

**When Recorded Mail To:**

OLD CAPITAL INVESTMENTS L.L.C.  
c/o Whispering Canyon Sales Office  
P.O. Box 4337  
Prescott, AZ 86302-4337

47

FEES
25
\$6
\$5
\$1
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3538947 BK 3994 PG 422  
Yavapai County, Arizona  
Patsy Jenney-Colon, Recorder  
01/21/2003 10:47A PAGE 1 OF 39  
CAPITAL TITLE AGENCY  
RECORDING FEE 39.00  
SURCHARGE 8.00  
POSTAGE 1.00

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DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHISPERING CANYON

This instrument is being re-recorded to add the legal description

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When recorded, return to:

Old Capitol Investments L.L.C.  
c/o Whispering Canyon Sales Office  
P. O. Box 4337  
Prescott, Arizona 86302-4337

3525094 BK 3982 PG 365  
Yavapai County, Arizona  
Patsy Jenney-Cotton, Recorder  
12/06/2002 11:30A PAGE 1 OF 37  
OLD CAPITOL INVESTMENTS LLC  
RECORDING FEE 37.00  
SURCHARGE 8.00  
POSTAGE 1.00

PAGE 2 OF 39  
BK 3994 PG 422 FEE#3538947

## DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WHISPERING CANYON

This Declaration of Covenants, Conditions and Restrictions for Whispering Canyon ("Declaration") is made as of this 19th day of November, 2002, by Old Capitol Investments L.L.C., an Arizona limited Liability Company ("Declarant").

### INTRODUCTION TO THE COMMUNITY

Declarant is the owner of certain interests in the real property legally described in Exhibit "A" attached hereto and commonly referred to as Whispering Canyon in the County of Yavapai, State of Arizona (the "Property").

This Declaration is being recorded to establish a plan for the development, sale and use of Whispering Canyon (the "project") in order to protect and enhance the value and desirability of the project. The Declarant declares that all of the Property within the project, as described on Exhibit "A" attached hereto, shall be held, sold and conveyed subject to this Declaration, including any additional property that may be annexed into the project at any future date. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for itself and its heirs, personal representatives, successors, transferees and assigns, binds itself and its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and all amendments thereto. In addition, each such Person by so doing, thereby acknowledges that this Declaration sets forth a plan for the development, sale and use of the Property and creates mutually beneficial covenants, conditions and restrictions for such Property that run with the Property and establishes a flexible but reasonable procedure for its overall development, administration, maintenance, and preservation.

As part of the development plan, Declarant has formed the Whispering Canyon Development Community Association, Inc., a non-profit association ("Association") comprised of all Owners in Whispering Canyon. The Association will be responsible for implementing the Declarant's goals for the community. Foremost among these goals is the Declarant's desire to create a community through the plan of development and appropriate use and densities of improvements on the Property.

## ARTICLE I CREATION OF THE COMMUNITY

1.1 Initial Declaration. Declarant hereby declares that the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration shall be held, sold, used, and conveyed subject to the Covenants, Conditions, and Restrictions herein that shall run with the title to the land. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns.

1.2 Annexation of Additional Property. The Declarant intends to acquire and shall have the right to annex and subject to this Declaration any Additional Property without the consent of any other Owner or Person. The annexation of any Additional Property shall be effected by the Declarant setting forth a Declaration of Annexation on future plats of Whispering Canyon with the legal description of the Additional Property being annexed, stating that the Additional Property is thereby annexed and subjected to the Declaration.

The Property annexed by the Declarant pursuant to this Section need not be contiguous with other Property in the Project.

1.3 Duration. Unless terminated as provided below, this Declaration shall have perpetual duration. Unless otherwise provided by Arizona law, in which case such law shall control, this Declaration may not be terminated within 35 years of the date of recording without the consent of all Owners. After 35 years from the date of recording, this Declaration may be terminated, extended and/or modified only by an instrument in writing, signed by the Association and approved by sixty seven percent (67%) of the then Owners.

## ARTICLE II DEFINITIONS

The terms used in this Declaration and not otherwise defined shall generally be given their natural, commonly accepted definitions except as otherwise specified. Certain capitalized terms shall be defined as set forth below:

2.1 "Architectural Review Committee." The committee also known as the "Reviewing Body", which the Declarant or Board may create, subject to provisions of Article V, at such time as it shall determine, in its discretion, to (i) review construction and modifications, additions, and alternations made and to be made to construction, and (ii) administer and enforce architectural standards.

2.2 "Area of Common Responsibility." The Common Area, together with any other areas, which become the responsibility of the Association, including the project Entry and Access Improvements, as defined in Article VI, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association.

2.3 "Articles." The Articles of Incorporation of Whispering Canyon Development Community Association, Inc., as they may be amended from time to time.

- 2.4 "Association". Whispering Canyon Development Community Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.
- 2.5 "Base Assessment" or "Regular Assessment". Assessments levied on all Lots subject to assessment under Article IX to fund Common Expenses for the general benefit of all Lots, as more particularly described in Article IX.
- 2.6 "Board of Directors" or "Board". The body responsible for administration of the Association as selected pursuant to the Bylaws of the Association.
- 2.7 "Builder". Any Person who purchases one or more Lots within Whispering Canyon for the purpose of constructing one or more Dwellings for later sale to consumers in the ordinary course of such Person's business, whether or not licensed as a contractor pursuant to Arizona law.
- 2.8 "Bylaws". The ByLaws of the Association, incorporated herein by reference, as they may be amended from time to time.
- 2.9 "Class "B" Control Period". The period during which the Class "B" Member is entitled to appoint a majority of the Board as provided in Article VII.
- 2.10 "Common Area". All real and personal property which the Association now or hereafter owns, leases, has easement rights to, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term may include, without limitation, recreational facilities, entry features, signage, landscaped medians, streams, watercourses and wetlands, as well as hiking, walking and bicycle trails and any other improvements that Declarant may convey to the Association.
- 2.11 "Common Expenses". The actual and estimated expenses incurred or anticipated to be incurred by the Association that are deemed by the Board to be for the general benefit of all Lots, including expenses with respect for the operation, maintenance, repair and restoration of the Common Areas and Areas of Common Responsibility and related facilities, including, but not limited to, salaries, wages, reasonable management fees, expenditures for capital-type items, payroll taxes, attorneys' and accountants' fees, supplies, materials, parts, services, landscaping, insurance, fuel, power and adequate reserves for the maintenance, restoration and replacement of the Common Areas and related facilities and the appurtenances thereto, as the Board may find necessary or appropriate.
- 2.12 "Covenant to Share Costs". Any declaration or other instrument executed by Declarant or the Association, that is recorded in the Official Records against title to the property affected by the Declaration or instrument (the "Subservient Property") and that creates easements or other rights for the benefit of the Association (or its Members) and the present and future owners of the Subservient Property and/or that obligates the Association or its Members and present and future owners to share the costs described therein.
- 2.13 "Declarant". Old Capitol Investments L.L.C., an Arizona limited liability company, or any successor, or assignee who takes title to any portion of or interest in the Property for the purpose of development and/or resale in the ordinary course of business and who is designated as the Declarant in a written instrument executed by the immediately preceding Declarant and recorded in the Official Records.

- 2.14 "Design Guidelines". The architectural, design, development, construction and other guidelines, standards, controls, and procedures promulgated by the Declarant or the Board including, but not limited to, application and review procedures, as they may be amended from time to time, applicable to the Property.
- 2.15 "Dwelling Lot". All buildings or structures or a portion of a building or structure located upon a Lot and used, or intended to be used, for a single-family residence, including any garages, open or closed patios, storage units, and basements.
- 2.16 "Member". A Person entitled to membership in the Association as an Owner of a Lot, including Declarant.
- 2.17 "Mortgage". A mortgage, deed of trust, deed to secure debt, contract for deed, contract of sale, or any other form of security deed or contract.
- 2.18 "Mortgagee". A beneficiary or holder of a Mortgage.
- 2.19 "Official Records". The Office of the County Recorder of Yavapai County, Arizona.
- 2.20 "Owner". Collectively, one or more Persons who hold the record title to any Lot, but excluding in all cases any Person holding an interest merely as security for the performance of an obligation or debt. If a Lot is sold under a contract for deed or a contract/agreement for sale, the contract (equity) purchaser (rather than the fee owner of the Property) will be considered the Owner, unless the contract specifically provides otherwise.
- 2.21 "Person". A human being, a corporation, a limited liability company, a partnership, a trustee, or any other legal entity.
- 2.22 "Planned Area Development". The Planned Area Development for the development of Whispering Canyon filed with Yavapai County, Arizona.
- 2.23 "Property or Properties". The real property described in Exhibit "A".
- 2.24 "Reviewing Body". The body authorized to exercise architectural review pursuant to Article V, also known as the Architectural Review Committee.
- 2.25 "Special Assessment". Assessments levied against all Owners to cover expenses of the Association, to the extent such expenses are not included within Base Assessments, as more particularly described in Article IX.
- 2.26 "Supplemental Declaration". An amendment or supplement to this Declaration filed pursuant to Article X, which identifies any additional Common Area and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.
- 2.27 "Lot". A portion of the Property, whether improved or unimproved, which may be independently owned and that is intended for development, use, and occupancy as a detached residence for a single family. The term shall refer to the land as well as any improvements thereon. Prior to recordation of a subdivision plat, a parcel of vacant land or land on which improvements are under construction shall be deemed to contain the number of Lots

designated for residential use for such parcel on the applicable Master Plan, preliminary plat, or the site plan approved by the Declarant, whichever is more current. Until a Master Plan, preliminary plat, or site plan has been approved, such parcel shall contain the number of Lots set by Declarant in conformance with the Master Plans.

2.28 "Use Restrictions". The rules and use restrictions adopted by the Board to regulate the development of the project, as modified, canceled, limited or expanded under Article IV from time to time.

2.29 "Voting Member". An Owner who is entitled to cast one or more votes in the Association.

2.30 "Subservient Property". Certain real property that because of its relationship to the Association and/or the Property will share costs and expenses.

2.31 "Master Plans". The Water, Waste Water, Sewage and Drainage Master Plans, for the development of Whispering Canyon filed with Yavapai County, as they may be amended, updated, or supplemented from time to time, which plans include the Property.

2.32 "Public Report". A public report issued by the Arizona Real Estate Commissioner for the Lots within the Properties that authorizes the offering and sale of the Lots in the State of Arizona.

2.33 "Governing Documents". The Articles, Bylaws, Planned Area Development, this Declaration and all Supplemental Declarations, Design Guidelines, and other documents and instruments adopted and/or executed to carry out the purposes of this Declaration.

2.34 "Class A". As used in the context of describing Members, shall mean all Voting Members.

2.35 "Class B". As used in the context of describing Members, shall mean the Declarant.

### ARTICLE III CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

3.1 Community Standards. Goals. The Declarant intends for the development and future use of Whispering Canyon to be carried out in a sensitive manner. In this regard, the Declarant has two Goals: (1) to incorporate the natural beauty of the surrounding environment into the physical development of Whispering Canyon, and (2) to regulate the use of the Properties to guarantee the greatest benefit to all Owners. It is the intention of this Declaration that the Association be given the authority, through both express and implied powers to regulate landscaping, site planning and building design, construction, and activities on the Properties in order to achieve these Goals.

3.2 Guidelines. The Declarant, on behalf of itself, its successors and assigns, and on behalf of the Association, acknowledges and agrees that the architectural and landscaping requirements and guidelines set forth in the Design Guidelines, as initially prepared, and as may be amended from time to time, shall remain consistent with the design philosophy espoused in this Article.

#### ARTICLE IV USE AND CONDUCT

4.1 Framework for Regulation. The Declarant has established a general plan of development for Whispering Canyon in order to protect all Owners' quality of life and collective interests, enhance the aesthetics and environment within Whispering Canyon and to engender a sense of community within the Properties. To accomplish this objective, the Properties are subject to the provisions of the Governing Documents governing individual conduct and use of or actions on the Properties. In accordance with the Governing Documents, the Board and the Members shall have the ability to respond to changes in circumstances, conditions, needs, and desires affecting the Owners.

All provisions of the Governing Documents shall apply to all Persons on the Properties, including without limitation, Owners, occupants, tenants, guests and invitees of any Lot. If there exists any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and any other Governing Document(s), the provisions of this Declaration will prevail in all instances. The Properties are subject to Design Guidelines as set forth in this Declaration and the rules and regulations adopted by the Board governing land development, architectural and design control, individual conduct and uses of or actions upon the Properties.

4.2 Rule Making Authority.

(a) Subject to the terms of this Article, the Board may adopt rules and regulations, which modify, cancel, limit, create exceptions to, and/or expand the Use Restrictions. The Board shall send notice by mail to all Owners concerning any such proposed action at least five (5) days prior to the Board Meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any such rules and regulations shall become effective after compliance with subsection (c) of this Section unless such rules are disapproved by Members representing at least sixty-seven percent (67%) of the total Class "A" vote and by the Declarant, so long as the Declarant owns any Property. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required in Article III, Section 4 in the Bylaws for special meetings. If a meeting to consider disapproval of a rule is requested by the Members prior to the effective date of such rule, the rule may not become effective until after such meeting is held.

(b) Alternatively, with the approval of the Declarant during the Class "B" Control Period, the Voting Members representing at least sixty-seven percent (67%) of the total Class "A" vote, at a meeting duly called for such purpose may adopt rules, which modify, cancel, limit, create exceptions to, or expand the Use Restrictions.

(c) At least thirty (30) days prior to the effective date of any action under Subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner specifying the effective date of such rule. The Association shall provide, without costs, a copy of the Use Restrictions and rules and regulations then in effect to any requesting Member or Mortgagee.

(d) Nothing in the Article shall authorize the Board or the Voting Members to modify, repeal or expand the Governing Documents to circumvent any requirements of the State of Arizona or Yavapai County concerning the development of the Properties. This Declaration shall be implemented and interpreted consistent with the provisions of applicable Arizona law.

4.3 Owner's Acknowledgment. All Owners are subject to the Use Restrictions and are hereby given notice that:

(a) Their ability to use their privately-owned property is limited by the Governing Documents, and;

b) The Board may add, delete, modify, create exceptions to, or amend the Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

**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 USE RESTRICTIONS AND RULES MAY CHANGE FROM TIME TO TIME.**

4.4 Protection of Owners. Except as set forth in the initial Use Restrictions, neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Home Site Identification and Signage. In order to create continuity within the community, a standard form of address, resident identification, construction and real estate signage, a standard location for placement of home site identification and signage has been established by the Architectural Review Committee. All signs shall comply with the standard as described in the Architectural Design Guidelines for Whispering Canyon.

(c) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds customarily displayed in residences located in single-family residential neighborhoods in Yavapai County shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions regulating displays which are visible from outside the Lot. In any event, no such displays shall be placed, erected or displayed on any lot prior to 45 days before the day of the Holiday and further, such displays must be removed or taken down no more than 30 days after the day of the Holiday.

(d) Assembly. The rights of Owners and occupants to assemble on such portions of the Common Area as are designated by the Board from time to time shall not be eliminated; provided, however, the Board may adopt reasonable time, place, and manner restrictions on assembly. At no time shall the Common Area be construed as a place of public assembly.

(e) Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households. However, it is the intent that all occupants be members of a single family and to limit the total number of occupants on the basis of the size and facilities of the Lot and its fair-share use of the Common Area. Notwithstanding



the nature of any entity that may be an Owner, it is the intent of this Declaration that each Lot be occupied and utilized for residential purposes only by a single household with no member of that household compensating the owner for the use of said lot, improvements or fair share of Common Area, by compensation in money, in-kind services, voucher, grant, entitlement from any agency of any jurisdiction, or otherwise, except with the prior written consent of the Association.

(f) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may, in its discretion, prohibit or restrict:

(i) Activities not normally associated with property restricted to residential use prescribed by the City of Prescott, Arizona;

(ii) Activities that create monetary costs or expenses for the Association or other Owners;

(iii) Activities that create a danger to the health or safety of Owners or occupants of other dwellings;

(iv) Activities that generate excessive noise or traffic in the project;

(v) Activities that create unsightly conditions visible outside the dwelling; and

(vi) Activities that create an unreasonable source of annoyance or a nuisance, or that are illegal.

(g) Pets. No animals shall be raised, bred or kept on any lot except a reasonable number of dogs, cats, or other generally recognized household pets, provided that they are not kept, bred, or maintained for any commercial purposes. The following animals shall not be considered household pets and, therefore, shall be prohibited from the project:

(i) Pigs, hogs, swine.

(ii) Purebred wolves.

(iii) Those other animals as specified in paragraph (h) below.

Dogs shall be kept within a structure or fence, and must be walked on secured leashes. Owners shall be responsible to "pick up" after their own pets on their own property, as well as on any Common Areas, streets, in a neighbor's yard and the like. Dogs that bark continuously for more than two (2) minutes shall be kept inside the dwelling.

(h) This Article prohibits the keeping, raising, or breeding of any horse, cattle, sheep, goat, pig, fowl or other game animal including exotic animals for any purpose.

(i) No animal shall be allowed to make an unreasonable amount of noise or a nuisance. Upon the written request of an owner or on its own initiative, the Board shall conclusively determine, at its sole discretion, whether a particular animal is a nuisance or the number of animals on any property is unreasonable. Any decision rendered by the Board

concerning noise and/or nuisance shall be enforceable by the Association. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance as determined by the Board or its designee.

(j) Alienation. No rule shall prohibit the leasing or transferring of any Lot, or require consent of the Association or Board for leasing or transferring of any Lot; provided, however, that the Association or the Board may require a minimum lease term of no less than 12 months.

The Association may require that Owners provide the Board of Directors and the Association with pertinent information about prospective tenants in writing on forms approved by the Association and receipt of such information shall not be construed as the Association's, the Board's or the Declarant's approval of the tenancy and/or the tenant. Owner shall provide tenant's signature as proof of tenant's receipt of copies of the Governing Documents and all rules and regulations in effect at the time of the execution of the lease. Any agreement for the leasing or rental of a residence shall provide that the terms of such lease shall be subject in all respects to the provisions of the Governing Documents. Said lease shall further provide that any Owner who shall lease the Lot or a portion thereof, shall be responsible for assuring compliance by such Owner's tenant with the Governing Documents and shall be jointly and severally responsible for any violations thereof by its tenant. All leases shall be in writing and failure of tenant to comply with the Governing Documents shall be a default under the lease. Further, an Owner who leases a Lot, or any portion thereof, shall indemnify and hold the Association, Declarant, Owners, and the Board harmless from all claims, damages, losses and causes of action related in any way, directly or indirectly, to the tenant.

(k) Right to Develop. No rule or action by the Association or Board shall impede Declarant's right to develop, as generally anticipated in the Planned Area Development or this Declaration, including, but not limited to, the rights of the Declarant as set forth in Article X.

(l) Application of Rules. No rule or regulation of the Association shall be applied retroactively except as otherwise required by law.

(m) The rights of Owners and occupants to display on their Lot political signs and symbols of the kinds normally displayed in or outside of residences located in single-family neighborhoods in individually owned property shall not be abridged, except that the Association may adopt reasonable time, place and manner restrictions regulating signs and symbols which are visible from outside the Lot.

(n) Notwithstanding any provision in the Governing Documents to the contrary, the Association shall not prohibit the outdoor display of the American flag by an Owner on that Owner's Property if the American flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code Sections 4-10). The Association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, including the location and size of flagpoles, but shall not prohibit the installation of a flagpole.

## ARTICLE V ARCHITECTURAL APPROVAL

5.1 General Requirements for Prior Approval. No structure or improvement of any type whatsoever shall be placed, erected or installed upon any portion of the Properties, no alterations or improvements of or additions to the existing landscaping, and no improvements (including staking, brushing, clearing, excavation, grading, and other, site work, and exterior alteration of existing improvements) shall take place within the Properties without the approval of the Reviewing Body, as established pursuant to Article 5.2.

The establishment of the designated building envelope for each Lot and the percentage of applicable lot coverage shall limit the extent of alteration of the native terrain. In addition to the construction of dwellings and other buildings, it is specifically intended that the placement or posting of other structures (e.g. without limitation fences, signs, antennae and satellite dishes (of no more than 20 inches in diameter), playground equipment, basketball hoops, pools, propane tanks (which must be buried with the exception of portable gas grills), lighting, temporary structures, solar devices, and artificial vegetation on the exterior of any Lot or other portion of the Properties shall require the approval of the Reviewing Body, which approval shall be consistent with applicable law. Modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to this Article.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Declarant and/or the Association. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation into this Declaration.

### 5.2 Architectural Review.

(a) New Construction. Until expiration of the Class "B" Control Period, the Declarant or the Architectural Review Committee ("ARC"), shall have exclusive authority to administer and enforce the architectural controls created pursuant to this Declaration and to review and act upon all applications submitted for approval. There shall be no surrender of this right prior to the expiration of the Class "B" Control Period except in a written instrument executed by Declarant and delivered to the Board. The ARC shall consist of at least three persons (who need not be Owners of any of the Lots contained within Whispering Canyon) and who shall serve and may be removed in the Declarant's sole discretion during the Class "B" Control Period and thereafter shall be appointed and removed by the Board.

(b) Fees Assistance. The Board will establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. The basis and structure for such fees are more particularly described in the Architectural Design Guidelines for Whispering Canyon. Such fees may include the reasonable costs incurred in having any application reviewed by architects, landscape architects, engineers or other professionals (and may also include an additional refundable deposit, all or any portion of which may be retained by the Association if it is determined by the Reviewing Body that the applicant or any Person acting on behalf of the applicant has failed to comply with the Governing Documents). The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's budget as a Common Expense.

5.3 Guidelines and Procedures.

PAGE 12 OF 39  
BK 3994 P6 422 FEE#3538947

(a) Design Guidelines. The Declarant has prepared the initial Design Guidelines, which shall apply to all matters requiring approval pursuant to this Declaration. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon location, unique characteristics, intended use, the Plan, and any applicable zoning ordinances.

The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern in considering applications for improvements, development or construction upon any Lot hereunder.

During the Class "B" Control Period the Declarant shall have the sole authority to amend the Design Guidelines from time to time in its discretion. Thereafter, the ARC shall have the authority to amend the Design Guidelines, with the consent of the Board, in a manner consistent with the philosophy for the development of Whispering Canyon as set forth in Article III. Subject to Article III, there shall be no limitation on the scope of amendments to the Design Guidelines. The Declarant is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive in whole or in part.

The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties, and all such Persons shall conduct their activities in accordance with such Design Guidelines.

All structures and improvements constructed upon a Lot shall be constructed in substantial compliance with the plans and specifications for such improvements submitted and approved by the Reviewing Body. Its findings and conclusions with respect to appropriateness of, applicability of, or compliance with the Design Guidelines and this Declaration shall be final.

(b) Procedures. Prior to commencing any activity requiring approval under this Article V, an Owner shall submit an application for approval of the proposed work to the Reviewing Body. Such application shall be in the form required by the Reviewing Body and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, any General Contractor OR For Sale Sign to be placed upon the lot during construction, landscaping, drainage, lighting, irrigation, utility facilities layout and screening, and other features of proposed construction, as required by the Design Guidelines and as applicable. The Reviewing Body may require the submission of such additional information as it deems necessary to consider any application.

In reviewing each submission, the Reviewing Body may consider whatever reasonable factors it deems relevant, including, but not limited to, visual and environmental impact, ecological and archeological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the general intent of the environmental and design philosophy stated in Article III, and architectural merit. Decisions may be based purely on aesthetic considerations.

Each Owner acknowledges that determinations as to such matters are a subjective component relative to compliance with the Architectural Design Guidelines and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The ARC may require up to 30 calendar days for review of submissions.

The Reviewing Body shall, within the period specified in the Design Guidelines, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of the following:

- (i) Approval of Plans, or;
- (ii) Segments or features of the Plans which are deemed to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines.

Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery and facsimile transmission of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

If construction does not commence on an approved project within 120 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Reviewing Body for reconsideration.

If construction is not completed on a project for which Plans have been approved within one year of such approval, such approval may, in the sole discretion of the Reviewing Body, be deemed withdrawn, and such incomplete construction shall then be deemed in violation of this Declaration and subject to the remedies herein.

**5.4 No Waiver of Future Approvals.** Each Owner acknowledges that the members of the Board and Reviewing Body will change from time to time and that the interpretation, application and enforcement of the Governing Documents may vary accordingly.

Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval. Should the Reviewing Body permit nonconforming improvements, it shall not be construed as a waiver of future enforcement rights or permission for future noncompliance.

**5.5 Variances.** The Reviewing Body may authorize variances or deny approvals when reasonable circumstances dictate, such as unusual topography, natural obstructions, hardship, aesthetic or environmental considerations.

Notwithstanding the above, the Reviewing Body may not authorize variances without the consent of the Declarant during Class "B" Control Period.

5.6 Limitation of Liability. Neither the Declarant, the Association, the Board, the ARC, nor any member, officer or staff of the foregoing, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARC, nor any member, officer, or staff of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all such matters, the Declarant, the Board, the ARC and their members, officers, and staff shall be defended and indemnified on demand by the Association, including as provided in the ByLaws.

5.7 Enforcement. All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. The Association shall be primarily responsible for enforcement of this Article in accordance with the Governing Documents. If, however, in the discretion of the Declarant, the Association fails to take appropriate enforcement action within a reasonable time period, the Declarant, during the Class "B" Control Period or for so long as it owns any portion of the Properties, or has a right to annex property pursuant to Article X, shall be authorized to exercise any enforcement rights which could have been exercised by the Association. Should an Owner fail to cure the nonconforming work, the Board or its designees or the Declarant, during the Class "B" Control Period, shall have the right to enter the Property, remove the violation, and restore the Property to substantially the same condition as previously existed. In that event, the Owner hereby indemnifies and holds the Association, the Board and Declarant harmless from all claims, damages, losses and causes of action related directly or indirectly to the entry upon and removal and restoration of the Property. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as an Assessment.

5.8 Acts by Agents. All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties. In such event, neither the Association, nor its officers or directors shall be held liable to any Person for exercising the rights granted by this Section. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board.

#### ARTICLE VI MAINTENANCE AND REPAIR

6.1 Level of Maintenance Required. Whispering Canyon shall be maintained in accordance with the Governing Documents and orders between the Declarant and Yavapai County, Arizona. Each Person responsible for maintenance of any portion of the Properties shall maintain or provide for such maintenance in accordance with the standards of the Governing Documents and Yavapai County laws, provided, however, that special requirements or exemptions for Property owned by the Declarant or the Association may be applicable to their respective Properties.

Maintenance, as used in this Article, shall include, without limitation, repair and replacement, as needed, as well as such other duties, as the Board may determine necessary or appropriate. During the Class "B" Control Period, the Declarant and thereafter, the Board, may establish a higher standard for portions of the Properties that are environmentally or archeologically sensitive or that provide a greater than usual aesthetic value and may require additional maintenance for such areas to reflect the nature of such Property.

Notwithstanding anything to the contrary contained herein, neither the Association, nor any Owner, nor any other Person responsible for the maintenance of a portion of the Properties shall be liable for property damage or personal injury occurring on or arising out of the condition of any Property which it does not own, unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

6.2 Owner's Responsibility. Each Owner shall maintain its Lot in accordance with the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

In addition to any other enforcement rights provided for in the Governing Documents, if an Owner fails to properly perform the maintenance responsibilities of this Article, the Association may perform such maintenance responsibilities and assess all costs incurred against such Owner in accordance with Article IX. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

6.3 Responsibility for Repair and Replacement. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on the Lot.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or compromising the Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article V. Alternatively, the Owner shall clear the Lot of building debris and maintain it in a condition consistent with the environmental and design philosophy set forth in this Declaration.

6.4 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include but not be limited to:

- (a) All Common Areas;
- (b) All landscaping and other flora, parks, signage, structures, and improvements, including any bike, pedestrian pathways and trails, situated upon the Common Areas;
- (c) All walls and fences situated upon the Common Area;
- (d) All private streets, including any asphalt repairs thereto, situated upon the Common Areas;

- (e) Open space corridors, vista corridors, scenic corridors, buffers, boulder outcroppings, and washes situated upon the Common Area;
- (f) Landscaping, sidewalk, street lights and signage within public rights-of-way abutting the Properties;
- (g) Landscaping and other flora within any public utility easements and scenic easements with the Common Area, subject to the terms of any easement agreement relating thereto;
- (h) Any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, the Covenant to Share Costs, and plat of any portion of the Properties, or any contract or agreement for maintenance thereof entered into by the Association; and
- (i) Any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and the Association's Members and identified by written notice from the Declarant to the Association until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

Except as otherwise specifically provided herein, all costs for maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

#### **ARTICLE VII COMMUNITY GOVERNANCE AND ADMINISTRATION THE ASSOCIATION AND ITS MEMBERS**

##### **7.1 Functions of the Association.**

- (a) The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility;
- (b) The Association shall be the primary entity responsible for compliance with and enforcement of the Governing Documents;
- (c) The Association shall be the entity permitted to provide for and fund such community activities and services as deemed necessary, appropriate or desired in accordance with the Governing Documents; and
- (d) The Association shall also be responsible for preparing those statements and certificates required under Article 33-1806 and 33-1807I. of the Arizona Revised Statutes ("ARS").

The Association shall perform its functions in accordance with the Governing Documents and Arizona law.



7.2 Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulations and the restrictions on voting set forth in Article 7.3(a) and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised only by any duly authorized officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association.

7.3 Voting. The Association shall have two classes of membership. Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any, and all Owners not entitled to vote. Class "A" Members shall have one vote for each Lot in which they hold the interest required for membership under Article 7.2, except that there shall be only one vote per Lot and no vote shall be exercised for any Property which is exempt from assessment under Article 9.10.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The Class "B" member shall have 3 votes for each Lot owned by Declarant within the Property.

(c) The Class "B" Member shall retain its Declarant rights until the last Lot in the project is sold. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of actions proposed under this Declaration, the ByLaws and the Articles, are specified in the Governing Documents.

(d) The Class "B" membership, and thus the Class "B" Control Period, shall terminate upon the earlier of:

(i) When 100% of the total number of Lots contained in the entire project for Whispering Canyon (including all Phases) permitted under the most current and approved P.A.D. have been conveyed to Owners other than the Declarant or affiliates thereof;

(ii) When, in its discretion, exercised in writing, delivered to the Board and recorded in the Official Records, the Declarant so determines.

Upon termination of the Class "B" membership, the Declarant shall become a Class "A" Member, entitled to as many votes as it owns Lots.

7.4 Exercise of Voting Rights. Except as otherwise specified in this Declaration or the ByLaws, in any situation where a Member is entitled personally to exercise the vote for its Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

Unless otherwise provided in this Declaration, a quorum shall be as defined in the ByLaws for the Association. Any act for which the vote of the Members is required shall be approved if consented to by fifty-one percent (51%) of all votes attributable to the Members entitled to vote or action in lieu of a meeting at which a quorum is present.

7.5 Meetings.

(a) Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the first close of escrow of a Lot at such hour and at such place as may be specified in a written notice of such meeting, and each subsequent regular annual meeting of the Members shall be held each year at such place as may be designated in the written notice of such meeting.

(b) Special Meetings. Special meetings of the Members may be called at any time by the President or by a majority of the Board, or upon written request of more than fifty percent (50%) of the Class A Members made to the Board.

(c) Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meetings, by mailing a copy of such notice, postage prepaid, at least ten (10) days, but no more than sixty (60) days prior to the date of such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books and records of the Association. All notices shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

7.6 Board of Directors.

(a) Number. The business and affairs of this Association shall be initially managed by a Board of three (3) directors. After the termination of the Class B Membership in the Association, the number of directors shall be increased to five (5). The number of directors must always be an odd number with a maximum of seven (7).

(b) Enumeration of Officers. The Officers of this Association shall be a President and Vice President, who shall at all times be Members of the Board, a Secretary and a Treasurer, and such other Officers as the Board may from time to time provide for by resolution.

(c) Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Article VII of the ByLaws.

(d) Election of Officers. The election of Officers shall take place at the first meeting of the Board of Directors, held no later than thirty (30) days following each annual meeting of the Members.

(e) Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine and in accordance with Article VII of the ByLaws.

(f) Resignation and Removal. Any Officer may be removed from office with or without cause, by the Board, except those Officers elected by the Class B Members. Any Officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(g) Vacancies. A vacancy in any office may be filled by appointment by the Board. The director or Officer appointed to such vacancy shall serve for the remainder of the term of the director or Officer replaced.

(h) Duties. The duties of the Officers are as follows:

(i) President: The President shall be the chief executive officer of the Association and shall supervise all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Members and all meetings of the Board of Directors. He may sign, with or without any other Officer of the Association as authorized by the Board, deeds, mortgages, bonds, contracts or other instruments, which the Board has authorized to be executed, except where the signing and execution thereof shall be expressly delegated by the Board or by the Bylaws to some other Officer or Agent of the Association or shall be required by law to be otherwise signed or executed. He shall have the power to appoint and remove one or more administrative Vice Presidents of the Association and such other assistants to the various elected Officers of the Association as is necessary for the accomplishment of their duties. In general, he shall perform all duties incident to the office of the President and such other duties as may be prescribed by the Board.

(ii) Vice President: In the absence of the President, or in the event of its death, inability or refusal to act, the Vice President, or if there is more than one Vice President, the Senior Vice President, shall perform the duties of the President, and when so acting, shall have all the powers of, and be subject to, all of the restrictions upon the President. Otherwise, such Senior and other Vice Presidents shall perform only such duties as may be assigned by the President or by the Board.

(iii) Secretary. The Secretary shall keep the minutes of all meetings and proceedings of the Board of Directors and the minutes of all meetings of the Members in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of the ByLaws, or as required by law; be custodian of the records and see that the documents are properly executed when such is duly authorized; keep or cause to be kept under its general supervision by a registrar or Agent appointed by the Board, a register of the name and post office address of each Member as furnished by such Member; and have general charge of the books of the Association.

(iv) Treasurer. Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association, receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all monies in the name of the Association in such banks, trust companies or other depositories as shall be directed by the Board; shall sign all checks, promissory notes of the Association, except in those instances where the Board has delegated the authority

to sign checks to an Agent employed by the Association; shall keep proper books of account; shall cause an annual audit or review of the books of the Association to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at the regular annual meeting of the Members, and shall deliver a copy of such to the Members; and shall perform such other duties incident to the office of Treasurer.

(v) Committees. The Board may appoint an Architectural Review Committee, or the Board may act in the capacity of the Architectural Review Committee, as provided in the Declaration. In addition, the Board shall appoint other committees, as the Board may deem appropriate to carry out the purposes of the Association.

(i) Term of Office. So long as there is a Class B Membership in the Association, the Board shall be appointed and may be removed by the Declarant. After the termination of the Class B Membership in the Association, the Board shall be elected by the Members at each annual meeting of the Members. At the first annual meeting of the Members following the termination of the Class B Membership, at least one (1) director shall be elected for a term of one (1) year; at least one (1) director shall be elected for a term of two (2) years; and at least one (1) director shall be elected for a term of three (3) years, and, at each annual meeting thereafter, the Members shall elect at least one (1) director for a term of three (3) years, so as to stagger the terms of office of the Board.

(j) Qualifications. Each director shall be a Member or Owner (or if a Member is a corporation, partnership or trust, a director may be an officer, authorized agent, partner or trustee of such Member). If a director shall cease to meet such qualifications during its term, said director will thereupon be terminated, and its place on the Board shall be deemed vacant. The requirements of this section shall not apply to directors elected as a result of any of the votes cast by the Class B Membership.

(k) Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Board. In the event of death, resignation or removal of a director, its successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of its predecessor.

(l) Compensation. No director shall receive compensation for any service it may render to the Association. However, any director may be reimbursed for its actual expenses incurred in the performance of its duties as a director.

(m) Action Taken Without a Meeting. The Board shall have the right to take any action in the absence of a meeting, which they could take at a meeting by obtaining the written approval of all directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

#### 7.7 Nomination and Election of Directors.

(a) Nomination. Nominations for election to the Board of Directors may be made from the floor at the annual meeting by any Member entitled to vote. Nominations may also be made by a Nominating Committee. A Nominating Committee shall consist of a Chairman, who shall be a Member of the Board, and two (2) or more Members of the Association. The

Nominating Committee would be appointed by the Board at least forty-five (45) days prior to each annual meeting and shall serve until such annual meeting has been concluded.

The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

(b) Election. Election to the Board of Directors shall be by secret written ballot or mail in ballot. Those candidates for election to the Board receiving the greatest percentage of votes cast either in person, mail in ballot or by proxy at the meeting shall be elected. While Class B Membership is in effect, the Class B Members shall appoint all directors without any vote therefore being held.

7.8 Meetings of Directors.

(a) Regular Meeting. Regular meetings of the Board may be held monthly without notice, at such place and hour as may be affixed from time to time by the Board.

(b) Special Meetings. Special meetings of the Board may be held and called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director, or within ten (10) days after the presentation to the President of the Association of a petition signed by fifty percent (50%) of the Class A Members.

(c) Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present, at a duly held meeting at which a quorum is present, shall be regarded as the act of the Board.

(d) Powers. The Board shall have all of the powers necessary for the administration of the affairs of the Association and may do all such acts as are designated by the Declaration, Articles or the ByLaws, which are required to be exercised or done by the Members. In addition to the duties imposed by the ByLaws or by any resolution of the Members that may hereafter be adopted, the Board shall have the following powers:

- (i) Elect and remove the Officers of the Association;
- (ii) Adopt and publish rules and regulations governing the use of the Common Area, related facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof; and
- (iii) Suspend the rights of a Member to vote and to use the Common Area and related facilities during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for infraction of published rule and regulations promulgated by the Board.

## ARTICLE VIII

### ASSOCIATION POWERS AND RESPONSIBILITIES

8.1 Acceptance and Control of Association Property. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Properties, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Area of Common Responsibility by the Association, at its expense, for the benefit of its Members.

8.2 Maintenance of the Area of Common Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility. The Association may also maintain and improve other property, which it does not own, including, without limitation, wetlands, streams, water courses, and stream beds, wildlife habitats, and property, including any trail systems, that may be dedicated to public use, if the Declarant (during the Class "B" control period) or the Board thereafter, determines that such maintenance is necessary or desirable, and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from Persons responsible for such work pursuant to this Declaration, any Covenant to Share Costs, other recorded covenants, or agreements with such Persons.

8.3 Maintenance in Public Rights-of Way. The Association may, in its reasonable discretion, locate and maintain all improvements that are located within or on public easements or public rights-of-way in accordance with applicable ordinances of Yavapai County and the terms of any easements or licenses applicable.

8.4 Insurance.

(a) Types and Limits of Insurance. To the extent deemed reasonably necessary by the Board, the Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at a reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority and interest to insure any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial General liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, the Board, officers of the Association, employees, agents, or contractors while acting on its behalf. If Generally available at a reasonable cost, the commercial General liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage provided, should additional coverage and higher limits be available at reasonable cost, which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment, but not less than an amount equal to one-sixth of the annual Base Assessments on all Lots, plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

(b) Policy Requirements. All Association policies shall provide for a Certificate of Insurance to be furnished to each Member insured and to the Association. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Article 8.4(a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the ByLaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lot(s) as a Benefited Assessment.

All insurance coverage obtained by the Board shall:

(i) Be written with a company authorized to do business in the State of Arizona, which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate.

(ii) Be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area and Area of Common Responsibility shall be for the benefit of the Association and its Members.

- (iii) Not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (iv) Contain an inflation-guard endorsement; and
- (v) Include an agreed upon amount of endorsement, if the policy contains a coinsurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies, which list the Owners as additional insureds and provide:

- (i) A waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owner, and their tenants, servants, agents, and guests;
  - (ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;
  - (iii) An endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
  - (iv) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
  - (v) An endorsement requiring at least "30 days" prior written notice to the Association of any cancellation, substantial modification or non-renewal;
  - (vi) A cross-liability provision; and
  - (vii) A provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.
- (c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes or desired architectural and design alternatives.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Board elects to call for a vote on such matters and Voting Members representing at least 75% of the total Class "A" votes and the Class "B" Member, if any, decide within 6 months after the loss not to repair or reconstruct.

If either the Insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such period, then the period shall be extended until such funds or information are available.



If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected Property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or other, such settlement, as is necessary and appropriate, shall be retained by and for the benefit of the Association.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Voting Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage.

#### 8.5 Compliance and Enforcement.

(a) Every Owner and every occupant of a Lot shall comply with the Governing Documents and all rules, regulations and policies of the Association. The Board may impose sanctions for violation of the foregoing, after notice and an opportunity for a hearing in accordance with the procedures set forth in the ByLaws. Such sanctions may include, without limitation, some or all of the following:

- (i) The imposition of reasonable monetary fines;
- (ii) Suspending an Owner's right to vote;
- (iii) Taking action to abate any violation of the Governing Documents in a non-emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of any applicable parking rules and regulations);
- (iv) Requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of Article V 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;
- (v) 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 of Article V from continuing or performing any further activities in the Properties;
- (vi) Levying Benefited Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents;
- (vii) Suspending any Person's right to use any recreational facilities within the Common Area (provided, however, nothing herein shall authorize the Board to prohibit egress to or from a Lot); and

(viii) 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.

(b) In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

- (i) Exercising self-help in any emergency situation; and
- (ii) Bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents or any rule or regulation, the Association shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or Rule, which 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 merit to the Association to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or stop the Association from enforcing any other covenant, restriction or rule.

8.6 Implied Rights, Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents or which may be reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

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

Neither the Association, the Board, any officers of the Association, the Association's management company, the Declarant, nor any successor Declarant, shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines, or utility sub-stations adjacent to, near, over, or on the Properties. 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-stations, and electromagnetic fields and further acknowledges that the Association, the Board, the officers of the Association, the management company of the Association, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner, Declarant, or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations, or electromagnetic fields.

No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the Board, the officers of the Association, the management company of the Association, the Declarant nor any successor Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose. 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 Properties (by virtue of accepting such interest or lien or making such use) shall be bound by this Article 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.

**8.8 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, which may be so 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.

**8.9 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 Properties designed to make the Properties safer than they otherwise might be; provided, neither the Association, the Board, the officers of the Association, the Association's management company, nor the Declarant or any successor Declarant, shall in any way be considered insurers or guarantors of security within the Properties. Neither the Association, the Board, the officers of the Association, the Association's management company, nor the Declarant or any successor Declarant shall be held liable for any loss or damage for failure to provide adequate security or for the 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, the Declarant, or any successor Declarant, do not represent or warrant that any entrance (gated, secured or otherwise), patrolling of the Properties, neighborhood watch group, volunteer security patrol, or any security system may not be compromised or circumvented; nor that any entrance, patrolling of the Properties, 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 Properties, 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 may rely upon any representations or warranties, express or implied, relative to any entrance, patrolling of the Properties, neighborhood watch group, volunteer security patrol, or any security systems recommended or installed or any security measures undertaken within the Properties.

8.10 Governmental and Recreational Interests. During the Class "B" Control Period, Declarant and thereafter the Board may designate sites within the Properties for governmental or public recreation purposes. The sites may include Common Areas and, in such case, the Association shall dedicate and convey such sites as directed by the Declarant and no membership approval shall be required.

8.11 Pedestrian Trail System Open to the Public. All Owners hereby acknowledge that hiking, bicycle, pedestrian or similar type trail system or systems located within all or a portion of the Properties may be dedicated by the Declarant and thereafter the Association to a quasi-public entity, and may be open for the use and enjoyment of the public in accordance with any applicable rules, regulations and ordinances of Yavapai County.

## ARTICLE IX ASSOCIATION FINANCES

9.1 Budgeting and Allocating Common Expenses. Not less than 90 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 a reserve fund as provided below.

The Base Assessment shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total receipts for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Article 9.5), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's 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.

Notice of assessments shall be provided to all Members according to the provisions in the By-Laws. If the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

9.2 Budgeting for Reserves. The Board may prepare, on an annual basis, reserve budgets for general purposes, 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 capital improvements and purchasing additional capital assets. The Board shall include in the Base Assessments reserve contributions in amounts sufficient to meet these projected needs, if any, as well as reserves to meet any other reasonable purpose, including reserves for delinquent assessments.

The Board may adopt resolutions regarding the expenditure of reserve funds, including during the Class "B" Control Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without the Declarant's prior written consent.

The Declarant or the Board may solicit bids for a Reserve Study to be performed by a professional in that field. The Board may elect, but is not obligated, to use the results of the Reserve Study, or a Reserve Study Update to set the Reserve Budgets.

9.3 Authority to Assess Owners Time of Payment. The Association may levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments for Association expenses:

- (a) Base Assessments;
- (b) Operating Contribution / Working Capital; a one-time expense equal to two (2) months of regular monthly assessments on all new sales from the Declarant to prospective Owners; this expense will also be assessed to a "new" buyer for the "re-sale" of any lot.
- (c) Special Assessments.

Each Owner, by acquiring legal or equitable title for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

Assessments shall be paid in such manner and by such dates as the Board may establish. If any Owner is delinquent in paying any assessments or other charges levied on its Lot, the Board may assess a late charge and require unpaid installments of all outstanding assessments to be paid in full immediately. The Board may approve a Collection Policy setting forth fees and charges relating to late assessments.

9.4 Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, Declarant may annually elect to loan to the Association any shortage (or operating deficit), if any, for such fiscal year, which shall be repaid to Declarant with future income reserves; provided however, Declarant shall not be responsible to loan any funds to the Association for any shortage resulting from the failure of any Owner to pay assessments applicable to such Owner. Such "shortage" shall be deemed to exist if Income and Revenues, as defined in paragraph (a) below are less the Expenditures incurred, as defined in paragraph (b) below.

- (a) Income and Revenues are the amount of all income and revenue of any kind received and/or earned by the Association, excluding refundable deposits.

(b) Expenditures are the amount of all actual operating expenses incurred, or obligated for, by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses, such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds.

(c) The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Lots in the same amount and manner as any other Owner.

9.5 Special Assessments. In addition to other authorized assessments, the Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including sums expended on capital-type items, to the extent not included within Base Assessments. Such Special Assessment may be levied against the entire membership for Common Expenses. Such Special Assessments shall become effective unless disapproved by the Declarant during the Class "B" Control Period within 60 days following the levy of such assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.6 Personal Obligation. Each Owner is deemed to covenant and agree to pay all assessments authorized in this Declaration (and, with respect to Lots owned jointly, all such Owners are deemed to covenant and agree to pay assessments jointly and severally). All assessments, together with interest from the due date of such assessment at the rate of 18% per annum, unless a different rate is determined by the Board, reasonable late charges established by Board, costs, and attorney's fees, shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of legal or equitable title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

No Owner may exempt itself from liability for assessments by non-use of Common Area, abandonment of the Owner's Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner.

No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Board shall, upon written request, furnish to any Owner liable for any type of assessment, or its Mortgagee, a certificate in writing signed by an officer of the Board, or its designated agent, setting forth whether such assessment has been paid and the amount of any unpaid assessments, within the time periods prescribed by law. A properly executed certificate of the Board as to the status of assessments on a Lot will be binding on the Board as of the date of issuance of the certificate and for the time periods specified in the certificate. Payment of a processing fee for the issuance of such certificate may be required.

9.7 Lien for Assessments. All assessments shall constitute a lien against the Lot until paid, unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of all interest, late charges, and costs of collection and such lien shall be superior to all other liens, except:

(a) The liens of all taxes, bonds, assessments, and other levies which by law would be superior; and

(b) The lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

By recordation of this Declaration, the Association is granted a perfected, consensual and continuing lien upon each Lot against which an assessment is made or has been incurred for the payment of amounts due pursuant to this Declaration, and any further recordation of any claim of lien or notice of lien is not required for perfection or enforcement of the Association's lien for assessments and other such amounts. The Association may enforce such lien when an assessment or other charge is delinquent, or take any other action either independently or simultaneous to the extent permitted at law or in equity.

The Association may sue or take any other action permitted at law or in equity for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments.

9.8 Date of Commencement of Assessment Obligations. The obligation to pay assessments shall commence as to each Lot on the first day following:

(a) The date the Lot is made subject to this Declaration; or

(b) The date the Association first determines a budget and levies assessments pursuant to this Article, whichever is later.

The first annual Base Assessments against each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

9.9 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 may retroactively assess any shortfalls in collections.

9.10 Exempt Property. The following property shall be exempt from payment of assessments:

(a) All Common Areas; and

(b) All Property dedicated to and accepted by any governmental authority or public utility.

**ARTICLE X  
COMMUNITY DEVELOPMENT  
EXPANSION AND REDUCTION OF THE COMMUNITY AND COMMON AREA**

10.1 Expansion by the Association. The Association and Declarant shall have the right, during the Class B control period, to subject and/or annex additional property to the provisions of this Declaration by filing a Supplemental Declaration in the Official Records describing the additional property pursuant to Article 1, Paragraph 1.2 of this Declaration. During the Class "B" Control Period, the consent of the Declarant shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the additional property, and by Declarant.

10.2 Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Base Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s), not unreasonably withheld, shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration, as it applies to the subject property in order to reflect the different character and intended use of such property.

10.3 Effect of Filing Supplemental Declaration. Any Supplemental Declaration filed pursuant to this Article shall be effective upon recording in the Official Records, unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

10.4 De-annexation of Property. Declarant reserves the right to de-annex any real property from the terms of this Declaration at any time during the Class "B" Control Period, without prior notice and without the consent of any Person, for the purpose of removing such real property from the coverage of this Declaration or clarifying that such property is no longer subject to annexation, provided such action is not materially adverse to the overall, uniform scheme of development for the Properties. If Declarant elects to de-annex any property, Declarant shall record a Supplemental Declaration in the Official Records.

10.5 Condemnation. Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, each Owner shall be entitled to notice thereof by posting, in a prominent place within the Properties and included in the Association's newsletter, if any. The Board may convey Common Area under threat of condemnation if the Board reasonably determines that it is in the best interest of the Association and is approved in writing by Declarant during the Class "B" Control Period. The award made for such taking shall be payable to the association as trustee for all Owners to be disbursed as follows:



(a) If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless within 60 days after such taking the Declarant, so long as the Declarant owns any portion of the Properties or has the right to annex property, shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.

(b) If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

10.6 No Partition. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees, subject, however, to those provisions contained in paragraph 12.1(d) of this Declaration.

10.7 Dedication of Common Area. Declarant, or the Board may, dedicate or grant easements over portions of the Common Area to any local, state, or federal governmental entity.

#### ARTICLE XI RIGHTS RESERVED TO DECLARANT

11.1 Construction of Improvements. The Declarant and its employees, agents and designees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing any improvements to the Common Area as it deems appropriate in its sole discretion.

11.2 Right to Use Common Area. The Declarant, and its designees, may maintain and carry upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, signs, and sales offices. The Declarant and its designees shall have easements for access to and use of such facilities.

The Declarant, and its designees, during the course of construction on the Properties adjacent to any Common Area, may use such Common Area for temporary storage and for facilitating construction on adjacent property. The user of such Common Area will return the Common Area to the condition it was in prior to its use. If the Declarant's use, under this Article, results in additional costs to the Association, the Declarant shall reimburse the Association for such costs, however, the Declarant shall not be obligated to pay any use fees, rent or similar charges for its use of Common Areas pursuant to this Article.

The Declarant, and its employees, agents and designees, shall also have a right to an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate, in its sole discretion.

11.3 Other Covenants Prohibited. No Person shall record any declaration of Covenants, Conditions and Restrictions, or declaration or similar instrument affecting any portion of the Properties during the Class "B" Control Period without Declarant's written consent. Any attempted recordation, without such consent, shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

11.4 Right to Approve Changes. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any rules, use guidelines, restrictions or Governing Documents affecting the Properties shall be effective without prior notice to and the written approval of the Declarant during the Class "B" Control Period.

11.5 Right to Transfer or Assign Declarant Rights. Any or all of the rights and obligations of the Declarant set forth in this Declaration may be transferred to other Persons. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Official Records.

11.6 Amendment. This Article shall not be amended without the prior written consent of Declarant during the Class "B" Control Period. The rights contained in this Article shall terminate upon the earlier of:

- (a) 50 years after the conveyance of the first Lot to an Owner; or
- (b) The recording by Declarant of a written statement terminating such rights.

Thereafter, the Declarant and its designees may continue to use the Common Area for purposes stated in this Article only pursuant to a rental or lease agreement between the Declarant and/or such designee and the Association.

## ARTICLE XII PROPERTY RIGHTS WITHIN THE COMMUNITY EASEMENTS

12.1 Easements in Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, and such right and nonexclusive easement shall be appurtenant to such Owner's Lot, subject to:

- (a) This Declaration, and any other applicable covenants;
- (b) Any restrictions or limitations contained in any instrument conveying such property to the Association;
- (c) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to owners of Lots and their guests, and rules limiting the number of occupants and guests who may use the Common Area;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to governmental entities;

(e) The right of the Board to create, enter into agreements with, grant easements to and transfer portions of the Common Area to non-profit or tax-exempt organizations;

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

(g) The right of the Board to change the use of any portion of the Common Area, subject to obtaining the consent of the Declarant during the Class "B" Control Period; and

(h) The rights and obligations of the Association, acting through its Board, to restrict, regulate or limit Owners' and occupants' use of the Common Area for health and safety purposes.

12.2 Easement of Encroachment. Declarant reserves unto itself an easement of encroachment, and easements for maintenance and use of any permitted encroachment between each Lot and any adjacent Common Area and between adjacent Lots.

12.3 Easement for Utilities. Declarant reserves unto itself, and grants to the Association, an easement for the purpose of access and maintenance upon, across, over, and under all of the Properties to the extent reasonably necessary to install, replace, repair, and maintain all utilities, including, but not limited to water, sewers, meter boxes, telephone, gas, and electricity.

Declarant specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into any dwelling upon any Lot, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board and Declarant during the Class "B" Control Period.

The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to Whispering Canyon. Declarant hereby reserves for itself and its designees all rights to revenues received from the foregoing service or utility companies during the Class "B" Control Period. Such right shall include an easement over the Properties for access and for installation, maintenance, and auditing of facilities and equipment to provide the foregoing services. This reservation shall survive termination of this Declaration and no Amendment to or modification of this Section 12.3 shall be made without the prior written consent thereto by the Declarant.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under, or through any existing dwelling upon any Lot. Any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person or company exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

12.4 Easements to Serve Additional Property. The Declarant hereby reserves unto itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property later made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant

agrees that if the easement is exercised for permanent enjoyment and use of and/or access to such Property, and such Property or any portion thereof is not made subject to this Declaration, the Declarant shall enter into a reasonable agreement with the Association to share the cost of maintenance, of any access roadway serving such Property.

12.5 Easements for Cross-Drainage. Every Lot and the Common Area may be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall discharge any water, backwash any pool, spa or similar improvements, or alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Properties, or the Common Areas without the consent of the Owner(s) of the affected property, the Board, and the Declarant during the Class "B" Control Period.

12.6 Right of Entry. Public providers of emergency services shall have access to Lots in an emergency as provided by state law and, if applicable, Yavapai County, Arizona, operating policies, or regulations of regional volunteer fire departments or their successor in practice.

12.7 Easements for Maintenance and Enforcement. Authorized agents of the Association, shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Lot to:

- (a) Perform its maintenance responsibilities under Article VI; and
- (b) Make inspections to ensure compliance with this Declaration.

Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to the Owner's Property, and any physical damage caused by the Association shall be repaired by the Association, at its expense.

12.8 Rights to Storm Water Runoff Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties. Such right shall include an easement over the Properties for access and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent. This Article may not be amended without the consent of the Declarant or its successor, and the rights created in this Article shall survive termination of this Declaration.

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

**ARTICLE XIII  
AMENDMENT OF DECLARATION**

13.1 Amendment by Declarant. Until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is:

- (a) Necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination;
- (b) Necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots;
- (c) Required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example; the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make or purchase Mortgage loans on the Lots;
- (d) Necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; or
- (e) Otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. However, any such amendment shall not adversely affect the title to any Lot, unless the affected Owner shall consent thereto in writing.

13.2 Amendment by Owners. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or combination thereof of Voting Members representing at least 67% of the total Class "A" Votes and the consent of the Declarant during the Class "B" Control Period. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

13.3 Validity and Effective Date of Amendments. Amendments in accordance with the Declaration shall become effective upon recordation in the Official Records, unless a later effective date is specified in the Amendment.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this  
21st day of November, 2002.

**"DECLARANT"**

OLD CAPITOL INVESTMENTS L.L.C., an Arizona  
limited liability company

By: Four Capital Group, Inc., an Arizona  
corporation, as Manager-Member

By: Robert Cole Johnson  
Robert Cole Johnson, President

STATE OF ARIZONA )  
County of Yavapai ) ss.

This instrument was acknowledged before me, the undersigned Notary Public, this  
21st day of November, 2002 by Robert Cole Johnson, as President of  
Four Capital Group, Inc., an Arizona corporation, as the Manager-Member of OLD CAPITOL  
INVESTMENTS L.L.C., an Arizona limited liability company.

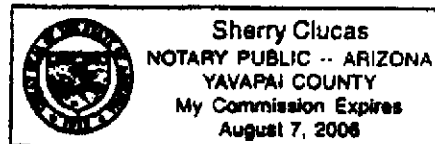
My Commission Expires:

Sherry Clucas  
Notary Public

**ACCEPTED AND APPROVED:**  
Capital Title Agency, Inc.

By: Sherry L. Middlemore

As: Trust Officer



**SEAL**

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**Lots 1 through 36, inclusive, of WHISPERING CANYON, Phase 1, and Lots 37 through 92, inclusive of WHISPERING CANYON, Phase 2, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, recorded in Book 46 of Maps, pages 33 through 36, inclusive.**