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1 FENNEMORE CRAIG, P.C.  
2 Jay L. Shapiro (No. 014650)  
3 Patrick J. Black (No. 017141)  
4 3003 N. Central Ave., Suite 2600  
5 Phoenix, Arizona 85012  
6 Attorneys for Mingus Panorama Estates Homeowners Association

DOCKETED BY

6 IN THE MATTER OF THE  
7 APPLICATION OF MINGUS  
8 PANORAMA ESTATES HOMEOWNERS  
9 ASSOCIATION FOR AN  
ADJUDICATION OF "NOT A PUBLIC  
SERVICE CORPORATION" STATUS

DOCKET NO. W-20477A-06-0558

NOTICE OF COMPLIANCE WITH  
DECISION NO. 69336

10 Mingus Panorama Estates Homeowners Association (the "Association"), by and  
11 through undersigned counsel, submits this Notice of Compliance with certain filing  
12 deadlines set forth in Decision No. 69336 (February 20, 2007). Decision No. 69336  
13 required the Association to file a copy of its Declaration of Covenants, Conditions,  
14 Restrictions and Easements ("Declaration") after it has been amended by deleting  
15 paragraph 7.1.5 and recorded it with the Yavapai County Recorder's Office. A copy of  
16 the amended and recorded Declaration is attached hereto as **Exhibit 1**.

17 Decision No. 69336 also requires the Association to file a copy of its Bylaws.  
18 Attached hereto as **Exhibit 2** are the Association's Bylaws which were previously filed  
19 with the Application.

20 Finally, Decision No. 69336 requires the Association file a copy of the agreement  
21 conveying ownership of the water system to the Association. Attached hereto as  
22 **Exhibit 3** is a copy of that agreement between Mingus Panorama Estate LLC and the  
23 Association dated August 16, 2006.

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RESPECTFULLY SUBMITTED this 25th day of July, 2007.

FENNEMORE CRAIG, P.C.

By:   
Jay L. Shapiro  
Patrick J. Black  
Attorneys for Mingus Panorama Estates  
Homeowners Association  
3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
(602) 916-5400

**ORIGINAL** and 13 copies filed  
this 25th day of July, 2007 to:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

**COPY** sent via regular mail  
this 25th day of July, 2007 to:

Reginald Lopez  
Utilities Division  
Arizona Corporation Commission  
400 West Congress  
Tucson, Arizona 85701-1347

By:   
1941145.1/17917.001

# **Exhibit 1**

When Recorded Return to:

Clara Y. Mak  
350 Shadow Rock Drive  
Sedona, AZ 86336



**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

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**DECLARATION OF COVENANTS, CONDITIONS,  
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**MINGUS PANORAMA ESTATES**

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## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

### MINGUS PANORAMA ESTATES

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MINGUS PANORAMA ESTATES** (the "Declaration") is made this \_\_\_\_\_ day of June, 2007, by **MINGUS PANORAMA ESTATE, L.L.C.**, an Arizona limited liability company (the "Declarant").

#### RECITALS

A. Declarant is the record owner of that certain real property situated in Yavapai County, Arizona, described in the Plat recorded in the office of the Yavapai County Recorder in Book 60 of Maps, Pages 24 (the "Property").

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

C. Declarant desires that the Property be developed as a residential community to be known as "Mingus Panorama Estates". Regarding the Domestic Water System, said described Property shall consist of sixty-nine (69) customers, fixed or potential.

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

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

F. The Mingus Panorama Estates, an Arizona nonprofit corporation, has been incorporated under the laws of the State of Arizona for the purpose of exercising the foregoing powers and functions.

G. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property.

### **DECLARATIONS**

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

### **ARTICLE 1 - DEFINITIONS**

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

1.2 **"Architectural Committee"** means the architectural committee of the Association to be created pursuant to Section 5.11 of this Declaration and the Bylaws.

1.3 **"Areas of Association Obligation"** means (i) all Common Area, including the Improvements and landscaping situated thereon, (ii) any portion of the Improvements situated on a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association, and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated easements or rights-of-way with respect to which the State of Arizona, or any county or municipality has not accepted responsibility for the maintenance, repair and replacement of such areas.

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

1.5 **"Assessment"** means an Annual Assessment, Water System Assessment, Special Assessment, or Lot Specific Assessment.

**1.6 "Association"** means Mingus Panorama Estates Homeowners Association, an Arizona nonprofit corporation and its successors and assigns.

**1.7 "Association Lien"** means the lien created and imposed by Section 6.1 of this Declaration.

**1.8 "Association Property"** means any personal property owned or leased by the Association.

**1.9 "Association Rules"** means the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

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

**1.11 "Bylaws"** mean the Bylaws of the Association, as amended from time to time.

**1.12 "Common Area"** means all real property known as Tract "A" and Tract "W", recorded in Book 60 of Maps and Plats, Page(s) 24, Official Records of Yavapai County Recorder, Yavapai County, Arizona, and all other real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. "Common Area" shall not include any Lot, or Improvements, or personal property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriffs sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action.

**1.13 "Common Expenses"** means the actual or estimated expenses incurred, or anticipated to be incurred, by the Association, together with any allocations to reserves.

**1.14 "Declarant"** means Mingus Panorama Estate, L.L.C., an Arizona limited liability company, its successors and assigns, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

**1.15 "Declarant Parties"** means collectively Declarant, its builders, general contractors or brokers, or their agents or employees.

**1.16 "Declaration"** means this Declaration of Covenants, Conditions and Restrictions and Easements, as it may be amended from time to time.

**1.17 "Design Guidelines"** means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.11 of this Declaration and the Bylaws, as they may from time to time be amended or supplemented.

**1.18 "Domestic Water System"** means the domestic water system located at the Property, consisting of a well identified on Arizona Department of Water Resources records as Arizona Department of Resources Well Registration No. 900909 located at the Well Site located on Tract "W" of the Property, including its casing, pumps, motors, valves, pipes, meters, treatment plant, electrical facilities and connections, and all other parts, equipment, machinery and appurtenances now or hereafter used in the operation of the well; and water transmission pipelines, valves, meters and other parts, equipment and other connecting facilities now or hereafter used in distributing potable water from the well to the Lots at the Project.

**1.19 "Domestic Water System Matter"** means a matter that pertains to the operation, care, upkeep or maintenance of the Domestic Water System, including (a) hookup fee charges; (b) terms and conditions of connection; (c) employment of a certified operator of the Domestic Water System; and (d) rates charged to customers. Notwithstanding the foregoing, assessments levied pursuant to Sections 6.1, 6.6, and 6.7 of this Declaration are not Domestic Water System Matters.

**1.20 "Exterior Alteration"** means any construction, installation, addition alteration, repair, change, change of color, landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon which Exterior Alteration means any addition, alteration repair, change or other work which in any way alters the exterior appearance, including the exterior color scheme, or any part of a Lot, or any Improvements located thereon which are Visible From Neighboring Property, from their appearance on the date this Declaration is recorded.

**1.21 "First Mortgage"** means any mortgage, deed of trust, or contract for sale pursuant to the provisions of A.R.S. §33-741 et. seq. on a Lot which has priority over all other mortgages, deeds of trust, and contracts for sale on the same Lot.

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

**1.23 "Improvement"** means any Residential Unit, guest house, building, fence, wall or other structure (including any sheds, guest houses, play structures, patio covers, balconies, light fixtures and light poles), and any swimming pool, road, driveway, parking area, irrigation facilities, and any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

**1.24 "Lessee"** means a third-party lessee, sublessee, tenant or subtenant under a lease, oral or written, of any Lot, including an assignee of a lease. As used herein a "third party" is any Person who is not an Owner.

**1.25 "Lot"** means each parcel of real property designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

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

**1.27 "Member"** means any Person who is a Member of the Association that holds a "Membership" created pursuant to Article 5 of this Declaration. There will be only sixty-nine (69) memberships in the Association, one for each of the sixty-nine (69) Lots.

**1.28 "Owner"** means the record owner, whether one or more Persons, of legal, beneficial or equitable title to the fee simple interest of a Lot. "Owner" shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the "Owner." "Owner" shall also include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. Section 33-741, et seq. "Owner" shall not include purchasers under purchase contracts and receipts, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to such executory contracts pending the closing of a sale or purchase transaction.

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

**1.30 "Plat"** means the plat of Mingus Panorama Estates recorded in Book 60 of Maps, Pages 24, records of Yavapai County, Arizona, and all amendments, supplements and corrections thereto.

**1.31 "Project Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules, and the Design Guidelines.

**1.32 "Property" or "Project"** means the real property described on the Plat as Lots 1 through 69, inclusive, and Tracts "A" and "W" together with all the Improvements located thereon. The Project will consist of sixty-nine (69) Lots, and no additional Lots will be added to the Project by either the acquisition of additional real property, or the subdivision of any Lot.

**1.33 "Purchaser"** means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

**1.34 "Recording"** means placing an instrument of public record in the office of the County Recorder of Yavapai County, Arizona, and **"Recorded"** means having been so placed of public record.

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

**1.36 "Residential Unit"** means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

**1.37 "Restricted Setback Requirement"** means the setback requirement, defined as the minimum distances between a Residential Unit or other permitted Improvement from the Lot boundary line, for certain Lots that is more restrictive than the standard county required setbacks for the R1-35 zones. The area within the Restricted Setback Requirement of a Lot is referred to as the "Restricted Setback Requirement Area". Lots 6, 8, 10, 12, 16, 26, 27, 32, 33, 36, 37, 38, 39, 43, 44, 45, 46, and 69 are subject to the Restricted Setback Requirement, as reflected on sheet 2 of 5 on the Plat for such Lots.

**1.38 "Single Family"** means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

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

**1.40 "Transition Date"** means the first to occur of:

- (i) the day on which title to the last Lot in the Project owned by Declarant is conveyed to a third party for value, other than as security for the performance of an obligation, or
- (ii) the date twelve (12) years after the date this Declaration is recorded, or
- (iii) such earlier date as Declarant declares to be the Transition Date in a recorded instrument.

**1.41 "Visible From Neighboring Property"** means, with respect to any given object, that the object is or would be visible to a person six (6) feet tall, standing at ground level on any part of the adjoining Lot or Common Area.

**1.42 "Well Site"** means the site provided by Declarant on which Declarant shall develop and provide a water delivery system, including a well, in compliance with

requirements of the Arizona Department Water Resources and the Arizona Department of Environmental Quality.

## ARTICLE 2 - PLAN OF DEVELOPMENT

**2.1 Property Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Project and in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. There will be a total of sixty-nine (69) Lots in the Project, and no additional Lots will be added to the Project. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

**2.2 Domestic Water System.** Declarant shall, at its cost, construct and install a water delivery system, including all production, pumping, treatment, storage, transmission, distribution, pressure and metering facilities, for the Project, and fire hydrants to provide both domestic water and fire protection water service to the Owners, Lessees, Residents and Common Area (the "Water System"). The Project consists of acreage, which is not in the service area of a municipality utility or public service corporation. The Domestic Water System will supply water exclusively for domestic purposes; no water will be sold or used for any commercial purpose whatsoever. Upon completion of construction of the Water System, Declarant for and in consideration of the Association agreeing to provide water service to the Project, shall assign and transfer the Water System to the Association. The Association shall operate the Domestic Water System in accordance with all laws, rules and regulations promulgated by the applicable governmental authorities. The Association shall contract with certified persons or companies to manage, operate, and maintain the Domestic Water System. The cost of owning, maintaining and operating the Domestic Water System shall be

paid for by Water Assessments as set forth in Section 6.6 of this Declaration, and through charges to an Owner, Lessee, or Resident, being the customers for water usage and related services. Each Owner of a Lot, by having a membership in the Association, is or will be a customer of the Domestic Water System, known as the "Mingus Panorama Estates Water System".

**2.3 Water System; No Liability to Declarant Parties.** The Water System may include such facilities as treatment plant, pumping equipment, water storage tanks, generators, metering and distribution equipment, site lighting and other equipment and facilities normally associated with such water systems. Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, acknowledges and agrees as follows:

- (i) The Declarant Parties shall have no responsibility for the operation or maintenance of the Water System; and
- (ii) The operation of the Water System may create noise, and outdoor lighting will be used in and around such System.

The existence of the Water System may cause inconvenience and disturbance to the Owners, Lessees, Residents and their families, invitees and licensees; however, each Owner, Lessee and Resident has considered the location of the Lot being purchased, leased or occupied and its proximity to the Water System. By acceptance of a deed or by acquiring any interest in any of the Property, each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, acknowledges and assumes the risks of the aforesaid inconvenience and disturbance to said persons. In no event shall any Declarant Parties be responsible or accountable for, or have liability (including strict liability) for any claims, causes of action, losses, damages, costs or expenses (including attorneys' fees and court costs) for any inconvenience or disturbance arising from the Water System, including any acts or omissions occurring with respect to the Water System or the use thereof, including any violation of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., The Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., The Arizona Environmental Quality Act, A.R.S. § 49-281 et seq. or any other similar state or federal law as such laws have been or may be amended from time to time. Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, covenants and agrees that he or she does knowingly and voluntarily assume all risks associated with the foregoing, including the risks of inconvenience and disturbance, arising from the existence, operation and maintenance of the Water System.

**2.4 Release.** Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, hereby releases the Declarant Parties and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including strict liability) related to or arising in connection with any

nuisance, inconvenience, disturbance, injury (including death) or damage resulting from activities or occurrences described in Section 2.3 of this Declaration.

**2.5 Lots with a Restrictive Setback Requirement.** Each Owner of a Lot subject to a Restrictive Setback Requirement as shown on the Plat and identified in Section 1.37 of this Declaration, hereby agrees that he or she will construct the Residential Unit and all Improvements inside of the Restrictive Setback Requirement Area.

**2.6 Lot 52 Leach Field Requirement.** The placement of the leach field on Lot 52 shall be limited to the area within Lot 52 outside of the circumference of circle shown on the Plat on sheet 2 of 5, and 3 of 5 by a dotted line. The Owner of Lot 52 agrees that they will construct and maintain the leach field outside the area encompassed by the dotted line encircling the Well Head in Tract W.

**2.7 Emergency Access Only and Drainage Easement.** The Declarant intends to construct an emergency access, as shown on the Plat identified as "Emergency Access Only and Drainage Easement", for the purpose of allowing emergency vehicles, such as police, fire department ambulances and other emergency vehicles and personnel access to the Project from an alternate road than Page Springs Road. Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, acknowledges and agrees as follows:

- (i) Declarant Parties make no representation or warranties that the emergency access easement will provide faster emergency service to Lots.
- (ii) The barrier to the Emergency Access Only and Drainage Easement entrance may restrict or delay entry into the Project by the police, fire department ambulances and other emergency vehicles and personnel.

Each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, assumes the risk that the restricted Emergency Access Only and Drainage Easement entrance may restrict or delay entry into the Project by police, fire department ambulances and other emergency vehicles and personnel. Neither the Declarant Parties, the Association, nor any director, officer, agent nor employee of any of the foregoing shall be liable to any Owner, Lessee and Resident, on behalf of its family members, invitees and licensees for any claims or damages resulting, directly or indirectly, from the construction, operation, existence or maintenance of the restricted Emergency Access Only and Drainage Easement.

**2.8 No Access to Lee Pasture Road.** Except for emergency vehicles and personnel, no Owner, Lessee, Resident, and their agents, invitees and licensees, shall have access under any circumstance to Lee Pasture Road from any Lot or the

Emergency Access Only and Drainage Easement. Lee Pasture Road is a private road, and use of it by any Owner, Lessee, Resident and their agents, invitees and licensees is strictly prohibited.

**2.9 Views Not Guaranteed.** Although certain Lots in the Project at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot or Residential Unit. Neither Declarant Parties nor the Association makes any representation or warranty whatsoever, express or implied, concerning the view which any Lot or Residential Unit will have whether as of the date this Declaration is recorded or thereafter. Any view which exists at any point in time for a Lot or a Residential Unit may be impaired or obstructed by further construction within or outside the Project, including by construction or Improvements (including landscaping) by Declarant, construction by third parties (including other Owners and Residents) and by the natural growth of landscaping. No third party, including any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or Residential Unit constructed thereon or any view of a Lot or Residential Unit constructed thereon from any other property.

**2.10 Portion of Project in One Hundred Year Flood Plain.** Portions of Lots 5, 6, 9, 10 and 12 are located within or proximate to an area within the Project in the one hundred year flood plain, as shown on the Plat as the "100 Year Flood Plain" (the "100 Year Flood Plain Area"). The location of a portion of such Lots in or proximate to the 100 Year Flood Plain Area may cause loss, damage, inconvenience and disturbance to the Owners, Lessees, Residents and their families, invitees and licensees should there be a 100-year flood, defined by federal and state agencies to be the flood elevation that has a one percent (1%) chance of being equaled or exceeded each year; however, each Owner, Lessee and Resident has considered the location of the Lot being purchased, leased or occupied and its location in or proximate to the 100 Year Flood Area. By acceptance of a deed or by acquiring any interest in any of such Lots, each Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, acknowledges and assumes the risks of the aforesaid loss, damage, inconvenience and disturbance. In no event shall the Declarant be responsible or accountable for, or have liability (including strict liability) for any claims, causes of action, losses, damages, costs or expenses (including attorneys' fees and court costs) for any loss, damage, inconvenience or disturbance arising from the location of any portion of the Lot in or proximate to the 100 Year Flood Plain Area.

**2.11 Disclaimer of Representations.** Declarant makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans of the Project as they exist on the day this Declaration is recorded; (ii) any property subject to this Declaration will be committed to or developed for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

### ARTICLE 3 - USE RESTRICTIONS

**3.1 Architectural Control.** In addition to any requirements imposed by Yavapai County:

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

**3.1.2** No Improvement which would be Visible From Neighboring Property at the time it is constructed or would be Visible From Neighboring Property with the passage of time shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

**3.1.3** No Exterior Alteration shall be made or done without the prior written approval of the Architectural Committee.

**3.1.4** Any Owner desiring approval of the Architectural Committee for any Exterior Alteration shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Exterior Alteration that the Owner desires to make or perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove, in writing, an application for approval within sixty (60) days after receipt of the application and any supporting information, plans and specifications requested by the Architectural Committee (the application shall not be deemed received until all supporting information, plans and specifications have been received), approval will not be required and this Subsection 3.1.4 will be deemed to have been complied with by the Owner who requested approval of such plans.

**3.1.5** In reviewing plans and specifications for any Exterior Alteration which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures. The Architectural Committee may disapprove plans and specifications for any Exterior Alteration if it determines, in its sole and absolute discretion, that the Exterior Alteration: (i) would violate any provision of this Declaration; (ii) does not comply with any of the Design Guidelines; (iii) is not in harmony with existing Improvements in the Project or with Improvements previously approved by the Architectural Committee but not yet constructed; (iv) is not aesthetically acceptable; (v) would be detrimental to or adversely affect another Owner or the appearance of the Project; or (vi) is otherwise not in accord with the general plan of development for the Project. All decisions of the Architectural Committee shall be final and no Owner or any other Person shall have any recourse or remedy against the Architectural Committee.

**3.1.6** The approval by the Architectural Committee of any Exterior Alteration pursuant to this Subsection 3.1.6 shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar Exterior Alteration subsequently submitted for approval.

**3.1.7** Upon receipt of approval from the Architectural Committee for any Exterior Alteration, the Owner who requested such approval shall proceed to perform, construct or make the Exterior Alteration approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

**3.1.8** Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

**3.1.9** The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any Exterior Alteration pursuant to this Subsection 3.1.9, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

**3.1.10** The provisions of this Subsection 3.1.10 do not apply to, and approval of Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant, any member of Declarant or any Person affiliated or controlled by Declarant or any member of Declarant.

**3.1.11** The approval required of the Architectural Committee pursuant to this Subsection 3.1.11 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

**3.1.12** The Design Guidelines may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation.

**3.1.13** During construction of any Improvement on a Lot, Owner and Owner's contractor at all times shall keep the Lot free from accumulation of waste materials or rubbish caused thereby. Upon completion, Owner shall remove all waste materials, debris and rubbish from the Lot.

**3.1.14** Owner shall be responsible to pay for the cost of repair for any damage caused by Owner's contractor or contractor's subcontractors to the Common

Area or Areas of Association Obligation during construction of any Improvement on a Lot.

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

**3.2 Minimum Building Size; Building Height.** No Residential Unit shall be constructed with a livable area above grade of less than 1,800 square feet, exclusive of any basements, accessory building and guest house, breezeways, screened porches, terraces, patios and garages. No portion of any Residential Unit shall exceed the immediately adjacent natural grade by more than twenty (20) feet, as measured to the midpoint of a peaked roof or the parapet of a flat roof.

**3.3 Sewer Facilities.** Each Owner shall be required to dispose of all sewage generated on such Owner's Lot and Residential Unit by installing a septic system or other waste disposal technology. By acceptance of a deed or by acquiring any interest in a Lot, each Owner, Lessee and Resident agrees to be subject to the provisions of this Section 3.3. Each Owner, Lessee and Resident shall comply with all laws, rules and regulations promulgated by governmental authorities with regard to the installation and maintenance of such septic system or other waste disposal technology.

**3.4 Fencing.** Property line fencing shall be allowed only constructed of mason materials, of not more than six (6) feet in height, painted of earth tones or similar colors as the Residential Unit, with design in harmony with existing Improvements in the Project, upon the approval of the Architectural Committee. Fencing around the Residential Unit or other structures or improvements within building areas may include privacy screening, solid wall and other types of fencing materials. Architectural Committee's approval of the fences color, material, height, and design is required.

**3.5 Antennas.** Except for an eighteen inch (18") satellite television dish, or as permitted under the Design Guidelines, no antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation proposed to be erected, used or maintained outdoors on any portion of the Project, whether attached to a Residential Unit or structure or otherwise, shall be erected or installed without the prior written consent of the Architectural Committee.

**3.6 Driveway Surfaces.** All driveways and parking areas shall be surfaced with one of the following: concrete, asphalt, brick, gravel, crusted granite or stone, as approved by the Architectural Committee.

**3.7 Common Driveway.** Lots 6 and 7 shall share a common driveway. Declarant will initially construct and surface the driveway, and thereafter the Owners of

Lot 6 and Lot 7 shall have a duty to maintain and restore the Common Driveway between themselves at their own expense.

**3.8 Water Service Restriction.** The Association shall be the sole provider of domestic water through the Domestic Water System for all Owners of Lots and Residential Units, including any landscape irrigation water, subject to all fees, charges, rules, regulations and other requirements established by the Association. No Lot shall contain any water well or water storage facility for such purpose. No Owner, Lessee or Resident shall sell, or otherwise use the water for any commercial purpose. By acceptance of a deed or by acquiring any interest in a Lot, each Owner, Lessee and Resident agrees to be subject to the provisions of this Section 3.8. Each Owner, Lessee and Resident shall comply with all rules, regulations and other requirements established by the Association concerning a Domestic Water System Matter.

**3.9 Pools.** Owners who have swimming pools on their Lots shall assume responsibility for all safety requirements of law and the Association shall have no responsibility in regard thereto.

**3.10 Temporary Occupancy and Temporary Buildings.** No trailer, incomplete building, tent, shack, garage, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Exterior Alterations approved by the Architectural Committee, interior remodeling, reroofing or other work shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of one month thereafter without the prior written approval of the Architectural Committee.

**3.11 Nuisances.** No animal waste, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Common Area, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No use of a Lot shall be permitted which will result in the discharge of toxic or hazardous materials into the Water System. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate.

**3.12 Diseases and Insects.** No Person shall permit any thing or condition to exist upon any Lot or Common Area which shall induce, breed or harbor infectious plant diseases or noxious insects.

**3.13 Repair of Building.** No Residential Unit, building or structure on any Lot or Common Area shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. In the event that any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

**3.14 Mineral Exploration.** No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

**3.15 Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property. The Board shall have the right to contract with one or more third parties for the collection of garbage, trash, or recyclable materials for the benefit of the Owners and Residents, with any costs to be Common Expenses or billed separately to the Owners at the sole discretion of the Board.

**3.16 Clothes Drying Facilities.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible From Neighboring Lot.

**3.17 Utilities Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

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

**3.19 Residential Use.** All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances of Yavapai County, Arizona, and (iii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section 3.19 shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof for periods of not less than thirty (30) consecutive days and with the consent of the Association shall not be considered a trade or business within the meaning of this Section 3.19. A guest house (or other structure or Improvements) may not be completed prior to the completion of the Residential Unit. Any guest house, which may include a kitchen, shall be for the use of bona fide guest(s) or domestic help, as the case may be, or the occupants of the Residential Unit, or members of such occupant's family, and shall not be rented or leased separate from the Residential Unit.

**3.20 Animals.** No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that five (5) generally recognized house or yard pets ("Permitted Pets") may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All Permitted Pets shall be confined to the Owner's Lot except that a dog may be permitted to leave the Owner's Lot if such dog is at all times kept on a leash. No kennel shall be allowed to be placed or constructed on any portion of the Lot. Owners, Lessees and Residents shall be required to pick up immediately any animal feces from the Owner's Lot or any other Lot, Common Area, Street or Easement. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. Upon the written request of any Owner, Lessee or Resident, the Board shall determine, in its sole and absolute discretion, whether, for the purposes of this Section 3.20 (i) a particular Permitted Pet is a nuisance or making an unreasonable amount of noise, (ii) a particular pet is a Permitted Pet, and (iii) the number of Permitted Pets kept on a Lot is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

**3.21 Combination of Lots.** Two or more contiguous Lots may be combined by one Owner for purposes of building a single Residential Unit. Such Lots shall retain

their separate aspects under this Declaration for purposes of assessments and voting, subject however to the limitation on voting for a Domestic Water Supply Matter.

**3.22 Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner. No further covenants, conditions restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

**3.23 Prohibiting Timesharing and other Fractional Interest Plans.** No Lot may be used and/or occupied by any Owner or other person pursuant to any timesharing plan., fractional ownership interest plan, fractional private residence club plan, membership residential privilege plan, or any other similar type of plan (such prohibited plans shall be collectively referred to herein as a "Timesharing Plan"). For purposes of this Section, "Timesharing Plan" means the joint or common ownership, use and/or occupancy of a Lot by three (3) or more Unrelated Persons during any 365 day period for the primary purpose of allocating periodic use or occupancy of such Lot among Unrelated Persons or their lessees, sublessees, assignees, or permittees on an ongoing basis over time pursuant to a timesharing plan, fractional ownership interest plan, membership plan, or similar arrangement, regardless of whether such arrangement constitutes a timesharing plan or timeshare interests under Arizona law or under the laws of any other particular state. Any type of joint use or occupancy plan that allows the use and/or occupancy of the Lot on an ongoing basis over time by three (3) or more Unrelated Persons during any 365 day period, whether or not the Lot is only owned by one person, and whether or not currency or other form of compensation, trade, or barter is provided in exchange for the use of the Lot, is prohibited. For purposes of this Section, "Unrelated Persons" means purchasers or holders of such rights of use or occupancy, whether by owning a fee title interest, or by holding some other right or interest, or some other right of occupancy, whether or not any interest in the Lot is connected to said right, directly or indirectly, individually or through a corporation, partnership, limited liability company, trust or other entity, who are not related by blood, adoption or marriage. In calculating three (3) or more Unrelated Persons, a husband and wife and their children (including the children of either spouse), or a family trust or any other entity comprised exclusively of the same people, shall collectively constitute only one Unrelated Person.

**3.24 Leasing of Lots.** No Owner may lease or sublease his or her Lot to Lessee for any period whatsoever or modify, alter or extend the term of an existing or previously approved lease or sublease without the prior written consent of the Association. The requirements and guidelines for the approval of leases and subleases shall be set by the Board of Directors of the Association. All Owners of lots that are

leased or subleased, including those that may be leased without the consent of the Association, hereby grant to the Association a power of attorney to enforce against the Lessee the provisions of the Project Documents and to enforce against the Lessee those provisions of such leases or subleases that relate to violations by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors of the Project Documents or the lease agreement (except those provisions that relate to the payment of rent.) The power of attorney granted hereby authorizes the Association to take any lawful action to enforce the Project Documents and the lease agreement, including, without limitation, bringing actions at law or in equity and to recover, from the Owner and/or the Lessee against whom any enforcement effort or action is brought, the costs of enforcing the terms of the Project Documents and the lease or sublease with respect to violations thereof by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors. The "costs of enforcing" shall include properly levied fines and penalties, penalty late fees and interest, costs of collection (including legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action), attorneys' fees, court costs, property damage, etc.

**3.25 Motor Vehicles.** Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project so as to be Visible From Neighboring Property, and no inoperable vehicle may be stored or parked on any such Lot or other property so as to be Visible From Neighboring Property. Parking on streets is prohibited.

**3.26 Trucks, Commercial Vehicles, Campers and Boats.** No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, commercial vehicle or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area so as to be Visible From Neighboring Property, except for (i) the temporary parking of a motor home, camper, recreational vehicle or boat and boat trailer on the concrete driveway situated on a Lot for a period of not more than twenty-four (24) consecutive hours within any consecutive seven (7) day period for the purpose of loading or unloading such vehicle or equipment (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; (iii) boats and motor vehicles parked in garages on Lots; (iv) boats and motor vehicles parked at the back of a Residential Unit if not Visible From Neighboring Property by the construction of privacy screening, enclosure, or solid wall, if approved by the Architectural Committee as required under Subsection 3.1.2 of this Declaration; or (v) motor vehicles not exceeding seven (7) feet in height and twenty-two (22) feet in length that are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind and that are parked in the garage or on the concrete driveway situated on a Lot.

**3.27 Fire Sprinkler System.** In accordance with the requirements of Yavapai County, each Residential Unit will be equipped with a fire sprinkler system and each Owner shall maintain the fire sprinkler system in good working condition.

**3.28 Outside Fires.** All outside fires must be within an outside fireplace or facility that has been approved by the Architectural Committee. The fireplace or facility must be one that will control the size of the fire and must have some type of cover that will control the height of the fire.

**3.29 Lights and Noise.** Any lights installed on a Lot shall comply with the Yavapai County Dark Sky ordinance. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot that in any manner will allow light to be directed or reflected unreasonably upon any other Lot. No radio, television or other speakers or amplifiers shall be installed or operated on any Lot as to be audible from other Lots, the Common Areas or streets.

**3.30 Signs.** No signs whatsoever shall be erected or maintained on the Lots whether in a window or otherwise without the prior written approval of the Architectural Committee except: (i) signs required by legal proceedings; (ii) residence identification signs; (iii) one (1) "For Sale", provided that the Architectural Committee shall reserve the right to prescribe within the Design Guidelines the size, materials, color and format of such signs; and (iv) signs expressing an Owner's free speech liberties.

**3.31 Window and Window Covers.** Glass surfaces on windows or skylights shall not be highly reflective or reflective to any degree not approved by the Architectural Committee. Only customary curtains, drapes, shades and shutters may be installed as window covers. No window cover shall be covered by paint, foil, sheets or similar items.

**3.32 Other Uses, Activities and Facilities.** The Association Rules may contain restrictions, limitations, rules and regulations governing any additional uses, activities, Improvements or facilities on a Lot or within the Project that are (i) Visible From Neighboring Property, (ii) visible from any Common Area or street, or (iii) that are deemed by the Association to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents. The Association Rules are intended to be responsive to the changing needs of the Project and the desires of the Association's Members.

**3.33 Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article 3, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other

Owners or Lessees of the Project and is consistent with the high quality of life intended for residents of the Project.

**3.34 Drainage.** No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, as shown on the Plat and marked as a Drainage Easement, or any part thereof, or for any Lot as shown on the drainage plans on file with Yavapai County, Arizona. No Person shall alter the grading of a Lot or alter the natural flow of water over and across a Lot without the prior written approval of the Architectural Committee.

**3.35 Backflow Prevention.** In accordance with the Arizona Department of Environmental Quality ("ADEQ") Backflow Protection Requirement, and particularly Section R 18-4-115 of the water rules, each Owner shall install a backflow prevention device at each Lot's meter box to protect the water system from contamination caused by backflow through unprotected cross connections. No Person shall make a connection or allow one to exist between the Association's pipes, conduits or metering devices and any source of contamination, other water system or any substances whatsoever unless there is a backflow prevention device installed, as approved in writing by the Architectural Committee.

**3.36 Compliance with Laws.** In connection with the use, occupancy and construction of Improvements on any Lot, each Owner, Lessee and Resident, and their respective agents, contractors, invitees, an representatives, shall comply with all laws and regulations and the failure to so comply with such laws and regulations shall be deemed a violation of this Declaration, and the Association shall be authorized to enforce all remedies provided in this Declaration.

#### **ARTICLE 4 - EASEMENTS**

**4.1 Owners' Easements of Enjoyment.** Every Owner, Lessee and Resident shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area (including the right of use any streets which may be part of the Common Area for ingress and egress to the Owner's Lot) which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (i) The right of the Association to dedicate, convey, transfer or encumber the Common Area or an Easement as provided in Section 5.12 of this Declaration.
- (ii) The rights and easements granted to the Declarant in this Declaration, including the rights and easements granted to the Declarant in Sections 4.2, 4.3, 4.7, 4.8 and 4.9 of this Declaration.

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

**4.2 Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities both public and private, including, but not limited to, gas, water, sewer, telephone, cable television, electricity and drainage. By virtue of this Easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no electrical lines, waterlines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed or as approved by the Board. Without limiting the foregoing, an eight (8) foot Utilities Easement, as shown on the Plat along all streets and rights of way and the Page Springs Road frontage, is for such utility services and facilities, subject to exceptions as noted on the Plat in reference to the Drainage Easements.

**4.3 Declarant's Use for Sales and Leasing Purposes.** Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area while the Declarant is selling Lots. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

**4.4 Declarant's Easements.**

**4.4.1** Declarant shall have the right and an easement on and over the Areas of Association Obligation to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Obligation and any Lots and other property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

**4.4.2** The Declarant shall have the right and an easement upon, over, and through the Areas of Association Obligation as may be reasonably necessary for the purpose of discharging its obligations and exercising the rights granted to or reserved by the Declarant by this Declaration.

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

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

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

**4.5.3** For the construction of the wall located within the Wall Easement Area ("Temporary Construction Easement");

**4.5.4** For correction of emergency conditions in one or more Lots;

**4.5.5** For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

**4.5.6** For inspection of the Lots (i) in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot, or (ii) to satisfy the disclosure requirements, if any, of applicable law.

**4.6 Easement for Unintended Encroachments.** To the extent that any Improvement upon a Lot or Common Area encroaches on any other Lot or Common Area as a result of the original construction shifting or settling, or alteration or restoration authorized by this Declaration or any other reason other than the intentional encroachment on a Lot or Common Area by an Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

**4.7 Drainage Easements.** Drainage facilities have been or will be constructed or installed on Lots within areas shown on the Plat identified as "Drainage Easement" (sheet 4 of 5) or in areas identified as "Drainage Easement" in such other recorded instruments executed by the Owner of a Lot (collectively, the "Drainage Easement Areas"). Lots 8, 16, 26, 27, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 57, 58, 59, 60, 61, and 69 are subject to the Drainage Easement, as shown on the Plat. Such facilities may consist of detention ponds, drainage swales, channels with gunnite surfaces, pipes, scuppers or other types of drainage transfer and collection improvements. The Association shall be responsible for maintaining, repairing and replacing the drainage facilities within the Drainage Easement Areas. Each Owner and Lessee of a Lot encumbered by a Drainage Easement acknowledges and agrees that (i) no Improvements, except landscaping and plant materials approved by the Architectural Committee, shall be installed or planted within the Drainage Easement Areas, and (ii) no actions will be taken or allowed by such Owner or Lessee that may obstruct or divert the flow of water within the Drainage Easement Areas.

**4.8 Entrance Sign Feature Easement (reflected on Plat sheets 2 and 3 of 5).** Easements have been granted to the Association upon, across over and under the

area on Lots 2 and 3 as shown on the Plat (detail on sheet 3 of 5) and identified as "Entrance Sign Feature Easement", collectively the "Sign Easement Areas", for the purpose of the Association to construct and maintain identification signs within the Sign Easement Areas, and to plant and maintain landscaping thereon. The Association shall be responsible for maintaining and replacing the identification signs, and any landscaping placed on the Sign Easement Areas. Each Owner and Lessee of Lot 2 and Lot 3 acknowledges and agrees that no Lot Improvements will be installed or planted within the Sign Easement Areas.

**4.9 Emergency Access Only and Drainage Easement.** An access street and drainage facilities have been or will be constructed or installed on Lots within areas shown on the Plat identified as "Emergency Access Only and Drainage Easement" for the purpose of allowing emergency vehicles, such as police, fire department ambulances and other emergency vehicles and personnel access to the Project from an alternate route than Page Springs Road, and for drainage (the "Emergency Access Areas"). Lots 8, 16, 26, and 27, are subject to the Emergency Access Only and Drainage Easement, as shown on the Plat. The Association shall be responsible for maintaining, repairing and replacing the street and drainage facilities within the Emergency Access Areas. Each Owner and Lessee of the Lot encumbered by the Emergency Access Only and Drainage Easement acknowledges and agrees that (i) no Improvements shall be installed or planted within the Emergency Access Areas, and (ii) no actions will be taken or allowed by such Owner or Lessee that may obstruct the use of the street by emergency vehicles or divert the flow of water within the Emergency Access Areas. Each Lot Owner, Lessee and Resident, on behalf of its family members, invitees and licensees, in the subdivision, hereby warrant and agree not to use the Emergency Access Areas for ingress or egress to the Project or to their Lot.

**4.10 Non-Vehicular Access Easement.** Subject to this Declaration and the Association Rules, a one (1) foot Non Vehicular Access Easement, as shown on the Plat, and to which Lots 2, 3, 7,8, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 are subject, is granted exclusively in favor of the Association and its directors, officers, agents, employees and independent contractors for the sole purpose of enforcing the restriction that no person traverses the Non-Vehicular Access Easement for access to or from a Lot, Page Springs Road or Lee Pasture Road. Each Owner, Lessee, Resident of a Lot, and their family members, agents, invitees and licensees are strictly prohibited from entering on or traversing over the Non-Vehicular Access Easement for the purpose of access to or from a Lot, Page Springs Road or Lee Pasture Road, either by vehicle, bicycle, motorcycle, or any other means of transportation.

**4.11 Wall Easement.** Subject to this Declaration and the Association Rules, a five (5) foot Wall Easement, "Wall Easement Area", as shown on the Plat, and to which Lots 2, 3, 4, 5, 6, 7, 8, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 are subject, is granted in the favor of Declarant and the Association and its directors, officers, agents, employees and independent contractors for the sole purpose of constructing,

maintaining and repairing a wall should Declarant or Association, determine, in its sole discretion, to construct a wall within the Wall Easement Area.

**4.12 Easement Designated on Plat.** Each Lot, and its Owner, Lessee and Resident, and the Association, as the case may be, are declared to be subject to all easements, dedications, and rights of way granted or reserved in, on, over, or under the Property and each Lot as shown on the Plat.

**4.13 Miscellaneous Easements.** In addition to the blanket easements granted herein, the Association is authorized and empowered to grant upon, across, over, or under, Common Property and Areas of Association Obligation such permits, licenses, easements and rights-of-way for water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, security lines, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas and Areas of Association Obligation or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

## **ARTICLE 5 - THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS**

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

**5.2 Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Until the Transition Date, the directors of the Association shall be appointed by and may be removed by the Declarant. After the Transition Date, directors shall be elected by the Members in accordance with the Articles and Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

**5.3 The Association Rules.** The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility, (iii) the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, (iv) Minimum Standards for the maintenance of Lots, (v) restrictions on the use of Lots, or (vi) any other subject within the jurisdiction of the Association. Except as limited herein, the Association Rules may be adopted, amended and

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

**5.4 Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section 5.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**5.5 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

**5.6 Identity of Members.** Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Lot owned by the Declarant and each Lot owned by an Owner, and may not be separately assigned, transferred or conveyed. There shall not be an increase in the number of memberships allowed in the Association.

**5.7 Classes of Members.** The Association shall have two classes of voting membership.

**5.7.1 Class A.** Class A members shall be all Owners of Lots, with the exception of the Declarant until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned on each occasion that a vote of the Association membership is properly called for under the Project Documentation, excepting such votes that pertain to a Domestic Water System Matter, and in such votes pertaining to a Domestic Water System Matter, Class A members shall be entitled to only one (1) vote regardless of the number of Lots owned by a Class A member.

**5.7.2 Class B.** The Class B member shall be the Declarant, its successors or assigns. The Class B member shall be entitled to five (5) votes for each

Lot owned on each occasion that a vote of the Association membership is properly called for under the Project Documents, excepting such votes that pertain to a Domestic Water System Matter, and in such votes pertaining to a Domestic Water System Matter, the Class B member shall be entitled to only one (1) vote regardless of the number of Lots owned by the Class B member. The Class B membership shall automatically cease to exist when the Declarant, its successors or assigns no longer owns any Lot within the Project.

**5.8 Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each Lot shall be exercised as the Owners, if there is more than one Owner, agree among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot owned by an Owner. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Class A member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void. In the event that more than one (1) vote is cast by a Class A member who owns more than one Lot regarding a Domestic Water System Matter, none of the votes shall be counted, and all of the votes shall be deemed void.

**5.9 Absentee Ballots.** Unless the Project Documents require otherwise, the Association shall provide for votes to be cast by absentee ballot or by some other form of delivery when directors are to be elected or any other matter is submitted to a vote of the Members, as provided in the Bylaws or as determined by the Board.

**5.10 Transfer of Membership.** The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

**5.11 Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The members of the Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove

the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot or voluntarily surrenders its right to appoint and remove the members of the Architectural Committee, the members of the Architectural Committee shall be appointed by the Board. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions (the "Design Guidelines"). The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any request for approval submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

**5.12 Water System Committee.** The Association shall have a Water System Committee to perform all the functions of the Association set forth in this Declaration as relating to any Domestic Water System Matter and Section 2.2 of this Declaration. The Water System Committee shall be a Committee of the Board, provided, initially, and until Declarant no longer owns any Lot in the Project, the members of the Water System Committee shall be elected directly by the Members of the Association, which members shall then be approved by the Board of Directors. The Water System Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot or Lots (regardless of the number of Lots owned) Declarant shall have only one (1) vote as a Member of the Association to elect the members of the Water System Committee. Each Member that owns more than one (1) Lot shall have only one (1) vote as a Member of the Association to elect the members of the Water System Committee. The Declarant shall have no right to appoint or remove the members of the Water System Committee. At such time as the Declarant no longer owns any Lot in the Project, the members of the Water System Committee shall be appointed by the Board. The Water System Committee shall promulgate rules and regulations in managing and operating the Water System, including without limitation fees and charges. The decision of the Water System Committee shall be final on all matters submitted to it relating to Domestic Water System Matters pursuant to this Declaration. The Water System Committee shall advise the Board on matters related to the advisability of a Water System Assessment.

**5.13 Conveyance or Encumbrance of Common Area; Assignment or Dedication of Easements.** Except as set forth in this Section 5.13 of this Declaration, the Common Area or any Easement shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Members of the Association. The Declarant, so long as the Declarant owns any property within the Project, and thereafter the Board, without obtaining the approval or consent of any other Owner, may grant easements over or convey portions of the Common Area and may convey, transfer or dedicate easements:

- (i) to the State of Arizona, Yavapai County or any other governmental or quasi-governmental authority;

- (ii) to any Person for the purpose of correcting areas of unintentional encroachment;
- (iii) to any Person so long as such conveyance or easement shall not have a material adverse affect on Members or Residents.

Any such conveyances or granting of easements may reserve to the Association and its Members any rights, privileges and duties determined by the Declarant or the Board, whichever is applicable, to be appropriate for the enjoyment and use of the Property.

**5.14 Suspension of Voting Rights.** If an Owner otherwise entitled to vote is delinquent in the payment of any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

## **ARTICLE 6 - COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIEN THEREFOR**

**6.1 Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties.** Each Owner, other than the Declarant, (except as provided in Section 6.5 of this Declaration), by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration or the other Project Documents. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration or the other Project Documents. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest, late charges, and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in enforcing the Project Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due. The personal

obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

## **6.2 Annual Assessments.**

**6.2.1** In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot. The Board shall not levy an Annual Assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of a majority of the Members of the Association.

**6.2.2** The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may, subject to the twenty percent (20%) limit set forth in Subsection 6.2.1 of this Declaration for the increase of the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

**6.3 Assessment Period.** The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year.

**6.4 Rate of Assessment.** The amount of the Annual Assessment for each Lot other than Lots owned by the Declarant shall be the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots.

**6.5 Obligation of Declarant for Deficiencies.** Until the Transition Date, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board with reasonable notice, such funds as may be necessary, when added to the Annual Assessments then collected by the Association, to pay all Common Expenses of the Association as they become due. Notwithstanding the foregoing sentence, Declarant shall not be obligated to pay to the Association pursuant to this Section 6.5 any funds for the establishment of replacement and maintenance reserves.

## **6.6 Water System Assessment.**

**6.6.1** The Board shall levy against each Lot with or without Residential Unit Construction and Water Service Connection, in any Assessment Period, a Water System Assessment for the purpose of providing or defraying, in whole or in part, the cost of operating the Domestic Water System and the cost of any upgrade, construction, reconstruction, repair or replacement of an improvement used to operate the Domestic Water System, including fixtures and personal property related thereto.

**6.6.2** The total amount to be assessed against each Lot shall be the amount that is reasonably estimated from time to time by the Board to produce the necessary funds for the Association to operate, maintain, repair and replace the Domestic Water System in accordance with all laws, rules and regulations promulgated by the applicable governmental authorities divided by the number of Lots in the Project. Water System Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board.

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

**6.8 Lot Specific Assessments.** Lot Specific Assessments shall be levied by the Board against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

**6.9 Commencement Date of Assessment Obligation.** Each Lot shall be subject to assessment upon the conveyance thereof to a Person other than Declarant.

**6.10 No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or other Area of Association Responsibility, or that the Association is not enforcing the Project Documents.

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

**6.12 Purposes for which Association's Funds May Be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project and the Owners.

**6.13 Rules Regarding Billing and Collection Procedures.** Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**6.14 Fines and Penalties.** In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

**6.15 Notice of Violation, Appeal and Payment of Fines and Penalties.**

**6.15.1** The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner, his family or guests. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or Lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a

statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

**6.15.2** Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Residential Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

**6.15.3** The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

**6.15.4** Any fines or penalty levied pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1 of this Declaration.

**6.16 Costs of Enforcement.** Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 6.1 of this Declaration.

**6.17 Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association.**

**6.17.1** Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within fifteen (15) days after the Assessment, fee, charge, fine or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the association shall impose a late charge on late-payments authorized by law. Late charges shall refer to charges to be added to late payments of Assessments and shall be applicable to any payment that becomes delinquent if not paid within fifteen (15) days from the date due, and are limited to the greater of fifteen dollars (\$15.00) or ten percent (10%) of each amount that becomes delinquent. This

late charge is subject to the highest permitted amounts that may become applicable by reason of any laws that may become effective after the execution date of this Declaration.

**6.17.2** As set forth in Section 6.1 of this Declaration, the Association shall have a lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees levied against or charged to a Lot or the Owner thereof. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, reasonable attorneys' fees and the costs of preparing the Notice of Lien.

**6.17.3** Subject to applicable statutes, the Lien created by Section 6.1 of this Declaration shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.

**6.17.4** The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

**6.17.5** The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right, if any, to the use of the recreational facilities that are part of the Common Area.

**6.17.6** The Board may, without notice or demand, enforce the lien established pursuant to Section 6.1 of this Declaration.

**6.17.7** The Board may, without notice or demand, institute an action at law for a money judgment to recover the amount of the delinquent Assessment together with all fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees.

**6.18 Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus

as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

## **ARTICLE 7 - MAINTENANCE**

### **7.1 Areas of Association Obligation.**

**7.1.1** The Association, or its duly delegated representative, shall manage, maintain, repair and replace the (i) the Areas of Association Obligation, and all Improvements located thereon, including the Water System, as set forth in Subsections 7.1.3 through 7.1.9 of this Declaration, and (iii) all Association Property.

**7.1.2** The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

**7.1.3** The Association shall be responsible for the operation, maintenance, repair and replacement of the Water System in compliance with all applicable federal, state and local laws, ordinances and regulations. The Association shall file all reports regarding the operation and maintenance of the Water System as may be required by federal, state or local laws, ordinances or regulations. Water lines and appurtenant facilities which serve only one Lot and which are located within the boundary of a Lot shall be maintained, repaired and replaced by the Owner of the Lot served.

**7.1.4** The Association shall contract with a certified operator to manage, operate and maintain the Water System.

**7.1.5** If the Board determines, in its reasonable discretion, that it is in the best interest of the Owners, Lessees and Residents that the Association not provide water services to the Owners, Lessees and Residents, and that any such services can better be provided by another entity, then and in that event of termination of such services by the Association, the Board shall discontinue the charges authorized pursuant to Article 6 of this Declaration with respect to the discontinued portion of the operation and maintenance of the Water System and any obligations of Owners, Lessees and Residents created hereunder for the benefit of the Association as to the operation or maintenance of the Domestic Water System are expressly assigned to the entity that will provide water service.

**7.1.6** The Association shall be responsible for maintaining, repairing and replacing the drainage facilities within the Drainage Easement Areas.

**7.1.7** The Association shall be responsible for maintaining, repairing and replacing the wall, if any, located within the Wall Easement Area.

**7.1.8** The Association shall be responsible for maintaining, repairing and replacing the gate, barrier, or other security measure, if any, located within the Emergency Access Areas.

**7.2 Lots.** Subject to the restrictions set forth in Section 3.1 of this Declaration, each Owner shall be responsible for maintaining his or her Lot. Each Owner shall be responsible for maintaining, repairing or replacing all buildings, Residential Units, landscaping or other Improvements situated on his or her Lot. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die or present a fire hazard shall be removed. No yard equipment, wood piles or storage area may be maintained so as to be Visible From Neighboring Property or streets.

**7.3 Sewer System Maintenance.** Each Owner, Lessee and Resident shall be solely responsible for the repair and maintenance of the sewer facilities and lines (septic or otherwise) installed within the boundaries of Owner's Lot, including payment for the cost of regular periodic pumping and cleaning of the system. Each Owner, Lessee and Resident shall be solely responsible for maintaining and repairing the structural and mechanical aspects of the sewer system. It is specifically agreed and understood by all Owners, Lessees and Residents that the sewer system used on each Lot shall in no way be altered or changed without the written consent of the Architectural Committee and, shall comply with the requirements of all governmental agencies having jurisdiction over any such alterations or changes.

**7.4 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section 7.4 in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

**7.5 Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event

the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Association Lien.

## **ARTICLE 8 - INSURANCE**

**8.1 Scope of Coverage.** Commencing no later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

**8.1.1** Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Area of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

**8.1.2** Property insurance on all Area of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Area of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

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

**8.1.4** Directors and officers liability insurance in an amount to be determined by the Board;

**8.1.5** Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

**8.1.6** The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

- (i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;
- (ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;
- (iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;
- (iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;
- (v) Statement of the name of the insured as the Association; and
- (vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

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

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

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

Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

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

## ARTICLE 9 - GENERAL PROVISIONS

**9.1 Enforcement.** The Association or any Owner shall have the right to enforce Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the nonprevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

**9.2 Method of Termination.** This Declaration shall continue in full force and effect during such time as Declarant owns any Lot, and thereafter unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes of in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Yavapai County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.



# **Exhibit 2**

**BYLAWS  
OF  
MINGUS PANORAMA ESTATES HOMEOWNERS ASSOCIATION  
ADOPTED AUGUST 15, 2006**

WHEREAS, Mingus Panorama Estates Homeowners Association (the "Association") was incorporated as a nonprofit corporation in the State of Arizona on July 27, 2006.

WHEREAS, Arizona Revised Statutes §10-3101, *et seq.* and the Articles of Incorporation vest the authority to adopt initial bylaws in the Board of Directors; and

WHEREAS, the Board of Directors unanimously adopted on August 15, 2006, these Bylaws as set forth herein.

NOW THEREFORE, the Bylaws of the Association are hereby adopted in their entirety as follows:

**Article I  
Name and Location of Association**

**Section 1.1 Name.** The name of the Association is Mingus Panorama Estates Homeowners Association.

**Section 1.2 Principal Office.** The principal office of the Association in the State of Arizona is currently located at 350 Shadow Rock Drive, Sedona, Arizona 86336. The Association may change the location of its principal office as the Board of Directors may determine or as the affairs of the Association may require.

**Article II  
Reference to Declaration**

**Section 2.1 Reference to Declaration.** Reference is made to the certain Declaration of Covenants, Conditions, Restrictions and Easements for Mingus Panorama Estates Homeowners Association recorded on \_\_\_\_\_, 2006 as Instrument No. \_\_\_\_\_ in the Official Records of Yavapai County, Arizona, (the "Declaration"). Unless otherwise defined in these Bylaws, all capitalized words and phrases shall have the meanings set forth in the Declaration.

**Article III  
Purpose**

**Section 3.1 Purpose.** The primary purpose of the Association is to serve as the governing body for the Owners of Lots and to fulfill such obligations and exercise such rights as are given by statute and the Project Documents, as they may hereafter be amended.

## **Article IV Membership**

**Section 4.1 Qualification.** Membership in the Association shall be limited to Owners of Lots.

**Section 4.2 Voting Rights.** The Association shall have two classes of voting membership, as provided in Section 5.7 of the Declaration.

**Section 4.3 Good Standing.** If a Member otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Association's Project Documents, the Board of Directors may, in its sole discretion, certify that such Member is not in good standing and such Member's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

**Section 4.4. Transfer of Membership.** Membership in the Association is inextricably and irrevocably connected with ownership of a Lot and may not be transferred independently of such ownership.

## **Article V Meetings of Members**

**Section 5.1 Annual Meeting.** An annual meeting of the Members of the Association shall be held at least once every twelve (12) months at a date and time determined by the Board of Directors for the purpose of electing or announcing the results of the election of Directors and transacting such other business as may properly come before the meeting.

**Section 5.2 Special Meetings.** Special meetings of the Members may be called by the President, the Board of Directors, or by the written request signed by Members having at least one-fourth (1/4<sup>th</sup>) of the total authorized votes in the Association. The close of business on the thirtieth (30<sup>th</sup>) day before delivery of the demand or demands for a special meeting shall be the record date for the purpose of determining whether the demand for the special meeting has been signed by Members having at least one-fourth (1/4<sup>th</sup>) of the total authorized votes in the Association.

**Section 5.3 Record Date.** For any meeting of the Members, the Board of Directors may fix a date not more than fifty (50) nor less than ten (10) days before the date of such meeting, as a record date for the determination of the Members of record entitled to vote at such meeting. If a record date has not been fixed in advance of a meeting as provided herein, the time of commencement of the meeting shall be deemed the record date.

**Section 5.4 Place of Meeting.** Meetings of the Members shall be held in Yavapai County, Arizona, at a suitable place designated by the Board of Directors.

**Section 5.5 Notice of Meetings.** Written notice stating the place, day and hour of the annual meeting of Members or a special meeting of Members shall be hand delivered or delivered by first-class US Mail to all Members, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the Secretary. The notice of the meeting shall be deemed to be delivered when left with a person of suitable age and discretion at the address that appears on the records of the Association or when deposited, postage prepaid, in the United States Mail and addressed to the Member at the address that appears on the records of the Association. In the case of special meetings, the purpose for which the special meeting is called, including the general nature of any proposed amendment to the Project Documents, changes in Assessment that require approval of the Members and any proposal to remove a director of the Association, shall be stated in the notice and no business shall be transacted at such special meeting except as stated in the notice. A Member's attendance at a meeting waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the mater at the time it is presented.

**Section 5.6 Quorum.** Except as otherwise provided in the Project Documents, the presence in person, by absentee ballot, or by proxy, if allowable, at a properly noticed meeting of Members entitled to cast one-tenth (1/10<sup>th</sup>) of the total authorized votes in the Association shall constitute a quorum at all meetings of the Members. If a quorum shall not be present at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time until a quorum shall be present.

**Section 5.7 Proxies.** Prior to the Transition Date, at any meeting of Members, any Member entitled to vote may vote by proxy executed in writing by the Member or by his or her duly authorized attorney-in-fact. Proxies may be granted in favor of only another Member, the granting Member's attorney, the lessee of a granting Member's Lot, the Secretary of the Association or the Board of Directors. Proxies shall be duly executed in writing and shall be valid only for the particular meeting designated therein or any adjournment thereof. All proxies must be filed with the Secretary prior to the commencement of the meeting for which they are given. Proxies shall be deemed revoked only upon the appearance in person of the Member granting a proxy at the meeting for which the proxy was granted or upon the actual receipt by the person presiding over the meeting of a notice of revocation signed by the Member who granted the proxy. After the Transition Date, in accordance with §33-1812, no vote may be cast pursuant to a proxy.

**Section 5.8 Absentee Ballots.** The Association shall provide for votes to be cast in person and by absentee ballot and may provide for voting by some other form of delivery. Any action taken at an annual, regular or special meeting of the Members

shall comply with all of the following if absentee ballots are used: the absentee ballot (i) shall set forth each proposed action; (ii) shall provide an opportunity to vote for or against each proposed action; (iii) is valid for only on specified election or meeting or the Members and expires automatically after the completion of the election or meeting; (iv) specifies the time and the date by which the ballot must be delivered to the Board of Directors in order to be counted, which shall be at least seven (7) days after the date that the Board delivers the unvoted absentee ballot to the Member; and (v) does not authorize another person to cast votes on behalf of the Member. Votes cast by absentee ballot or other form of delivery are valid for the purpose of establishing a quorum.

**Section 5.09 Manner of Acting.** A majority of the votes entitled to be cast on a matter to be voted upon by the Members present, by absentee ballot, or represented by proxy, if permissible, at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by statute, the Declaration or these Bylaws.

**Section 5.10 Minutes.** Minutes shall be taken at all meetings of Members. Copies of the minutes shall be available for inspection at the office of the Association by Members and Directors at all reasonable times.

**Section 5.11 Non-cumulative Voting.** All voting shall be done on a non-cumulative basis.

## **Article VI Board of Directors**

**Section 6.1 Powers and Duties.** The affairs of the Association shall be managed by its Board of Directors. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things that are not required by the Declaration, statute or these Bylaws to be exercised or done by the Members. In addition to the powers and duties granted and imposed by statute and the Project Documents, the powers and duties of the Board of Directors shall include, but are not limited to, the following:

- (A) Open bank accounts on behalf of the Association and designate the signatories thereon;
- (B) To make, or contract for the making of repairs, additions to, improvements to or alterations of the Common Area and Areas of Association Obligation, in accordance with the Project Documents, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- (C) To own, maintain and otherwise manage all of the Common Area and Areas of Association Obligation; to pay all taxes and assessments, if any,

which may properly be levied against the Common Area and Areas of Association Obligation; to repair, rehabilitate, and restore the Common Area and Areas of Association Obligation; and to insure the Common Area and Areas of Association Obligation against such risks as the Board of Directors shall determine in accordance with the Project Documents;

- (D) To own, maintain, manage, lease, sell or otherwise dispose of any personal and real property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action and all facilities, structures, buildings, fixtures, landscaping and other improvements located thereon; to pay all taxes and assessments, if any, which may properly be levied against such property; to repair, rehabilitate, and restore such property; and to insure such property against such risks as the Board of Directors shall determine;
- (E) To purchase, lease, acquire, own, maintain, manage, sell or otherwise dispose of Association Property; to pay all taxes and assessments, if any, which may properly be levied against Association Property; and to insure Association Property against such risks as the Board of Directors shall determine;
- (F) To do all things necessary to carry out and enforce the terms and provisions of the Project Documents and to do all things and acts, including the payment of all maintenance, operating and other costs, which in the sole discretion of its Board of Directors shall be deemed to be in the best interest of the Members of the Association or for the peace, comfort, safety, or general welfare of the Members of the Association, all in accordance with the Project Documents;
- (G) To enter into agreements with third parties authorizing such parties to carry on any activities which might legally be carried on by the Association and delegated by the Association to third parties;
- (H) To engage the services of a manager or managing agent who shall manage and operate the Property for all of the Members upon such terms, for such compensation and with such authority as the Board of Directors may approve;
- (I) To appoint committees of the Board of Directors and to delegate to such committees the authority to carry out certain duties of the Board of Directors, to the extent permitted by statute and the Project Documents law;

- (J) To estimate the amount of the annual budget; to provide the manner and time of assessing and collecting from the Owners the Assessments provided for in the Project Documents;
- (K) To promulgate such rules and regulations pertaining to the use and occupancy of the Property and the personal conduct of the Members and their family members, guests, lessees and invitees thereon as may be deemed proper and which are consistent with the Declaration;
- (L) To enforce, by suit or otherwise, the terms and provisions of the Project Documents;
- (M) To establish and maintain working capital, reserve and contingency accounts in an amount to be determined by the Board of Directors;
- (N) To lend or invest its working capital and reserves with or without security;
- (O) To obtain, for the benefit of all of the Property, all water, sewage, gas and electric services and refuse collection, and to grant easements when necessary for utilities, sewer facilities and CATV over the Property;
- (P) Levy and collect Assessments as provided in the Declaration;
- (Q) To establish, levy, collect and enforce by any lawful means a schedule of fines, penalties, transfer fees, refinance fees, administrative charges, late charges, interest, and costs of collection;
- (R) To do all other acts and things required by applicable law or statute or authorized in the Declaration but not explicitly set out above;
- (S) In general to do and perform such acts and things and to transact such business in connection with the foregoing objects and purposes as may be necessary or appropriate.

**Section 6.2 Number and Qualifications of Directors.** The number of Directors of the Association shall not be less than three (3) nor more than seven (7) as determined by the Board of Directors. If the number of Directors is reduced, all Directors whose terms have not yet expired and who are in good standing shall be allowed to serve the balance of their terms. Until the termination of the Class B Membership, the directors need not be Members of the Association. After the termination of the Class B Membership, all Directors must be Members in good standing of the Association in accordance with the provisions of Section 4.3 of these Bylaws, but need not be residents of the State of Arizona. If an Owner is a corporation, partnership or trust, an officer, partner, trustee or beneficiary of such owner may serve as a Director. If a Director shall fail to meet the qualifications of good standing or

Membership at any time during his or her term, he or she will thereupon cease to be a Director and his or her place on the Board shall be deemed vacant.

**Section 6.3 Terms and Term Limitation.** Directors shall be elected to and shall serve staggered two-year terms as follows: One-half of the number of Directors (or as close to one-half as is possible if there are an uneven number of Directors) shall be elected at each annual meeting, or each year if voting is conducted by mail, for two-year terms. All elections and appointments of Directors under these Bylaws shall be made in a manner to preserve the staggering of terms contemplated hereby. No Director shall serve more than three (3) consecutive terms, or portions thereof.

**Section 6.4 Regular Meetings.** A regular annual meeting of the Board of Directors shall be held without other notice than this bylaw, immediately after, and at the same place as, the annual meeting of Members. The Board of Directors may provide by resolution the time and place for additional regular meetings of the Board.

**Section 6.5 Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any convenient place and time as the place and time for holding any special meeting of the Board of Directors called by them.

**Section 6.6 Teleconference Meetings.** Meetings of the Board of Directors may be held by telephone conference or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation at such meeting shall constitute presence in person at the meeting.

**Section 6.7 Notice.** Notice of any special meeting of the Board of Directors shall be given to Directors at least three (3) days prior thereto by written notice delivered personally or sent by mail or facsimile to each Director at his or her address or facsimile number as shown on the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited, postage prepaid, in the United States Mail in a sealed envelope so addressed. If notice is given by facsimile, such notice shall be deemed to be delivered when the notice is transmitted to a telecopier to which the sender has reason to believe the Director has access. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by statute or by these Bylaws.

**Section 6.8 Quorum.** A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors; but if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

**Section 6.9 Manner of Acting.** The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless a greater number is required by law or by the Project Documents.

**Section 6.10 Attendance at Meetings.** If any Director fails to attend three (3) or more successive meetings of the Board, including special meetings of which such Director has been given notice as provided in Section 6.7 of these Bylaws, or misses four (4) or more meetings out of six (6) successive meetings of the Board, including special meetings of which such Director has been given notice as provided in Section 6.7 of these Bylaws, such Director shall, unless otherwise determined by two-thirds (2/3rds) of the Directors present at a meeting at which a quorum is present, be automatically removed as a Director.

**Section 6.11 Removal.** At any annual or special meeting of the Members duly called, any one or more of the Directors may be removed from the Board with or without cause by Members having more than two-thirds (2/3rds) of the votes entitled to be cast by the Members present in person or by proxy at the meeting, and a successor may then and there be elected to fill the vacancy thereby created by a majority of the Members in attendance at the meeting. A Director so elected shall be selected for the full unexpired term of the Director removed. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting prior to the vote for removal.

**Section 6.12 Vacancies.** Except as provided in Section 6.11 of these Bylaws, any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum, at the next regular or special meeting of the Board. A Director appointed to fill a vacancy shall be appointed for the full unexpired term of his or her predecessor in office.

**Section 6.13 Compensation.** Directors shall not receive any compensation for their services as such. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties. Nothing herein contained shall be construed to preclude a Director from serving the Association in any other capacity and receiving compensation therefor.

**Section 6.14 Open Meetings.** After the termination of the Class B Membership, notice of the time and place of all meetings of the Directors shall be given to all Members by mail, hand delivery, posting in a conspicuous place, publishing in a newsletter of general circulation to all Members, or by any other reasonable means as determined by the Board of Directors. Except as otherwise provided herein or by statute, all meetings of the Directors shall be open to all Members of the Association and Members shall be permitted to attend and listen to the deliberations and proceedings; provided, however, that Members who are not Directors may not participate in any deliberation or discussion unless expressly authorized to do so by a

vote of majority of the Directors present. The foregoing notwithstanding, any meeting or portion of a meeting of the Board of Directors may be closed if, and only if, the closed meeting or portion thereof is limited to consideration of the following:

- (A) Employment or personnel matters for employees of the Board of Directors or the Association;
- (B) Legal advice from an attorney for the Board of Directors or the Association;
- (C) Pending or contemplated litigation; or
- (D) Pending or contemplated matters relating to enforcement of the Association's Project Documents.

**Section 6.15 Action Taken Without a Meeting.** The Directors 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 consent of all the Directors. Any such written consent shall be filed with the minutes of the proceedings of the Board.

## **Article VII Officers and Executive Director or Managing Agent**

**Section 7.1 Officers.** The officers of the Association shall be a President, one (1) or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary, a Treasurer and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors may elect or appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority to perform the duties prescribed, from time to time, by the Board of Directors. All officers of the Association must be Members in good standing of the Association. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

**Section 7.2 Election and Term of Office.** The officers of the Association shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and qualified.

**Section 7.3 Removal or Disqualification.** Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Association would be served thereby. Any officer who ceases to be a Member of the Association or who ceases to be in good standing shall be automatically removed from office.

**Section 7.4 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

**Section 7.5 Powers and Duties.** To the extent such powers and duties are not assigned or delegated to a Managing Agent pursuant to Section 7.7 of these Bylaws, the powers and duties of the officers shall be as follows:

**7.5.1 President.** The President shall be the principal executive officer of the Association and shall, in general, supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the Members and of the Board of Directors. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, leases, mortgages, bonds, contracts, or other instruments that the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by the Declaration, these Bylaws or by statute to some other officer or agent of the Association.

**7.5.2 Vice President.** In the absence of the President or in the event of the President's inability or refusal to act, the Vice President (or in the event there be more than one (1) Vice President, the Vice Presidents in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be delegated or assigned by the President or by the Board of Directors.

**7.5.3 Treasurer.** The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these Bylaws; and, in general, perform all the duties to the office of Treasurer and such other duties as from time to time may be delegated or assigned by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give, at the Association's expense, a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

**7.5.4 Secretary.** The Secretary shall keep the minutes of the meetings of the Members and of the Board of Directors in one (1) or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the Association records; keep a register of the post-office addresses of each Member which shall be furnished to the Secretary by such Member; and, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be delegated or assigned by the President or by the Board of Directors.

**Section 7.6 Compensation.** No officer shall receive any compensation from the corporation for acting as such. However, any officer may be reimbursed for his or her actual expenses incurred in the performance of his or her duties. Nothing contained herein shall be construed to preclude an officer from serving the corporation in any other capacity, and receiving compensation therefor.

**Section 7.7 Managing Agent.** The Board of Directors may hire a Managing Agent at a compensation established by the Board of Directors. The Managing Agent may either be an employee of the Association, an independent professional management company, or an independent contractor. The Managing Agent shall perform such duties and services as the Board of Directors shall authorize. The Board of Directors may, but is not obligated to, delegate to the Managing Agent all of the powers granted to the Board of Directors or the officers of the Association by these Bylaws; provided, however, that the following powers may not be delegated to the Managing Agent:

- (A) To adopt the annual budget, any amendment thereto or to levy Assessments;
- (B) To adopt, repeal or amend Association Rules;
- (C) To designate signatories on Association bank accounts;
- (D) To borrow or lend money on behalf of the Association.

**Section 7.8 Management Agreement.** Any contract with the Managing Agent must provide that it may be terminated with or without cause and without payment of any penalty or termination fee on no more than thirty (30) days written notice. The term of any such contract may not exceed one (1) year.

## **Article VIII Committees of the Board**

**Section 8.1 Committees of Directors.** The Board of Directors shall establish an Architectural Committee and a Water System Committee, as provided in the Declaration. The Board of Directors may, by resolution adopted by a majority of the Directors in office, designate and appoint other standing or *ad hoc* committees, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors in the management of the Association, except that no such committee shall have the authority of the Board of Directors, in reference to amending, altering or repealing these Bylaws; electing, appointing or removing any Member of any such committee or any Director or officer of the Association; amending the Articles of Incorporation; authorizing the sale, lease, exchange or mortgage of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of the

assets of the Association; or amending, altering or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by the Declaration or by law.

## **Section 8.2 Architectural Committee.**

**8.2.1** The Architectural Committee shall consist of at least three (3) persons. None of the committee members shall be required to be an architect or to meet any other particular qualifications for membership. A committee member may, but need not, be an officer, Director or Member of the Association. The Board of Directors may increase the number of members on the Architectural Committee but the number of members must always be an odd number.

**8.2.2** It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms of the Declaration, to adopt Design Guidelines, and to perform other duties imposed upon it by the Declaration.

**8.2.3** The Architectural Committee may adopt, amend and repeal, by unanimous vote or written consent, Design Guidelines. The Design Guidelines shall interpret and implement the Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are required to be used within the Property.

**8.2.4** The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under the Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or other matter subsequently submitted for approval.

## **Section 8.3 Water System Committee.**

**8.3.1** The Water System Committee shall consist of at least three (3) Members of the Association. None of the committee members shall be required to be an hydrologist or to meet any other particular qualifications for membership. A committee member may, but need not, be an officer or Director of the Association. The Board of Directors may increase the number of members on the Water System Committee but the number of members must always be an odd number.

**8.3.2** It shall be the duty of the Water System Committee to consider and act upon any and all of the Domestic Water System Matters as defined in the Declaration, and to perform such other acts as provided in the Declaration.

**Section 8.4 Proceedings of Committees.** The provisions of these Bylaws, governing meetings, action without meetings and notice, waiver of notice, quorum and voting requirements of the Board also shall apply to committees and their members.

**Section 8.5 Alternate Members.** The Board may designate one or more directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

**Section 8.6 Compensation.** Members of committees shall not be entitled to compensation for their services, unless approved by a majority of all of the Directors. However, any member of a committee may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

### **Article IX Budget and Annual Assessments**

**Section 9.1 Annual Budget.** No later than thirty (30) days prior to the beginning of each fiscal year, the Board shall cause to be prepared an estimated annual budget for the upcoming fiscal year of the Association. Such budget shall take into account the estimated Common Expenses and cash requirements for the year. To the extent that Assessment and other cash income collected from the Members during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall be taken into account.

Common Expenses shall include, but shall not be limited to the following:

- (A) All expenses of the Board of Directors incurred for the administration of the Association;
- (B) Management fees;
- (C) All expenses for the operation, maintenance, repair, and replacement of the Association's Common Areas and Areas of Association Obligation;
- (D) Rent for equipment and facilities;
- (E) Taxes on Association property;
- (F) Insurance premiums on all policies of insurance obtained by the Board of Directors or the Association's Managing Agent;
- (G) Security expenses;
- (H) Working capital reserves;
- (I) General operating reserves;

- (J) Repair and replacement reserves;
- (K) Reserve for deficits accrued in prior years;
- (L) Utility expenses;
- (M) Fees payable to attorneys, accountants, bookkeepers, architects, engineers, construction managers and consultants;
- (N) All costs of carrying out the powers and duties of the Association; and
- (O) All other amounts that the Board of Directors may deem necessary or the Membership determines appropriate for the operation, administration, and maintenance of the Association.

**Section 9.2 Regular Assessments.** The estimated annual budget for each fiscal year shall be approved by the Board, and copies thereof shall be furnished by the Board to each Member before the beginning of the fiscal year. The Board shall then determine the amount of the Annual Assessment against each Lot and shall send written notice of the Annual Assessments to every Member. The Board shall not levy an Annual Assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of a majority of the Members of the Association.

**9.2.1** The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may, subject to the twenty percent (20%) limit set forth in Section 9.2 of these Bylaws, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

**9.2.2** In the event the Board shall determine that the amount collected or to be collected through Regular Assessments is in excess of the Association's needs for the current year and reserves appropriate for future years, the Board in its discretion may refund to the Members who paid such Assessments all or a portion of such excess, reduce the amount of the Regular Assessments or abate collection of Regular Assessments as it deems appropriate.

**Section 9.3 Collection of Assessments and Other Charges.** The Association shall collect Assessments, fees, charges, fines and penalties, together with

interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, as provided in the Declaration.

## **Article X Negotiable Instruments and Securities**

**Section 10.1 Signatures on Checks, Etc.** All checks, drafts, orders for payment of money, and negotiable instruments shall be signed by an officer or officers, employee or employees, or the Managing Agent of the Association as the Board of Directors may from time to time, by standing resolution or special order, prescribe.

**Section 10.2 Signatures on Certificates and Securities.** Endorsements or transfers of bonds or other securities will be signed by the president or any vice president and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the Association unless the Board of Directors prescribes otherwise.

**Section 10.3 Securities.** An officer or officers of the Association will from time to time be designated by the Board of Directors to have power to control and direct the disposition of any bonds or other securities or property of the Association deposited in the custody of any trust company, bank, or custodian.

## **Article XI Records**

**Section 11.1 Records.** The manager, managing agent, and Board of Directors will keep records of all actions of the manager, managing agent, and Board of Directors, as well as minutes of the meetings of the Board of Directors, minutes of the meetings of the Members and financial records and books of account for the Association, including a record of all receipts and disbursements. A separate account will also be kept for each Member containing, among other things, the amount of each Assessment, the date when due, amounts paid thereon, the balance remaining due, and any other fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed.

**Section 11.2 Access to Records.** The Association shall make the financial and other records of the Association reasonably available for examination and copying by a Member and his or her authorized agents. The Association may charge a reasonable fee for the time and costs of copying Association records. Association records may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

- (A) Personnel matters or medical records;

- (B) Communication between an attorney for the Association and the Association;
- (C) Pending or contemplated litigation;
- (D) Pending or contemplated matters relating to enforcement of the Association's Project Documents; or
- (E) Meeting minutes or other records of a session of a meeting of the Board of Directors that is not required to be open to all Members pursuant to statute or Section 6.14 of these Bylaws.

**Section 11.3 Obligation of Association to Disclose Information.** Except for a sale of a Lot from the Declarant to a purchaser, the Association shall furnish to a purchaser, after receipt of a written notice of a pending sale that contains the name and address of the purchaser, a copy of the Project Documents and any other information that may be required by applicable law within the time period prescribed by such law. The Association may charge the Member a reasonable fee to compensate the Association for any costs incurred in the preparation of a statement furnished by the Association pursuant to this Section 11.3. The Association shall make available to any interested party the amount of any such fee established from time to time by the Association.

## **Article XII Fiscal Year**

**Section 12.1 Fiscal Year.** The fiscal year of the corporation shall be from the first day of July through the last day of the succeeding June.

## **Article XIII Miscellaneous**

**Section 13.1 Notices.** All notices required or permitted to be sent to the Board of Directors will be sent by first-class mail, postage prepaid, in care of the manager or managing agent, or if there is no managing agent, to the office of the Association as set forth herein, or to such other address as the Board may, from time to time, designate. All notices required or permitted to be sent to any Member will be sent first-class U.S. mail, postage prepaid, to such address as the Member may have designated in writing to the Board of Directors. All notices will be deemed to have been given when mailed, except notice of change of address which will be deemed to have been given when received.

**Section 13.2 Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws will be deemed to have been abrogated or waived by reason

of any failure to enforce it, irrespective of the number of violations and failures to enforce that may occur.

**Section 13.3 Invalidity.** If any provision or provisions of these Bylaws is or are declared invalid, the invalidity will in no way impair or affect the validity, enforceability, or effect of the remaining provisions of these Bylaws.

#### **Article XIV Conflicts**

**Section 14.1 Conflicts.** In case of a conflict between these Bylaws and the Articles of Incorporation, the Articles shall control. In case of a conflict with these Bylaws and the Declaration, the Declaration shall control. If any provision of these Bylaws is less restrictive than the Declaration or the Articles of Incorporation when dealing with the same subject, the more restrictive provisions of the Declaration and the Articles of Incorporation shall be applicable in the same manner as if included in the provisions of these Bylaws.

#### **Article XV Amendment**

##### **Section 15.1 Amendment.**

**15.1.1** Until the Class B Membership has terminated, these Bylaws may be amended at any time by the Board without a vote of the Members. After the Class B Membership has terminated, these Bylaws may be amended at a regular or special meeting of the Members by a vote of the Members having more than 50% of the votes entitled to be cast by the Members present in person or by proxy.

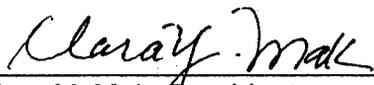
**15.1.2** The Declarant, so long as there is a Class B Membership, and thereafter the Board, without a vote of the Members and without the consent of any First Mortgagee, may amend these Bylaws in order to conform these Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

**15.1.3** So long as the Declarant owns any Lot or any other property within the Project, any amendment to these Bylaws must be approved in writing by the Declarant.

**Article XVI  
Dissolution**

**Section 16.1 Dissolution.** If there are Members entitled to vote on dissolution, the Board of Directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of those Members, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation shall be given to each Member entitled to vote at such meeting of Members. A resolution to dissolve the corporation may be adopted only by act of the Members. If there are no Members, or no Members entitled to vote on dissolution, the dissolution of the corporation may be authorized by act of the Board of Directors. Voluntary dissolution shall comply in all respects with Arizona Revised Statutes §10-2045.

IN WITNESS WHEREOF, these Bylaws of the Mingus Panorama Estates Homeowners Association are adopted as set forth above.

  
\_\_\_\_\_  
Clara Y. Mak, President

**SECRETARY'S CERTIFICATE**

The undersigned does hereby certify that:

He is the duly elected Secretary of the Mingus Panorama Estates Homeowners Association, an Arizona nonprofit corporation; and

The foregoing Bylaws constitute the Bylaws of the Mingus Panorama Estates Homeowners Association as adopted by all of the Directors on August 15, 2006.

  
\_\_\_\_\_  
Kurt Wuersch, Secretary

# **Exhibit 3**

## AGREEMENT

THIS AGREEMENT is entered into this 16 day of August, 2006, by and between MINGUS PANORAMA ESTATE, LLC ("Developer") an Arizona corporation, and MINGUS PANORAMA ESTATES HOMEOWNERS ASSOCIATION ("Association"), an Arizona nonprofit corporation.

## RECITALS

WHEREAS, Developer owns certain real property located in an unincorporated area within Yavapai County, Arizona, on which Developer intends to construct a subdivision to be known as Mingus Panorama Estate; and

WHEREAS, among the improvements to be constructed within Mingus Panorama Estate is a domestic water system which will provide a potable water supply to residents of the subdivision and the common areas; and

WHEREAS, Developer will arrange for the funding and construction of said domestic water system as a part of its activities in developing Mingus Panorama Estate; and

WHEREAS, Developer intends to convey title to the facilities comprising said domestic water system to Association upon the completion of construction of the system, at no cost to Association; and

WHEREAS, Association was formed for the purpose of assuming and discharging various roles and responsibilities on behalf of future residents of Mingus Panorama Estate; and

WHEREAS, one of those roles and responsibilities pertains to the operation and maintenance of a potable domestic water system; and

WHEREAS, Association is willing to accept the conveyance of the aforesaid domestic water system from Developer, at no cost to Association, and thereafter operate and maintain the same for the benefit of future residents of Mingus Panorama Estate;

NOW, THEREFORE, it is agreed as follows:

1. Developer shall cause, and fund, the construction of a domestic water system to provide for satisfaction of the requirements of residents of Mingus Panorama Estate for potable water service including the provision of water for common area users.

2. Title to the facilities of which domestic water system is comprised will be conveyed by Developer to the Association, at no cost to the Association. The documentation used to accomplish such title transfer(s) shall be in a form and content acceptable to the Association. Prior to such title transfer(s), Developer shall have responsibility for obtaining, at its cost, all necessary approvals in order for the transferred water facilities to be operated and

maintained as a potable water system pursuant to applicable federal and state statutes and regulations.

3. Upon transfer(s) of title to domestic water system facilities which are the subject of this Agreement, and the Association's acceptance thereof, the Association shall have responsibility for the ownership, operation, maintenance, repair and replacement of the domestic water system serving residents of Mingus Panorama Estate.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

MINGUS PANORAMA ESTATE, LLC

MINGUS PANORAMA ESTATES  
HOMEOWNERS ASSOCIATION

By: Claray Mak  
Member

By: Claray Mak  
President