Declarant that particular Designated Builder will have with respect to this Declaration, the Association Rules and the Design Guidelines. Declarant may revise, alter, supplement or rescind the rights, privileges, obligations and exemptions previously given to a Designated Builder by delivering written notice to the Association detailing any revisions, alterations, supplements, or rescissions.

1.15 “Governing Documents”. The Declaration, Articles, By-laws, Association Rules, and Design Guidelines.

1.16 “Lot”. A subdivided lot as shown on the Plat. A “Lot” includes the residential dwelling unit and other improvements constructed thereon. In the event that the Association owns a subdivided lot shown on the Plat for the common use and enjoyment of the Owners, it will be considered “Common Area” in accordance with Section 1.7 and not a “Lot” pursuant to this Section 1.16, notwithstanding its designation as a “Lot” on the Plat.

1.17 “Majority of Members”. The Members holding more than 50% of the total votes entitled to be cast by Members (including, unless otherwise specifically provided herein, Declarant so long as Declarant or any Related Party owns any portion of the Property) with respect to a given matter. Any specified fraction or percentage of the Members means the Members holding that fraction or percentage of the total votes entitled to be cast by Members (including, unless otherwise specifically provided herein, Declarant so long as Declarant or any Related Party owns any portion of the Property) with respect to a given matter. A “Majority of a Quorum of Members” means the Members holding more than 50% of the total votes entitled to be cast by the Members (including, unless otherwise specifically provided herein, Declarant so long as Declarant or any Related Party owns any portion of the Property) who are present (in person or by proxy) at a meeting at which a quorum of Members (as defined in the By-laws) is present. Unless otherwise specified, any provision herein requiring the approval of the Members means the approval of a Majority of a Quorum of Members.

1.18 “Member”. Every Person who is a member of the Association.

1.19 “Membership”. A membership in the Association.

1.20 “Mortgage”. A first position recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Arizona law) as security for the performance of an obligation including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.21 “Mortgagee”. The holder of a note secured by a Mortgage.

1.22 “Occupant”. Any Person, other than an Owner, in rightful possession of a Lot, whether an Owner’s immediate family member, guest, tenant or other individual.

1.23 “Owner”. The record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot that is a part of the

Property, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation. If a Lot is subject to a deed of trust pursuant to Arizona law (as amended from time to time), legal title shall be deemed to be in the trustor under the deed of trust. If fee simple title is vested of record in a trustee pursuant to Arizona law, legal title shall be deemed to be in the beneficiary.

1.24 “Person”. An individual, corporation, partnership, limited liability company, trustee or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.25 “Plat”. The subdivision plat of the Property as recorded in the official records of Navajo County, Arizona, and as thereafter amended or supplemented from time to time.

1.26 “Private Roads”. Any street, roadway or other similar right-of-way within or partly within the Property that has not expressly been dedicated to public use.

1.27 “Property”. The real property described in the Plat, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto. The Property shall not include any property other than the Property,

1.28 “Proportionate Share”. That fraction wherein the numerator is one and the denominator is the sum of the total number of Lots in the Property.

1.29 “Related Parties”. The officers, directors, members, shareholders, and other principals of Declarant, and their respective successors and assigns.

1.30 “Retail Purchaser”. A Person who purchases a Lot in a retail transaction and shall not include Declarant, any Related Party, any Designated Builder or any other Person who acquires a Lot (i) in a bulk sale transaction, or (ii) by distribution (as distinguished from purchase), or (iii) in any similar transaction.

1.31 “Transition Date”. Ninety (90) days following the date upon which 90% of the Lots within the Property have been conveyed to Retail Purchasers or such earlier date as Declarant voluntarily specifies in an instrument recorded in the official records of the County.

## 2. RIGHTS OF ENJOYMENT

2.1 Owners’ Right of Enjoyment. Declarant and every Owner and Occupant shall have a nonexclusive easement for use and enjoyment in and to, and access, ingress and egress over, the Common Areas, which easement shall be appurtenant to, and shall pass with, the title to every Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration including, but not limited to, the following provisions:

2.1.1 The right of the Association to establish reasonable rules and regulations pertaining to or restricting the use of the Lots and the Common Areas by Owners, Occupants, guests or other Persons.

2.1.2 The right of the Association to suspend the right of an Owner or Occupant to use the recreational facilities within the common area.

2.1.3 The right of the Association to dedicate or transfer all or any part of, or interest in, the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association provided that these actions otherwise comply with this Declaration.

2.1.4 The right of the Association to change the use, size, shape or location of Common Areas, to exchange Common Areas for other property that then become Common Areas, and to abandon or otherwise transfer Common Areas, provided that all of these actions otherwise comply with this Declaration.

2.1.5 The right of the Association to limit or restrict the right of Owners and other Persons to use portions of the Common Area which exist for the benefit of the Association, but which by their nature are not intended for access by Owners including, but not limited to, portions of the Common Area that are subject to drainage, utility, water line, or similar easements or restrictions.

2.1.6 The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any recreational facility situated upon the Common Area;

2.1.7 The right of the Association to mortgage, pledge, or hypothecate any or all of its real or personal property as security for Association obligations;

2.1.8 The rights and obligations of the Association, acting through its Board, to restrict, regulate or limit Owners' and occupants' use of the Common Area for environmental preservation purposes, including, without limitation, wildlife corridors, winter wildlife ranges and natural wildlife habitat.

2.2 Delegation of Use. No Owner may delegate the Owner's right to use and enjoy the Common Areas to any Person, to Occupants of the Owner's Lot, or to the Owner's guests, except as permitted by the Association Rules. An Owner's right of use and enjoyment of the Common Areas shall be appurtenant to and shall pass with title to the Owner's Lot.

2.3 Waiver of Use. No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments or release any Lot the Owner owns from the liens, charges and other provisions of this Declaration, the Articles, By-laws, Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of the Owner's right to, the use and enjoyment of the Common Areas, or the abandonment of the Owner's Lot.

### 3. ASSOCIATION

3.1 Purpose of Association. The Association has been incorporated as a nonprofit corporation to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, including, but not limited to, the assessment of expenses, payment of losses, disposition of casualty insurance and other matters as provided in the Governing Documents. The Association shall not be deemed to be conducting a business of any kind and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the By-laws.

3.2 Membership in Association. Every Owner shall be a Member of the Association and shall comply with the Governing Documents. There shall be one Membership in the Association with one Membership vote for each Lot. Each Membership shall be entitled to one vote on each matter to be decided by the Members. If the Owner of a Lot is other than one individual, each individual and entity comprising the Owner shall be considered a Member but the number of Memberships or votes attributable to the Lot shall not be increased by the fact of multiple ownership. In the case of multiple ownership or ownership by an entity, the Owner shall give the Association written notice identifying the individual who is entitled to cast the Membership vote for the Lot. In the absence of written notice, Assessments shall nevertheless be charged against the Lot and the Owner thereof, but there shall be no right to cast the Membership vote. The individual, as so specified, shall be the only Person entitled to vote for the Owner of the Lot at Association meetings and elections. An Owner may change the individual who is designated for the Owner's Lot, subject to such reasonable procedures and processing fees as the Board may establish from time to time. An Owner shall remain a member of the Association until the Owner ceases to be an Owner, at which time the Owner's membership in the Association shall automatically cease. With respect to Water System matters, each member/owner shall have equal voting rights, with each member/owner entitled to one vote regardless of the number of lots owned and Declarant shall not have the right to cast votes.

3.3 Suspension of Voting Rights. No Owner shall be entitled to exercise any voting rights as a Member in the Association during any period in which the Owner is delinquent in the payment of any Assessments.

3.4 Assignment of Declarant's Voting Rights. If any lender to whom Declarant has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security succeeds to the interests of Declarant by virtue of the assignment, the lender shall hold Declarant's memberships and voting rights on the same terms as they were held by Declarant pursuant hereto.

#### 3.5 Board of Directors.

3.5.1 The affairs of the Association shall be conducted by the Board as provided herein and in accordance with the Articles and By-laws. Except for directors appointed by Declarant, each director shall be an Owner or the spouse of an Owner. In the case of ownership by an entity, a Director related to the entity-owner shall meet such other

qualifications as the Board may determine from time to time. If a director ceases to meet the foregoing qualifications during the director's term, the director will thereupon cease to be a director and the director's place on the Board shall be deemed vacant. Unless the vote or consent of the Members is expressly required hereunder, any action required or permitted to be taken by the Association, shall be satisfied or taken by the Board. The Board may appoint various committees (which may consist, in whole or in part, of individuals who are not on the Board) and may delegate responsibilities to those committees.

3.5.2 Declarant shall have the absolute power and right to appoint and remove the members of the Board until the Transition Date. After the Transition Date, the Members shall have the power and right to elect and remove the members of the Board as provided in the Articles and By-laws. Declarant may (but shall not be required to) relinquish its rights under this Section prior to the Transition Date by recording a notice of relinquishment.

3.6 "Board's Determination Binding". In the event of any dispute or disagreement between or among any Owners, Members, or any other Persons subject to this Declaration, relating to the Property, or any question of interpretation or application of the provisions of this Declaration, the Articles, By-laws, Association Rules or Design Guidelines, then (subject to any judicial decision by a court of competent jurisdiction) the determination thereof by the Board shall be final and binding on each Owner, Member or other Person subject to this Declaration.

3.7 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, the Articles or By-laws, any provision of this Declaration, the Articles or By-laws that requires the vote or written assent of the Members of the Association shall be deemed satisfied by the following:

(a) The vote in person or by proxy of the specified percentage of Members at a meeting duly called and noticed pursuant to the provisions of the Articles or By-laws dealing with annual or special meetings of the Members.

(b) Written consents signed by the specified percentage of Members as provided in the Articles or By-laws.

3.8 Additional Provisions in Articles and By-laws. The Articles and By-laws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members not inconsistent with law or this Declaration.

3.9 Association Rules. The Board shall be empowered to adopt, amend or repeal rules and regulations that it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the Association, the use and/or occupancy of the Common Areas, the Lots, or any other part of the Property and the delivery of any services provided by the Association.

3.9.1 The Association Rules may establish a system of monetary penalties enforceable as Special Assessments, unless otherwise restricted by state law, and



if it is restricted, then the monetary penalties shall be enforceable in accordance with state law. The Association Rules may not discriminate among similarly situated Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, any Articles, By-laws or Design Guidelines.

3.9.2 The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration, the Articles, By-laws or Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, By-laws or Design Guidelines to the extent of the conflict.

3.9.3 All Owners are subject to the Association Rules and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Board and/or the Members may add, delete, modify, create exceptions to, or amend the Association Rules. Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Association Rules may change from time to time.

3.10 Indemnification. To the fullest extent permitted by law, the Association shall indemnify the following Persons against all expenses and liabilities including, but not limited to, attorneys' fees, witness fees (including expert witness fees), costs and litigation-related expenses reasonably incurred by or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement of any such proceeding: (i) every director and officer of the Association; (ii) every member of the Design Review Committee and other committees of the Association; (iii) Declarant and all Related Parties (and their respective employees); and (iv) all the employees of the Association. Any agent of the Association may, in the discretion of the Board and subject to the findings described below, also be indemnified by the Association. Any Person described in the first sentence shall be entitled to indemnification whether or not that Person is a director, officer, member of the Design Review Committee or serving in any other specified capacity at the time the expenses are incurred. Notwithstanding anything to the contrary in this Declaration, before any Person is entitled to indemnity pursuant to this Section 3.10, the Board shall determine, in good faith, that the Person to be indemnified did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of that Person's duties. These rights of indemnification shall be in addition to and not exclusive of all other rights to which the Persons to be indemnified may be entitled at law or otherwise.

3.11 Non-Liability of Officials. To the fullest extent permitted by law, none of the following Persons shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not

defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which the following Persons reasonably believed to be within the scope of their respective duties, (i) every director and officer of the Association; (ii) every member of the Design Review Committee and other committees of the Association; (iii) Declarant and all Related Parties (and their respective employees); and (iv) all the employees of the Association. Each Owner, Occupant, and other Person having any interest in the Property or entering upon or using any portion of the Property is deemed to acknowledge and accept the following:

(a) None of the Persons described above in this Section 3.11 shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant, or other Person entering upon or making use of any portion of the Property. Each Owner, Occupant, and other Person assumes all risks associated with the use and enjoyment of the Property including, but not limited to, any recreational facilities upon or within the Property and the risk of forest fires or other natural calamities.

(b) None of the Persons described above in this Section 3.11 shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property. Each Owner, Occupant and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence or malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Property.

(c) No provision of this Declaration, the Articles, By-laws, Association Rules or Design Guidelines shall be construed or interpreted as creating a duty by any of the Persons described above in this Section 3.11 to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

3.12 Easements. In addition to the other easements granted hereunder, the Association is authorized and empowered to grant permits, licenses, easements and rights-of-way upon, across or under real property owned or controlled by the Association for public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the development, maintenance or preservation of the Common Areas, or Areas of Common Reasonability, for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from a grant of any of the foregoing rights shall be repaired by the grantee at its expense.

3.13 Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct accounting records in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners at reasonable times during regular business hours at the principal office of the Association, books or other records specifying in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise. The Association shall cause the books and records of the Association to be audited on an annual basis by an accounting firm selected by the Board.

3.14 Records. The Association shall, subject to any applicable restrictions set forth in state law, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner, at the Association's office, the books, records and financial statements of the Association together with current copies, as amended from time to time, of the Governing Documents. Declarant shall be under no obligation to make its own books and records available for inspection by any Owner or other Person.

3.15 Managing Agent. All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to one or more managing agent(s) under management agreements; provided, however, that no delegation shall relieve the Association of its obligation to perform any delegated duty.

3.16 Declarant's Control of Association. Notwithstanding anything in this Declaration to the contrary, Declarant shall maintain absolute control over the Association, including appointment of the members of the Board, until the Transition Date. In addition, until the Transition Date, Declarant shall have exclusive jurisdiction over architectural and design matters and shall be entitled to exercise the architectural and design review powers reserved to Declarant under this Declaration as provided in Section 11.

3.17 Rights of Enforcement. The Board shall have the right to enforce the provisions of this Declaration, the Design Guidelines (except as provided in Section 11), and the Association Rules. If, however, the Board fails or refuses to enforce this Declaration for an unreasonable period of time after written request to do so, then an Owner (at the Owner's expense) may enforce the provisions of this Declaration by appropriate legal action, whether at law or in equity. Notwithstanding any provision hereof concerning the rights and powers of the Board, Declarant may pursue whatever rights and remedies might be available to it at law or in equity. Notwithstanding any provision of this Declaration, Declarant shall have no duty to undertake any such enforcement actions and shall not be deemed a guarantor of enforcement.

3.18 Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained in this Declaration, the Board may enter into contracts and transactions with others, including Declarant, any Related Party and any affiliated Persons, for the performance of the Association's duties and for other purposes consistent with this Declaration.

3.19 Changes to Common Areas. The Association, through the action of the Board, may sell, exchange, convey, abandon or change the use of any Common Areas, provided the Board has determined that the change is in the best interest of the Property and the Owners and does not fundamentally diminish the amenities or services available to Owners. Prior to the Transition Date, the Board may act to effect a change described in this Section 3.19 without the vote or consent of any Owner or other Person. After the Transition Date, the Board may act to effect a change described in this Section 3.19 only with the consent of Declarant, so long as Declarant or any Related Party owns any portion of the Property. Tracts A, G, and I of the Plat shall not be changed as described in this Section unless such change is approved by Navajo County.

3.20 Purposes for Which Association's Funds May be Used. The Association, except as otherwise permitted in this Declaration, shall apply all funds and property collected and received by it from any source (including Assessments, fees, loan proceeds, and surplus funds) for the common good and benefit of the Property, the Owners, and Occupants by devoting these funds and property, among other things, to the Common Expenses. Notwithstanding these requirements, all funds of the Association shall be deemed to be the sole property of the Association in its corporate capacity, and not trust funds, and the Association shall not be deemed to hold any funds as trustee or in any fiduciary capacity, except as expressly provided in this Declaration.

3.21 Association's Rights in Spending Funds from Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in that year, regardless of source, unless specifically provided to the contrary in this Declaration. The Association may carry forward as additional working capital or reserves any remaining balances. The Association shall not be obligated to reduce the amount of the Regular Assessments in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year any surplus that the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes, except as otherwise provided in this Declaration.

3.22 Designated Service Providers. The Board shall have the authority to designate exclusive providers of services within the Property when the Board deems it necessary or desirable to do so for reasons of obtaining better rates or terms of service or for other reasons deemed reasonable by the Board. If the Board makes such a designation, the Association may enter into an agreement with the designated service provider, and the cost of services purchased by the Board shall be considered a Common Expense of the Association and shall be included in the Regular Assessments payable by each Owner; provided, however, the Board may allocate such costs between improved and unimproved property, or among particular property, as a Special Assessment, in such a manner as the Board deems in good faith to be equitable. Notwithstanding any designation and negotiation with a service provider, each Owner may contract separately with the designated service provider to receive services in excess of those provided to the Property pursuant to the service provider's agreement with the Association, and the cost of the additional services shall be paid separately by the Owner and shall not be an Assessment under this Declaration. Any service provider designated by the Board pursuant to this Section 3.22 shall have an easement over the Common Areas to the extent necessary or convenient for the efficient delivery of the designated service.

3.23 Provision of Services. The Association may provide services and facilities for the Members of the Association and for third parties if the Board determines it to be in the best interest of the Association. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. In addition to Common Expense charges, the Board shall be authorized to charge additional use and consumption fees for selected services and facilities. By way of example, some services and facilities that may be provided include landscape maintenance, pest control service, cable television service, security, caretaker,

fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein is a representation as to what services and facilities will or will not be provided.

3.24 Transfer of Title to Common Areas; Indemnification. Fee simple title to the Common Area and all improvements located thereon shall be conveyed to the Association within ninety (90) days after the Common Area improvements have been approved by Navajo County. In consideration of the transfer of title by Declarant to the Association without cost, the Association agrees to indemnify and hold harmless the Declarant against any and all claims, damages, expenses, and liabilities including, but not limited to, attorneys' fees, witness fees (including expert witness fees), costs and litigation-related expenses reasonably incurred in connection with any proceeding relating to the design and construction of the Common Area improvements.

#### 4. EASEMENTS

4.1 Blanket Easements. There is hereby created a perpetual, non-exclusive blanket easement upon, across, over and under the Property (including all Lots and, Common Areas) for ingress and egress, installing, constructing, replacing, repairing, maintaining and operating all utilities, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the providing service provider to erect (including, but not limited to, underground installation) and maintain the necessary or appropriate facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no easements shall be created, nor shall any electrical lines, water lines or other facilities for utilities be installed or relocated, except as initially created and approved by Declarant or thereafter created or approved by the Association. This provision shall in no way affect any other recorded easements on the Property.

4.2 Utility Easement. The Plat may designate portions of the Property to be subject to an easement shown as a "Utility Easement" or a similar designation (each, a "Utility Easement"). Utility Easements shall be perpetual, non-exclusive easements in favor of the service provider named on the Plat and any successor provider of the same type of utility service to the Property. If the Plat does not name a utility provider for a Utility Easement, that Utility Easement shall be in favor of such parties as the Declarant or the Association may designate from time to time. The provisions of this Section 4.2 shall in no way limit or otherwise alter the blanket easement described in Section 4.1 above.

4.3 Declarant Easement. There is hereby created a nonexclusive easement for ingress and egress over, for the right to go over, under, and across, and for the right to enter and remain upon, all portions of the Property, including, but not limited to, Lots (except the interiors of occupied dwelling units) and Common Areas for the purpose of enabling Declarant, the Related Parties and their respective employees, agents, invitees, licensees, contractors and guests to exercise Declarant's rights and obligations hereunder

and to engage in activities reasonably related to the development, management, administration, operation, maintenance, advertisement and sale or rental of the portions of the Property owned by Declarant or any Related Party. The easement created in this Section shall be in favor of Declarant and the Related Parties, and appurtenant to portions of the Property owned by Declarant or a Related Party. The rights of access established in this Section shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Lot by its Owner and any Occupant. The easement created in this Section shall continue until the day upon which neither Declarant nor any Related Party has any interest in any portion of the Property.

4.4 Association Easement. There is hereby created a nonexclusive easement in favor of the Association for ingress and egress over all the Property (except the interiors of occupied dwelling units) for the purpose of enabling the Association and its contractors, employees, representatives, and agents to implement the provisions of this Declaration. The rights of access established in this Section shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Lot by its Owner and any Occupant.

4.5 Drainage Easement. All Lots and Common Areas are hereby subjected to a perpetual, non-exclusive easement for drainage of storm water runoff from other portions of the Property. The Plat may designate portions of the Property, which are likely to be subject to storm water runoff, as a "Drainage Easement" or a similar designation. The designation of certain areas as "Drainage Easements" on the Plat is intended to indicate certain likely drainage patterns over the Property but shall not limit the generality of the easement created by this Section 4.5 in any way. No Person shall be entitled to alter the drainage patterns on any portion of the Property that are set forth on drainage plans approved by the County to increase materially the drainage of storm water onto adjacent portions of the Property (or materially relocate its locations) without the consent of any Owners of the affected property, the Declarant, the Board, and Navajo County.

4.6 Easements for Lake and Pool Maintenance and Flood Water. Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams and wetlands located within the Common Area to (a) construct, maintain, and repair pumps in order to provide water for the irrigation of any Common Area; and (b) construct, maintain, and repair any dam, or other structure retaining water; and remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Property abutting or containing any portion of any of the lakes, pools, rivers, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

4.6.1 There is further reserved herein for the benefit of Declarant, the Association, and their successors, assigns and designees, a perpetual nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within one hundred (100) feet of lake beds, ponds, streams

and wetlands within the Property, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Property; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, river, streams, and wetlands within the Common Area subject to the approval of all appropriate regulatory bodies; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, pools, rivers, streams, and wetlands, and (d) enter upon and across such portions of the Property for the purpose of exercising their rights under this Section. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from, the intentional exercise of the rights granted under such easements. Nothing herein shall be construed to make the Declarant, the Association, or any other Person liable for damage resulting from flooding due to heavy rainfall, hurricanes, or other natural causes. The Property is hereby burdened with a non-exclusive easement in favor of the Association for over spray of water from any irrigation system serving Common Area. Under no circumstances shall the Association or any other Person be held liable for any damage or injury resulting from such over spray or the exercise of this easement.

4.7 Easement for Use of Private Streets. The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress and egress over the private streets within the Common Area, for law enforcement, fire fighting, paramedic, rescue and other emergency vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; private delivery or courier services; and for vehicles, equipment and personnel providing garbage collection service to the Property; provided, such easement shall not authorize any such persons to enter the Property except while acting in their official capacities.

## 5. DOMESTIC WATER SERVICE

5.1 Definitions. For purposes of this Section 5 and any other applicable references throughout this Declaration, the following terms shall have the meanings set forth below.

5.1.1 “Water System” means the entire domestic water production, storage, treatment and delivery system of the Property, as initially installed and as later modified, including all wells, all Transmission Lines, all Lateral Lines, all Meters, all easements and licenses, all other related real property interests, and all related personal property and facilities owned, managed or maintained by the Association under this Declaration for the purpose of providing domestic water service to Lots, but excluding the Service Lines (each of which will be owned by the Owner of the Lot served by the Service Line).

5.1.2 “Connected Owner” means an Owner whose Lot contains improvements that are connected to a Meter by means of a Service Line.

5.1.3 “Fixed Water Costs” mean all those costs and expenses associated with use, operation, maintenance, repair and replacement of the Water System, or any component thereof, including, but not limited to: water quality monitoring and treatments costs; water quality measurement and monitoring costs; personnel costs;

administrative and legal costs; common area usage; and establishment of a reserve account for maintenance, repair and replacement of the Water System.

5.1.4 “Lateral Lines” mean those water pipelines running from Transmission Lines to Meters, including connections into Meters. To the extent that any Lateral Lines or Meters are placed on Lots in connection with the original construction of the Water System by Declarant an easement is hereby created for their installation, maintenance, repair and replacement from time to time as required or permitted by this Declaration.

5.1.5 “Meters” mean water measuring devices to be installed within the boundary of Lots for the measurement of water delivered to each Lot through a Service Line.

5.1.6 “Service Lines” mean those water pipelines running from a Meter to improvements located on a Lot.

5.1.7 “Transmission Lines” mean those water pipelines and related parts, equipment and components for the distribution of water through the Water System to Lateral Lines, including connections into Lateral Lines.

5.1.8 “Usage Fee” shall mean the fee to be charged each lot owner based upon the reading of the Meter.

5.1.9 “Water Costs” mean the Fixed Water Costs and the Usage Fee.

5.2 Ownership and Operation of Water System. Declarant shall construct the Water System, including installation of all Meters, in a good and workmanlike manner, in accordance with all applicable regulations of the County and any other governmental authority having jurisdiction. Upon completion of the Water System, Declarant shall transfer ownership of the Water System to the Association. The Association shall own the Water System and shall manage, use, operate, maintain, repair and replace the Water System pursuant to the terms and conditions hereof, in accordance with the laws, rules, ordinances and regulations of any governmental authority having jurisdiction, and inconformity with good management practices. The Water System shall be operated by a properly qualified certified operator, holding any necessary licenses and permits, in accordance with all applicable regulations of the County and any other governmental authority having jurisdiction. The Water System may be altered, modified, relocated, and improved by the Association, in accordance with the laws, rules, ordinances and regulations of any governmental authority having jurisdiction.

5.3 Use of Water System. The Association shall use and operate the Water System solely for the purposes of (a) providing domestic water services to the Property, for the benefit and enjoyment of the Declarant, the Association, the Owners, the Occupants and their respective agents, servants, invitees and designees; (b) providing water for construction at the Property, for the benefit and enjoyment of Declarant, the Association, the Owners, the Occupants and their respective agents, servants, invitees and



designees; and (c) providing water for temporary operation of sales trailers and/or model homes at the Property, for the benefit and enjoyment of Declarant, and its respective agents, servants invitees and designees. The Association shall not use or operate the Water System for the purpose of providing water service to, or for construction at, any property outside of the Property, except for emergency purposes such as the control of fire which threatens life or property. The Association Rules shall include regulations and requirements that the Board deems reasonable and appropriate for the use of the Water System, including, but not limited to, requirements for establishing connections to the Water System.

5.4 Service Lines. Upon compliance with any applicable rules and regulations for connection into the Water System established by the Association from time to time, an Owner may connect one Service Line on the Owner's Lot into the Meter for that Lot. Each Owner shall be responsible for all costs of connecting the Owner's Service Line to the Water System and shall own the Service Line located on the Owner's Lot. Each Owner shall keep and maintain the Service Line for that Owner's Lot in good repair and condition and its sole cost and expense. A connection from a Service Line into the Water System may be made only through a Meter and not directly into a Lateral Line or a Transmission Line.

5.5 Construction Water. Upon compliance with the rules and regulations for connection into the Water System for construction purposes established by the Association from time to time an Owner may take water from the Water System through a temporary meter for construction purposes at the Owner's Lot. Declarant also may utilize the Water System to provide water for temporary construction and operation of sales trailers and/or model homes at the Property, for the benefit and enjoyment of Declarant, and its respective agents, servants, invitees and designees.

5.6 Entitlement to Take Water. At all times during the term of this Declaration, subject to the terms, conditions, covenants and restrictions contained herein (including, but not limited to, the provisions of Section 5.8 relating to a shortage of water and to the Association Rules), each Connected Owner (including, but not limited to, the Declarant, for so long as Declarant owns any portion of the Property, and the Association, for so long as the Association owns any portion of the Property) shall have the right to take and receive from the Water System for the purposes described in this Section 5. The Declarant and/or the Association shall have the right to take large quantities of water to fill and maintain the lakes and ponds in addition to irrigation for grass, groves of trees, and other landscaping.

5.7 Permitted Water Use. Water from the Water System shall be used only for as follows: (a) for domestic water purposes throughout the Property, including, but not limited to, use for ordinary and typical household purposes, irrigation of landscaping, and vegetable and fruit gardens; (b) for construction purposes throughout the Property; (c) by the Declarant for temporary operation of model homes at the Property; and (d) by the Declarant and /or the Association for the Common Areas, including but not limited to domestic use for the recreational facilities, and for large quantities of water to fill and maintain the lakes and ponds in addition to irrigation for grass, groves of trees, and other landscaping. Water shall not be used for the irrigation of field crops, wholesale nursery

stock or for any commercial, industrial or other purpose requiring the consumption of large volumes of water, whether continuous or intermittent.

5.8 Quality and Quantity of Water.

5.8.1 If the amount of water available from the Water System is insufficient to serve the then-existing demands for water at the Lots owned by Connected Owners, the Connected Owners will share the available water supply in equal portions.

5.8.2 If the quantity or quality of water available through the Water System is inadequate or insufficient for any reason, or if any portion of the Water System, including, but not limited to any well, fails for any reason, the Association shall use reasonable efforts to address the deficiency of failure in a timely manner, or, if necessary, to find an alternative source of water in a timely manner. If, despite reasonable efforts, the Association is unable to resolve the deficiency or failure or to find an alternative source of water in a timely manner, the Association shall provide notice to the Owners, and each Owner shall thereafter be responsible for obtaining replacement water for the Owner's Lot from other sources, at the Owner's expense. Except as expressly provided in this Section, each Owner assumes all risks regarding the quantity and quality of water supplied by the Water System and waives any right to make, file or prosecute any claims, demands or causes of action for losses, costs, injury to person or damages to property with respect to the quantity or quality of water supplied by the Water System, unless the problem arises or is caused by the gross negligence or willful misconduct of the Association.

5.9 Water Assessments and Fees.

5.9.1 As part of the budget process described in Section 6, the Association will estimate the Fixed Water Costs for the upcoming calendar year and determine each Owner's Proportionate Share of Fixed Water Costs, the amount of which shall constitute the "Fixed Water Costs Assessment." Each Owner shall thereafter pay to the Association the Fixed Water Costs Assessment at such regular intervals as may be determined by the Board from time to time. Each installment shall be due and payable on the date fixed by the Board. At the end of each calendar year, the Association will determine whether the Fixed Water Cost Assessment for the calendar year was greater or less than the actual Fixed Water Costs for that calendar year. The Association may apply any overpayment to the reserve account, or shall increase the estimated Fixed Water Costs Assessment for the upcoming calendar year by the amount of any underpayment.

5.9.2 All Meters shall be read on a regular basis as determined by the Board. All Connected Owners shall pay a Usage Fee based upon the rate structure established by the Board from time to time. Reasonable late charges may be added to the Usage Fee.

5.9.3 The lien rights created in Section 6 below shall apply to the Fixed Water Costs Assessment and the Usage Fee.

5.9.4 The Board, in its discretion, may incorporate the Fixed Water Costs Assessment and the Usage Fee into the other Assessments that are collected pursuant to this declaration.

## 6. ASSESSMENTS

6.1 Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, and any other sums established and collected from time to time as provided in this Declaration, the Association Rules and the Design Guidelines. All Assessments shall be established and collected, from time to time, as provided in this Declaration. The Assessments and charges provided for in this Declaration, the Association Rules and Design Guidelines, together with interest thereon, late charges, attorneys' fees, witness fees (including expert witness fees), costs, litigation-related expenses and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon the Owner's Lot against which the Assessments and charges are made. Each Assessment and charge, together with interest and other costs, shall also be the personal obligation of the Owner to whom the Assessment or charge relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by the Owner's successor. If more than one Person owns a Lot, all co-Owners of the Lot shall be jointly and severally liable for all Assessments, charges and other obligations provided for in this Declaration, the Association Rules and the Design Guidelines.

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Association and all other Common Expenses and to otherwise further the interests of the Association. If a Lot has separate utility service from a third-party provider, all costs related to the service (including, but not limited to, service charges, repairs, and maintenance) shall be the personal obligation of the Owner of the Lot and shall not be part of the Common Expenses to be paid through Assessments, unless (and then only to the extent that) the Board elects to enter into agreements with designated service providers pursuant to Section 3.22.

6.3 Budgeting and Allocating Common Expenses. Not less than thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget may include reserve funds as provided below. A sample budget listing general areas of income and expenses is attached hereto as Exhibit A.

6.4 The Regular Assessment. The Regular Assessment shall be levied equally against all Lots subject to assessment and shall be set at a level that is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserve funds for the Private Roads, Water System, and other Common Area improvements as deemed appropriate by the Board. In determining the level of assessments, the Board, in its discretion, may consider other

sources of funds available to the Association. In addition, the Board shall take into account any subsidy made by the Declarant, in its discretion. Any such subsidy shall be disclosed as a line item in the Common Expense budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years.

6.4.1 Each Owner shall thereafter pay to the Association the Owner's Regular Assessment at such regular intervals as may be determined by the Board, from time to time. Each installment shall be due and payable on the date set forth in the written notice sent to Owners. The fiscal year of the Association shall be the calendar year, unless otherwise specified in the Articles or By-laws.

6.4.2 If the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Association shall then determine the approximate amount of the inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. If the estimated total Regular Assessments for the current year prove to be in excess of the actual Common Expenses, the Association may, at the discretion of the Board, retain the excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for a period of time deemed appropriate by the Board. No reduction or abatement of Regular Assessments because of any anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

6.4.3 From one fiscal year to the next, in no event shall the Board increase Regular Assessments payable by Lots by more than twenty percent without the approval of a Majority of a Quorum of Members, but in no event more than the maximum increase permitted by applicable law.

6.5 Special Assessments. The Association may levy Special Assessments in accordance with the following:

6.5.1 The Association may levy a Special Assessment against a particular Owner and Lot that is subject to Assessment to recover the cost, including overhead and administrative expenses, of providing benefits, items, or services to the Lot, or to its Owner or Occupant that are not included in the Common Expenses payable as Regular Assessments. Special Assessments under this Section 6.5.1 may be levied in advance and payment of the Special Assessment may be a condition of providing the benefit, item, or service. Such benefits, items and services may, but are not required to, include such things as the delivery of firewood, winterizing or other opening or closing preparation of residences for Owners, delivery of supplies, and other offerings for the convenience and enjoyment of Owners.

6.5.2 The Association may levy a Special Assessment against a particular Owner and Lot that is subject to Assessment to cover the cost (including attorney's fees) of bringing a Lot (or its Owner or Occupant) into compliance with the

requirements of this Declaration, the Articles, By-laws, Association Rules and Design Guidelines. Before any Special Assessment is levied pursuant to this Section 6.5.2, any Owner affected by the Special Assessment shall be given notice and an opportunity to be heard by the Board (or by a committee designated for the purpose by the Board).

6.5.3 The Association may levy a Special Assessment against each Owner, for the Proportionate Share of each Lot owned by that Owner, for the purpose of defraying, in whole or in part, the cost of any action or undertaking on behalf of the Association in connection with, or the cost of any construction or replacement of, a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto. Without the vote of a Majority of a Quorum of Members (and, after the Transition Date, the written consent of Declarant), the Association shall not impose a Special Assessment for the purposes described in this Section 6.5.3 in an amount that in any one year exceeds twenty percent (20%) of the estimated annual Common Expenses. All amounts collected as Special Assessments pursuant to this Section 6.5.3 shall be used only for the purposes set forth in this Section 6.5.3.

6.5.4 The Association may levy a Special Assessment against each Owner, for the Proportionate Share of each Lot owned by that Owner, for the purpose of providing any necessary funds for restoration and repair of damaged or destroyed Common Areas in accordance with Section 8. Notwithstanding the foregoing sentence, if the amount available from the proceeds of any insurance policies for restoration and repair, together with any uncommitted or unreserved capital of the Association, is less than 75% of the estimated cost of restoration and repair, the Association may levy a Special Assessment pursuant to this Section 6.5.4, unless two-thirds of the Members, at a special meeting held for that purpose, disapprove the restoration and repair. All amounts collected as Special Assessments pursuant to this Section 6.5.4 shall be used only for the purposes set forth in this Section 6.5.4.

6.5.5 The Association also may levy Special Assessments for any other charge designated as a Special Assessment the Governing Documents.

6.6 Exempt Property. The following property shall be exempt from payment of assessments: (a) all Common Area; and (b) all property dedicated to and accepted by any governmental authority or public utility.

6.7 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association or Committee, if any, may retroactively assess any shortfalls.

6.8 Budgeting for Reserves. The Board shall prepare, on an annual basis, reserve budgets which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such reserve budgets may also anticipate making additional improvements and purchasing

additional capital assets. The board shall include in the Regular Assessments reserve contributions in amounts sufficient to meet the projected needs, if any.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended such as the Private Roads, Water System, and recreational facilities.

6.9 Date of Commencement of Regular Assessments. Regular Assessments, as to Lots within the Property subject to Assessment, shall commence on the first day of the month following the date of completion and approval by Navajo County of the infrastructure improvements for the Property.

6.10 Time and Manner of Payment; Late Charges and Interest. The manner and timing of payment of Assessments shall be designated by the Board. The Board may, in its discretion, establish late fees and charge interest (including interest at the Default Rate of Interest) on any Assessment not paid by its due date consistent with the provisions of Arizona law. The Board may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance.

6.11 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against the specified amount shall be permitted for any reason including, but not limited to, a claim that (a) the Association, the Board or Declarant is not properly exercising its duties and powers as provided in this Declaration; (b) Assessments for any period exceed Common Expenses; or (c) a Member has made, and elects to make, no use of the Common Areas.

6.12 Subordination of Lien. Any lien that arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment that accrues from and after the date on which a Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any reasonable attorneys' fees, witness fees (including expert witness fees), costs, litigation-related expenses, interest and any late charges related thereto).

6.13 Enforcement of Lien. The lien provided for in this Section 6 may be foreclosed by the Board in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 6 relating to the enforcement of the lien provided for herein (including, but not limited to, the subordination provisions in Section 6.12 or the provisions of this Section 6.13) shall apply with equal force in each other instance provided for in this Declaration, the Association Rules or Design Guidelines wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by the lien provided for in this Section 6. Nothing in this Section shall be construed as requiring that the Association take any action in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take action at a later time or in a different instance.

6.14 Exemption of Unsold Lots. Notwithstanding anything in this Section 6 to the contrary, prior to the Transition Date, no Assessments shall be levied upon, or payable with respect to, any Lot owned by Declarant or any Related Party until the Lot has been conveyed by Declarant or the Related Party to a non-affiliated purchaser thereof.

## 7. INSURANCE

7.1 Authority to Purchase. The Board shall have the power and authority to purchase, with Association funds, such public liability, casualty, officers' and directors' liability and indemnity, workers' compensation, fidelity and other insurance as the Board shall deem reasonably necessary or appropriate from time to time. Policies shall be on such terms and conditions as the Board shall determine in its discretion. All policies maintained by the Association, and endorsements thereon, or copies thereof shall be deposited with the Association. The Association shall advise the Owners of the coverage of any policies purchased by the Association in order to permit the Owners to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured by the Association. All of the Association's insurance policies and claims thereunder shall be administered by the Board.

7.2 Owner's Responsibility. Each Owner shall provide insurance on any additions and improvements to the Owner's Lot in the amount of the full replacement cost of the additions and improvements. Each Owner also shall be responsible for providing insurance on the Owner's Lot, the furnishings and personal property located on the Owner's Lot, the Owner's personal property stored elsewhere within the Property, the Owner's personal liability to the extent not covered by the public liability insurance obtained by the Association and any other insurance as the Owner desires. No Owner shall maintain any insurance, whether on the Owner's Lot or otherwise, that would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas.

7.3 Non-Liability of Association/Board. Neither the Association, the members of the Board, Declarant, the Related Parties, nor any of their respective employees shall be liable to any Owner, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for additional insurance coverage and protection as the Owner may desire.

7.4 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium arising from the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas, by an Owner may be assessed against that particular Owner.

7.5 Insurance Claims. The Board, acting for the Association, is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and

deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

7.6 Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for, the Association or the Owners, as their interests may appear.

## 8. DAMAGE AND DESTRUCTION OF COMMON AREAS

8.1 Duty of Association. In the event of partial or total destruction of all or any portion of the Common Areas, or any improvements thereon, the Board shall elect either (i) to restore and repair the destroyed area; or (ii) to clear and landscape the destroyed area as promptly as practical pursuant to this Section 8. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for whichever purpose is elected by the Association pursuant to the foregoing sentence, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

8.2 Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any damaged or destroyed area is either restored and repaired or cleared and landscaped pursuant to Section 8.1, the Board, in its discretion, may retain those sums in the general funds of the Association or may distribute all or a portion of the excess to the Owners in their Proportionate Shares, subject to the prior rights of Mortgagees whose interests may be protected by the insurance policies carried by the Association. The rights of an Owner or the Mortgagee of a Lot to such a distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

## 9. EMINENT DOMAIN

9.1 Definition of Taking. The term "Taking" as used in this Section 9 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

9.2 Representation in Condemnation Proceedings. In the event of a threatened Taking, the Owners hereby appoint the Association (through individuals designated by the Board) to represent all of the Owners in connection therewith. The Board shall act in its sole and absolute discretion with respect to any awards being made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

9.3 Award for Taking. Any awards received by the Association on account of a Taking shall be paid to the Association. The Board may, in its sole and absolute discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Owners as their interests may appear. The rights of an Owner



and the Mortgagee of the Owner's Lot to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

## 10. MAINTENANCE, REPAIRS AND REPLACEMENTS

### 10.1 Maintenance of Lots.

10.1.1 Generally. Each Owner shall furnish and be responsible for, at the Owner's expense, all of the maintenance, repairs and replacements within the Owner's own Lot. In the event of damage to or destruction of structures on any Lot, the Owner of the Lot shall proceed promptly to repair or reconstruct the structures in a manner consistent with the original construction or other plans and specifications approved in accordance with Section 11.5.

10.1.2 Improper Maintenance and Use of Lots. If (i) any portion of any Lot is so maintained as to present a public or private nuisance or an unreasonable condition (as determined by the Board) with respect to other Owners or Occupants, or as to detract substantially from the appearance or quality of the surrounding Lots or other areas of the Property; (ii) any portion of a Lot is being used in a manner that violates this Declaration, the Association Rules or the Design Guidelines; or (iii) the Owner of any Lot fails to perform any of the Owner's obligations under this Declaration, the Association Rules or Design Guidelines, then the Board may give notice to the offending Owner that unless corrective action is taken within a deadline reasonably established by the Board, the Board may cause corrective action to be taken at the Owner's cost. If, at the expiration of the deadline fixed by the Board, the requisite corrective action has not been taken, the Board is authorized and empowered to cause remedial action to be taken. The cost of any remedial action shall become a Special Assessment against the offending Owner and the Owner's Lot and shall be secured by the lien provided for in Section 6. Notwithstanding the foregoing, if the Board believes that immediate action is or may be necessary to avoid a risk of serious physical injuries to individuals or damage to property, the Board shall be entitled, after giving notice to the affected Owner, to take whatever action it may believe to be minimally necessary to guard against or prevent injuries or damage without being required to wait for the period otherwise established by the Board as a deadline for action by the defaulting Owner.

10.2 Common Areas. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including, but not limited to, all Private Roads, provided, however, the Association shall not be responsible for maintaining any Common Areas that are part of Lots unless the Association assumes in writing the responsibility for the maintenance, or the Association's responsibility is set forth in a recorded instrument as provided in this Declaration. The Board shall be the sole judge of the appropriate maintenance of all Common Areas except that the Association shall be responsible for the maintenance of all Drainage Facilities in accordance with the Drainage Facilities Management Plan attached hereto as Exhibit B. "Drainage Facilities" shall mean all drainage easements indicated as such on the final plat, all improvements located within such easements, drainage improvements located within the Common Areas, culverts and bar ditches located along the Private Roads, and other drainage improvements

indicated on the As-Built drawings for the drainage plan for the Property. The Association shall not be responsible for drainage on the individual lots, except as specifically set forth herein.

10.3 Security. It is the goal of all Owners, including Declarant, to have a safe and healthy environment. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be; provided, neither the Association, the Board, the officers of the Association, the Association's management company, nor the Declarant or any successor Declarant, shall in any way be considered insurers or guarantors of security within the Property. Neither the Association, the board, the officers of the Association, the Association's management company, nor the Declarant or any successor Declarant shall be held liable for any loss or damage for failure to provide adequate security nor ineffectiveness of security measures undertaken.

10.3.1 All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner or the Declarant, acknowledge that the Association and its officers, its Board of Directors, the Association's management company, the Declarant, or any successor Declarant do not represent or warrant that any entrance, patrolling of the Property, neighborhood watch group, volunteer security patrol, or any security system may not be compromised or circumvented; nor that any entrance, patrolling of the Property, neighborhood watch group, volunteer security patrol, or any security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that any entrance, patrolling of the Property, neighborhood watch group, volunteer security patrol, any fire protection system, burglar alarm system, or other security systems will in all cases provide the detection or protection for which the system is designed or intended.

10.3.2 All Owners and occupants of any Lot and all tenants, guests, and invitees of any Owner or the Declarant assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and no Owner, occupant, or any tenant, guest, or invitee of any Owner or the Declarant relied upon any representations or warranties, expressed or implied, relative to any entrance, patrolling of the Property, neighborhood watch group, volunteer security patrol, or any security systems recommended or installed or any security measures undertaken within the Property.

10.3.3 Gates may be constructed at primary entrances to the Property in order to limit access and to provide more privacy for the Owners. Each Owner and occupant, and their families, guests and invitees acknowledge that any guardhouse and/or guard gate may restrict or delay entry by the Police, the fire Department, ambulances and other emergency vehicles or personnel. Each Owner and other occupant and their families, guests and invitees agree to assume the risk that the guardhouse and/or guard gate may restrict or delay entry to emergency vehicles and personnel. Neither the Association, the Board, the officers of the Association, the Association's Management Company, nor the Declarant or any successor Declarant shall be liable to any Owner or other occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction existence or maintenance of any guardhouse and/or guard gate.

10.3.4 Each Owner and other occupant and their families, guests and invitees acknowledge that any guardhouse and/or guard gate does not guarantee the safety or security of the Owners and other occupants and their families, guests and invitees or guarantee that no unauthorized Person will gain access to the Property.

10.4 Assessment of Certain Costs of Maintenance and Repair of Common Areas. If the need for maintenance, repair, or replacement of Common Areas or any other areas maintained by the Association is caused through the willful or negligent act of any Owner or Occupant or the family, guests, or invitees of either, the cost of all required maintenance or repairs shall be a Special Assessment against the Owner and the Owner's Lot and shall be secured by the lien provided for in Section 6.

10.5 Right of Access. An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas, or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas, or to perform any of the Association's duties or responsibilities hereunder.

## 11. ARCHITECTURAL AND LANDSCAPE CONTROL

11.1 General Description of Improvements. Improvements on the Property should enhance the rural character of the area and be in harmony with the natural features of the site, including the surrounding mountains, perimeter forest and central meadow area. Without altering the general statements included in this Section 11 regarding construction of improvements and the establishment of Design Guidelines, materials used in the construction of improvements on the Property are expected to include pine log and other natural materials that are consistent with the development of a high-quality mountain community, and improvements shall be site-built.

11.2 Appointment of Design Review Committee. Subject to Section 11.8, the Association shall have a Design Review Committee consisting of not less than three nor more than five individuals, as specified from time to time by resolution of the Board. After the Transition Date or such earlier date as Declarant elects to delegate the design review powers to the Design Review Committee, members of the Design Review Committee shall be appointed by the Board. Individuals appointed to the Design Review Committee by the Board must be Owners or satisfy any other requirements as may be designated by the Board.

11.3 Design Guidelines. The Board shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"). The Design Review Committee may, from time to time, recommend amendments to the Design Guidelines for approval by the Board. After the Transition Date or such earlier date as Declarant elects to delegate the design review powers to the Design Review Committee, any change in the Design Guidelines will be effective only if it is approved by Declarant (so long as Declarant or any Related Party, owns any portion of the Property). The Design Guidelines shall be binding on all Owners and other Persons having

any interest in the Property as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Guidelines shall include, but not be limited to, the following requirements:

11.3.1 Building Envelope Requirements. Building Envelopes have been established for all Lots. Maps indicating the location of the Building Envelopes shall be kept on file in the office of the Association. The Building Envelope defines the maximum allowable construction area, including the driveway. The minimum setback requirement for all Lots shall be twenty-five feet from property lines.

11.3.2 Storage Buildings and Fences. No storage buildings or sheds that are detached from the single family dwelling shall be allowed. A detached garage, guesthouse, or gazebo is not considered to be a storage building. Fences are discouraged, but may be allowed in compliance with the Design Guidelines.

11.3.3 Square Footage. Each residence constructed on a Lot shall be a minimum of 2,400 square feet of heated space exclusive of garages, basements, patios, breezeways, and other unheated areas. The maximum square footage of heated space of any residence located on Lots 11 and 12 and Lots 33 through 51 shall be 5,000 square feet exclusive of garages, basements, patios, breezeways, and other unheated areas.

11.3.4 Timing of Construction – Resale to Declarant. Within ten years after an Owner acquires title to a Lot from the Declarant, the Owner (or its assignee) shall construct a single family dwelling on the Lot in accordance with the requirements of this Declaration and the Design Guidelines. If an Owner fails to comply with this requirement, the Declarant shall have the absolute right to purchase the Lot at the original sales price paid to the Declarant at the initial sale of the Lot.

#### 11.4 General Provisions.

11.4.1 The Design Review Committee may assess reasonable fees in connection with its review of plans and specifications.

11.4.2 The Design Review Committee may delegate its plan review responsibilities, except final review and approval required by the Design Guidelines, to one or more of its members or architectural consultants retained by the Design Review Committee. Upon any delegation of responsibilities, the approval or disapproval of plans and specifications by the member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

11.4.3 The Design Review Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Design Guidelines within any period as may be specified in the Design Guidelines.

11.4.4 The Design Review Committee, in its discretion, from time to time, may waive compliance with the restrictions set forth in this Section 11 or any comparable restrictions set forth in or the Design Guidelines subject to approval by the Board only if the waiver will not defeat the philosophy and spirit of the Design Guidelines; provided, however, following the Transition Date, any such waiver shall require the prior

written approval of Declarant, so long as Declarant or any Related Party owns any portion of the Property.

11.5 Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, but not limited to, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with the Design Guidelines. It is understood and agreed by each Person having or acquiring an interest in the Property that the Design Review Committee will include aesthetic judgment in its decision-making process and approval of submitted plans will not be required simply because the plans satisfy stated objective requirements.

11.6 Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances (or other governmental requirements), and by approving the plans and specifications neither the Design Review Committee, the members thereof, Declarant, any Related Party, the Association, any Owner, nor the Board (nor any committee, officer, director, employee or agent of any of the foregoing) assumes any liability or responsibility therefor, or for any defect in any structure constructed from the plans and specifications. Neither the Design Review Committee, any member thereof, Declarant, any Related Party, the Association, nor the Board (nor any committee, officer, director, employee or agent of any of the foregoing) shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development, or manner of development of any portion of the Property, or (d) the execution and filing of an estoppel certificate pursuant to the Design Guidelines, whether or not the facts therein are correct; provided, however, that the action, with the actual knowledge possessed by the Person executing and filing the estoppel certificate, was taken in good faith. Approval of plans and specifications by the Design Review Committee (or by Declarant pursuant to Section 11.8) is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

11.7 Inspection and Recording of Approval. Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on the Lot to ascertain that the improvements have been or are being built in compliance with the Design Guidelines and this Declaration. The Design Review Committee shall cause an inspection to be undertaken

within 30 days of a request from any Owner as to the Owner's Lot, and if the inspection reveals that the improvements located on the Lot have been completed in compliance with this Section 11 and the Design Guidelines the Design Review Committee shall provide the Owner a notice of approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of this Section 11 and the Design Guidelines as to the improvements described in the recorded notice, but as to the described improvements only.

11.8 Declarant Review. Each Owner acknowledges that Declarant, as the developer of the Property has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation and do not impair Declarant's ability to market, sell or lease its property. Notwithstanding anything contained in this Declaration to the contrary, until the Transition Date, Declarant, shall have all of the rights granted in this Declaration or to the Design Review Committee, and shall exercise all of the powers granted in this Declaration or to the Design Review Committee through individuals appointed by Declarant for such purpose including, but not limited to, establishment of the Design Guidelines. Until the Transition Date or such earlier time as Declarant delegates all or a portion of its design review powers to the Design Review Committee, the Association shall have no jurisdiction over architectural or design review matters. If Declarant delegates all or a portion of its design review powers to the Design Review Committee prior to the Transition Date, Declarant shall give the Association at least 30 days prior written notice of the delegation. Upon the expiration or relinquishment of Declarant's rights under this Section, the Association, acting through the Design Review Committee, shall assume jurisdiction over architectural and design review matters. In exercising its powers under this Section 11.8, Declarant shall be acting in its own interest as developer of the Property.

11.9 Reconstruction of Common Areas. The reconstruction of any Common Areas after destruction by casualty or otherwise that is accomplished in substantial compliance with "as built" plans for the Common Areas, as applicable, shall not require compliance with the provisions of this Section 11 or the Design Guidelines.

11.10 Additional Powers of the Design Review Committee. The Board may promulgate as a part of the Design Guidelines additional architectural and landscape standards, rules and regulations as it deems appropriate; provided the standards, rules and regulations are not in conflict with this Declaration or the architectural and landscape standards, rules and regulations promulgated by Declarant in the exercise of its powers under Section 11.8. The Board may require appropriate construction security deposits to ensure a compliance with the Design Guidelines.

11.11 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and Design Review Committee will change from time to time and that interpretation, application and enforcement of the Governing Documents may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans, and specifications, drawings, or other matters subsequently or additionally submitted for approval. Should the Board or Design Review Committee permit non-conforming

improvements through hardship or error, it shall not be construed as a waiver of future enforcement rights or permission for future noncompliance.

## 12. USE AND OCCUPANCY RESTRICTIONS

12.1 Residential Use. Each Lot shall be improved and used exclusively for single family residential purposes and none other. No business or trade may be conducted on any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the Design Guidelines.

12.1.1. The restriction on use of any Lot for business or trade shall not prohibit an activity if it meets all of the following requirements: (a) is not apparent or detectable by sight, sound or smell from outside the Lot on which it occurs, (b) does not involve individuals coming onto the Lot who do not reside on the Lot (excluding once a day document delivery services such as Federal Express) or solicitation of residents of the Property by anyone, whether or not a resident, and (c) is consistent with the residential character of the Lot and the Property and not a nuisance, or a hazardous or offensive use, as may be determined in the sole and absolute discretion of the Board.

12.1.2 No garage or rummage sales shall be allowed.

12.1.3 The scope of the types of activities that are prohibited by this Section may be clarified, supplemented and interpreted by the Board (or by Declarant, prior to the Transition Date) from time to time, as it may choose in its sole and absolute discretion, so long as not materially inconsistent with the terms set forth above.

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

12.2 Violation of Law or Insurance. No Owner or Occupant shall permit anything to be done or kept on the Owner's Lot or in or upon any Common Areas that will result in the cancellation, increase in premiums or reduction in coverage of insurance maintained by the Association or that would be in violation of any law or other applicable requirement of governmental authorities.

12.3 Signs. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Association or the Design Review Committee, except: (a) signs used by Declarant or any Related Party in connection with the development and sale of Lots in the Property; (b) signs required by legal proceedings, or the prohibition of which is precluded by law; (c) signs of an approved size placed in approved locations on a Lot indicating that the Lot is served by security or alarm

services; and, (d) signs required for traffic control and regulation of Common Areas. No "For Sale" or "For Rent" sign may be posted on any Lot; provided, however, an Owner may, in accordance with applicable provisions of the Association Rules, be permitted to post or keep on record one "For Sale" or "For Rent" notice in a form approved by the Board in a location specified for that purpose by the Board, rather than on the Owner's Lot.

12.4 Animals. Raising, breeding or keeping of animals, livestock, or poultry of any kind is prohibited, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted on a Lot, however, those pets that are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the Lot boundaries and all owners of pets are expressly responsible for cleaning up after their pets. Pets shall be registered, licensed and inoculated as required by law.

12.5 Nuisances. No Owner or Occupant shall permit or suffer anything to be done or kept about or within the Owner's Lot, or on or about the Property, that will permit any nuisance or obstruct or unreasonably interfere with the rights of other Owners, Occupants or other individuals holding the right to use and enjoy the Common Areas, or annoy them by unreasonable noises or otherwise. Each Owner and Occupant shall comply with the Association Rules, the requirements of all health authorities and other governmental authorities having jurisdiction over the Property. 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, provided they are in compliance with the Design Guidelines and requirements of the Design Review Committee and Board. Lots, Common Areas 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 shall be piled only in such areas as may be approved by the Design Review Committee or Board. In addition, any construction equipment and building materials stored or kept on the Property during construction of improvements may be kept only in areas approved by the Design Review Committee or Board, which also may require screening of the storage areas. The Board, in its sole and absolute discretion, shall have the right to determine the existence of any unreasonable annoyance or nuisance under this Declaration.

12.6 Motor Vehicles. No motor vehicles, including, but not limited to, automobiles, boats, trailers, buses, motor homes and campers (i) may be parked or stored on the Private Roads or other portions of the Common Area, except in parking areas designated by the Board; (ii) may be parked or stored upon a Lot except within an enclosed structure or as otherwise permitted by the Association Rules from time to time; or (iii) may be repaired or rebuilt upon any portion of the Common Area or on any Lot except within an enclosed structure or as otherwise permitted by the Association Rules from time to time. The Board may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner of the vehicle in any manner consistent with law.



12.7 Mining; Wells. No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind, except for exploring or removing water for purposes related to the Water System.

12.8 Fires. Other than barbecues, in properly constructed barbecue pits or grills, (all in accordance with the Design Guidelines), or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots, nor shall any other similar activity or condition be permitted that would tend to increase the insurance rates for the Common Area, or for other Owners. The Board may designate a portion of the Common Area where campfires may be allowed, subject to any applicable rules or requirements imposed by the Board. The Board may establish fire regulations for periods of drought.

12.9 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind. All laundry facilities shall be provided within the buildings to be constructed on each Lot.

12.10 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction that would interrupt the normal drainage of the land or within any area designated on a Plat, or other binding document, as a "Drainage Easement" or similar designation, except that, with the prior consent of applicable governmental authorities and the Design Review Committee, non-permanent structures, including fences, may be erected in those areas that contain only underground closed conduit storm drainage facilities.

12.11 Use of Lots. An Owner shall be responsible for assuring compliance by any Occupants or guests of the Owner's Lot with all of the provisions of this Declaration, the Articles, By-laws, Association Rules and Design Guidelines, and shall be jointly and severally responsible for any violations of this Declaration, the Articles, By-laws, Association Rules and Design Guidelines by the lessee or other Person.

12.12 Enforcement. The Association and its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct the violation at the expense of the Owner of the Lot. Any expenses, and any monetary penalties imposed pursuant to this Declaration, the Articles, By-laws, Association Rules or Design Guidelines, to the extent allowed by applicable law, shall be a Special Assessment secured by a lien upon the Lot enforceable in accordance with the provisions of Section 6. All remedies described in this Declaration and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant or other Person of any provision of this Declaration.

12.13 Repair of Structures. No building, structure, or improvement on the Property shall be permitted to fall into disrepair, and (subject to any provisions of this Declaration expressly imposing maintenance and repair obligations on the Association or other Persons) each building, structure and improvement on a Lot shall at all times be kept

by the Owner of that Lot in good condition and repair and adequately painted or otherwise finished.

12.14 Utility Service. All lines, wires, or other services for the communication or transmission of electric current or power or electromagnetic impulses, including telephone, television, and radio signals on the Property shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Design Review 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, structures, or improvements approved by the Design Review Committee. All Lots shall be required to connect to the approved sewer system for the Property. No private septic or sewer system shall be allowed on any Lot.

12.15 Health, Safety, and Welfare. If any uses, activities, and facilities are deemed by the Board to be an unreasonable annoyance or a nuisance, or to adversely affect the health, safety, or welfare of Owners or Occupants, the Board may make rules restricting or regulating their presence on the Property as part of the Association Rules. Any rules promulgated pursuant to this Section 12.16 shall be consistent with the provisions of this Declaration.

12.16 Open Space. The Plat may designate portions of the Property as "Open Space" or a similar designation (each, an "Open Space Area"). In addition to the meadow included in the Common Area, natural woodland, grassy areas and other forms of open space, Open Space Areas may include common recreational facilities, structures and improvements for the benefit of the Owners and such other Persons as may be designated by the Declarant or the Association from time to time.

12.17 Perimeter Forest. Portions of the Property are adjacent to national forest land. Vehicular access from the Property into neighboring national forest land is prohibited.

12.18 Private Roadways. All roadways constructed by the Declarant within the Property shall be private roadways not subject to dedication to the public. The maximum speed limit on any roadway within Sierra Springs Ranch shall be 15 miles per hour. Such private roadways shall be maintained in perpetuity by the Association.

12.19 No Further Subdivision. No Lot in the Property shall be further subdivided or separated into smaller Lots or conveyed in less than the full original dimensions of such Lots as shown in the Plat. Lot line adjustments which are in the best interests of the Association may be made, when approved by the Board. Such adjustments must be duly recorded in the Official Records. Notwithstanding this Section or any other provision contained in this Declaration, as long as the Declarant owns any Lots in the Property, the Declarant, without the consent of any other Member, shall have the right to re-plat the Property by changing the size, location and configuration of Lots, roadways and Common Areas, provided, however, that such re-plat shall not increase the total number of Lots or area served by the potable water system for the Association.

12.20 Combining of Lots. An owner of two contiguous Lots may combine the two Lots into a single Lot only for the purpose of constructing a single family dwelling and only after obtaining prior written approval from the Design Review Committee and Navajo County. Each of the two combined Lots shall remain separate Lots for Assessment purposes pursuant to this Declaration.

12.21 Transfer of Lots. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Association at least fourteen (14) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. In addition, all Owners acknowledge that the Association may be required to provide resale disclosure statements or other similar type information required by applicable law and may charge such Owner a reasonable fee in addition for the provision of such information. The transfer fee shall be a minimum of \$500. The transfer fee does not apply to initial sales of Lots by the Declarant.

12.22 Rentals. The rental or leasing of any Lot shall be conducted exclusively through the Association manager or its designee. No short-term rentals less than one week in duration shall be allowed. A rental/leasing fee shall be paid to the Association as determined by the Board. All rentals/leases shall be subject to the Association Rules. The Owner shall be responsible and liable for all activities conducted by the tenant/lessee on the Property.

12.23 Drainage. Obstruction or re-channeling of drainage flows after location and installation of drainage swales, storm sewers or storm drains or other flow of water as shown on the drainage plan on file with Navajo County are not permitted, except that the Declarant and the Association shall have such right; provided, (1) the exercise of such right shall not materially diminish the value or unreasonably interfere with the use of any Lot without the Owner's consent; and (2) any proposed obstruction or re-channeling shall be reviewed by the Navajo County Flood Control District.

12.24 Dumping. The dumping of grass clippings, leaves or other debris, petroleum products, fertilizer, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, lake, or elsewhere within the Property is prohibited, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff.

12.25 Water Structures. There may be water structures constructed or occurring naturally upon the Property. The Declarant, the Board, and the Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of such structures within or adjacent to the Property. Neither the Declarant, its successors and assigns, nor the Association, makes any guarantee of natural water flows and shall have the exclusive right and freedom to draw water from lakes, ponds and streams within the Property for purposes of irrigation and such other purposes as the Declarant or Association shall deem desirable.

12.26 Firearms. The discharge of firearms is prohibited within the Property, provided that the Board shall have no obligation to take action to prevent or stop such discharge.

12.27 Motorized Vehicles on Pathways and Trails. Operation of motorized vehicles on pathways or trails maintained by the Association is prohibited.

12.28 Skateboards and Motorized Scooters. No skateboards or motorized scooters are permitted for operation or use on any of the traveled roadways or pathways and trails.

12.29 Sprinklers and Irrigation Systems. Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Property shall be prohibited, except that the Declarant and the Association shall have the right to draw water from such sources.

12.30 Fireplaces. The Board reserves the right to restrict or ban the use of non-natural gas or non-propane fireplaces within the Property.

12.31 Propane Tanks. All propane tanks located on any Lot shall be buried.

12.32 Fire Prevention Requirements. The Board shall have the authority to adopt reasonable fire prevention requirements to be included in the Association Rules. The Board may, in its discretion, hire a forester or other qualified professional to inspect the Property to give recommendations regarding fire prevention measures which should be taken. The Board may then require each Owner to carry out the recommendations on the Lots, including the areas outside the Building Envelope. If an Owner fails to carry out the recommendations as directed by the Board, they Association may enter the Lot and perform the work as authorized by Section 10.1.2.

### 13. RIGHTS OF MORTGAGEES

13.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, , the Articles, By-laws, Association Rules and Design Guidelines, the following provisions shall apply to and benefit each holder of a Mortgage upon a Lot.

13.2 Liability for Assessments. A Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of the Mortgage, or through any equivalent proceedings such as, but not limited to, the taking of a deed or assignment in lieu of foreclosure or acquiring title at a trustee's sale under a first deed of trust, (a "Successor Owner"), will not be liable for the Lot's unpaid dues, charges or Assessments that accrued prior to the time the Successor Owner comes into possession of the Lot or becomes record Owner of the Lot, whichever occurs first. In addition, a Successor Owner shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration that secures the payment of any dues, charges or Assessments accrued prior to the time the Successor Owner either comes into possession of

the Lot or becomes record Owner of the Lot. Any unpaid dues, charges or Assessments against the foreclosed Lot shall be deemed to be a Common Expense charged pro rata against all of the Owners. Nevertheless, in the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Board, for the Lot's Assessment that was due prior to the final conclusion of the foreclosure or equivalent proceedings. Further, any unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the Lot, and the Board may use reasonable efforts to collect unpaid Assessments from the Owner even after the Owner is no longer the Owner of the Lot.

13.3 No Personal Liability. A Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or By-laws, or any management agreement, except for those matters that are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 13.

13.4 Enforcement After Foreclosure Sale. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against any purchaser who has acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to the purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot.

13.5 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a Mortgage (including any period of redemption) or from the time a trustee under a deed of trust has given notice of sale pursuant to power of sale conferred under the deed of trust and pursuant to law, the Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner.

13.6 Subject to Declaration. At such time as a Mortgagee comes into possession of or becomes record Owner of a Lot, the Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all Assessments and charges accruing thereafter, in the same manner as any other Owner.

#### 14. COMPLIANCE AND ENFORCEMENT

14.1 General Compliance. Every Owner and every occupant of a Lot shall comply with the Declaration, Bylaws, Association Rules, and Design Guidelines. The Board may impose sanctions for violations of the foregoing, after notice and a hearing in accordance with the procedures set forth in the Association Rules. Such sanctions may include, without limitation, some or all of the following:

(a) reasonable monetary penalties which shall constitute a lien upon the violator's Lot to the extent allowed by applicable law; if any occupant, guest or invitee of a Lot violates the Declaration, the Bylaws or any rule or regulation and a penalty is imposed, the penalty shall first be assessed against the occupant; provided, however, if the penalty is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(b) suspending an Owner's right to vote;

(c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to prohibit ingress or egress to or from a Lot;

(d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;

(e) exercising self-help or taking action to abate any violation of the Declaration, Association Rules or Design Guidelines in a non-emergence situation (specifically including, but not limited to, the towing of vehicles that are in violation of any applicable parking rules and regulations;

(f) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions from continuing or performing any further activities in the Property; and

(h) levying Assessments to cover costs incurred by the Association to bring a Lot in compliance with the Declaration.

14.2 Additional Procedures. In addition, the Board may take the following enforcement procedures to ensure compliance with the Declaration without the necessity of compliance with the procedures set forth in the

(b) exercising self-help in any emergency situation; and

(c) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

14.3 Cumulative Remedies. All remedies set forth in the Declaration, the Association Rules, or the Design Guidelines, shall be cumulative of any remedies available

at law or in equity. In any action to enforce the provisions of the foregoing documents the Association shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

14.4 No Waiver. The Association shall not be obligated to take action to enforce any covenant, restriction, or rule that the Board reasonably determines is, or is likely to be construed as, inconsistent with the applicable law, or in any case in which the Board reasonably determines that it would not be economically prudent or would otherwise not be of sufficient benefit to the Association to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenant, restriction, or rule. Failure by the Board to enforce any provision of this Declaration shall not be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof.

## 15. AMENDMENT

15.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration", or a similarly entitled instrument, which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a meeting of the Members upon the approval thereof of two-thirds of the Members (excluding Declarant) or without any meeting if all Members have been duly notified and if two-thirds of the Members (excluding Declarant) consent in writing to such amendment. Amendments once properly adopted shall be effective upon recording in the Navajo County Recorder's office.

15.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

15.3 Required Approvals. Notwithstanding the provisions of the foregoing sections of this Section 15:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all Owners and/or all lien holders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to the action shall be approved by all of the Members and/or all Owners and/or all lien holders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by law.

(b) Until the Transition Date, this Declaration may not be amended by the Members pursuant to Section 15.1 without the prior written consent of Declarant, which may be withheld for any reason.

15.4 Declarant's Right to Amend. Notwithstanding any other provision of this Section 15, until the Transition Date, Declarant reserves the right to amend this Declaration without the approval of the Board or the Members, except as specifically set forth in this Section 15.4. After the conveyance of the first Lot to an Owner, Declarant may not amend the following provisions of this Declaration without the approval of the Members as provided in Section 15.1: Sections 3.2 (to change the number of Memberships attributable to each Lot or to change the number of votes for each Lot or Membership); Section 6.4.3 (to increase the cap on increases in Regular Assessments); the second sentence of Section 6.5.3 (to increase the amount of a Special Assessment that may be collected for capital improvements without a vote of a Majority of a Quorum of Members); Section 12.19 (to increase the total number of Lots); and this Section 15.4 (to delete any references to Sections that require the approval of the Members to amend).

## 16. TERM; TERMINATION

16.1 Term. This Declaration shall be of perpetual duration, unless terminated as provided below.

16.2 Withdrawal by Declarant. This Declaration may be terminated by Declarant without the approval or consent of any other Person if the action is taken before any sale to a Retail Purchaser. Any Plat may be withdrawn by Declarant, without the approval or consent of any other Person, if the action is taken before the sale of any real property shown on that Plat to a Retail Purchaser.

16.3 Termination. After the first sale to a Retail Purchaser, this Declaration may be terminated at any time upon a vote in favor of termination by 90% of the Members and with the consent of Declarant (so long as Declarant or a Related Party owns any portion of the Property). Declarant may, but shall not be obligated to, release its consent rights by recorded instrument. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the Navajo County Recorder's office a Certificate of Termination. Thereupon, this Declaration, as of the date of recordation of the Certificate of Termination (or such later date as may be specified in the Certificate of Termination), shall have no further force and effect, and the Association shall be dissolved.

## 17. GENERAL PROVISIONS

17.1 Notices. Notices provided for in the Governing Documents, shall be in writing and shall be addressed to the Association at the address specified in the By-laws. The Association may designate a different address or addresses for notice by giving written notice of change of address to all Owners. All notices to Owners shall be to their respective Lots or to the last address shown on the records of the Association. Notices addressed as



above shall be deemed delivered when mailed by United States mail, or when delivered in person with written acknowledgment of the receipt thereof.

17.2 Captions; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

17.3 Severability. If any provision of the Governing Documents, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Governing Documents, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of the Governing Documents shall be construed as if such invalid part were never included therein.

## 18. DISCLAIMERS

18.1 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary in this Declaration, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that any land now owned or hereafter acquired by Declarant or any Related Party is or will be subjected to this Declaration, or that any land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if any land is once used for a particular use, the use will continue in effect.

18.2 No Express or Implied Covenants or Restrictions. Nothing in this Declaration shall create, or be deemed to create, any express or implied covenants or restrictions with respect to any real property that has not been subjected to this Declaration.

18.3 Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of Owners and occupants of any Lot. Notwithstanding anything contained in the Governing Documents or any other document governing or binding the Association, neither the Association, the Board, any officers of the Association, the management company of the Association, the Declarant nor any successor Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property, including recreational facilities, if any, and may be required to execute specific liability waivers from time to time as a condition of such use.

18.4 Disclaimer Regarding Utility Lines. Neither the Association, the Board, any officers of the Association, the Association's management company, the Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines, or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any owner, Declarant, or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines, utility sub-station, and electromagnetic fields, and further acknowledges that the Association, the Board, the Officers of the Association, the management company of the Association, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner, Declarant, or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-station, or electromagnetic fields.

18.5 No Creation of Duty. No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the board, the officers of the Association, the management company of the Association, the Declarant nor any successor Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

18.6 Waiver of Liability. Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest in or lien upon, or making such any use) shall be bound by this Section 18 and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the Board, the officers of the Association, the Association's management company, the Declarant and any successor Declarant arising from or connected with any matter for which the liability has been disclaimed.

## 19. RIGHTS AND OBLIGATIONS

19.1 Binding Effect. Each grantee of Declarant, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and the heirs, successors and assigns of the foregoing Persons, accepts the grant, conveyance or agreement subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Further, all impositions and obligations imposed by this Declaration shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in the Property, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such an interest.

## 20. DISPUTE RESOLUTION

20.1 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee member, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Section 20 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that specified claims, grievances or disputes described in this Section 20 ("Claims") shall be resolved using alternative dispute resolution procedures in lieu of filing suit in any court.

20.2 Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Property shall be subject to the provisions of Section 20.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 20.3

(a) Any suit by the Association to enforce the provisions of Section 6 (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Sections 11 and 12;

(c) Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

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

(e) Any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 20.3.1 unless the Party or parties against whom the Claim is made agree to toll the statute of initiations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 20.3.

### 20.3 Mandatory Procedures.

20.3.1 Notice. Any Bound Party having a Claim ("Claimant") against any other bound Party ("Respondent") (collectively, the "Parties") shall notify each

Respondent in writing and provide a copy of the notice to the Board (the "Notice"), stating plainly and concisely:

- (a) The nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (b) The legal basis of the Claim(i.e., the specific authority out of which the Claim arises);
- (c) Claimant's proposed remedy; and
- (d) That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

#### 20.3.2 Negotiation and Mediation.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to such entity as is designated by the Association of mediating claims or, if the Parties otherwise agree, to an independent person providing dispute resolution services.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(d) Any Settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

The Claimant shall thereafter be entitled to sue in any court of competent jurisdiction or to initiate proceedings before any appropriate administrative tribunal on the Claim. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

20.4 Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 20.3, and any Party

thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 20.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the date first set forth above.

**SIERRA SPRINGS DEVELOPMENT, INC.,**  
an Arizona corporation

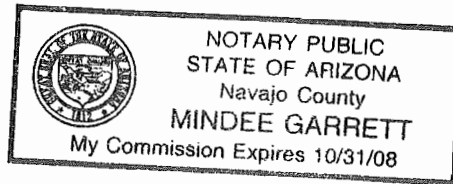
By: *Neal C. DuCharme*  
Neal C. DuCharme, President

STATE OF ARIZONA        )  
  ) ss  
County of Navajo         )

The foregoing instrument was acknowledged before me this 1st day of December, 2005, by Neal C. DuCharme, as President of Sierra Springs Development, Inc., an Arizona corporation, for and on behalf of the corporation.

*Mindee Garrett*  
Notary Public

My Commission Expires:  
10/31/08



**EXHIBIT "A"****Sierra Springs Ranch HOA Budget****Income****Dues**

HOA Dues (51 Lots / \$ Month)

**Other**

Fixed Water Cost Assessment  
 Water Usage Fees  
 Facility Rent  
 Other Facility Income  
 Home Owner Requested Services

**Total Income****Expenses****Common Area Expense**

Salaries (maintenance)  
 Payroll Taxes  
 Payroll Service Fee  
 Workmans Comp Insurance  
 Building Repairs & Maintenance  
 Equipment Repairs & Maintenance  
 Insurance  
 Landscaping Maintenance Supplies  
 Miscellaneous Direct Expense  
 Pond Repairs & Maintenance  
 Road Repairs & Maintenance  
 Water System Repairs & Maintenance  
 Water System Certified Operator Fees  
 Property Taxes  
 Small Tools  
 Utilities: Trash  
 Utilities: Electricity  
 Utilities: Fuel  
 Utilities: Propane  
 Utilities: Satellite TV  
 Utilities: Telephone  
 Vehicle Expense  
 Accounting  
 Legal  
 Dues & Subscriptions  
 Donations  
 Travel & Entertainment  
 Licenses, Fees & Permits  
 Office Supplies  
 Postage  
 Printing  
 Repairs & Maint. Office Equipment  
 Manager Salary  
 Payroll Taxes  
 Payroll Service Fee  
 Workmans Comp Insurance

**Total Annual HOA Operating Cost****General Reserve Fund****Road Resurfacing Reserve Fund****Water System Reserve Fund****Net Annual HOA Operating Surplus**

## Exhibit "B"

### Drainage Facilities Maintenance Plan

The Association shall be responsible for the maintenance of Drainage Facilities in accordance with this Drainage Facilities Maintenance Plan. The Association shall keep the Drainage Facilities in the same condition, or better, as shown on the As-Built drawings for the Sierra Springs Ranch Subdivision. The As-Built drawings also provide a benchmark with a given elevation, upon which all elevations for the structures are based. A copy of the As-Built drawings for Sierra Springs Ranch can be reviewed at the Navajo County Public Works Department at 100 E. Carter, Holbrook, Arizona 86025.

1. The As-Built drawings for Sierra Springs Ranch list the target flow through the Drainage Facilities for the 50-year storm event. The drawings also provide the required detention basin volume and list the elevations for the structures within the easements at which the structures must be maintained. Any condition differing from the As-Built drawings will result in the drainage facilities not working as designed. It is the Association's responsibility to maintain the Drainage Facilities.
  
2. The Association shall obtain an annual inspection of the Drainage Facilities, to be performed by a registered Civil Engineer. It is recommended that this inspection be performed after snowmelt is complete and just following the rainy season. The person performing the inspection shall create a report detailing information regarding to the following:
  - A. Date, time, and area being inspected
  - B. Existing Erosion
  - C. Sedimentation
  - D. Physical Condition
    1. cracking of any structure
    2. open joints
    3. rodent, etc. holes
  - E. Loss of Detention/Retention Volume
  - F. Potential for Increase of Discharge (volume rate, or linear velocity)
  
3. The Association shall also have the Drainage Facilities inspected by a person with the same qualifications as listed above to perform inspections as a result of the following events:
  - A. Major storm (25-100 year event)
  - B. Any over-topping of any structure occurs
  - C. When required by Navajo County
  - D. When major damage to a facility is apparent

4. The Association shall be responsible for all repairs and maintenance. Such items include, but are not limited to, the following:
  - A. Scheduled periodic
    1. weed and vegetation control
    2. rodent control
    3. joints sealed in structures
  - B. Silt shall be removed and properly discarded to maintain as-built condition in the structures. The method of work shall be approved by the County Engineer. Benchmarks shown on the As-Built drawings shall be utilized to determine condition of the facilities.

5. Responsible Parties.

A. The Association is the responsible party for inspecting and maintaining the Drainage Facilities as explained above.

B. If the Association fails to comply with the requirements of this Plan, the Plan may be executed by the County or County designated vendors, the cost of which may be assessed to the lot owners through regular property assessments.

6. Reporting to Navajo County Public Works

Once the inspection of the Drainage Facilities has been done, the person performing the inspection shall make a list of the work that necessary to perform and also detail how and what should be done to bring the site back to original condition. This list will be given to the Association and the Association will be required to make sure the items on the list have been corrected. The Association will be responsible to notify the Navajo county Public Works Department within 10 working days following any inspection. With that notification, the owner must provide the County with a timeline of when the items will be corrected. The Association will also be required to notify the County within 2 days before commencing major repairs, and within 10 working days following the completion of any repairs.

No construction or landscaping can take place in the drainage easements without first notifying the Navajo County Public Works Department. The proposed improvements must be approved by the County Engineer. It will be at the County Engineer's discretion as to whether engineered plans will be required prior to commencing with the repairs.



When recorded mail to:  
Sierra Springs Development, Inc.  
1630 E. White Mountain Blvd., Suite A-3  
Pinetop, AZ 85935

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**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR SIERRA SPRINGS RANCH**

This First Amendment to Declaration of Covenants, Conditions, and Restrictions for Sierra Springs Ranch ("First Amendment to Declaration") is made and entered into as of the 3 day of April, 2006, by Sierra Springs Development, Inc., an Arizona corporation (herein called "Declarant").

WHEREAS, a Declaration of Covenants, Conditions, and Restrictions for Sierra Springs Ranch was previously recorded on December 23, 2005, at Fee No. 2005 38374, in the Office of the County Recorder of Navajo County, Arizona (the "Declaration"); and

WHEREAS, the Declarant is the owner of the Property which is subject to the Declaration; and

WHEREAS, said Property is known as the Sierra Springs Ranch subdivision and is described in the Plat recorded on December 21, 2005, in the records of Navajo County at Book 25 of Plat Maps, Pages 29-31; and

WHEREAS, the Declarant, by its desire to further establish the nature of the use and enjoyment of the Sierra Springs Ranch subdivision, hereby amends the Declaration by adopting this First Amendment to Declaration pursuant to Section 15.4 of the Declaration.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. A new provision, Section 11.3.5, shall be added as follows:

"11.3.5 Timing of Construction – Existing Home Conformance. Within four years after an Owner acquires title to a home located on Lots numbered 21, 23, 24, 29, 30, 31, 42, 43 or 51 from the Declarant, the Owner (or its assignee) shall make any changes as required to conform with the CC&Rs and Design Guidelines for size, appearance and landscaping."

2. A new provision, section 12.14.1 shall be added.

"12.14.1 Sewer Grinder Pump (lift station). Homes located on lots numbered 13, 14, 15, 16, 17, 38, 39, 40 and 41 may require a lift station which may result in additional costs to the Owner for construction of a home."

- 3. Section 12.17 shall be deleted in its entirety and replaced with the following:

“12.17 Perimeter Forest and Perimeter Fencing. Portions of the Property are adjacent to national forest land. Vehicular access from the Property into neighboring national forest land is prohibited. The entire Property is surrounded by an eight (8) foot tall electric fence to prevent cattle and wild animals from entering the subdivision. All Owners shall take the necessary steps to inform their family members, guests, and invitees of the existence of the electric fence and its potentially dangerous condition.”

- 4. This First Amendment to Declaration shall become effective upon recordation in the office of the County Recorder of Navajo County.

IN WITNESS WHEREOF, the Declarant has caused this First Amendment to Declaration to be duly executed as of the date set forth above.

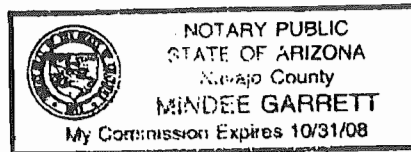
**SIERRA SPRINGS DEVELOPMENT, INC.,**  
an Arizona corporation

By: Neal C. DuCharme  
Neal C. DuCharme, President

STATE OF ARIZONA        )  
  ) ss  
County of Navajo        )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of April, 2006, by Neal C. DuCharme, as President of Sierra Springs Development, Inc., an Arizona corporation, for and on behalf of the corporation.

Mindee Garrett  
Notary Public



2012-12603

Page 1 of 2

Requested By: Sierra Springs Development  
Navajo County Recorder - Laurette Justman  
08-02-2012 10:36 AM Recording Fee \$13.00

When recorded mail to:  
Sierra Springs Development, Inc.  
9595 Sierra Springs Dr.  
Pinetop, AZ 85935

## SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SIERRA SPRINGS RANCH

This Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Sierra Springs Ranch ("Second Amendment to Declaration") is made and entered into as of the 30 day of July, 2012, by Sierra Springs Development Inc., an Arizona corporation (herein called "Declarant").

WHEREAS, a Declaration of Covenants, Conditions, and Restrictions for Sierra Springs Ranch was previously recorded on December 23, 2005, at Fee No. 2005 38374, and a First Amendment recorded on April 4, 2006 at Fee No. 2006 10070 in the Office of the County Recorder of Navajo County, Arizona (the "Declaration"); and

WHEREAS, the Declarant is the Developer of the Property which is subject to the Declaration; and

WHEREAS, said Property is known as the Sierra Springs Ranch subdivision and is described in the Plat recorded on December 21, 2005, in the records of Navajo County at Book 25 of Plat Maps, Pages 29-31; and

WHEREAS, the Declarant, by its desire to further establish the nature of the use and enjoyment of the Sierra Springs Ranch subdivision, hereby amends the Declaration by adopting this Second Amendment to Declaration pursuant to Section 15.4 of the Declaration.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Section 11.3.5 shall be deleted in its entirety and replaced with the following:

"11.3.5 Timing of Construction - Existing Home Conformance. Within Twelve (12) years after an Owner acquires title to a home located on Lots numbered 21, 23, 24, 29, 30, 31 or 43 from the Declarant, the Owner (or its assignee) shall make any and all changes, and will have completed such changes, as required to conform with the CC&Rs and Design Guidelines for size, appearance and landscaping. If an Owner fails to comply with this requirement, the Owner shall pay a Non-Compliance Penalty Fee to the Sierra Springs Ranch Owner's Association in the amount of Twenty Five Thousand Dollars (\$25,000.00), and an additional Non-Compliance Penalty Fee of One Thousand Dollars (\$1,000.00) per month for each month that the requirement is not complied with. This new Section 11.3.5 Timing of Construction - Existing Home Conformance cannot be further modified or changed without the consent of the Declarant".

Section 11.3.4 shall be deleted in its entirety.

3. Section 11.2 shall be deleted in its entirety and replaced with the following:

"11.2 Appointment of Design Review Committee. Subject to Section 11.8, the Association shall have a Design Review Committee consisting of not less than three nor more than five individuals, as specified from time to time by resolution of the Board and shall contain at least one Board Member. After the Transition Date or such earlier date as Declarant elects to delegate the design review powers to the Design Review Committee, members of the Design Review Committee shall be appointed by the Board. Individuals appointed to the Design Review Committee by the Board must be Owners and include one Board Member and satisfy any other requirements as may be designated by the Board".

4. Section 12.22 shall be deleted in its entirety and replaced with the following:

"12.22 Rentals. The rental or leasing of any Lot or home by an Owner shall be reserved exclusively to any Lot Owner's immediate and extended family. The Owner shall be responsible and liable for all activities conducted by the tenant/lessee on the Property".

5. Second Amendment to Declaration shall become effective upon recordation in the office of the County Recorder of Navajo County.

IN WITNESS WHEREOF, the Declarant has caused this Second Amendment to Declaration to be duly executed as of the date set forth above.

**SIERRA SPRINGS DEVELOPMENT INC.,**  
An Arizona corporation

By: *Neal C. DuCharme*  
Neal C. DuCharme, President

STATE OF ARIZONA    )  
                                  ) ss  
County of Navajo     )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of July, 2012, by Neal C. DuCharme, as President of Sierra Springs Development, Inc., an Arizona corporation, for and on behalf of the corporation.

*Victoria M. Heuett*  
Notary Public



When recorded mail to:  
Sierra Springs Development Inc.  
9564 Sierra Springs Dr.  
Pinetop, AZ 85935

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**THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR SIERRA SPRINGS RANCH**

This Third Amendment to the Declaration of Covenants, Conditions, and Restrictions for Sierra Springs Ranch ("Third Amendment to Declaration") is made and entered into as of the 15<sup>TH</sup> day of March 2018, by Sierra Springs Development Inc., an Arizona corporation (herein called "Declarant").

WHEREAS, a Declaration of Covenants, Conditions, and Restrictions for Sierra Springs Ranch was previously recorded on December 23, 2005, at Fee No. 2005 38374, a First Amendment recorded on April 4, 2006 at Fee No. 2006 10070, and a Second Amendment recorded on August 2, 2012 at Fee No. 2012-12603 in the Office of the County Recorder of Navajo County, Arizona (the "Declaration"); and

WHEREAS, the Declarant is the Developer of the Property which is subject to the Declaration; and

WHEREAS, said Property is known as the Sierra Springs Ranch subdivision and is described in the Plat recorded on December 21, 2005, in the records of Navajo County at Book 25 of Plat Maps, Pages 29-31; and

WHEREAS, the Declarant, by its desire to further establish the nature of the use and enjoyment of the Sierra Springs Ranch subdivision, hereby amends the Declaration by adopting this Third Amendment to Declaration pursuant to Section 15.4 of the Declaration.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Section 1 1.3.5 shall be deleted in its entirety and replaced with the following:

"11.3.5 Timing of Construction — Existing Home Conformance. Prior to December 31, 2021 homes located on Lots numbered 21, 23, 24, 29, 30, 31 and 43, the Owner (or its assignee) shall make any and all changes, and will have completed such changes, as required to conform with the CC&Rs and Design Guidelines for size, appearance and landscaping. If an Owner fails to comply with this requirement, the Owner shall pay a Non-Compliance Penalty Fee to the Sierra Springs Ranch Owner's Association in the amount of Fifteen Thousand Dollars (\$15,000.00) on January 1<sup>st</sup> 2022, and an additional Non-Compliance Penalty Fee of Five Hundred Dollars (\$ 500.00) per month for each month that the requirement is not complied with. This new Section 11.3.5 Timing of Construction - Existing Home Conformance cannot be further modified or changed without the consent of the Declarant".

2. Third Amendment to Declaration shall become effective upon recordation in the office of the County Recorder of Navajo County.

IN WITNESS WHEREOF, the Declarant has caused this Second Amendment to Declaration to be duly executed as of the date set forth above.

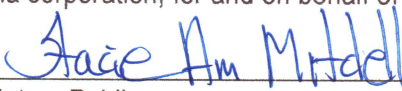
**SIERRA SPRINGS DEVELOPMENT INC.,**  
An Arizona corporation

By: 

Neal C. DuCharme, President

STATE OF ARIZONA    )  
                                  ) ss  
County of Navajo     )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of March 2018, by Neal C. DuCharme, as President of Sierra Springs Development, Inc., an Arizona corporation, for and on behalf of the corporation.

  
\_\_\_\_\_  
Notary Public

