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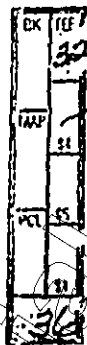
CITY OF PRESCOTT
DATE: 08/03/95 TIME: 11:40
FEE: 32.00 SC: 4.00 PT:
BOOK 3055 PAGE 044 PAGES: 032

DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS

FOR

ASPENS ON THE CREEK



BOOK 3055 PAGE 44

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ASPENS ON THE CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into as of the date hereinafter set forth by Aspens on the Creek L.L.C., an Arizona Limited Liability Company (hereinafter referred to as "Declarant").

RECITALS

WHEREAS, Declarant, an Arizona Limited Liability Company, is the owner of the parcel of real property situated in Yavapai County, Arizona, which is more specifically described as Lots 1 thru 20, all Common Areas and Private Roadways (collectively hereinafter referred to as the "Parcel") as specified on the Final Plat of Aspens on the Creek and recorded in Book ____ of Maps, pages _____, official records of Yavapai County, Arizona.

WHEREAS, Declarant desires to submit and subject the Parcel, together with all buildings, improvements, and other permanent fixtures of whatever kind now or hereafter located thereon, and all Common Areas, Private Roadways, easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto (all of which collectively comprise the "Property"), to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights contained herein; and

WHEREAS, Declarant desires that the Property be developed in accordance with a master plan and general scheme of development into an attractive residential development of patiohomes and/or townhomes to be collectively known as "Aspens on the Creek" (the "Project"); and

WHEREAS, Declarant deems it desirable to establish covenants, conditions and restrictions upon the Property, and each and every part 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 Project; and

WHEREAS, it is desirable for the efficient management of the Project to create an owners association with the powers of managing, maintaining, and administering the common areas within the Project; administering and enforcing these covenants, conditions, and restrictions; collecting and disbursing funds pursuant to the assessments and charges hereafter created; and performing such other acts as are herein provided or which will generally benefit its members, the Project, and the Owners of any interests therein; and

WHEREAS, Aspens on the Creek Homeowners Association, a non-profit corporation, has been, or will be prior to the sale of the first Lot, formed and incorporated under the laws of the State of Arizona for the purpose of exercising such powers and functions; and

WHEREAS, Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants, and all other persons hereinafter acquiring any interest in the Property, or any part thereof, 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 the Project.

NOW, THEREFORE, Declarant, for the purposes set forth above, declares that the Property, and each and every part thereof, shall hereafter be held, owned, transferred, sold, purchased, conveyed, mortgaged, encumbered, 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 each and every part thereof, 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 letters of such terms capitalized.

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

1.2 "Assessments" shall include the following:

1.2.1 "Regular Assessment" means the amount which is to be paid by each Owner as such Owner's Proportionate Share of the Common Expenses of the Association, as provided in Section 5.3.

1.2.2 "Special Assessment" means the amount which is to be paid by a particular Member, as provided in Section 5.4.

1.2.3 "Reconstruction Assessment" means the amount which is to be paid by each Owner as such Owner's Proportionate Share of the cost to the Association for reconstruction of any portion of the Common Areas.

1.2.4 **"Capital Improvement Assessment"** means the amount which is to be paid by each Owner as such Owner's Proportionate Share of the cost to the Association for the installation or construction of any capital improvements on any of the Common Areas.

1.3 **"Association"** means Aspens on the Creek Homeowners Association, an Arizona non-profit corporation, and its successors and assigns.

1.4 **"Association Rules"** means the rules and regulations from time to time adopted by the Association pursuant to Section 3.8.

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

1.6 **"ByLaws"** means the Bylaws of the Association, as may be amended from time to time.

1.7 **"Common Areas"** means, collectively, all real property and the improvements or amenities now or hereafter located thereon, and any now or hereafter existing easements, licenses, rights, or rights-of-way belonging or in any way pertaining to the Property and the Private Roads.

1.8 **"Common Driveway"** means a driveway shared by two or more Lot Owners for ingress and egress and access to their respective Lot, and such Lot Owner(s), as a condition of accepting title to their Lot, have agreed to grant unto each other an easement for ingress and egress purposes, and that such Lot Owner(s) can not deny access to each other.

1.9 **"Common Expenses"** means the actual and estimated costs incurred by the Association in administering, maintaining, and operating the Project, including, without limitation, the following:

(a) costs of maintenance, management, operation, repair, and replacement of the Common Areas, and all other areas of the Project which are maintained by the Association;

(b) costs of maintenance, management, operation, repair and replacement of Private Roads, Security Entrance Gates and Storm Drains of the Project;

(c) unpaid Assessments;

(d) costs of management and administration of the Association, including, without limitation, any compensation paid by the Association to directors, officers, managers, accountants, attorneys, agents and employees;

(e) costs of utilities, including, without limitation, water, electricity, gas, sewer, trash pick-up and disposal, landscaping maintenance, and cable television, which are provided to the Association or the Project and not individually metered or assessed by Lot, and other services which generally benefit and enhance the value and desirability of the Project and which are provided by the Association;

(f) costs of fire, casualty, liability, workmen's compensation, and other insurance covering the Association, Members, employees and the Common Areas;

(g) costs of any other insurance obtained by the Association;

(h) reasonable reserves for contingencies, repairs, replacements, and other proper purposes as deemed appropriate by the Association, which reserve funds shall be adequate to meet the costs and expenses of maintenance, repairs, and replacements of those Common Areas which must be maintained, repaired, or replaced on a periodic basis;

(i) costs of bonding the members of the Board, the Officers, any professional managing agent, or any other person handling the funds of the Association;

(j) real estate and other taxes paid by the Association;

(k) amounts paid by the Association for discharge of any liens or encumbrances levied against the Common Areas, or any part thereof;

(l) costs incurred by committees established by the Board;

(m) costs of security gate(s) at entrance(s) to the Project from the public streets, and any other security systems or services installed, operated, maintained, or contracted for by the Association;

(n) costs of garbage collection service for all Lots (if any); and

(o) any other costs incurred by the Association for any reason whatsoever in connection with the Common Areas (excepting reconstruction costs and capital improvement costs, which are otherwise provided for herein), or the costs of any other item or items designated by, or to be provided or performed by, the Association pursuant to this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.10 "Declarant" means the above-recited Declarant, and its successors and assigns.

1.11 "Declaration" means this instrument, as may be amended from time to time.

1.12 **"Default Rate of Interest"** means an annual rate of interest equal to the prime rate as announced from time to time by Bank of America, in Phoenix, Arizona (as the rate charged to its largest and most credit-worthy customers), with interest hereunder adjusted as and when said prime rate is adjusted, plus four percent (4%) per annum. Notwithstanding anything herein to the contrary, if during any period the highest lawful rate of interest which may be paid by any Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said period shall be the highest lawful rate. If Bank of America would cease doing business in Arizona or no longer announces its prime rate of interest as described above, the Association may compute interest hereunder upon the announced prime rate of interest of any other bank doing business in Arizona as determined by the Board of Directors.

1.13 **"Design Guidelines"** means the rules, regulations, restrictions, architectural standards, and design guidelines from time to time adopted by the Board of Directors and/or the Design Review Committee appointed by the Board pursuant to Section Eleven of the ByLaws of Aspens on the Creek Homeowners Association, Inc.

1.14 **"Design Review Committee"** means the Board of Directors or the Committee appointed by the Board of Directors provided for in Section Eleven of the ByLaws of Aspens on the Creek Homeowners Association, Inc.

1.15 **"Lot"** means any of the twenty (20) individual numbered lots in the Property as shown on the Plat. A "Lot" shall not include any Common Areas. A "Lot" includes all improvements now or hereafter constructed thereon.

1.16 **"Majority of Members"** means more than fifty percent (50%) of the total votes entitled to be cast with respect to a given matter. A specified fraction or percentage "of all of the Members" means that fraction or percentage of the total votes entitled to be cast with respect to a given matter.

1.17 **"Member"** means every Person defined as a "Member" in the Association pursuant to Section 3 hereof.

1.18 **"Mortgage"** means any recorded, filed, or otherwise perfected instrument concerning the Property, or any part thereof, given in good faith and for valuable consideration as security for the performance of an obligation, which is not a fraudulent conveyance under Arizona law, including, without limitation, a mortgage, deed of trust, or contract for conveyance of real property under Arizona Revised Statutes Sections 33-741 et seq. (as may be amended from time to time), but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means the holder of a note or the obligee of an obligation secured by a Mortgage. "Mortgagor" means the party executing the Mortgage. "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property. "First Mortgagee" means the holder of the First Mortgage.

1.19 "Occupant" means any Person, other than an Owner or a Member, in rightful possession of a Lot, whether as a family member, guest, tenant, or otherwise.

1.20 "Owner" means:

(i) any Person who is the record holder of legal title to the fee simple interest in any Lot, including, without limitation, any seller under any executory contract pending the closing of a sale or purchase transaction, but excluding any Person who is the seller of any Lot under any contract for conveyance of real property under Arizona Revised Statutes Sections 33-741 et seq. (as may be amended from time to time), provided, however, that if the record holder of legal title to the fee simple interest in any Lot is a trustee under Arizona Revised Statutes Section 33-801 et seq. (as may be amended from time to time), the trustor under a deed of trust shall be deemed to be the record holder of legal title to the fee simple interest in such Lot; or

(ii) any Person who is the record purchaser of any Lot under any contract for conveyance of real property under Arizona Revised Statutes Sections 33-741 et seq. (as may be amended from time to time).

Provided, however, that if more than one Person is the Owner of any Lot, whether as tenants in community, joint tenants, tenants in common, tenants by the entirety, or otherwise, all of such Persons collectively shall be deemed to be the "Owner" of such Lot hereunder.

1.21 "Parcel" means that parcel of real property referred to in the recitals hereof.

1.22 "Person" means an individual, corporation, partnership, trustee, or other entity capable of holding title to real property and their respective heirs, personal representatives, successors, and assigns.

1.23 "Plat" means the plat of the subdivision of "Aspens on the Creek" as recorded in the official records of Yavapai County, Arizona, as described in the recitals hereof, and as thereafter may be amended or supplemented from time to time.

1.24 "President" means the duly elected or appointed President of the Association.

1.25 "Private Roads" and "Private Streets" are synonymous and mean any street, roadway, drive, sidewalk, walkway, path, or other right-of-way within the Project which has not expressly been dedicated to the public use. In the event that the Association elects to dedicate a Private Road to public use and costs may be incurred for the purpose of bringing such Private Road into conformance with applicable specifications, such costs shall be considered costs of capital improvements and subject to the provisions hereof for Capital Improvement Assessments.

1.26 "Project" means the master planned development of the Property, as described in the recitals hereof, to be called "Aspens on the Creek".

1.27 "Property" means the Parcel together with all buildings, improvements, and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges now or hereafter belonging or in any way pertaining thereto.

1.28 "Proportionate Share" for any Owner means that fraction wherein the numerator is the number of Lots owned by such Owner and the denominator is the total number of Lots in the Property according to the Plat (i.e. twenty (20)). Provided, however, that if more than one Person is the Owner of any Lot, whether as tenants in community, joint tenants, tenants in common, tenants by the entirety, or otherwise, such Persons shall be jointly and severally liable for the Proportionate Share with respect to such Lot.

RIGHTS OF ENJOYMENT

2.1 **Members' Right of Enjoyment.** Every Member shall have a non-exclusive easement for use and enjoyment in and to the Common Areas, which right shall be appurtenant to and shall pass with such Member's membership as herein provided, and shall be subject to all of the easements, covenants, conditions, restrictions, and other provisions contained in this Declaration and on the recorded plat, including, without limitation, the following provisions:

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

2.1.2 The right of the Association to borrow money for the purposes of improving, replacing, restoring, repairing, or expanding the Common Areas or adding new Common Areas and, in aid thereof, to mortgage said property, or any part thereof, provided that the rights of any lenders hereunder shall be subordinate to the rights of the Members.

2.1.3 The Association shall have the power to suspend the right of a Member or any Person to use the Common Areas or any designated part thereof during any period in which any Assessment respecting such Member remains unpaid and delinquent. The Association shall also have the power to suspend the right of a Member or any Person to use the Common Areas or any designated part thereof for a period not to exceed sixty (60) days for any single infraction of this Declaration, the Association Rules, or the Design Guidelines, and for a period of up to one (1) year for any subsequent violation of the same or any similar provision of this Declaration, the Association Rules, or the Design Guidelines, respectively; provided, however, that such power may only be exercised after notice and hearing. Notwithstanding the foregoing, the Association shall not have any power hereunder to suspend any Member's rights to use any part of the Property or any Private Roads necessary for such Member to gain access to his/her Lot.

2.2 **Delegation of Use.** No Member may delegate his right of use and enjoyment of the Common Areas to any Person, except to Occupants, and to any other Persons as may be permitted by the Association Rules.

ASSOCIATION

3.1 Purposes of Association. The Association has been, or will be, incorporated as a non-profit corporation to serve as the governing body for all of the Members as provided in this Declaration, the Articles, ByLaws, Association Rules, and Design Guidelines. 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 Members in accordance with the provisions of this Declaration, the Articles, ByLaws, Association Rules, and Design Guidelines.

3.2 Membership in Association. The Association shall have only Owners as Members. All Owners, upon becoming such, shall be deemed automatically to have become Members, and there shall be no other qualifications for membership. Each Owner shall be a Member of the Association so long as he/she shall be an Owner, and such membership shall automatically terminate when he/she ceases to be an Owner. Membership shall be appurtenant to and may not be separated from ownership of any Lot. A membership in the Association shall not be transferred, pledged, or alienated in any way, except as expressly provided herein. A membership shall automatically be transferred to the new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, conveyance, intestate succession, testamentary disposition, foreclosure of a Mortgage, trustee's sale, forfeiture, or otherwise. Any attempt to make a prohibited transfer of a membership in the Association is void and will not be recognized by or reflected upon the books and records of the Association. In the event any Member fails or refuses to transfer or surrender the membership registered in his name as herein required, the Association shall have the right to record a transfer upon the books and records of the Association and issue a new membership as appropriate, and thereupon the old membership outstanding in the name of said Member shall be null and void as though the same had been surrendered. Provided, however, that if more than one Person is the Owner of any Lot, whether as tenants in community, joint tenants, tenants in common, tenants by the entirety, or otherwise, each of such Persons shall be deemed to be a Member, but all of such Persons collectively shall hold only a single membership in the Association.

3.3 Voting Rights.

3.3.1 Each Owner shall have one (1) vote for each Lot owned by such Owner

3.3.2 Provided, however, that if more than one Person is the Owner of any Lot, whether as tenants in community, joint tenants, tenants in common, tenants by the entirety, or otherwise, such Lot shall be as they shall determine among themselves, but in no event shall the vote be split or more than one vote be cast with respect to any such Lot. If such Persons are unable to agree on how their single vote is to be cast, then their vote shall not be counted.

3.3.3 Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to the membership with respect to his/her Lot to a Mortgagee as security, if a copy of such proxy or other instrument pledging such vote has been filed with the Association, only the vote of such Mortgagee will be recognized. In the event that more than one such instrument has been filed, the Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

3.3.4 The Association shall have the power to suspend the right of any Member to vote or to participate in any vote during any period in which any Assessment respecting such Member remains unpaid and delinquent. The Association shall also have the power not to exceed sixty (60) days for any single infraction of the Declaration, the Association Rules, or the Design Guidelines, and for a period of up to one (1) year for any subsequent violation of the same or any similar provision of this Declaration, the Association Rules, or the Design Guidelines, respectively; provided, however, that such power may only be exercised after notice and hearing.

3.4 **Assignment of Declarant's Voting Rights.** If any lender to whom the Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration succeeds to the interests of the Declarant by virtue of said assignment, the absolute voting rights of the Declarant as provided in Section 3.16 shall not be terminated thereby, and such lender shall hold the Declarant's membership, voting, and other rights hereunder on the same terms and conditions as they were held by Declarant pursuant hereto.

3.5 **Board of Directors.**

3.5.1 The affairs of the Association shall be conducted by the Board as herein provided and in accordance with the Articles and ByLaws. Except for directors elected by the Declarant, each director shall be a Member or the spouse of a Member in good standing. If a director shall cease to meet such qualifications during his/her term, he/she will thereupon cease to be a director and his/her place on the Board shall be deemed vacant.

3.5.2 Declarant shall have the absolute power and right to appoint and remove the members of the Board until the expiration of Declarant's control of the Association pursuant to Section 3.16.

3.5.3 Following the expiration of Declarant's control of the Association pursuant to Section 3.16, all or any member of the Board may be removed from office at any time by action of the Members, as follows. Upon presentation to the President of a petition duly executed by twenty-five percent (25%) of all of the Members in favor of the removal from office of the member or members of the Board therein named, a special meeting of the Members shall be promptly held to determine whether such member or members of the Board should be removed from office. Upon affirmative vote of two-thirds (2/3) of all of the Members in attendance (and assuming a quorum is present) to remove such member or members of the Board from office, such member or members shall be deemed removed from office. Any vacancy on the Board created by the removal of a member of the Board as herein provided shall be filled by an election by the Members in the manner provided in the Articles or ByLaws for the election of directors.

3.6 Association Bound. Upon its incorporation, this Declaration shall be binding upon and shall benefit the Association.

3.7 Additional Provisions in Articles and ByLaws. The Articles and ByLaws may contain any provisions relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, and Members not inconsistent with law or this Declaration.

3.8 Association Rules. The Board shall be empowered to adopt, amend, or repeal such rules and regulations from time to time as it deems necessary and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Common Areas or any other part of the Project. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Members except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles, ByLaws, or Design Guidelines. A copy of the Association Rules as they may from time to time be adopted, amended, or repealed, or a notice setting forth the adoption, amendment, or repeal of specific portions of the Association Rules, shall be given to each Member in the same manner established in this Declaration for the giving of notices. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were an integral part of this Declaration and shall be binding on the Members, Occupants, and all other Persons subject to this Declaration, whether or not actually received thereby. The Association Rules, as from time to time adopted, amended, or repealed, shall be available at the principal office of the Association to each Member or other Person reasonably entitled thereto upon request. In the case of any conflict between any provision(s) in the Association Rules and any provision in this Declaration, the Articles, ByLaws, or Design Guidelines, the provision(s) in this Declaration, the Articles, ByLaws, or Design Guidelines shall govern, unless otherwise provided.

3.9 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, the members of the Design Review Committee, Declarant (to the extent a claim may be brought against Declarant by reason of its appointment of, removal of, or control over members of the Board, the Design Review Committee, or any other committees of the Association), and the members of any other committees of the Association, shall be indemnified by the Association, and every other person serving as an employee or agent of the Association may, in the discretion of the Board, be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he/she may be a party, or in which he/she may become involved, by reason of his/her being or having served in such capacity on behalf of the Association (or in the case of Declarant by reason of its having appointed, removed, or controlled or failed to appoint, remove, or control any members of the Board, the Design Review Committee, or any other committees of the Association), or any settlement thereof, whether or not he/she is a director, officer, member of the Design Review Committee, member of any other

committees of the Association, or serving in such other capacity at the time such expenses and liabilities are incurred, provided that the Board shall determine, in good faith, that such director, officer, member of the Design Review Committee, member of any other committees of the Association, other Person, or Declarant, did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of his/her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of any rights to which such Persons may be entitled at law or otherwise.

3.10 Non-Liability of Officials. To the fullest extent permitted by law, the directors and officers of the Association, the members of the Design Review Committee, Declarant, and the members of any other committees of the Association shall not be liable to any Member, Occupant, the Association, or any other Person for any damage or loss suffered or claimed on account of any decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, action, inaction, omission, error, negligence, or the like made in good faith and which such directors, officers, members of the Design Review Committee, Declarant, or members of any other committees of the Association reasonably believed to be within the scope of their respective duties.

3.11 Easements. In addition to the blanket easements granted in Section 4.1, the Association is authorized and empowered to grant to itself or to any other Person upon, across, over, or under the Property, or any part thereof, such permits, licenses, easements, and rights-of-way for sewer lines, water lines, pipes, underground conduits, storm drains, television cable, and other similar public or private utility purposes, or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation, use, and enjoyment of the Common Areas or for the preservation of the health, safety, convenience, and welfare of the Owners, Members and Guests, provided that any damage to any Lot resulting from any such grant shall be repaired by the Association at its expense.

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

3.13 Books and Records. The Association shall, upon written request stating the purpose of the examination, and during reasonable business hours, make available for inspection by each Member entitled to vote or to participate in any vote the books and records (of account and otherwise) of the Association for any proper purpose, together with current copies, as amended from time to time, of this Declaration and the Articles, ByLaws, Association Rules and Design Guidelines. Declarant shall be under no obligation to make its own books and records available for inspection by any Member or by any other Person.

3.14 Managing Agent. All powers, duties, and rights of the Association may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligations to perform any such delegated duties.

3.15 Declarant's Control of Association. Notwithstanding anything in this Declaration to the contrary, Declarant, in its sole discretion, may maintain absolute control over the Association, including, without limitation, appointment of the members of the Board, the officers, the members of the Design Review Committee, and the members of any other committees of the Association, until the sale or other disposition of the last Lot owned by Declarant for resale as part of the development of the Project, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including, without limitation, an assignment by Declarant to any lender as security). Declarant, in its sole discretion, may (but shall not be required to) permit the other Members to assume control of the Association at any time.

3.16 Declarant's Conveyance of the Common Areas to the Association. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be obligated to convey all or any part of the Common Areas to the Association until the sale or other disposition of the last Lot owned by Declarant for resale as part of the development of the Project, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including, without limitation, an assignment by Declarant to any lender as security). Declarant, in its sole discretion, may (but shall not be required to) convey all or any part of the Common Areas to the Association at any time and from time to time, but in any event shall convey the Common Areas within a reasonable time after the last Lot is sold or disposed of. Any conveyance of all or any part of the Common Areas by Declarant to the Association shall be by quit claim deed.

EASEMENTS

4.1 Blanket Easement. There is hereby created a blanket easement upon, across, over, and under the Property, and each and every part thereof, for ingress and egress (over existing roadways), installing, constructing, replacing, repairing, maintaining, and operating all utilities, including, without limitation, water, sewer, gas, telephone, electricity, television cable, security systems, communication lines and systems, and storm drains, and in addition thereto for the use of emergency vehicles of all types. By virtue of such blanket easement, it shall be expressly permissible for any providing utility to erect (including, without limitation, underground installation) and maintain the necessary facilities, pipes, lines, wires, circuits, conduits, cables, and related appurtenances, facilities, and equipment on the Property, and each and every part thereof. Notwithstanding anything contained in this Section to the contrary, no easements shall be created nor shall any sewers, electrical lines, water lines, or other appurtenances, facilities, or equipment for utilities be installed or relocated except as initially created by Declarant or thereafter created by the Association. This provision shall in no way affect any other recorded easements on the Property.

4.2 Use of Common Areas. Except for the use limitations provided in Section 2.1, each Member shall have the non-exclusive right to use the Common Areas in common with all other Members as required for the purposes of access and ingress and egress to (and use, occupancy, and enjoyment of) any Lot owned in whole or in part by such Member or Common Areas available for the use of such Member. Such right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to such Member, Occupants, and the agents, servants, and invitees of each Member. Such right to use the Common Areas shall be perpetual and appurtenant to each respective Lot, subject to and governed by the provisions of this Declaration, the Articles, ByLaws, Association Rules, and Design Guidelines.

4.3 Declarant Easement. There is hereby created a non-exclusive easement in favor of the Declarant for ingress and egress over the Property, and each and every part thereof, and for the right to go upon, across, over, and under, and to enter and remain upon, the Property, and each and every part thereof, for all purposes reasonably related to Declarant's rights and responsibilities, including, without limitation, the development, advertisement, and sale of the Property and any part thereof. The easement created in this Section 4.3 shall continue until the sale or other disposition of the last Lot owned by Declarant for resale as part of the development of the Project, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including, without limitation, an assignment by Declarant to any lender as security).

4.4 Cross-Over Easement. At the discretion of the Declarant, a Lot Owner may be required to grant an easement to an adjacent Lot Owner. Said easement shall be used as the result of selected Lot Owner(s) sharing a common wall, or may be used to fence a defined area for an adjacent lot owner's sole and exclusive use. The easement shall not be more than three feet in width and may extend from the front property line to the rear property line and/or may also connect two or more adjacent rear property lines. Said easement shall be specifically defined at the initial point of sale and at the close of escrow.

4.5 Driveway Easement. Certain Lots require a Common Driveway for ingress and egress for Owners to gain access to their Lot. In such instances, each affected Owner grants to each and every other affected Owner an easement to use said Common Driveway. Said Easement has been stipulated in the Final Plat of Aspens on the Creek and recorded in the official records of Yavapai County, Arizona and shall also be recorded as a matter of title upon the transfer of title to the Owner. Such Easement shall run with the title to the property in perpetuity. Lots 1 and 2 shall share a Common Driveway and Lots 3, 4 and 5 shall share a Common Driveway. The Owners of these respective Lots shall each share equally in the cost of maintenance, repair and replacement of their respective Common Driveway with the other affected Owner(s). All of the relevant provisions of these Covenants, Conditions and Restrictions shall apply herewith, including but not limited to, the right of enforcement.

ASSESSMENTS

5.1 Creation of Lien and Personal Obligation.

5.1.1 Each Owner, by becoming an Owner, is deemed to covenant and agree to pay to the Association Regular Assessments, Capital Improvement Assessments, and Reconstruction Assessments, such Assessments to be established and collected by the Association from time to time as provided in this Declaration. Such Assessments, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of collection thereof (all of which shall be deemed to be a part of such Assessments), shall be a continuing lien from the date of recordation of this Declaration upon each Owner's Lot, and shall also be the personal obligation of the Owner to whom such Assessments relate, which personal obligation shall continue even after such Owner is no longer the Owner of the Lot in question. The personal obligation for any Assessments shall not pass to an Owner's successor unless expressly assumed by him/her in writing; however, any such obligation remains on each Lot until paid.

5.1.2 Each Member, by becoming a Member, is deemed to covenant and agrees to pay to the Association Special Assessments, such Special Assessments to be established and collected by the Association from time to time as provided in this Declaration. Such Special Assessments, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of collection thereof (all of which shall be deemed to be a part of such Special Assessments), shall be a continuing lien from the date of recordation of this Declaration upon the Lot of each Member against whom such Special Assessments are levied, and shall also be the personal obligation of each such Member, which personal obligation shall continue even after such Member is no longer a Member. The personal obligation for any Special Assessments shall not pass to a Member's successor unless expressly assumed by him/her in writing. Provided, however, that if more than one Person is the Owner of any Lot, whether as tenants in community, joint tenants, tenants in common, tenants by the entirety, or otherwise, such Special Assessments shall only be the personal obligation of the particular Member against whom such Special Assessments are levied.

5.1.3 The lien of the Assessments provided for herein shall be superior to any and all other charges, liens, or encumbrances which hereafter in any manner may arise or be imposed upon any Lot, except as otherwise provided herein and except that such lien shall be subordinate to liens for taxes and other public charges which by applicable law are expressly made superior.

5.2 Purposes of Assessments. The Assessments levied by the Association shall be used for the purposes indicated herein. Where a Lot has separate gas, electrical, sewer, water, telephone or other similar utilities services, the costs of such services shall be the personal obligation of the Owner of such Lot.

5.3 Regular Assessments.

5.3.1 Each Owner shall pay as his/her Regular Assessment such Owner's Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and ByLaws or as determined by the Association.

5.3.2 Not later than sixty (60) days prior to the beginning of each fiscal year of the Association, the Board of Directors shall make available for review by each Member at the Association's office during reasonable hours a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. At the same time, the Board of Directors shall determine the amount of the Regular Assessment to be paid by each Owner for the upcoming fiscal year and shall give written notice thereof to each Owner. Each Owner shall thereafter pay to the Association his/her Regular Assessment in equal monthly installments during such fiscal year. Each such installment shall be due and payable on the date set forth in the written notice given to each Owner.

5.3.3 If at any time during any fiscal year the Board of Directors determines that the aggregate Regular Assessments for such year are, or will become, inadequate to meet all Common Expenses for such year for whatever reason, including actual Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for such year, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses for such year and determine the revised amount of the Regular Assessment to be paid by each Owner for the balance of the year and shall give written notice thereof to each Owner. Each Owner shall thereafter pay to the Association his/her revised Regular Assessment in equal monthly installments during the balance of such fiscal year. Each such installment shall be due and payable on the date set forth in the written notice given to each Owner. If the aggregate Regular Assessments for any fiscal year prove to be excessive in light of the actual Common Expenses for such year, the Board of Directors may, in its sole discretion, retain such excess as additional working capital or reserves, reduce the amount of Regular Assessments for the succeeding fiscal year, or abate collection of Regular Assessments for such period as it deems appropriate.

5.4 Special Assessments. A Special Assessment shall be levied by the Board of Directors against a particular Member and his/her Lot for the following:

5.4.1 Costs incurred by the Association in bringing such Member or his Lot into compliance with the provisions of this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines;

5.4.2 Any other charge designated as a Special Assessment in this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines;

5.4.3 Fines fixed by the Board of Directors pursuant to Section 10.8; and

5.4.4 In the event the Association undertakes to provide materials or services which benefit a particular Member or Lot, then such Member herein agrees that the costs thereof incurred by the Association shall be a Special Assessment.

5.5 Capital Improvement Assessments.

5.5.1 The Board of Directors may levy in any fiscal year a Capital Improvement Assessment applicable to that year only, for the purpose of defraying the cost to the Association for the installation or construction of any capital improvements on any of the Common Areas. If levied in any fiscal year, each Owner shall pay as his/her Capital Improvement Assessment for such year such Owner's Proportionate Share of the cost to the Association for the installation or construction of any capital improvements on any of the Common Areas. Except as otherwise specifically provided herein, payment of Capital Improvement Assessments shall be in such amounts and at such times as may be provided in the Articles and ByLaws or as determined by the Board of Directors. Provided, however, that without the vote of the Majority of Members, the Board of Directors shall not impose a Capital Improvement Assessment in any one (1) fiscal year the aggregate amount of which exceeds five percent (5%) of the estimated Common Expenses for such year. All amounts assessed and collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Association in a separate bank account for such purposes.

5.6 **Uniform Assessments.** The Regular Assessments, Capital Improvement Assessments, and Reconstruction Assessments for each Lot Owner shall be uniform.

5.7 **Exempt Property.** All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

5.8 **Date of Commencement of Regular Assessments.** The Regular Assessments shall commence as to each Owner on the first day of the month following the date of conveyance to such Owner of the Lot to which such Regular Assessments apply.

5.9 **Time and Manner of Payment; Late Charges and Interest.** Assessments shall be due and payable in such manner and at such times as the Board of Directors shall designate. If not paid within ten (10) days after its due date, each Assessment shall have added to it a late charge equal to ten percent (10%) of the amount of the Assessment and shall bear interest at the Default Rate of Interest from its due date until paid. The Board of Directors 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.

5.10 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that: (a) the Association or the Declarant is not properly exercising any of its duties or powers; (b) Regular Assessments for any period exceed Common Expenses.

5.11 Homestead Waiver. Each Owner, to the extent permitted by law, hereby automatically waives to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now or hereafter in effect.

5.12 Reserves. The reserves included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account and held for the purposes for which such reserves were collected. The responsibility of the Board of Directors (whether while controlled by Declarant or the other Members) shall be only to provide for such reserves as the Board of Directors in good faith deems reasonable, and neither Declarant nor the Association shall have any liability to any Member or to any other Person if such reserves prove to be inadequate.

5.13 Certificate of Payment. Upon becoming an Owner, any Person or Persons shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to the Lot in question, if any, and no lien shall attach to the Lot in excess of the amount set forth in the certificate, except for Assessments which accrue after the date thereof.

5.14 Enforcement of Assessment Liens.

5.14.1 The Assessment lien provided for herein against any Lot may be foreclosed by the Association in accordance with the laws of the State of Arizona then governing the foreclosure of mortgages of real property. The Association, through its duly authorized agents, shall have the power to bid on any such Lot at foreclosure sale and to acquire, hold, sell, lease, mortgage, and convey the same. The Association shall have the right to recover any deficiency remaining after any such foreclosure sale, and any Lot sold at any such foreclosure sale may be redeemed after such foreclosure sale, all in accordance with the laws of the State of Arizona then governing the foreclosure of mortgages of real property.

5.14.2 The Assessment lien and the right of foreclosure hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association may have hereunder, at law, or in equity, including, without limitation, a suit to recover a money judgment for any unpaid Assessment.

5.14.3 All of the provisions of this Section 5 relating to the enforcement of the Assessment lien provided for herein shall apply with equal force in each other instance provided in this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines wherein it is stated that payment of a particular Assessment, charge, or other sum shall be secured by the lien provided for in this Section 5.

5.14.4 Nothing herein shall be construed as requiring that the Association take any action to collect any Assessments at any time, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

5.15 Pledge of Assessment Rights as Security. The Association shall have the power to pledge its Assessment rights provided for in this Declaration as security for the performance of any obligation by the Association.

5.16 Exemption of Unsold Lots. Notwithstanding anything contained in this Declaration to the contrary, no Assessments shall be levied upon, or payable with respect to, any Lot owned by Declarant for resale as part of the development of the Project until after the sale or other disposition of such Lot by Declarant, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including, without limitation, an assignment by Declarant to any lender as security).

INSURANCE

6.1 Authority to Purchase. The Association shall purchase and maintain certain insurance upon the Common Areas, including, without limitation, the insurance described in Section 6.3.

6.2 Member's Responsibility. It shall be the responsibility of each Member to provide for insurance on his/her own Lot, any additions and improvements thereto, furnishings and personal property therein, his/her personal property stored elsewhere within the Project, his/her personal liability, and such other insurance as the Member desires. No Member shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of any damage to the Common Areas, or any part thereof.

6.3 Coverage. The Association shall maintain and pay for policies of insurance as follows:

6.3.1 A policy covering all of the Common Areas, providing, at a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location, and use, including, without limitation, perils normally covered by an "all-risk" policy, in an amount determined by the Board of Directors, with agreed amount, inflation guard, and construction code endorsements, if available.

6.3.2 A policy of comprehensive public liability insurance covering all of the Common Areas in an amount determined by the Board of Directors for personal injury, death, and property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location, and use.

6.3.3 At the Board of Directors' election, fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees, or volunteers responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, then, at the Association's election, fidelity bond coverage shall also be obtained for the officers, employees, or agents thereof handling or responsible for Association funds.

6.3.4 A worker's compensation policy, if necessary to meet the requirements of applicable law.

6.3.5 A policy of "directors and officers" liability insurance.

6.3.6 Such other insurance, and in such amounts, as the Board of Directors shall determine from time to time to be desirable.

6.4 Non-Liability of Association. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association, any Board member, any officer, nor Declarant shall be liable to any Member, Mortgagee, Occupant 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 Member to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Member may desire.

6.5 Premiums. Premiums upon 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 occasioned by the use, misuse, occupancy, or abandonment of a Lot or its appurtenances, or of the Common Areas, by a Member, shall be assessed against that particular Member as a Special Assessment.

DAMAGE AND DESTRUCTION OF COMMON AREAS, PRIVATE ROADS AND ENTRANCE GATES: RECONSTRUCTION ASSESSMENTS

7.1 Duty of Association. In the event of any partial or total damage or destruction of the Common Areas, or any part thereof, it shall be the duty of the Association to cause the damaged or destroyed Common Areas to be restored and repaired to substantially the condition the Common Areas were in prior to the damage or destruction as promptly as practical pursuant to

this Section 7. Insofar as the planting and replacement of trees and vegetation is concerned, the Association shall use its best judgment based upon professional guidance as to the type, nature, and location of trees and vegetation to plant for the restoration. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose.

7.2 Automatic Reconstruction. In the event of any partial or total damage or destruction of the Common Areas, or any part thereof, if the amount available from the proceeds of any casualty insurance maintained pursuant to this Declaration, together with any uncommitted and unreserved capital of the Association, shall be at least seventy-five percent (75%) of the estimated cost of restoring and repairing the damaged or destroyed Common Areas to substantially the condition the Common Areas were in prior to the damage or destruction as promptly as practical, the Association shall levy a Reconstruction Assessment for the purpose of defraying the cost to the Association for such restoration and repair in excess of the amount of such funds available for such purpose, and shall cause the damaged or destroyed Common Areas to be restored and repaired to substantially the condition the Common Areas were in prior to the damage or destruction as promptly as practical. Insofar as the planting and replacement of trees and vegetation is concerned, the Association shall use its best judgment based upon professional guidance as to the type, nature and location of trees and vegetation to plant for the restoration. If levied, each Owner shall pay as his/her Reconstruction Assessment such Owner's Proportionate Share of the cost to the Association for such restoration and repair in excess of the amount of such funds available for such purpose. Except as otherwise specifically provided herein, payment of Reconstruction Assessments shall be in such amounts and at such times as may be provided in the Articles and ByLaws or as determined by the Association.

7.3 Vote of Members. In the event of any partial or total damage or destruction of the Common Areas, or any part thereof, if the amount available from the proceeds of any casualty insurance maintained pursuant to this Declaration, together with any uncommitted and unreserved capital of the Association, shall be less than seventy-five percent (75%) of the estimated cost of restoring and repairing the damaged or destroyed Common Areas to substantially the condition the Common Areas were in prior to the damage or destruction as promptly as practical, the Association shall levy a Reconstruction Assessment for the purpose of defraying the cost to the Association for such restoration and repair in excess of the amount of such funds available for such purpose, and shall cause the damaged or destroyed Common Areas to be restored and repaired to substantially the condition the Common Areas were in prior to the damage or destruction as promptly as practical, unless at least two-thirds (2/3) of all of the Members, at a special meeting held for such purpose and properly noticed, disapprove of such restoration and repair. If at least two-thirds (2/3) of all of the Members do not disapprove of such restoration and repair at such special meeting, each Owner shall pay as his Reconstruction Assessment such Owner's Proportionate Share of the cost to the Association for such restoration and repair in excess of the amount of such funds available for such purpose. Except as otherwise specifically provided herein, payment of Reconstruction Assessments shall be in such amounts and at such times as may be provided in the Articles and ByLaws or as determined by the Association. If at least two-thirds (2/3) of all of the Members disapprove of such restoration and repair at such

special meeting, the Association shall cause the damaged or destroyed Common Areas to be cleared and landscaped for community park use or other community use as determined by the Association as promptly as practical, and the costs thereof shall be paid with such casualty insurance proceeds, or if said insurance proceeds are insufficient, then the Board of Directors may levy a Reconstruction Assessment against all Members to cover the deficiency.

7.4 Excess Insurance Proceeds. If any excess proceeds of any casualty insurance maintained pursuant to this Declaration remain after any restoration and repair by the Association pursuant to this Section, the Association, in its sole discretion, may retain such excess proceeds or may distribute all or a part thereof to each Owner in his/her Proportionate Share.

7.5 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purpose set forth in this Section 7 and shall be deposited by the Association in a separate bank account for such purposes.

7.6 Assessment Lien Provisions of Section 5 Applicable. Any Reconstruction Assessment under this Section 7 shall be secured by The Assessment lien provided for in Section. 5.

EMINENT DOMAIN

8.1 Definition of Taking. The term "taking" as used in this Section 8 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any part of the Common Areas.

8.2 Award for Common Areas. Any awards on account of any taking shall be paid to the Association. The Board of Directors may, in its sole discretion, retain any awards or distribute all or any part thereof to each Owner in his/her Proportionate Share.

MAINTENANCE, REPAIRS, AND REPLACEMENTS

9.1 Owner's Responsibility. Each Owner shall furnish and be responsible for, at his/her own expense, all of the maintenance, repairs, and replacements within his/her own Lot. Any Owner who shares and has an easement on a Common Driveway, shall, in conjunction and cooperation with any other such Owner, pay their Proportionate Share for the maintenance, repair and replacement thereof. In the event of any partial or total damage or destruction of any improvements within any Lot, or any part thereof, it shall be the duty of the Owner of such Lot to cause the damaged or destroyed improvements to be restored and repaired to substantially the condition such improvements were in prior to the damage or destruction as promptly as practical.

9.2 Maintenance of Common Areas, Private Roads, Entrance Gates and Storm Drains. Except as otherwise provided in this Declaration to the contrary, maintenance, repairs, and replacements of the Common Areas, Private Roads, Entrance Gates and Storm Drains shall be furnished by the Association as part of the Common Expenses, subject to this Declaration, the Articles, ByLaws, Association Rules, and Design Guidelines. If due to the act or negligence of any Members, any Occupant of his/her Lot, or any of his/her invitees or other authorized visitors, damage or destruction shall be caused to the Common Areas, or any part thereof, or maintenance, repairs, or replacements shall be required which would otherwise be a Common Expense, then such Member shall pay for the damage or destruction and for such maintenance, repairs, and replacements, and such obligation shall be a Special Assessment.

9.3 Right of Access. Any authorized representatives of the Association or the Declarant and any contractors, repairmen, or other agents employed or engaged by the Association or the Declarant shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs, or replacements to the Common Areas, or any part thereof, or in connection with the performance of any of the Association's duties or responsibilities hereunder.

USE AND OCCUPANCY RESTRICTIONS

10.1 Residential Use. Each Lot may be used only for residential purposes and none other. No business or commercial building may be erected on any Lot, and no business or commercial enterprise or other non-residential use may be conducted on any part thereof. Nothing contained herein shall be deemed to limit Declarant's rights as set forth in Section 13.

10.2 Violation of Law or Insurance. No Member shall permit anything to be done or kept in his/her Lot or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

10.3 Signs. No sign of any kind shall be displayed to the public view from any Lot or any Common Areas without the approval of the Association or the Design Review Committee, except: (a) such signs as may be used by Declarant in connection with the development and sale of Lots in the Project; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; or (c) such signs as may be required for traffic control and regulation of the Private Roads and the Common Areas. No "For Sale" or "For Rent" sign may be posted on any Lot; provided, however, that an Owner may, in accordance with applicable provisions of the Association Rules, be permitted to post one "For Sale" or "For Rent" notice in a form approved by the Board of Directors in a location specified for that purpose by the Board, which may be in a Common Area rather than on the Lot.

10.4 Animals. No animals, including horses or other domestic farm animals, fowl, or poisonous reptiles of any kind may be kept, bred, or maintained upon any Lot or upon any Common Areas, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animals shall be kept, bred, or raised within the Project for commercial purposes. In no event shall any domestic pet be allowed to run free away from its Owner's Lot without a leash, or so as to create a nuisance. All such domestic pets must be registered with the Association and shall have proof of proper immunization presented at the time of said registration.

10.5 Nuisances. No Member shall permit or suffer anything to be done or kept upon or about his/her Lot, or upon or about the Property, which will obstruct or interfere with the rights of other Members, Occupants, or Persons authorized to use the Common Areas, or annoy them by unreasonable noises or otherwise, nor will he/she commit or permit any nuisance or commit or suffer any illegal act to be committed thereupon. Each Member shall comply with the Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property, or any part thereof.

10.6 Parking: Motor Vehicles and Boats. Except as specifically permitted by the Association Rules: (a) no boats, trailers, buses, motorhomes, campers, or other vehicles shall be parked or stored upon the Common Areas or upon any Lot except within an enclosed garage; (b) no boats, trailers, buses, motorhomes, campers, or other vehicles shall be repaired or rebuilt upon the Common Areas or upon a Lot; and (c) nothing shall be parked on the Private Roads or on any public streets except in such parking areas as may be designated on the Plat by the Declarant, or by the Association. The Association and/or the City of Prescott may remove, or cause to be removed, any cars, trucks, boats, trailers, buses, motorhomes, campers, or other vehicles in violation hereof at the expense of the owner thereof in any manner consistent with law.

10.7 Antennas. No radio, television, or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave, or other similar signals shall be placed or maintained upon any Lot except as may be permitted by the Association Rules or in accordance with the Design Guidelines.

10.8 Garbage. No garbage or trash shall be kept, maintained, or contained in any Lot so as to be visible from any other Lot or the Common Areas. No incinerators shall be kept or maintained on any Lot. No refuse pile or other unsightly objects shall be placed, accumulated, or permitted to remain anywhere on any Lot.

10.9 Mining. No portion of the Property shall be used in any manner to explore for or remove any water, oil, or other hydrocarbons, minerals of any kind, or earth substances of any kind.

10.10 Safe Condition. Without limiting any other provision in this Section, each Member shall maintain and keep his Lot at all times in a safe, sound, and sanitary condition and repair and shall correct any condition and refrain from any activity which might interfere with the reasonable enjoyment by other Members of their respective Lots or the Common Areas.

10.11 Fires. Other than barbeques in properly constructed barbeque pits or grills, and firepits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Association Rules or the Design Guidelines, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Areas, or for the other Owners.

10.12 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot.

10.13 No Further Subdivision. No Lot nor any portion of the Common Areas shall be divided or subdivided.

10.14 No Obstructions to Drainage. No Member shall erect, construct, maintain, permit, or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land.

10.15 Entrance Gates. Subject to the easements created herein, the Board of Directors may establish and from time to time determine who may have access through entrance gates to the Project onto the Private Roads, but may not restrict access to any Member, any Occupants of his/her Lot, or any of his/her invitees or other authorized visitors. Declarant reserves the unrestricted right of access and use of such Private Roads until the sale or other disposition of the last Lot owned by Declarant for resale as part of the development of the Project, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including, without limitation, as assignment by Declarant to any lender as security), for its agents, employees, invitees, licensees, and guests.

10.16 Rental of Lots. No Owner may lease his Lot except in accordance with the following terms and conditions: (a) the lease must be in writing and for a term of not less than six (6) months; (b) the entire Lot must be leased; (c) a Lot may only be leased to a single family unit; (d) a copy of any lease must be delivered to the Association promptly upon its execution. An Owner who leases his Lot to any Person shall be responsible for assuring compliance by his/her lessee with all of the provisions of this Declaration, the Articles, Bylaws, Association Rules, and Design Guidelines, and shall be jointly and severally liability and responsible for any violations by his/her lessee thereof. It shall be the sole responsibility of the Owner to ensure that the lessee is fully aware of all of the provisions of this Declaration, the Articles, ByLaws, Association Rules, and Design Guidelines.

10.17 Exterior Coverings and Colors. No exterior screening or shade materials of any type, including, without limitation, awnings, shutters, screens (other than normal window screens like or similar to those in existence at the time the Owner purchased the Lot), and coverings affecting the exterior appearance of any Lot or any change in the exterior color(s) of the home shall be permitted except as expressly authorized by the Association Rules or Design Guidelines.

10.18 Outside Lighting. No outside lighting shall be allowed or maintained on the Property or any of its residences or amenities in a manner such as to constitute a nuisance or unreasonable annoyance to any residents of the Property.

10.19 Common Areas. Except as otherwise set forth herein, no uses shall be made of the Common Areas except as indicated on the Plat.

10.20 No Time-Sharing or Rental Pools. No time-sharing or rental pools shall be permitted on the Property or any part thereof.

10.21 Equestrian Facilities. No equestrian facilities shall be permitted on any Lot.

10.22 Declarant's Right to Establish Parking Areas. Notwithstanding anything contained in this Declaration to the contrary, until the sale or other disposition of the last Lot owned by Declarant for resale as part of the development of the Project, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including, without limitation, an assignment by Declarant to any lender as security), Declarant shall have the right to establish parking areas on the Common Areas, or any part thereof, subject to applicable laws, rules, regulations, and ordinances.

10.23 Enforcement. The Association or its authorized agents may enter any Lot in which a violation of any of these restrictions exists and may correct such violation at the expense of the Member owning such Lot. Such expenses and such fines as may be imposed pursuant to this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines, shall be a Special Assessment. All remedies described in Section 13 hereof and all other rights and remedies available at law or in equity shall be available in the event of any breach by any Member, Occupant, or any other Person of any provision of this Section 10.

10.24 Further Restrictions. The Board of Directors may further restrict and regulate the use and occupancy of the Lots, the Common Areas and the Private Roadways by adopting rules and regulations of general application from time to time which shall be incorporated into and become an integral part of the Association Rules and/or Design Guidelines.

RIGHTS OF FIRST MORTGAGEES

11.1 General. Notwithstanding any other provisions contained in this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines, the following provisions shall apply to and benefit each holder of a First Mortgage upon any Lot.

11.2 Subordination. The lien of the Assessments provided for herein shall be subordinate to the lien of any now or hereafter existing First Mortgage on any Lot.

11.3 Liability for Assessments. Any Person, except the Member or Members against whom any unpaid Assessments are levied, who receives a sheriff's deed, a trustee's deed, or a deed in lieu of foreclosure to any Lot in connection with any First Mortgage on such Lot, or who completes the forfeiture of the interest of any record purchaser of any Lot, and any Persons having an interest in or a lien or encumbrance on such Lot, the priority of which is subordinate to that of the seller of such Lot, under any contract for conveyance of real property under Arizona Revised Statutes Sections 33-741 et seq. (as may be amended from time to time) in connection with any First Mortgage on such Lot, shall not be liable for any unpaid Assessments on such Lot which accrued prior to the date of the execution and delivery of such sheriff's deed, trustee's deed, or deed in lieu of foreclosure, or prior to the date of the completion of such foreclosure, respectively, and shall acquire his/her interest in such Lot free and clear of any lien provided for herein to secure the payment of any such unpaid Assessments. Any such unpaid Assessments shall be a Common Expense. Provided, however, that any such Person shall be subject to all of the terms and conditions of this Declaration on and after the date of the execution and delivery of such sheriff's deed, trustee's deed or deed in lieu of foreclosure, or on and after the date of the completion of such foreclosure, respectively, including, without limitation, the obligation to pay all Assessments accruing on and after such date.

EXEMPTION OF DECLARANT FROM RESTRICTIONS

Notwithstanding anything contained in this Declaration to the contrary, none of the terms and conditions of this Declaration shall be construed or deemed to restrict, limit, or prohibit any act of Declarant, its agents, employees, subcontractors, or any Persons designated by it, undertaken in connection with the development, construction, completion, sale, or leasing of the Lots, the Common Areas, the Property, or any part thereof.

REMEDIES

13.1 General Remedies. In the event of any violation by any Member, Occupant, or other Person of any of the provisions of this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines, Declarant (until the expiration of Declarant's control of the Association pursuant to Section 3.15) or the Association shall each have all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws, Association Rules, or Design Guidelines, or which may be available at law or in equity, and may bring an action against such Member, Occupant, or other Person seeking appropriate relief, including, without limitation, injunctive relief or money damages. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise.

13.2 Cost of Enforcement. All costs incurred in connection with any action or other proceeding described or permitted by this Section 13, including, without limitation, court costs and reasonable attorneys' fees, and all damages, late charges, fines, penalties, and interest, shall be assessed against the Member in question as a Special Assessment.

13.3 Specially Damaged Members. In addition to any other rights and remedies available under this Section 13, in the event of any violation by any Member, Occupant, or other Person of any of the provisions of this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines, any Member who is specially damaged by such violation may bring an action against such Member, Occupant, or other Person seeking appropriate relief, including, without limitation, injunctive relief or money damages.

13.4 Limitation on Declarant's Liability. Notwithstanding anything contained in this Declaration to the contrary, Declarant shall not have any personal liability to the Association, any Member, or any other Person arising under, in connection with, or resulting from (including, without limitation, resulting from action or failure to act with respect to) this Declaration except to the extent of the then interest of Declarant in the Property, or any part thereof (if any). In the event of any judgment against Declarant, no execution or any other action shall be taken thereon against, nor shall such judgment be a lien upon, any other assets of Declarant.

GENERAL PROVISIONS

14.1 Notices. Notices provided for in this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines shall be in writing (unless otherwise specified). All notices to the Association shall be addressed to the Association at the address of its principal offices specified in the ByLaws. The Association may designate a different address or addresses for notices to it by giving written notice thereof to all of the Members at any time. All notices to Members shall be addressed to their respective Lots or to the last address shown on the records of the Association. Any Member may designate a different address or addresses for notices to him by giving written notice thereof to the Association at any time. Notices addressed as above indicated shall be deemed delivered when mailed by United States mail, or when delivered.

14.2 Captions; Construction. Captions given to the various Sections herein, and the Table of Contents for this Declaration, are for convenience of reference only and are not intended to modify or affect the meaning of any of the provisions hereof. As used herein, the masculine gender shall include the feminine, unless the context otherwise requires. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development, operation, and maintenance of the Project as herein set forth.

14.3 Severability. If any provision of this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines, and the application thereof in any other circumstances, shall not be affected thereby.

14.4 Interpretation. Except for judicial construction, the Association through the Board of Directors shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be

final, conclusive, and binding as to all Persons and property which are bound by the provisions hereof.

14.5 Amendments.

(a) As long as the Declarant has control of the Association pursuant to Section 3.15, this Declaration may only be amended by the Declarant which may amend this Declaration without the consent or approval of any other Member or First Mortgagee, including but not limited to, the need to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Association documents is required by law or requested by the Declarant or the Board of Directors.

(b) After Declarant has relinquished control of the Association pursuant to Section 3.15, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof as determined and authorized by the Board of Directors, of more than sixty-seven percent (67%) of all of the Members of the Association.

(c) Any amendment(s) approved of this Declaration shall be signed by the President of the Association and shall be recorded with the County Recorder of Yavapai County, Arizona. Any such amendment shall certify that the amendment has been approved pursuant to this Section 14.5. Unless a later effective date is provided for in the amendment, any such amendment shall be effective upon the Recording of the amendment.

14.6 Declarant's Disclaimer of Representations. Notwithstanding anything contained in this Declaration to the contrary, the Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can be carried out, or that any land now or hereafter acquired by it can be used for any particular purpose, or that if used for any particular purpose, that such use can continue in effect.

14.7 Equitable Relief. Damages shall not be deemed to be adequate relief for any breach or violation of any of the provisions hereof. Any Person entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as any other relief available either at law or in equity.

14.8 Rule Against Perpetuities. If any interest created under this Declaration is challenged under the Rule Against Perpetuities or any similar rule, the interest shall be deemed to continue only from the date when the proof of perpetuities starts to run on such interest through that date which is twenty-one (21) years after the death of the survivor of the now living descendants of United States Senator John McCain and United States Senator Jon Kyl.

14.9 Obligations of and Distributions to Owners. If any obligation is imposed on the Owner of any Lot under this Declaration, the Articles, ByLaws, Association Rules, or Design Guidelines, and if more than one Person is the Owner of such Lot, whether as tenants in community, joint tenants, tenants in common, tenants by the entirety, or otherwise, such distribution shall be made to such Persons jointly with respect to such Lot.

14.10 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Arizona.

14.11 Waiver. No waiver of or with respect to any provision of this Declaration shall be effective unless it is in writing and signed by the waiving Person, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No course of dealing, nor any failure to exercise, nor any delay in exercising, on the part of any person, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any specific waiver of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

COVENANTS RUNNING WITH THE LAND

15.1 Covenants Running With The Land. All of the provisions of this Declaration shall be deemed to be covenants at law and equitable servitude running with the Property, and with each and every part thereof, binding each and every Owner and Member as though the provisions of this Declaration were set forth in full in each and every instrument evidencing or creating such ownership and membership.

CONFLICTS

16.1 Conflicts. In the case of any conflict between any provision(s) in this Declaration and any provision(s) in the Articles, ByLaws, Association Rules, or Design Guidelines, the provision(s) in this Declaration shall govern and prevail, unless otherwise provided.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 18th day of July, 1995.

ASPENS ON THE CREEK, L.L.C.
an Arizona Limited Liability Company

By: Donald C. Arbogast, Jr.
Donald C. Arbogast, Jr., Manager

Michael J. Scully
Michael J. Scully, Manager

STATE OF ARIZONA)
) ss
County of Yavapai)

The foregoing instrument was acknowledged before me on this 18th day of July, 1995, by Donald C. Arbogast, Jr., Manager, on behalf of Aspens on the Creek, L.L.C., an Arizona Limited Liability Company.

Sally Ann Lorette
Notary Public

My Commission Expires: Nov. 18, 1998

STATE OF ARIZONA)
) ss
County of Yavapai)

The foregoing instrument was acknowledged before me this 18th day of July, 1995, by Michael J. Scully, Manager, on behalf of Aspens on the Creek, L.L.C., an Arizona Limited Liability Company.

Sally Ann Lorette
Notary Public

My Commission Expires: Nov. 18, 1998