

2009-005445

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OFFICIAL RECORDS OF APACHE COUNTY

LENDRA Y. JOHNSON, RECORDER

08-25-2009 01:01 PM Recording Fee \$52.00

When recorded return to:
James W. Crosswhite, Manager
James Wayne Crosswhite, L.L.C.
Post Office Box 44
Nutrioso, Arizona 85932

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
EC BAR RANCH ESTATES PROPERTY OWNERS ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and entered into as of the 25 day of August, 2009, by JAMES WAYNE CROSSWHITE, L.L.C., an Arizona limited liability company ("DECLARANT").

RECITALS

A. DECLARANT is the record owner of that certain real property situated in Apache County, Arizona, described in the Plat recorded in the office of the Apache County Recorder in Book 9 of Maps, Pages 45 (said real property hereinafter referred to as "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 EC Bar Ranch Estates.

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 Water System (hereinafter defined), (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 (hereinafter defined), the Property, and the owners of any interests therein.

F. EC Bar Ranch Estates Property 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.

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.

“Architectural Review Committee.” The Architectural Review Committee is defined in Section 7 hereof.

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

“Assessments”. Include the following:

“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.

“Special Assessments”. The amounts that are to be paid by Owners pursuant to Section 6.

“Association”. The EC Bar Ranch Estates Property Owners Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

“Association Rules”. The rules and regulations adopted by the Board.

“Board”. The Board of Directors of the Association.

“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.

“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.

“DECLARANT”. JAMES WAYNE CROSSWHITE, L.L.C., an Arizona limited liability company, 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.

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

“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 Chase Bank of Arizona, NA (and charged to its largest and most creditworthy customers), but in no event greater than the highest lawful rate of interest. If Chase Bank of Arizona 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.

“Designated Lot” refers to a Lot that receives non-potable irrigation water from the Water System, as described in Section 5 hereof.

“Designated Lot Owner” is an Owner of a Designated Lot, as described in Section 5 hereof.

“Drainage Facilities” shall mean all drainage easements indicated as such on the final Plat, all improvements located within such easements, 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, as more particularly described in Section 10.2 hereof.

“Elk Fence.” The Elk Fence refers to an existing fence located on the Property and includes a number of gates. The location of this Elk Fence and all associated rights, obligations, conditions and restrictions is more particularly described in Section 4.

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

“Lot”. A Lot refers to a subdivided lot as shown on the Plat. A Lot includes the residential dwelling unit and other improvements constructed thereon.

“Majority of Members”. The Members holding more than fifty percent (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 fifty percent (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.

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

“Membership”. A membership in the Association.

“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.

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

“Nutrioso Creek Riparian Corridor.” The Nutrioso Creek Riparian Corridor includes the Nutrioso Creek stream channel located within the FEMA 100-year floodplain, plus a 100-foot buffer on each side and parallel to the floodplain, as shown on as “Tract A-2 and Tract A-3, Not Part of the Subdivision” on the plat attached hereto as Exhibit “A” and more particularly described in Section 3.7 hereof.

“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.

“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.

“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.

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

“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.

“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.

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

“Related Parties” (or “Related Party,” as the case may be). The trustees, officers, directors, members, shareholders, and other principals of DECLARANT, and their respective successors and assigns.

“Retail Purchaser”. A Person who purchases a Lot in a retail transaction and shall not include DECLARANT, any Related Party, 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.

“Transition Date”. Ninety (90) days following the date upon which fifty-one percent (51%) of the Lots within Phase I of the Property have been conveyed to Retail Purchasers or individual residential purchasers, or such earlier date as DECLARANT voluntarily specifies in an instrument recorded in the official records of the County of Apache. The Lots within “Phase I of the Property” are shown on the Plat.

“Water Line Easements” include the water lines, sprinklers, valves, storage facilities and other facilities associated with the Water System, as described in Sections 3.6 and 5.2 hereof.

“Water Management Agreement.” As a condition to escrow and a condition to receiving any non-potable irrigation water from the Water System, DECLARANT, the Association and Lot Owners must sign a Water Management Agreement as defined in Section 5 hereof.

“Water Rights” include all rights, title, and claims to the water rights recognized in the Norviel Decree, claimed in the State Water Right Filings, claimed in the Adjudication, registered as groundwater wells, or otherwise claimed or recognized in court decrees, notices of water

rights, historic beneficial uses or such other legally-recognized claims to water that may now or hereafter be associated with water uses on the Property and the respective Designated Lots as set forth in Section 5.3.

“Water System.” The Water System refers to the Water Line Easements and facilities associated with the delivery of non-potable irrigation water pursuant to Section 5.

1. ASSOCIATION.

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.

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 ownerships. 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, voting rights are set forth in the Water Management Agreement.

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.

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.

Board of Directors.

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.

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.

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 or Association Rules, 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.

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:

- 1.1.1 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.
- 1.1.2 Written consents signed by the specified percentage of Members as provided in the Articles or By-laws.

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.

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 Lots, or any other part of the Property and the delivery of any services provided by the Association.

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, or By-laws.

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 or By-laws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, or By-laws to the extent of the conflict.

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.

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 any settlement of any such proceeding: (i) every director and officer of the Association; (ii) every member of any committees established by the Board or 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 any committee established by the Board or the Association 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 2.10, 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.

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 any committees that may be established by the Association or the Board; (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:

2.11.1 None of the Persons described above in this Section 2.11 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.

2.11.2 None of the Persons described above in this Section 2.11 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.

1.1.3 No provision of this Declaration, the Articles, By-Laws or Association Rules shall be construed or interpreted as creating a duty by any of the persons described above in this Section 2.11 to protect or further the health, safety, or welfare of any person, even if funds of the association are used for such a purpose.

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 health, safety, convenience and welfare of the Owners and Occupants, 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.

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.

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.

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.

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.

Rights of Enforcement. The Board shall have the right to enforce the provisions of this Declaration 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.

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.

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.

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.

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 2.21 shall have an easement over the Property to the extent necessary or convenient for the efficient delivery of the designated service.

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.

EASEMENTS.

Blanket Easements. There is hereby created a perpetual, non-exclusive blanket easement upon, across, over and under the Property (including all Lots) 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.

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 3.2 shall in no way limit or otherwise alter the blanket easement described in Section 3.10 above.

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) 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.

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.

Drainage Easement. All Lots 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 3.5 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 Apache County.

Water Line Easements. DECLARANT reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon all ditches and water line easements that are used to deliver irrigation water and are shown on the Plat (“the Water Line Easements”) in order to (a) construct, maintain and repair pumps, water lines, ditches or other facilities used to provide water for the irrigation of the Designated Lots; and (b) construct, maintain, and repair any dam, or other structure retaining water; and (c) remove trash and other debris from the Water Line Easements and fulfill their maintenance responsibilities as provided in this Declaration. The Water Line Easements shall include all pipelines, ditches, trenches, storage tanks, valves, gates or other equipment or facilities used to operate the Water System.

Nutriosos Creek Riparian Corridor Conditions. DECLARANT recognizes that the conservation values of the Nutriosos Creek Riparian Corridor (herein so called) as shown as Tract A-2 and A-3 on the Plat and the map that is attached hereto as Exhibit “A”, are important to the habitat of a variety of riparian dependent aquatic and wildlife natural resources which may be impacted by activities on the Property. A total of twenty-four (24) Lots adjoin the Nutriosos Creek Riparian Corridor and include the following Lots: Lots 5, 6, 11, 12, 17, 18, 23, 24, 29, 30, 31 on east side of the creek and Lots 39, 40, 41, 42, 45, 46, 49, 50, 53, 54, 61, 62, 63 on west side. With respect to the Nutriosos Creek Riparian Corridor, the following conditions, restrictions, and covenants shall apply:

- 1.1.4 Owners and Occupants of Lots adjoining the Nutriosos Creek Riparian Corridor who maintain livestock on their Lots shall install a fence to prevent any livestock from entering the Nutriosos Creek Riparian Corridor.
- 1.1.5 Owners and Occupants of Lots adjoining the Nutriosos Creek Riparian Corridor shall treat, control, and eradicate any noxious weeds or invasive species (as identified in the Association Rules) that may spread from any Lot onto the Nutriosos Creek Riparian Corridor. In the event such species provide a seed source or spread into the Nutriosos Creek Riparian Corridor, the Association may notify the Lot Owner within a reasonable period of time in which to address the problem, after which, the Lot Owner may become liable for removal and damages in accordance with the Association Rules.
- 3.7.3 Owners and Occupants of Lots 5, 6, 11, 12, 17, 18, 23, 24, 29, 30, 31 on east side of Nutriosos Creek and Lots 46, 49, 61, 63 on west side of Nutriosos Creek shall not construct any building or other permanent structure of any kind, other than fencing, within two hundred (200) feet of their respective boundaries with the Nutriosos Creek Riparian Corridor.

3.7.4 Owners and Occupants of Lots 39, 40, 41, 42, 45, 50, 53, 54, and 62 on west side of Nutrioso Creek shall not construct any building or other permanent structure of any kind, other than fencing, within one hundred (100) feet of their respective boundaries with the Nutrioso Creek Riparian Corridor.

3.8 Easement for Use of Private Roads. DECLARANT hereby creates a perpetual, nonexclusive easement for access, ingress and egress over the Private Roads 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.

3.9 Agricultural Easement. DECLARANT excepts and reserves to itself, its lessees, successors and assigns a permanent agricultural easement for agricultural purposes, which include but are not limited to grazing horses, cattle or other livestock on all of the Property, provided that this easement shall not be in effect over any particular Lot during any period of time when that Lot is, at the sole expense of Owner, adequately fenced to keep off livestock. All grazing fees received on non-fenced lots shall be retained by DECLARANT and Owner shall have no right thereto.

2. ELK FENCE

2.1 An 8-foot high elk fence exists within or along Lots 5, 6, 11, 12, 17, 18, 23, 24, 29, 30, 31, 39, 40, 41, 43, 44, 47, 48, 51, 52, 55, 56, 57, 58, 59, 60, and 63 (for purposes of this Section, said Lots referred to as “the Elk Fence Lots”) that was constructed by DECLARANT for purposes of riparian and wildlife habitat protection (this fence, together with the gates located along the fence, is hereinafter referred to as “the Elk Fence”). All Owners of the Elk Fence Lots shall maintain such portion of the Elk Fence that is located on his or her respective Lots in such a way that any breaks or holes in the fence are repaired and so that the Elk Fence remains standing. Maintenance and repair of the Elk Fence includes the repair of damages to the fence created by elk, wind or other natural causes within seven (7) days of the occurrence of the damage. Subject to the prior written approval by the Board, Owners may create new gates or openings in the Elk Fence and/or relocate any portion of the Elk Fence on his or her respective Lots as long as such actions do not reduce the effectiveness of the Elk Fence to exclude elk. The openings may include cattle/elk guards as described in Section 4.2 below.

2.2 When not being actively used for access from one side of the Elk Fence to another side, all Owners, Occupants and Persons shall keep the gates to the Elk Fence closed at all times. To avoid having to open and close gates, an Owner may replace a gate within the Elk Fence with a cattle/elk guard provided that the guard will effectively prevent elk from crossing the fence line.

3. WATER SYSTEM

3.1 The Water System. The Association may, but is not obligated to, provide non-potable irrigation water to such Lots within the Property that can physically and legally receive

water and that are owned by Owners who have executed the Water Management Agreement defined herein (“the Designated Lots” or a “Designated Lot,” as the case may be, and with respect to ownership, “Designated Lot Owners”), which water shall be delivered via a water line and storage system provided by the Association (“the Water System”). As a condition to escrow and as a condition to receiving non-potable irrigation water, all Designated Lot Owners shall execute a Water Management Agreement (herein so called) by and between the Association and the Designated Lot Owner.

3.2 Access to the Water System. The water lines, sprinklers, valves, storage facilities and other facilities associated with the Water System are defined as “Water Line Easements” in this Declaration. DECLARANT, the Association and their successors, assigns and designees shall have all of the rights of entry to the Water Line Easements for purposes of maintaining, repairing, replacing and operating the Water System. Access to and use of the Water System shall be subject to the Water Management Agreement.

3.3 Use of Water; Water Rights. The delivery to and use of water on the Designated Lots shall be subject to the terms and conditions of the Water Management Agreement and this Declaration. DECLARANT, the Association and each Designated Lot Owner’s respective rights, claims and titles to the Water Rights (hereinafter defined) are set forth in the Water Management Agreement. The method and substance of transfers, assignments, and legal claims to the Water Rights are governed by the Water Management Agreement. The Water Rights (herein so called) include but are not limited to groundwater rights associated with wells that are part of the Water System, surface water rights recognized and confirmed in the decree entered on April 29, 1918, in *The St. Johns Irrigation Company and the Meadows Reservoir Irrigation Company, et al, v. Round Valley Water Storage & Ditch Company, et al*, by the Apache County Superior Court in Case No. 569 (as amended or modified, “the Norviel Decree”), surface water rights acknowledged and claimed with the Arizona Department of Water Resources as certificates of water right or registered surface water claims and all rights and claims to the use of groundwater or surface water that may have been made by DECLARANT in *The General Adjudication of All Rights in and to the Little Colorado River System and Source*, Apache County Superior Court Case No. 6417 (“the Adjudication”). No Designated Lot Owner who is a party to this Declaration and the Water Management Agreement shall challenge DECLARANT, the Association, or any other Designated Lot Owner’s right and priority to the Water Rights in the Adjudication or any other proceeding.

3.4 Compliance With the Limitations Set Forth in the Norviel Decree. For purposes of this Section 5.4, the following terms shall be used:

- 5.4.1. “The Decree Court” shall mean the Apache County Superior Court, which has jurisdiction to administer and enforce the Norviel Decree and shall include the “ditch master” who serves the Decree Court in administering the Norviel Decree;
- 5.4.2 “The Decreed Right” refers to irrigated acres under the Norviel Decree that have been changed, severed and transferred for use on all or a portion of the Property, including Designated Lots; and

- 5.4.3 “Proportionate Water Share” refers to a Designated Lot’s allocation of the total Decreed Right. All Proportionate Water Shares shall be based on the fraction wherein the numerator is the Designated Lot’s acreage and the denominator is the total acreage in the Decreed Right and shall be subject to the terms and conditions of the Water Management Agreement.

If the Decree Court or the Decree Court’s ditch master determine that the volume of water associated with the Decreed Right must be reduced during times of drought or water shortage, there will be a corresponding reduction in each Proportionate Water Share. Prior to each irrigation season (described herein) or at any time during each irrigation season, DECLARANT or the Association shall provide written notice to each Designated Lot Owner or Occupant of a Designated Lot of the volume water associated with his Proportionate Water Share. Additionally, the Norviel Decree provides that the irrigation season is April 15 through September 15 of each year and the irrigation duty is one cubic foot per second continuous flow to each 160 acres of land. No Designated Lot Owner shall (i) use more water than his Proportionate Water Share, (ii) divert more than the proportionate amount of one cubic foot per second continuous flow to each 160 acres of land, or (iii) irrigate during the period beginning April 15 and ending September 15 of each year unless such irrigation is limited to the use of groundwater in other periods of the year.

3.5 Water System Costs. Each and every Designated Lot Owner who receives water from the Water System shall be responsible for the payment of a pro rata share of maintenance, operation and utility expenses necessary for the use and operation of the Water System. These costs shall be assessed as a Special Assessment pursuant to Section 6 of this Declaration and subject to the Water Management Agreement. The Association may require the installation of water meters to each Designated Lot and may record the volume of water used on each Designated Lot for purposes of compliance with the Norviel Decree and to allocate expenses on the basis of usage. The Association has the right to shut off water delivery and to withhold providing water to any Designated Lot Owner who is thirty (30) days delinquent in the payment of the Assessments authorized in this Declaration.

3.6 Water System Hookups. Each and every Designated Lot Owner who receives irrigation water provided by the Water System shall be solely responsible for the costs, construction, installation and maintenance of connections from the Water Line Easements to individual water lines, storage tanks, outlets, sprinklers and hookups serving his Designated Lot.

3.7 Compliance with Applicable Law. Each and every Designated Lot Owner who receives water from the Water System shall comply with all the applicable provisions of the Norviel Decree and all applicable statutes, regulations, ordinances or other laws pertaining to the use of irrigation water provided by the Water System. No Designated Lot Owner shall interfere with the use of water delivered by the Water System to any other Designated Lot Owner.

3.8 Compliance with the Water Management Agreement. In addition to all terms and conditions stated herein and applicable law, each and every Designated Lot Owner shall execute and comply with all provisions of the Water Management Agreement, which Water Management

Agreement shall be provided prior to the close of escrow and shall be executed as a condition to escrow.

3.9 Limitations on Use. The irrigation water delivered by the Water System may be used for the irrigation of domestic lawns, gardens and orchards and shall not be used by any Designated Lot Owner or Occupant of a Designated Lot for the following:

- 5.9.1 Potable drinking water or any other type of household use;
- 5.9.2 A pond or reservoir, including without limitation, a recreational pond, fish pond, swimming pool or stockpond; and
- 5.9.3 Industrial or commercial uses.

3.10 Potable Water; Well Agreements. Each Owner shall be responsible for obtaining potable water for domestic uses on his or her Lot. Owners may enter into well sharing agreements with one another provided said agreements comply with all applicable rules, regulations or permitting requirements administered by the Arizona Department of Water Resources, the Arizona Real Estate Commission, the Arizona Corporation Commission, the Arizona Department of Environmental Quality or any other federal, state or local agency that may have jurisdiction. DECLARANT and the Association shall not be a party to any well sharing agreement and shall have no liability or responsibilities associated with same.

3.11 Availability and Quality of Water. The Association is not a “water company” as such term is used and recognized under Arizona state law. All Owners agree and understand that neither DECLARANT nor the Association have obtained and will not obtain an adequate water supply determination from the Arizona Department of Water Resources.

5.11.1 Irrigation Water Provided by the Water System. All Designated Lot Owners and Occupants of Designated Lots that receive water from the Water System accept water service “AS IS” and understand that neither DECLARANT nor the Association guarantee the safety, quality, pressure, or continued availability of the irrigation water provided by the Water System. All Designated Lot indemnify and hold DECLARANT and the Association harmless for any and all claims for personal injury, loss of property value or other damages arising from any alleged water quality violation, poor water pressure, or unavailability of water provided by the Water System.

5.11.2 Groundwater Supply. DECLARANT and the Association have not obtained and will not obtain an assured or adequate water supply determination from the Arizona Department of Water Resources. No guarantee is made by DECLARANT and the Association as to the availability or quality of groundwater. All Owners indemnify and hold DECLARANT and the Association harmless for any and all claims for personal injury, loss of property value or other damages arising from any alleged water quality violation, poor water pressure, or unavailability of groundwater.

ASSESSMENTS.

3.12 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 and the Association Rules. 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 and the Association Rules, 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 and the Association Rules.

3.13 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 3.2.

3.14 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.

3.15 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, and other 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 (20%) without the approval of a Majority of a Quorum of Members, but in no event more than the maximum increase permitted by applicable law.

3.16 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 and Association Rules. 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 Pursuant to Section 5, the Association may levy a Special Assessment against the Designated Lots to cover the cost of the Water System pursuant to the provisions of the Water Management Agreement. The Special Assessment described in this Section 6.5.3 shall not apply to Lots that are unable to receive irrigation water from the Water System.

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

3.17 Exempt Property. The following property shall be exempt from payment of assessments: (a) all property dedicated to and accepted by any governmental authority or public utility and (b) all Lots and property owned by DECLARANT.

3.18 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.

3.19 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, the Water System, and recreational facilities.

3.20 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 Apache County of the infrastructure improvements for the Property.

3.21 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.

3.22 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; or (b) Assessments for any period exceed Common Expenses.

3.23 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).

3.24 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 (as defined in the Association Rules and herein so called) 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.

3.25 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.

4. ARCHITECTURAL REVIEW.

4.1 There shall be an Architectural Review Committee (herein so called) consisting of DECLARANT prior to the Transition Date and three (3) persons after the Transition Date. The members of the Architectural Review Committee shall be appointed by the Board of Directors of the Association to serve at the will of the Board of Directors.

4.2 Construction and installation of improvements and landscaping on a Lot shall comply with the Design Guidelines, Section 11 hereof, Section 12 hereof, and all other terms and conditions of this Declaration, including the discretion of the Architectural Review Committee described in this Section 7.2. No improvements of any kind, including but not limited to the construction of structures, walls, fences, septic systems or outbuildings, shall be initiated, erected, constructed, placed, altered, maintained or permitted on any Lot without the prior written approval of the Architectural Review Committee in accordance with the procedure herein provided. In granting approval, the Architectural Review Committee may impose such conditions and stipulations as it may deem appropriate, including without limitation,

requirements concerning duration of construction activities, burial and camouflage of utility lines, restoration of adjacent streets, placement of curb cuts, location of utility connections, restoration of terrain, restrictions against interference with drainage, provisions for the retention of drainage, and the like. No material changes or deviations in or from the plans as approved shall be made without the prior written approval of the Architectural Review Committee. All decisions of the Architectural Review Committee shall be final and no Owner or any other party shall have any recourse or remedy against the Architectural Review Committee.

4.3 The Architectural Review Committee, with the approval of the Board of Directors of the Association, may create and from time to time amend a document to be called the Design Guidelines and Construction Agreement which are to be complied with by all Owners.

4.4 All Owners shall submit two sets of construction plans, together with a review fee not exceeding Five Hundred Dollars (\$500.00), which fee, shall be determined by the Board, as the first step of the approval process. These plans shall include, without limitation, the Lot number, the configuration of buildings and roof lines, the building square footage and setbacks, driveways and parking layout, topography, finished grades, site drainage and utility connections, building materials, colors, textures, shapes and finishes for all exterior aspects, the location and configuration of all structures, walks, driveways, fences, Elk Fence alterations (if applicable), exterior illumination, the landscaping plan, including sprinkler systems, vegetation and ground cover, and all other items required by the Architectural Review Committee.

4.5 The review fee described in Section 7.4 above shall be deposited with the Architectural Review Committee at such time as the construction plans are submitted. Approval of the construction plans shall be in writing and a written receipt for the review fee shall be provided with the written approval.

4.6 The Architectural Review Committee shall approve or reject the construction plans within sixty (60) days of receipt thereof. All approvals or rejections must be made in writing.

4.7 Without obligation to approve or disapprove prior or subsequent modifications, whether similar or dissimilar, the Architectural Review Committee may permit such variances or exceptions to the requirements of this Declaration with respect to proposed improvements as the Architectural Review Committee deems appropriate in its sole discretion. The granting or denial of a variance shall not constitute a precedent for the granting or denial of any prior or subsequent variance.

4.8 The Architectural Review Committee may reject plans as not sufficiently complete or otherwise inadequate, either in whole or in part, may reject plans as partially or completely unacceptable, may approve plans conditionally or unconditionally, may approve a portion of the plans and reject the balance and may otherwise proceed with respect to the consideration of plans in such manner as the Architectural Review Committee may determine in its sole discretion.

4.9 The members of the Architectural Review Committee shall not incur liability by virtue of their good faith acts or omissions, and members of the Architectural Review Committee shall only be responsible for willful misconduct and bad faith acts or omissions.

INSURANCE

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.

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.

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.

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 by an Owner may be assessed against that particular Owner.

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.

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.

5. EMINENT DOMAIN.

5.1 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 Property.

5.2 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 condemner in lieu of engaging in a condemnation action.

5.3 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.

6. MAINTENANCE, REPAIRS AND REPLACEMENTS.

6.1 Maintenance of Lots.

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.

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 or the Association Rules; or (iii) the Owner of any Lot fails to perform any of the Owner's obligations under this Declaration or the Association Rules, 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.

6.2 Drainage Facilities. The Association shall be responsible for the maintenance of all Drainage Facilities. "Drainage Facilities" shall mean all drainage easements indicated as such on the final Plat, all improvements located within such easements, 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.

6.3 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 (if one exists), 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 (if one exists), 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.

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 (if one exists), 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.

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.

Gates may be constructed at primary entrances to the Property in order to limit access and to provide more privacy for the Owners and Occupants. 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 (if one exists), 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.

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.

Assessment of the Treatment, Control or Eradication of Noxious Weeds and Invasive Species. If the need for the treatment, control or eradication of noxious weeds or invasive species is caused by the willful or negligent act of any Owners and Occupants of Lots adjoining the Nutrioso Creek Riparian Corridor, then the cost of the treatment, control or eradication of such noxious weeds or invasive species that have spread to the Nutrioso Creek Riparian Corridor 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.

Assessment of Costs of Maintenance and Repair of the Elk Fence. If the need for maintenance, repair, or replacement of all or a portion of the Elk Fence is caused through the untimely, 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.

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 any equipment, facilities or fixtures affecting or serving other Lots or to perform any of the Association's duties or responsibilities hereunder.

ARCHITECTURAL AND LANDSCAPE CONDITIONS.

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 and are subject to approval by the Architectural Review Committee as set forth above.

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.

Storage Buildings and Fences. No storage buildings or sheds that are detached from the single family dwelling shall be allowed unless approved by the Architectural Review Committee. A detached garage, guesthouse, or gazebo is not considered to be a storage building.

Square Footage. Each residence constructed on a Lot shall be a minimum of 1,200 square feet of heated space exclusive of garages, basements, patios, breezeways, and other unheated areas.

USE AND OCCUPANCY RESTRICTIONS

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 Declaration or the Association Rules.

- 6.3.1 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, (c) is consistent with the residential character of the Lot and the Property, conforms to all applicable zoning ordinances and requirements and is not a nuisance, or a hazardous or offensive use, as may be determined in the sole and absolute discretion of the Board, (d) the business activity does not involve door-to-door solicitation of Owners or other Occupants in the Project, (e) the trade or business shall be conducted only inside the dwelling unit or an approved guest house, and shall not involve the viewing, purchase or taking delivery of goods or merchandise, (f) the trade or business shall be conducted by the Owner, (g) no more than twenty percent (20%) of the total floor area of the dwelling unit shall be used for trade or business, (h) the dwelling unit used for trade or business shall not be used as a storage facility for a business conducted elsewhere, (i) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not be in excess of what is customary for a single family residence,

(j) the trade or business shall not utilize large vehicles not customary to residential use and (k) there shall be no signage identifying the business.

6.3.2 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.

Violation of Law or Insurance. No Owner or Occupant shall permit anything to be done or kept on the Owner’s Lot 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.

Signs. No sign of any kind shall be displayed to the public view or from any Lot 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 public roads or the Private Roadways. 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.

Animals. Raising, breeding or keeping of certain animals and livestock is permitted on Lots that are 1.2 acres in size or larger, subject to the following:

12.4.1 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.

12.4.2 For purposes of this Section 12.4, "livestock" shall be determined by the Board and may refer to horses, mules, donkeys, and cattle that are not sold or bred commercially. "Livestock" does not include poultry, swine or goats. The Board may prohibit the keeping of any species on a Lot, including poultry, swine, goats or other animals.

12.4.3 No commercial livestock operation of any kind shall be maintained on any Lot.

12.4.4 All livestock shall be confined within a fenced area and Owners must first install fencing before keeping livestock on their Lots. Fences shall be constructed of vinyl, metal, wood or other materials considered to be standard fencing materials. All fences and structures for livestock purposes shall be constructed and maintained in good and workmanlike manner and livestock areas shall be kept clean and orderly.

12.4.5 All livestock shall be maintained so as not to create excessive dust, noise or obnoxious odors, as determined by the Board. Excessive dust shall be determined by the Board and may include, but is not limited to, the lack of vegetation caused by livestock grazing.

12.4.6 No livestock whatsoever shall be permitted on any Lot containing less than 1.2 acres. No more than two (2) animals are permitted on any Lot containing less than five (5) acres, and no more than six (6) animals are permitted on any Lot containing five (5) acres or more. These restrictions on the number of animals shall not apply to livestock that graze the Property pursuant to DECLARANT's agricultural easement described in Section 3.9.

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 or Occupants 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. Lots shall be kept in a neat and tidy condition during construction periods; trash and debris shall not be permitted to accumulate. 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.

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 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 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.

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 providing groundwater for domestic uses on Lots located on the Property.

Fires. Other than barbecues, in properly constructed barbecue pits or grills, 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 other Owners. The Board may establish fire regulations for periods of drought.

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, non-permanent structures, including fences, may be erected in those areas that contain only underground closed conduit storm drainage facilities.

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, and the Association Rules, and shall be jointly and severally responsible for any violations of this Declaration, the Articles, By-laws, and the Association Rules by the lessee or other Person.

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.

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.

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. No provision of this Declaration shall be deemed to forbid the use of wireless devices or the erection of temporary

power or telephone structures incident to the construction of buildings, structures, or improvements. DECLARANT or the Association may contract for a cell tower on the Property.

Septic Systems. All Lots shall be subject to the following sewage collection system use requirements:

12.14.1 A septic tank and leach lines shall be installed on a Lot, subject to compliance with all applicable laws and regulations prior to the construction of a single-family residence or guest quarters. The size and location of each septic tank will be determined at the time the home is constructed on the Lot and must be approved by applicable county and state regulatory agencies.

12.14.2 The Owner is responsible for the proper maintenance of his or her septic tank and must have it pumped every three to five years, or as otherwise required by applicable county and state laws and regulations.

Water Storage Tanks. All water storage tanks located on any Lot shall be buried.

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.

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 except Lot #1, which may be divided into no more than five (5) smaller parcels and Lots 31 and 63, which may each be divided into no more than two (2) smaller parcels. 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 of Apache County, Arizona. 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 and roadways; provided, however, that such re-plat shall not increase the total number of Lots or area served by the Water System for the Association.

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 Apache County and/or the Board. Each of the two combined Lots shall remain separate Lots for Assessment purposes pursuant to this Declaration.

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.

Rentals. No short-term rentals less than one week in duration shall be allowed. 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.

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 Apache 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 Apache County Flood Control District.

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

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.

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

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

Propane Tanks. All propane tanks located on any Lot shall comply with applicable county or state regulations.

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 herein.

Completion Time and Construction Hours. Unless otherwise authorized by the Architectural Design Committee, construction of a residence or other improvement shall be finished and completed no later than 12 months after the issuance of a building permit by the appropriate regulatory body. Hours during which construction can take place are limited to 7am to 5pm Monday to Saturday and no construction may take place on Sunday. The Board or the Architectural Design Committee shall have the authority to amend these construction hours.

Minimum Sizes and Materials. All single family residential structures shall be constructed on site from new material. All exterior surfaces shall be non reflective. Any residential structure shall contain a minimum of 1,200 square feet of living area exclusive of carport, garage, open porches and patios. Any residential structure must include a minimum of one car garage. Residential structures may be two stories.

Location and Heights. No structure, fence or wall shall be erected or placed on any Lot other than within the Building Envelope as shown on the plat. Heights shall not exceed 28 feet without the approval of the Architectural Design Committee. The Architectural Design Committee shall also have the authority to grant variances from the established setbacks and height restrictions.

Driveways. Each Owner shall construct a driveway not to exceed sixteen (16) feet in width constructed of materials approved by the Architectural Design Committee. Each Owner or Occupant shall have the duty to properly maintain and restore the driveway which serves his or her residence.

Mobile/Modular/Manufacture Homes. No mobile or modular or manufactured homes shall be permitted to be placed on any Lot permanently or temporarily, unless authorized by the Architectural Design Committee as a temporary office during construction periods.

Other Prohibited Structures. No geodesic domes, a-frames or Quonset huts are permitted.

Temporary Structures. No structure of a temporary character, motor home, recreational vehicle or travel trailer, regardless of its nature or form, shall be used as a residence at any time.

RIGHTS OF MORTGAGEES.

General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, , the Articles, By-laws, Association Rules and Design Guidelines, the provisions of this Section 13 shall apply to and benefit each holder of a Mortgage upon a Lot.

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.

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.

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.

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.

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.

COMPLIANCE AND ENFORCEMENT.

General Compliance. Every Owner and every Occupant of a Lot shall comply with the Declaration, Bylaws and Association Rules. 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 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;

- (d) exercising self-help or taking action to abate any violation of the Declaration or Association Rules 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);
- (e) 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;
- (f) 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
- (g) levying Assessments to cover costs incurred by the Association to bring a Lot in compliance with the Declaration.

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 Governing Documents or the Association Rules:

- (a) exercising self-help in any emergency situation; and
- (b) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

Cumulative Remedies. All remedies set forth in the Declaration or the Association Rules, 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.

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.

AMENDMENT

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 Apache County Recorder's office.

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.

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

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.

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.

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 0. 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 0:

- (a) Section 2.2 (to change the number of Memberships attributable to each Lot or to change the number of votes for each Lot or Membership);
- (b) Section 6.4.3 (to increase the cap on increases in Regular Assessments);
- (c) Section 12.17 (to replat the subdivision); and
- (d) This Section 0 (to delete any references to Sections that require the approval of the Members to amend).

TERM; TERMINATION

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

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.

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 ninety percent (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 Apache 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.

GENERAL PROVISIONS

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.

Captions; Construction. Captions given to various sections herein 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.

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.

DISCLAIMERS

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.

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.

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 (if one exists), 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.

Disclaimer Regarding Utility Lines. Neither the Association, the Board, any officers of the Association, the Association's management company, the Architectural Review Committee, 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 (if one exists), 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.

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 (if one exists), 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.

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.

RIGHTS AND OBLIGATIONS

6.4 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.

DISPUTE RESOLUTION. For purposes of this Section 20, the defined terms as used in this Section shall apply specifically to this Section and are not set forth in the definitions provided in Section 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.

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 this section. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this section:

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

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 10, 11 and 12;

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;

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

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 limitations as to such Claim for such period as may reasonably be necessary to comply with this Section.

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

Mandatory Procedures.

Notice. Any Bound Party having a Claim (“Claimant”) against any other bound Party (“Respondent”) (collectively, the “Parties” and singularly, a “Party”) shall notify each Respondent in writing and provide a copy of the notice to the Board (the “Notice”), stating plainly and concisely:

The nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

Claimant’s proposed remedy; and

That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

Negotiation and Mediation.

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.

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.

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.

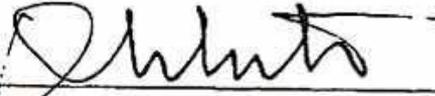
Any Settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall 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.

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.

JAMES WAYNE CROSSWHITE, L.L.C., an Arizona limited liability company

By: 
James W. Crosswhite, Manager

STATE OF ARIZONA)
) ss
County of Apache)

The foregoing instrument was acknowledged before me this 20th day of August 2009, by JAMES W. CROSSWHITE, as Manager of JAMES WAYNE CROSSWHITE, L.L.C., an Arizona limited liability company.


Notary Public

My Commission Expires:
July 16, 2012



EXHIBIT "A"

