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**AMENDED AND RESTATED DECLARATION**

**OF**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**RAILROAD SPRINGS 66**

# TABLE OF CONTENTS

<b>ARTICLE I DEFINITIONS.....</b>	<b>1</b>
1.1 “ASSOCIATION” .....	1
1.2 “BOARD” .....	1
1.3 “COMMON AREAS” .....	1
1.4 “CONSTITUENT DOCUMENTS” .....	1
1.5 “DECLARANT” .....	2
1.6 “DECLARATION” .....	2
1.7 “DESIGN REVIEW COMMITTEE” .....	2
1.8 “IMPROVEMENTS” .....	2
1.9 “LOT” .....	2
1.10 “MORTGAGE” .....	2
1.11 “OCCUPANT” .....	2
1.12 “OWNER” .....	2
1.13 “PERSON” .....	2
1.14 “PLAT” .....	3
1.15 “PROPERTY” .....	3
1.16 “RECORD” OR “RECORDING” .....	3
1.17 “SINGLE FAMILY” .....	3
1.18 “SINGLE FAMILY RESIDENCE” .....	3
1.19 “SINGLE FAMILY RESIDENTIAL USE” .....	3
1.20 “TRACT” .....	3
1.21 “VISIBLE FROM NEIGHBORING PROPERTY” .....	3
<b>ARTICLE II THE ASSOCIATION; MEMBERSHIP AND VOTING .....</b>	<b>3</b>
2.1 ASSOCIATION .....	3
2.2 IDENTITY OF MEMBERS.....	3
2.3 TRANSFER OF MEMBERSHIP .....	4
2.4 VOTING RIGHTS OF MEMBERS .....	4
2.5 SUSPENSION OF VOTING RIGHTS .....	4
2.6 BOARD OF DIRECTORS AND OFFICERS.....	4
2.7 QUALIFICATIONS OF DIRECTORS .....	4
2.8 ASSOCIATION RULES .....	5
2.9 BOARD’S DETERMINATION BINDING .....	5
2.10 ADDITIONAL PROVISIONS IN ARTICLES OF INCORPORATION AND BY-LAWS OF THE ASSOCIATION .....	5
<b>ARTICLE III EASEMENTS .....</b>	<b>5</b>
3.1 ENJOYMENT AND USE OF COMMON AREAS .....	5
3.2 MAINTENANCE EASEMENTS .....	6
3.3 EASEMENTS FOR ENCROACHMENTS.....	6
3.4 PRIVATE PEDESTRIAN ACCESS EASEMENTS.....	6
3.5 MAILBOX EASEMENTS.....	6
<b>ARTICLE IV INSURANCE .....</b>	<b>7</b>
4.1 INSURANCE REQUIREMENTS GENERALLY .....	7
4.2 CASUALTY INSURANCE.....	7
4.3 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE .....	8

4.4	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE .....	8
4.5	FIDELITY BONDS OR INSURANCE .....	8
4.6	INSURANCE BY OWNERS.....	8
4.7	OTHER INSURANCE BY THE ASSOCIATION .....	8
4.8	PAYMENT OF INSURANCE PROCEEDS .....	8
4.9	REPAIR AND REPLACEMENT OF DAMAGED OR DESTROYED COMMON AREAS.....	9
<b>ARTICLE V MAINTENANCE .....</b>		<b>9</b>
5.1	MAINTENANCE, REPAIRS AND REPLACEMENTS BY OWNERS .....	9
5.2	MAINTENANCE, REPAIRS AND REPLACEMENTS BY THE ASSOCIATION .....	9
5.3	IMPROPER MAINTENANCE AND USE OF LOTS .....	9
5.4	ASSESSMENT OF CERTAIN COSTS OF MAINTENANCE AND REPAIR .....	10
5.5	PARTY WALLS AND OTHER STRUCTURES.....	10
<b>ARTICLE VI ASSESSMENTS.....</b>		<b>10</b>
6.1	CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.....	11
6.2	PURPOSE OF THE ASSESSMENTS.....	11
6.3	ANNUAL ASSESSMENT FOR COMMON EXPENSES.....	11
6.4	SPECIAL ASSESSMENTS .....	12
6.5	NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 6.3(A) AND/OR 6.4 .....	12
6.6	RATE AND DUE DATES OF ANNUAL AND SPECIAL ASSESSMENTS.....	12
6.7	INDIVIDUAL ASSESSMENTS.....	12
6.8	WORKING CAPITAL FEE.....	13
6.9	EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION .....	13
6.10	PRIORITY OF THE ASSESSMENT LIEN .....	14
6.11	NO EXEMPTION OF OWNER.....	14
6.12	NO OFFSETS .....	14
6.13	STATEMENT OF PAYMENT OF ASSESSMENTS .....	14
<b>ARTICLE VII USE AND OCCUPANCY RESTRICTIONS .....</b>		<b>14</b>
7.1	RESTRICTED USE.....	14
7.2	BUSINESS AND RELATED USES .....	15
7.3	SIGNS .....	15
7.4	NOXIOUS OR OFFENSIVE ACTIVITIES.....	15
7.5	ROOF MOUNTED AND WINDOW EQUIPMENT.....	15
7.6	ANIMALS .....	15
7.7	DRILLING AND MINING .....	16
7.8	TRASH.....	16
7.9	WOOD PILES AND STORAGE AREAS .....	16
7.10	ANTENNAS AND SATELLITE DISHES.....	16
7.11	WINDOWS AND WINDOW COVERING.....	17
7.12	LEASING .....	17
7.13	ENCROACHMENTS.....	17
7.14	MACHINERY.....	17
7.15	RESTRICTION ON FURTHER SUBDIVISION AND TIME SHARES.....	17
7.16	INCREASED RISK.....	17
7.17	DRAINAGE PLAN.....	18
7.18	CLOTHES AND DRYING FACILITIES .....	18
7.19	OUTDOOR BURNING.....	18

7.20	OUTDOOR LIGHTING .....	18
7.21	HAZARDOUS MATERIALS.....	18
7.22	COMMERCIAL AND RECREATIONAL VEHICLES .....	18
7.23	GARAGES/CARPORTS AND PARKING OF PASSENGER VEHICLES .....	19
7.24	VEHICLE REPAIRS .....	19
7.25	ARCHITECTURAL AND LANDSCAPE CONTROL.....	19
7.26	FLAGS AND FLAGPOLES .....	19
<b>ARTICLE VIII GENERAL PROVISIONS .....</b>		<b>20</b>
8.1	PUBLIC DEDICATION .....	20
8.2	REMEDIES FOR ENFORCEMENT.....	20
8.3	AMENDMENT .....	21
8.4	TERM; METHOD OF TERMINATION .....	21
8.5	NOTICES .....	21
8.6	SEVERABILITY .....	22
8.7	NOTICE OF VIOLATION.....	22
8.8	LAWS, ORDINANCES AND REGULATIONS .....	22
8.9	JOINT AND SEVERAL LIABILITY .....	22
8.10	GUESTS AND TENANTS .....	22
8.11	RIGHTS AND OBLIGATIONS.....	22
8.12	ATTORNEYS' FEES.....	23
8.13	WAIVER .....	23
8.14	GENDER AND NUMBER.....	23
8.15	CAPTIONS AND TITLES.....	23
8.16	MORTGAGES .....	23
8.17	ANNEXATION WITH APPROVAL OF MEMBERS.....	23
<b>EXHIBIT "A" LEGAL DESCRIPTION .....</b>		<b>25</b>

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
RAILROAD SPRINGS 66**

WHEREAS, RAILROAD SPRINGS 66, LLLP, an Arizona limited partnership qualified as a limited liability partnership under Arizona law (“Declarant”) recorded the Declaration of Covenants, Conditions and Restrictions on July 17, 1998 at Docket 2126, Page 276, Instrument No. 98-23001, official records of Coconino County, Arizona Recorder, the Amendment to Declaration of Covenants, Conditions and Restrictions on September 16, 1998 at Docket 2149, Page 518, Instrument No. 98-31161, official records of Coconino County, Arizona Recorder, an Annexation Amendment on November 21, 2000 at Instrument No. 3072247 and an Annexation Amendment on January 31, 2003 at Instrument No. 3181829 (the “Original Declaration”);

WHEREAS, the Original Declaration governs that certain real property situated in the City of Flagstaff, County of Coconino, State of Arizona, which is more particularly described on Exhibit “A” attached hereto (hereinafter referred to as the “Property” and sometimes referred to as “Railroad Springs 66”); and

WHEREAS, the Association, by and through its Members, wishes to amend and restate the Original Declaration as set forth herein;

NOW, THEREFORE, the Association hereby declares that the Property described above shall be subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens of this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with, the real Property and be binding on all parties having any right, title or interest in the described Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereafter.

**ARTICLE I  
DEFINITIONS**

As used herein, unless the context otherwise requires, the following terms shall have the following definitions.

1.1 “Association” means RAILROAD SPRINGS 66 HOMEOWNERS’ ASSOCIATION, an Arizona nonprofit corporation, its successors and assigns and, unless otherwise provided, shall mean and include its board of directors, officers and other authorized agents.

1.2 “Board” means the board of directors of the Association.

1.3 “Common Areas” means the real property now or hereafter owned by the Association, its successors and assigns for the common use and enjoyment of its Members.

1.4 “Constituent Documents” shall include this Declaration; the Articles of Incorporation of the Association which are filed in the Office of the Corporation Commission of the State of Arizona, as said Articles shall be amended from time to time; the Bylaws of the

Association as such Bylaws may be amended from time to time; the Rules of the Association as such Rules may be amended from time to time; and all other policies, resolutions, and other documents governing the Association and/or the Owners.

1.5 “Declarant” means RAILROAD SPRINGS 66, LLLP, an Arizona limited partnership qualified as a limited liability partnership under Arizona law, its successors and assigns in the ownership of the Property for the purpose of the original development and sale thereof.

1.6 “Declaration” means this instrument by which the Property is submitted to the covenants, conditions and restrictions as contained herein, as from time to time amended.

1.7 “Design Review Committee” means the committee appointed by the Board of Directors of the Association.

1.8 “Improvements” means the buildings, carports, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs and all other structures or landscaping improvements of every type and kind constructed, installed or erected upon any Lot.

1.9 “Lot” means each of the numbered parcels of real property designated on the Plats together with all improvements constructed or to be constructed thereon and appurtenances thereto.

1.10 “Mortgage” means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, including without limitation a deed of trust, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. “Mortgagee” means a person secured by a Mortgage, include a trustee, and beneficiary under a deed of trust; and “Mortgagor” means the party executing a Mortgage. “First Mortgage” means a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.11 “Occupant” means a person or persons, other than an Owner, in rightful possession of a Lot.

1.12 “Owner” means the record Owner, whether one or more persons or entities, of the fee simple title, whether or not subject to any Mortgage, to any Lot, including a purchaser under an agreement for sale within the meaning of A.R.S. § 33-741, but does not mean those having such interest merely as security for the performance of an obligation. In the case of a Lot owned by a revocable trust, the Owner shall be deemed to be the trustor and in the case of a Lot owned by an irrevocable trust, the Owner shall be deemed to be the trustee. An “Owner’s Permittees” shall mean all family members, guests, tenants, licensees, invitees, and agents that use the Owner’s Lot or other portions of the Property (including Common Area) with the implied or express consent of an Owner.

1.13 “Person” means a natural individual, corporation, partnership, trustee or other entity capable of holding title to real property.

1.14 “Plat” means one or more of the subdivision plats of the Property, which are recorded in Case 7 Maps 68, 68A, 68B and 68C records of Coconino County, Arizona, Case 8 Maps 36, 36A, 36B and 36C records of Coconino County, Flagstaff, Arizona, and Case 8 Maps 96, 96A, 96B and 96C records of Coconino County, Flagstaff, Arizona.

1.15 “Property” means all of the real property described on Exhibit “A” attached hereto. Notwithstanding anything in this Declaration, Tracts “D”, and “F”, as shown on a Plat, shall not be considered “Property” and shall not be subject to the Declaration.

1.16 “Record” or “Recording” means the record or the act of recording, in the office of the County Recorder of Coconino County, Arizona.

1.17 “Single Family” means one person or a group of two or more persons, each related the other by blood, marriage or legal adoption, or to the group of not more than three (3) persons not all so related, together with their domestic employees, who maintain a common household in a dwelling.

1.18 “Single Family Residence” means a manufactured mobile home or single detached dwelling used as a residence for a Single Family.

1.19 “Single Family Residential Use” means the occupational use of a Single Family Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.20 “Tract” means those parcels so designated on a Plat of Railroad Springs 66.

1.21 “Visible from Neighboring Property” shall mean that an object is or would be visible to a person six feet (6') tall standing on a neighboring Lot or street at an elevation not greater than the elevation of the base of the object being viewed.

## **ARTICLE II THE ASSOCIATION; MEMBERSHIP AND VOTING**

2.1 Association. The Association has been formed to serve as the governing body for all of the Owners for the protection, improvement, alteration, expansion, augmentation, disposal, maintenance, repair, replacement, administration and operation of the Common Areas, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds received by the Association, and other matters as provided in the Constituent Documents and applicable law. The Association shall own, operate, manage, maintain, repair, rebuild and restore all of the Common Areas for the benefit of the Association and the benefit of the Lot Owners. All funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of the Constituent Documents.

2.2 Identity of Members. Each Owner shall be a Member of the Association as soon and so long as such Person shall be an Owner. When more than one Person holds an interest in any Lot, all such persons shall be Members. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner.

2.3 Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant, by intestate succession, testamentary disposition, foreclosure of a Mortgage of record or other legal process transferring fee simple title to such Lot (and then only to the Person to whom such fee simple title is transferred). Any attempt to make a prohibited transfer of a membership will be void and will not be recognized by or reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his name upon the sale of such Owner's Lot to the purchaser of such Lot, the Association shall have the right to enter a transfer upon the books of the Association and issue a new membership to the purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered. The Association shall have the right to charge a reasonable transfer fee, in an amount permitted by law, to cover the administrative costs of the Association or its agent associated with such transfer of ownership of the Lot to the new Owner of the Lot.

2.4 Voting Rights of Members. Each Member shall be entitled to one (1) vote for each Lot owned. When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot 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. In the event more than one ballot is cast for a particular Lot and there is a conflict among the votes, none of said votes shall be counted and said votes shall be deemed void.

2.5 Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Constituent Documents for a period of fifteen (15) days, such Owner's right to vote as a Member of the Association shall be suspended until all payments, including accrued interest and attorneys' fees, are brought current. In addition, in the event any Owner is in default in the performance of any of the terms of Constituent Documents, such Owner's right to vote as a member of the Association may be suspended for a reasonable time frame as determined by the Board of Directors.

2.6 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Constituent Documents or applicable law 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 of Directors. A majority vote of the directors shall entitle the Board to carry out an action on behalf of the Association.

2.7 Qualifications of Directors. Each director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, partner, beneficiary or trustee of such Owner). If a director shall cease to meet such qualifications 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.



2.8 Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations (“Rules”). The Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any guest, agent, or lessee of such Owner except that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

2.9 Board’s Determination Binding. Except for judicial construction, the Association, by and through the Board of Directors, shall have the exclusive right to construe and interpret the provisions of the Constituent Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association’s construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and Property benefited or bound by this Declaration.

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

### **ARTICLE III EASEMENTS**

3.1 Enjoyment and Use of Common Areas. There shall be appurtenant to each Lot a non-exclusive and perpetual right and easement of enjoyment and use the Common Areas in common with all other persons entitled to use the Common Areas as may be required for the purposes of access, ingress and egress to and from, and the use, occupancy and enjoyment of the Lots and the Common Areas for their intended purposes as provided herein. Such right and easement shall extend to each Occupant and the agents, servants, tenants, family members and invitee of such Occupant or the Owner of each Lot. Such right and easement shall be subject to the following provisions:

(1) Tract “B” is dedicated as a public easement for open space and public drainage easement and shall be subject to the rights of adjacent landowners as hereafter set forth on the Plat. The Association and Lot Owners are prohibited from placing, constructing or in any way altering or installing any type of encroachment, within the dedicated easement, including, but not limited to fencing, wall, boulders, trees, shrubs or other barriers that impede the City of Flagstaff’s ability, in its sole discretion, to access the easement area.

(2) Tract “C” is a Common Area identified as a resource protection/open space, drainage and use for utility purposes.

(3) The Board has the right to suspend the voting rights and right to the use of the recreational facilities, if any, located upon Common Area by any Member (a) for any period during which any Assessment or other amounts due under any of the provisions of the Constituent Documents is fifteen (15) or more days delinquent; (b) for a reasonable time frame as determined by the Board of Directors for any other infraction of the Constituent Documents, and (c) for so long as such infraction remains.

(4) The Board has the authority to lease, convey easements or grant concessions consistent with the overall character and use of the Property with respect to parts of the Common Areas and to change the character, description and use thereof, subject to the provisions of the Constituent Documents. Any funds received by the Association from leases, concessions or other sources shall be held and used for the benefit of the Members pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

(5) The Board has the right to regulate the use of the Common Area through the Rules and to prohibit or limit access to such portions of the Common Area, such as landscaped rights-of-way, not intended for use by the Owners or Occupants. Notwithstanding any provision in the Constituent Documents, there may be no restriction upon any Owner's right of ingress and egress to or from such Owner's Lot, which right shall be perpetual and appurtenant to the ownership of a particular Lot.

(6) Any Common Area designated by an applicable Tract described hereinabove shall remain undivided as set forth above and no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Property.

3.2 Maintenance Easements. Authorized representatives of the Board and of the managing agent employed by the Association, and all contractors and repairmen employed or engaged by the Association shall be entitled to access at any time to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving other Lots and/or on the Common Areas.

3.3 Easements for Encroachments. If any portion of the Common Areas or any Improvement constructed thereon shall actually encroach upon any Lot, or if any Improvement constructed upon any Lot shall actually encroach upon any portion of the Common Areas, or if any Improvement constructed upon any Lot shall actually encroach upon any other Lot, whether such encroachment results from the initial construction or from subsequent repair, reconstruction, settlement or shifting, there shall be deemed to be mutual easements in favor of the Association as Owner of the Common Areas and the respective Lot Owners involved to the extent of such encroachment so long as the same shall exist provided, however, that such easement shall not result from any alteration, addition or improvement made by an Owner without the prior written approval of the Board. The Association shall, at all times, have the right to maintain any Common Areas now existing or hereafter constructed, regardless of any encroachment now or hereafter existing on any such Common Areas upon any Lot. This provision shall not apply to Tracts or Easements owned by the City of Flagstaff.

3.4 Private Pedestrian Access Easements. The Private Pedestrian Access Easements (P.A.E.), as shown on the Plat shall be dedicated to the Railroad Springs Homeowner's Association for the purposes of pedestrian ingress and egress. Nothing written herein shall be construed to mean or constitute a dedication to the public of said Private Pedestrian Access Easements, provided the same is hereby dedicated for public utilities, private drainage and private access way for the ingress and egress of Owners, Occupants, and their guests and invitees.

3.5 Mailbox Easements. Mailbox units on top of concrete pads have been installed for use by Lot Owners. The Property is subject to an easement for the Association to maintain such

concrete pads, for the Association and/or United States Postal Service to maintain the mailbox units, and for Lot Owners and United States Postal Service to have access to the mailboxes for mail delivery and retrieval.

#### **ARTICLE IV INSURANCE**

4.1 Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to transact insurance business in the State of Arizona. All such insurance, to the extent possible, shall name the Association or its authorized representative or trustee as the insured. The Board shall review all such insurance on a periodic basis and shall adjust the amounts thereof as it deems necessary or appropriate. The cost and expense of all insurance obtained by the Association shall be a Common Expense. To the extent possible, such insurance shall:

- (1) Provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents and against each Owner and the members of each Owner's household, and any other person for whom the Association or any Owner may be responsible and shall provide for recognition of any authorized representative or trustee of the Association, if applicable;
- (2) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee of all or any part of the Property or any Lot and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or Mortgagee of all or any part of the Property or any Lot;
- (3) Provide that the policy of insurance shall not be terminated, canceled or substantially modified without at least thirty (30) days prior written notice to the Association;
- (4) Contain, if available, an Agreed Amount and Inflation Guard Endorsement;
- (5) Contain a "severability of interest endorsement" which shall preclude the insurer from denying the claim of any Lot Owner or the Association due to the negligent acts of the Association or any Owner(s).

4.2 Casualty Insurance. The Association shall obtain and maintain casualty insurance covering the Common Areas covering loss or damage by fire and such other hazards as are covered under standard extended coverage policies, for not less than one hundred percent (100%) of the replacement cost of the Common Areas (exclusive of the land, foundations, excavations and other items normally excluded from coverage), as determined on a periodic basis by an appraisal made in accordance with the rules and regulations of the Board of Underwriters or like board or body recognized and accepted by the insurance company or companies issuing such insurance, and a National Flood Insurance Association Standard Flood Insurance Policy, unless such insurance is not available or the Common Areas are not located an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards. Such policy or policies of casualty insurance shall, to the extent available, contain a standard all risk endorsement and shall insure

against all other perils which are customarily covered with respect to projects which are similar in construction, location and use.

4.3 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance, including medical payments insurance, covering liability for bodily injury, including death, and liability for property damage occurring in, upon or about the Common Areas. The Association shall be insured with respect to such liability arising out of the ownership, maintenance, repair or operation of the Property and the Common Areas. The limits of liability for such coverage shall not be less than \$1,000,000.00 for each occurrence and not less than \$2,000,000.00 aggregate with respect to bodily injury, death or property damage.

4.4 Workers' Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workers' compensation and employer's liability insurance as may be necessary to comply with applicable law.

4.5 Fidelity Bonds or Insurance. The Association shall obtain and maintain fidelity bonds or insurance covering all persons or entities which handle funds of the Association, including, without limitation, any professional manager employed by the Association and any of such professional manager's employees, in amounts not less than the maximum funds that will at any time be in the possession of the Association or any professional manager employed by the Association or, the total estimated Common Expense for a three (3) month period with respect to all Lots, whichever is greater. With the exception of a fidelity bond or policy obtained by a professional manager covering such professional manager's employees, all fidelity bonds or policies shall name the Association as an obligee. In addition, all such bonds or insurance shall provide that the same shall not be terminated, canceled or substantially modified without at least thirty (30) days prior written notice to the Association.

4.6 Insurance by Owners. Each Owner, at such Owner's expense, shall be obligated to obtain and at all times carry fire and extended coverage insurance on the exterior and structural portions of his or her Single Family Residence on the Lot against loss or damage by fire or other hazards sufficient to cover the full current replacement cost in an amount of not less than one hundred percent (100%) of the insurable value before application of the deductible. The Board of Directors is entitled to set a maximum deductible amount for such required insurance and the Association is entitled to require Owners to submit proof of such required insurance.

4.7 Other Insurance by the Association. The Association shall also have the power and authority to obtain and maintain other and additional insurance coverage, including but not limited to casualty insurance covering personal property of the Association, and a directors' and officers' liability policy.

4.8 Payment of Insurance Proceeds. With respect to any loss to the Common Area 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 4.9 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

4.9 Repair and Replacement of Damaged or Destroyed Common Areas. In the event of damage or destruction of any portion of the Common Areas, restoration of the Common Areas shall be undertaken by the Association without a vote of the Owners. Such restoration shall be performed substantially in accordance with this Declaration and the original plans and specifications for the Common Areas unless other action is approved by Owners of Lots to which seventy percent (70%) of the votes entitled to be cast with respect to the affairs of the Association are appurtenant. The cost of repair or replacement in excess of insurance proceeds and reserves set aside for that portion of the Common Area shall be paid by the Association, and the Association may levy a Special Assessment against the Owners for the cost thereof, and a vote of the Owners shall not be necessary to approve such Special Assessment. If the entire 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 be retained in the reserves of the Association.

## **ARTICLE V MAINTENANCE**

5.1 Maintenance, Repairs and Replacements by Owners. Each Owner, at his own expense, shall furnish and be responsible for all of the interior decorating within the Single Family Residence constructed upon his Lot, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating. Each Owner shall at all times maintain such Owner's Lot, all improvements constructed thereon, all appurtenances thereto and all landscaping planted thereon in good order and repair and in a neat, clean and orderly condition. Each Owner shall also maintain in good condition and repair all paved and concrete areas, including, but not limited to, driveways and parking areas located on his/her Lot. Each Owner shall be responsible for the maintenance, repair and replacement of any wall or fence on the Lot and/or on or near the boundary line between the Lot and Common Area. No building or improvement shall be permitted to fall into disrepair and each such building and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Each Owner shall also be responsible for keeping his/her Lot free of all trash, debris, weeds and other fire hazards of any kind. Maintenance of water and sewer lines serving a single Lot, wherever located, shall be the responsibility of the Owner of the Lot.

5.2 Maintenance, Repairs and Replacements by the Association. The Association shall furnish and be responsible for, as a Common Expense, all of the maintenance, repairs and replacements to the Common Areas and the landscape elements as initially installed by the Declarant on the south side of Tract B, as identified on the Plat.

5.3 Improper Maintenance and Use of Lots. In the event that any Owner fails to maintain his/her Lot, including all improvements and landscaping thereon in accordance with the standards set forth in Section 5.1 herein, then the Association may, at its option, cause such maintenance or repairs to be accomplished and charge such Owner for the complete cost thereof. Furthermore, if any Lot presents a public or private nuisance or an unreasonable condition, or substantially detracts from the appearance or quality of the surrounding Lots or other areas of the Property, or in the event any portion of a Lot is being used in a manner which violates the Constituent Documents, then the Association may, at its option, cause corrective action to be taken and charge such Owner for the complete cost thereof. The amount payable for such action by the Association shall be an Individual Assessment against such Owner and his/her Lot and shall be

secured by the Assessment Lien. The Association will not be liable for trespass for entering on to a Lot to exercise its rights under this Section.

5.4 Assessment of Certain Costs of Maintenance and Repair. If, due to the willful or negligent act of an Owner, Occupant or family member, guest, or visitor of such Owner or Occupant, or other person or animal for whom such Owner or Occupant may be responsible, damage shall be caused to the Common Areas or other areas maintained by the Association, then such Owner, upon receipt of a statement from the Board, shall pay for such damage and for such maintenance, repairs or replacements as may be determined by the Board. The amount payable for such maintenance, repairs or replacements shall be an Individual Assessment against such Owner and his/her Lot and shall be secured by the Assessment Lien.

5.5 Party Walls and Other Structures. Any wall, fence, column or other structure constructed upon the boundary line between two Lots and specifically benefitting the Owners of such adjacent Lots shall be a party structure. The rights and duties of Owners with respect to any party structure shall be as follows:

(1) The Owners of contiguous Lots upon which a party structure has been constructed shall have the right to use such party structure equally; provided, that such use by one Owner does not interfere with the use and enjoyment of such by the other Owner.

(2) In the event that any party structure is damaged or destroyed through the act of an Owner or any of such Owner's agents, guests, or family members (whether or not such individual is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair such party structure without cost to the other adjoining Lot Owner or Owners.

(3) In the event any such party structure is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner or any of such Owners' agents, guests, or family members, it shall be the obligation of both Owners whose Lots adjoin such structure to rebuild and repair such structure to rebuild and repair such structure at their joint and equal expense.

(4) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party structure and there shall be no alteration of any party structure without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(5) Each Owner shall permit adjacent Owners and the Association or their representatives, when so required, to enter his or her Lot for the purpose of repairing or maintaining a party structure, and there is hereby created an easement for such purposes over each Lot; provided, that requests for entry to a Lot shall be made in advance and such entry shall be at a time reasonably convenient to the Owner of such Lot. In case of an emergency, such right of entry shall be immediate.

## **ARTICLE VI ASSESSMENTS**

6.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association Annual Assessments, Special Assessments and Individual Assessments (collectively and individually referred to as "Assessments"). Such Assessments are established and collected as hereinafter provided. The Assessments, together, with interest, fees, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made (the "Assessment Lien"). Each such Assessment, together with interest, fees, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

6.2 Purpose of the Assessments. The Assessments levied by the Association shall be used for of the administration and operation of the Association and the Property, including by way of illustration, but not of limitation, real property taxes and assessments levied against the Common Areas, premiums for insurance for the Common Areas, the cost of maintenance and repair of the Common Areas, those portions of the Lots maintained by the Association and the appurtenances thereto, reasonable reserves for contingencies, replacements or other proper purposes, all as determined by the Board (herein referred to as "Common Expenses"). The Association shall maintain a reasonable reserve for taxes and assessments levied against the Common Areas, repair and replacement of the Common Areas and the appurtenances thereto. If any expense incurred by the Association is caused by the misconduct of an Owner or Owner's Permittees, the Association may specifically assess the expenses exclusively against the offender Owner/Lot.

6.3 Annual Assessment for Common Expenses. For each fiscal year of the Association, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes to be required during the ensuing fiscal year to pay all Common Expenses of the Association. The Board shall give notice of the "Annual Assessment" to each Owner in accordance with the limitations set forth below at least thirty (30) days prior to the beginning of each fiscal year of the Association, 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 equal to the Annual Assessment for the year immediately preceding until the Owner has been given thirty (30) days' notice of the new Annual Assessment amount.

(A) The Board, without a vote of the Owners, may increase the maximum Annual Assessments during each fiscal year of the Association by an amount ("Permitted Percentage Increase") equal to the greater of: (i) fifteen percent (15%); or (ii) a percentage calculated by dividing the Consumer Price Index in the most recent October (identified by an "A" in the formula) by the Consumer Price Index for the October one (1) year prior (identified by a "B" in the formula), minus one (1) (i.e.,  $CPI\ percentage = A/B - 1$ ). If the Consumer Price Index for All Urban Consumers shall no longer be published, then another index published by the Bureau of Labor Statistics or any other federal agency shall be substituted by the Board. The maximum monthly assessment may be increased above that established by the foregoing sentence provided that such increase shall have the assent of sixty-seven percent (67%) of Members who are voting in person or by absentee ballot at a meeting called for such purpose.

(B) Notwithstanding anything contained herein to the contrary, the Board shall not impose an Annual Assessment in any fiscal year that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of the majority of the Members, or as otherwise provided by Arizona law.

(C) If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that fiscal year within the limitations set forth above and the revised Annual Assessment shall commence on the date designated by the Board.

6.4 Special Assessments. In addition to the Annual Assessments for Common Expenses, the Association may levy a "Special Assessment" for the purpose of defraying, in whole or in part, any Common Expense, provided that any such Special Assessment shall have the assent of Owners holding sixty-seven percent (67%) of the votes cast on the matter.

6.5 Notice and Quorum For Any Action Authorized Under Sections 6.3(A) and/or 6.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.3(A) and/or 6.4 shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, Owners holding sixty percent (60%) of the votes relative to the affairs of the Association shall constitute a quorum. In the event there are not enough Owners present in person or by absentee ballot at the first meeting to constitute a quorum, a subsequent meeting or meetings may be called subject to the same notice requirement, and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum at the immediately preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting.

6.6 Rate and Due Dates of Annual and Special Assessments. Annual and Special Assessments shall be levied at a uniform rate for all Lots. Both annual and Special Assessments shall have due dates as established by the Board and may be collected on a monthly or other periodic basis as determined by the Board of Directors.

6.7 Individual Assessments. "Individual Assessments" shall be levied by the Association against an Owner for:

(A) Costs incurred by the Association in bringing an Owner or the Owner's Lot into compliance with the provisions of the Constituent Documents, including, but not limited to, attorneys' fees, interest and other costs or charges which are incurred in connection therewith, regardless of whether suit is filed;

(B) Costs incurred by the Association as a consequence of the conduct of the Owner or resident of a Lot, or their licensees, invitees, or guests;

(C) Any other charge designated as an Individual Assessment in the Constituent Documents; and

(D) In the event the Board undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such



Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Assessment.

6.8 Working Capital Fee. Each new Owner of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a Working Capital Fee in an amount equal to twenty-four (24) months of the then-current rate of Annual Assessments. Such fee shall be due upon the close of escrow or upon transfer of ownership, whichever occurs first. Notwithstanding the foregoing, no such fee shall be assessed on a Lot that is either (1) transferred within a family as defined in A.R.S. § 42-12053 (as amended, repealed, or recodified) or (2) transferred into a revocable living trust for the benefit of the trustor, where the owner(s) of the Lot becomes the trustor(s) of the trust. Funds paid to the Association pursuant to this Section may be used by the Association for the operation, maintenance, repair, and replacement of the Common Areas and any public rights-of-way maintained by the Association. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any other Assessments levied by the Association pursuant to this Declaration.

6.9 Effect of Non-payment of Assessments; Remedies of the Association.

(A) Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due (i) shall bear interest from the due date at the greater of the rate of twelve percent (12%) per annum and (ii) may be subject to a reasonable late charge as determined by the Board of Directors. The Board of Directors may cause to be recorded a "Notice of Claim of Lien" which shall set forth (i) the name of the delinquent Owner as shown on the records of the Association, (ii) the legal description of the Lot against which the claim of lien is made, (iii) the amount claimed as of the date of the recording of the notice including late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees, and (iv) the name and address of the Association. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

(B) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with late charges, interest, lien recording fees, reasonable collection costs, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. Subject to the approval requirements below, the Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale. By exercising any of the remedies hereinafter set forth the Association does not prejudice or waive its right to exercise any other remedies.

(C) Purchase of Lot by Association. Upon the consent or approval of a majority of Owners present and voting at a general or special meeting of the members of the Association or in such other manner as may be deemed by the Board to be necessary or expedient, the Board shall have the power and authority to bid for and purchase any Lot at a sale pursuant to a mortgage foreclosure, trustee's sale under a trust deed, or a foreclosure of any Assessment Lien, or at a sale

pursuant to an order or direction of a court, or other involuntary sale, and the Board shall have the power and authority to finance such purchase of a Lot by Mortgage, Special Assessment or any other financing arrangement that the Board may deem necessary or expedient.

6.10 Priority of the Assessment Lien. The Assessment Lien shall have priority over all liens or claims on the Lot except for (i) tax liens for real Property taxes on the Lot, (ii) assessments on the Lot in favor of any municipal or other governmental body and (iii) the lien of any First Mortgage. The sale or transfer of any Lot shall not affect the Assessment Lien except that the sale or transfer of a Lot pursuant to judicial or non-judicial foreclosure of a First Mortgage or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall extinguish the Assessment Lien as to payments which became due prior to the sale or transfer. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the personal obligation of the defaulting Owner of the Lot. No sale or transfer shall relieve the Lot from liability for any Assessments thereafter becoming due or from the lien thereof. Any such assessments that are extinguished pursuant to the foregoing provision shall be reallocated and assessed against all Lots as a Common Expense.

6.11 No Exemption of Owner. No Owner of a Lot may exempt himself or herself from liability for Assessments levied against his or her Lot or for other amounts which he or she may owe to the Association under the Constituent Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his or her Lot.

6.12 No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of the Constituent Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Constituent Documents.

6.13 Statement of Payment of Assessments. The Association shall, upon written request, furnish to a person acquiring an interest in any Lot and to a lienholder, escrow agent, Owner or person designated by an Owner, a written statement signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these statements. Such statement will be provided within the time period required by law. Such statements shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

## **ARTICLE VII USE AND OCCUPANCY RESTRICTIONS**

7.1 Restricted Use. Except as otherwise provided in this Declaration, a Lot shall be used only by a Single Family and only for Single Family Residential Use. All construction on any Lot shall be restricted to a Single Family Residence and related improvements. Except for those Single Family Residences originally constructed by Declarant, no Single Family Residence shall be constructed on the Property so as to contain less than nine hundred (900) net livable square feet. The term "net livable square feet" will mean the area, measured in square feet, of the exterior and enclosed living area of a single family residence, excluding any garages, covered patios, and balconies.

7.2 Business and Related Uses. No Lot shall ever be used, allowed, or authorized to be used in any way, directly or indirectly for any business, commercial, manufacturing, industrial, mercantile, storage, vending, trade or other similar uses or purposes; provided, however, that an Owner or other resident of a Lot may conduct a business activity on the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (iii) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Owners or other residents in the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Property, as may be determined from time to time in the sole discretion of the Board. Furthermore, no advertising or directional signs may be placed upon the Lot or any portion of the Common Area regarding the business activity. Notwithstanding the foregoing, garage sales, yard sales and estate sales may be held only to the extent permitted by the Rules and subject to any restrictions set forth in the Rules. The terms "business" and "trade" as used in this section 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.

7.3 Signs. No emblem, logo, sign, or billboard of any kind shall be displayed on any of the Lots or Common Areas so as to be visible from neighboring property, except for: (i) signs required by law to be allowed on the Lot; (ii) signs on the Common Area as may be placed and approved by the Board; (iii) one residential identification sign with a total face area of eighty square inches or less; (iv) signs as may be permitted by the Rules; and (v) signs as may be approved in advance by the Design Review Committee in terms of number, type, and style.

7.4 Noxious or Offensive Activities. No noxious or offensive activity shall be engaged in (or permitted to be engaged in) on any Lot. No act or use may be performed on any Lot which is or may become an annoyance or nuisance to the Property generally or other Owners specifically, or which interferes with the use and quiet enjoyment of any of the Owners and of the Owner's Lot. No Owner shall permit any thing or condition to exist upon any property which shall induce, breed, or harbor infectious plant diseases or infectious or noxious insects.

7.5 Roof Mounted and Window Equipment. Solar energy panels, solar energy devices, swamp coolers, air conditioning units, or other cooling, heating or ventilating systems may not be installed on the roof or in the window of any Single Family Residence or structure or in any other area of a Lot so as to be Visible from Neighboring Property, except when originally installed by the Declarant, unless otherwise approved by the Design Review Committee.

7.6 Animals. No animals, livestock, horses, insects, reptiles, birds, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure on a Lot; however, an Owner may keep up to two (2) dogs, or two (2) cats, or two (2) other common household pets or three (3) of any combination of dogs, cats or other common household pets in the Single Family Residence or in an enclosed private yard if permitted under the local zoning ordinances. Additional pets are prohibited unless approved in advance by the Board. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets shall be permitted for

only so long as they are not kept, bred, or maintained for any commercial purpose for only so long as they do not result in an annoyance or nuisance to other Owners. No animals may be fed outdoors. All permitted pets on the Property shall be kept, at all times, indoors, in a fenced yard on the Owner's Lot, or on a leash under the control of the owner of the pets. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the yard of the Owner's Lot or any other Lot, Common Area, or public or private streets. Owners shall be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board will be the sole judge for determining whether a pet is a common household pet or whether any pet is an annoyance or nuisance.

7.7 Drilling and Mining. No oil or well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon or in any Lot. No oil wells, tanks, tunnels or mineral excavations or shafts shall be permitted upon the surface of any Lot. No derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, maintained, or permitted upon any Lot.

7.8 Trash. All rubbish, trash, and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate on any Lot. In the case of an Owner who allows trash to accumulate on the Owner's Lot, the Association may arrange and contract for the removal and cleanup of the trash, and the costs shall become an Individual Assessment to that Owner. No incinerators shall be kept or maintained on any Lot. Refuse containers may be placed on a Lot so as to be visible from neighboring property only on trash collection days and then only for the shortest period of time reasonably necessary for trash collection. Except as permitted in the previous sentence, refuse containers shall be stored in an enclosed garage or on another portion of a Lot that is not Visible From Neighboring Property.

7.9 Wood Piles and Storage Areas. Woodpiles and open storage areas may not be maintained upon any Lot so as to be Visible From Neighboring Property. Furthermore, covered or uncovered patios may not be used for storage purposes whether or not Visible From Neighboring Property.

7.10 Antennas and Satellite Dishes. No antenna, satellite dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be placed upon a Lot or improvement thereon so as to be Visible From Neighboring Property, unless approved by the Architectural Committee, except those devices covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, will be permitted without prior approval. Any such device shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property. The devices governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule) as of the date of the recording of this Declaration are as follows: (i) Direct Broadcast Satellite ("DBS") antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite; (ii) Multi-point Distribution Service ("MDS") antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (iii) Antennas designed to receive local television broadcast signals ("TVBS"); and (iv) Antennas designed to

receive and/or transmit data services, including Internet access. If the FCC expands the types of antennas that fall under the FCC Rule, this Section 7.10 shall encompass those antennas as well.

7.11 Windows and Window Covering. Draperies or suitable window treatments designed and intended to be used as window treatments shall be maintained on all windows facing the street. Sheets, newspapers, and similar items may not be used as window coverings, even temporarily. No aluminum foil, reflective screens, awnings, reflecting glass, mirrors, or similar reflecting materials of any type shall be placed or installed inside or outside of any windows of a Single Family Residence or structure so as to be Visible From Neighboring Property without the prior written approval of the Design Review Committee.

7.12 Leasing. Nothing in the Declaration shall be deemed to prevent the leasing of an entire Lot and entire Single Family Residence to a Single Family from time to time by the Owner of the Lot subject to all of the provisions of this Declaration and for a period of no less than twelve (12) months. No subleases shall be permitted. No Lot may be advertised for lease for less than twelve (12) months. In addition to any information requested by the Association in accordance with applicable law, any Owner who leases his Lot shall promptly notify the Association and shall advise the Association of the term of the lease, the name and contact information of each lessee and other adult residing on the Lot, and a description and the license plate numbers of the lessees' vehicles.

7.13 Encroachments. No tree, shrub, or planting of any kind on any Property shall be allowed to overhang or otherwise to encroach upon any neighboring Lot, sidewalk, street, pedestrian way, or other area from ground level to a height of less than ten (10) feet. The restriction described in the previous sentence will not apply to trees and shrubs that existed prior to placing a home on the Lot.

7.14 Machinery. No machinery of any kind shall be placed, operated, or maintained upon or adjacent to any Lot or Common Area other than machinery that is usual and customary in connection with the use, maintenance, or construction of a Single Family Residence appurtenant structures, or other improvements, and other than machinery which the Association may require for the operation and maintenance of the Property.

7.15 Restriction on Further Subdivision and Time Shares. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such lot shall be conveyed or transferred by any Owner without the prior written approval of the Board. No Owner shall transfer, sell, assign or convey any time share in any Lot, and any such transaction shall be void. No Lot or Single Family Residence thereon may be used and/or occupied by any Person pursuant to any timesharing plan, fractional ownership interest plan, fractional private residence club plan, membership residential privilege plan, or other similar type of plan or arrangement.

7.16 Increased Risk. Nothing shall be done or kept in or on any Lot, Single Family Residence, or Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept on or in the Owner's Lot, Single Family Residence, structure, or in the Common Area which will result in the cancellation of insurance on any Single Family Residence for any part of the Common Areas or which would be in violation of any law.

7.17 Drainage Plan. No Single Family Residence, structure, pool, concrete area, or landscaping shall be constructed, installed, placed, or maintained on any Lot or Common Area, in any manner that would obstruct, interfere, or change the direction or flow of water in accordance with the drainage plans for the Property or any Lot on file with the county or municipality in which the Property is located without the prior written approval of the Design Review Committee and any required government agency(ies).

7.18 Clothes and Drying Facilities. Any clotheslines or other facilities for drying or airing clothes may not be erected or placed on a Lot so as to be Visible From Neighboring Property except as may be permitted by the Rules.

7.19 Outdoor Burning. There shall be no outdoor burning of trash, debris, wood, or other materials. The foregoing, however, shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills in accordance with any Rules adopted by the Board.

7.20 Outdoor Lighting. No spotlights, flood lights, or other high intensity lighting shall be placed or utilized upon any Lot so that the light is directed or reflected on any Common Areas or unreasonably directed or reflected on any other Lot. All lighting that is Visible From Neighboring Property must be approved in advance by the Design Review Committee.

7.21 Hazardous Materials. Except as may be necessary for normal household, landscaping, or automotive uses, no Owner shall permit any hazardous wastes (as defined under all applicable federal and state laws), asbestos, asbestos containing materials or any petroleum products or by-products to be kept, dumped, maintained, stored, or used in, on, under, or over any Lot. No gasoline, kerosene, cleaning solvents, or other flammable liquids may be stored in the Common Area. No fuel tanks of any kind shall be erected, placed, or maintained on the Property except for propane or similar fuel tanks as may be permitted under the ordinances of the county or municipality having jurisdiction over the Property.

7.22 Commercial and Recreational Vehicles. No motor vehicle classified by manufacturer rating as exceeding 1-ton, no vehicles or equipment displaying business logos larger than an aggregate of four (4) square feet, no vehicle with racks, towing equipment, or other commercial equipment visible, no semitrailer, wagon, freight trailer, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, dune buggy, all-terrain vehicle, or similar commercial or recreational equipment or vehicle (whether or not equipped with any sleeping quarters) (collectively referred to in this Declaration as "Commercial or Recreational Vehicles") that is owned, leased, or used by an Owner or Occupant of any Lot within the Property shall be parked upon a Lot within the Property, unless: (i) the Commercial or Recreational Vehicles are located in an enclosed garage located on the Owner's Lot or are located on the Owner's Lot, so as not to be Visible From Neighboring Property, in a screened recreational vehicle parking area that has been approved by the Design Review Committee; (ii) the Commercial or Recreational Vehicles are parked in the driveway of the Lot on a nonrecurring and temporary basis, as set forth in the Rules; or (iii) the Commercial or Recreational Vehicles are parked on any public or private street within the Property on a nonrecurring and temporary basis, as set forth in the Rules. This restriction does not apply to vehicles that the Association must allow to be parked on streets and driveways pursuant to Arizona law.

7.23 Garages/Carports and Parking of Passenger Vehicles. Each Lot shall have at least one (1) garage or carport that will be used by the Owner(s) and Occupant(s) of the Lot for parking passenger vehicles, any Commercial or Recreational Vehicles, and for household storage purposes only. The garage door will be maintained by the Owner in good and functioning order and will remain closed except while the garage is in use for cleaning, entry, and exit. No garage or carport may be used for storage or any other use which restricts or prevents the garage or carport from being used for parking of at least one (1) passenger vehicle or Commercial or Recreational Vehicle. Additional passenger vehicles that cannot be parked in the garage or carport (when utilized already by one (1) vehicle) located on the Lot may be parked in the driveway or in any recreational vehicle parking area of the type described in Section 7.22 above located on the Lot so long as the family vehicles are operable and are, in fact, operated from time to time. A “passenger vehicle” means any domestic and foreign car, station wagon, sport wagon, pick-up truck, van, mini-van, jeep, sport utility vehicle, motorcycle, and similar non-commercial and non-recreational vehicle used by the Owner(s) and Occupant(s) of the Lot for domestic purposes, and a “passenger vehicle” does not include any of the Commercial or Recreational Vehicles described above. This restriction on parking does not apply to vehicles that the Association must allow to be parked on streets and driveways pursuant to Arizona law.

7.24 Vehicle Repairs. Routine maintenance and repairs of passenger vehicles or Commercial or Recreational Vehicles may be performed within an enclosed garage but not on the driveway located on a Lot, any recreational vehicle parking area or any public or private streets within the Property, or any other portion of the Owner’s Lot. No vehicles of any type may be constructed, reconstructed, or assembled anywhere on any Lot. Without limiting the provisions of Sections 7.22 and 7.23 above, no family vehicle or commercial or recreational vehicle shall be permitted to be or remain anywhere on any Lot (including in an enclosed garage) in a state of disrepair or in an inoperable condition. For purposes of this Declaration, a vehicle is in a state of disrepair or in an inoperable condition if it is not running, has one or more flat tire(s) for ten (10) or more days, is up on blocks, is not properly licensed, or is not currently registered.

7.25 Architectural and Landscape Control. No Single Family Residence, building, fence, wall, antenna, tower, shutter, awning, garage, carport, sign, affixed basketball hoop, flag brackets, flag poles, fountain or other structure of any kind or character, and no landscaping shall be constructed, erected, installed, placed or maintained upon, the Property, nor shall any addition, change or alteration be made thereto or therein which is Visible From Neighboring Property, and no changes or alterations of grade or drainage shall be made, until plans and specifications showing the nature, kind, color, shape, height, materials, location and other physical attributes of the same shall have been submitted to and approved in writing as to time of completion, harmony of external design and location in relation to surrounding structures and topography by the Design Review Committee. In the event the Design Review Committee fails to approve or disapprove such proposal within sixty (60) days after proper plans and specifications have been received by it, such approval will not be required, and this Section will be deemed to have been fully complied with, provided, however, that landscaping, structures, grading and drainage must comply with the restrictions of this Declaration. Any such landscaping, structures, grading and drainage and any addition, change or alteration thereto must also comply with any applicable ordinance or code of the City of Flagstaff, including the procurement of valid building permits, when required.

7.26 Flags and Flagpoles. An Owner may install one (1) flagpole on the Lot with the prior written approval of the Design Review Committee in accordance with Section 7.25 herein.

Flags required by law to be permitted on the Lot may be flown on the Lot Visible From Neighboring Property in accordance with the Federal Flag Code (P.L. 94-344); however, the Rules may limit the number of flags displayed to two (2) at a time. Other flags may be flown only with the prior written approval of the Board or as specifically permitted by the Rules.

## **ARTICLE VIII GENERAL PROVISIONS**

8.1 Public Dedication. Unless specifically set forth herein, nothing contained in this Declaration shall be deemed to constitute a dedication for public use or to create any rights in the general public. Nothing contained in this Declaration shall be construed as creating an obligation on the part of the City of Flagstaff or any other governmental authority having jurisdiction over the Property and the Common Areas to maintain, repair or replace any portion of the Property, the Common Areas or the appurtenances thereto.

8.2 Remedies for Enforcement. The Association or any Owner shall have the right, but not the duty, to enforce the Constituent Documents in any manner provided for in the Constituent Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any improvements constructed in violation of this Declaration or to otherwise compel compliance with the Constituent Documents. Notwithstanding the foregoing, no Owner shall have the right to enforce the obligation to pay Assessments or other amounts due to the Association under the Constituent Documents or applicable law. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Constituent Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Constituent Documents in the future.

(A) Notwithstanding the generality of the foregoing, the Board shall have the power to levy reasonable fines against an Owner for a violation of the Constituent Documents by the Owner, Occupant, or guest thereof, after giving the Owner notice and an opportunity to be heard, and to impose late charges for payment of such fines if unpaid fifteen (15) or more days after the due date, provided that the late charge shall not exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid fine, or such greater amount as may be allowed by applicable law.

(B) In the event the Association acts to enforce the Constituent Documents, regardless of whether suit is filed, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Association's administrative costs and fees (including post-judgment attorneys' fees and costs). Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Lot. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorneys' fees, court costs, costs of investigation and other related expenses incurred therewith. If any lawsuit is filed by any Owner to enforce the provisions of the Constituent Documents or in any other manner arising out of the Constituent Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action.



(C) Notwithstanding any provision of this Declaration to the contrary, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration, or any right of reentry by reason thereof, shall not defeat or adversely affect the lien and/or rights of any Mortgagee except as herein expressly provided and each and all of such covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any lessee under any lease or against any Owner of any Lot whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

8.3 Amendment. The provisions of this Declaration may be changed, modified or amended by an instrument in writing setting forth such change, modification or amendment, approved in writing by (i) the Board of Directors and (b) the affirmative vote or written consent, or any combination thereof, of Owners holding not less than fifty percent (50%) of the votes in the Association. The Board may amend this Declaration at any time without the consent of any Owner to correct any error or inconsistency in the Declaration or to bring the Declaration in line with the law. Any amendment of this Declaration shall be signed by the President or Vice President of the Association, and any such amendment shall certify that the amendment has been approved as required and shall be Recorded in the records of Coconino County. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the recording of the amendment.

(A) Notwithstanding anything contained herein to the contrary, if this Declaration, the Articles or the Bylaws require the consent or agreement of the Owners holding a specified percentage of the votes relative to the affairs of the Association and/or any other persons having any interest in the Property for any such amendment or for any action specified in this Declaration, then any instrument so amending this Declaration or any provision hereof or providing for such action shall be signed by the Owners holding not less than such specified percentage.

8.4 Term; Method of Termination. Unless amended or terminated as hereinafter provided, this Declaration shall continue in full force and effect in perpetuity. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Owners holding not less than ninety percent (90%) of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded 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 and/or Arizona statutes.

8.5 Notices. Notices provided for in the Constituent Documents shall be in writing and shall be mailed postage prepaid if to the Association or the Board addressed to the address to which payments of assessments are then sent and if to an Owner addressed to the street address of such Owner's Lot. The Association or the Board may designate a different address or addresses to which notices shall be sent from time to time by giving written notice of such change of address to all Owners. Any Owner may also designate a different address to which notices shall be sent by giving written notice of his change of address to the Association. Notices shall be deemed delivered five (5) days after being deposited properly addressed in the United States mail, postage prepaid, or immediately upon delivery in person.

8.6 Severability. If any provision of the Constituent Documents, or any paragraph, clause, sentence, phrase or word, or the application thereof, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Constituent Documents, and of the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby, and the remainder of the Constituent Documents shall remain in full force and effect as if such invalid part were never included therein, and such invalid part shall be promptly amended as herein provided or reformed by such court so as to implement the intent thereof to the maximum extent permitted by law.

8.7 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Constituent Documents. Such notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Constituent Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Constituent Documents.

8.8 Laws, Ordinances and Regulations. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

8.9 Joint and Several Liability. In the case of joint ownership of a Lot or Parcel, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.

8.10 Guests and Tenants. Each Owner shall be responsible for compliance by his or her agents, tenants, lessees, guests, invitees, licensees and their respective agents and employees with the provisions of the Constituent Documents. An Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Owner by reason of such Owner's own noncompliance.

8.11 Rights and Obligations. Each grantee, by the acceptance of a deed of conveyance to a portion of the Property accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be

covenants running with the land and equitable servitudes and shall be binding upon and shall inure to the benefit of any grantee, purchaser or any person having at any time any interest or estate in the Property in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument of transfer, and each such grantee shall be entitled to bring, and shall be subject to, an action for the recovery of damages, or for injunctive relief, or both, resulting from any breach of any such provisions.

8.12 Attorneys' Fees. In addition to the Association's right to receive attorneys' fees as provided in Section 8.2 of this Declaration, in the event the Association incurs legal expenses and costs, including, but not limited to, attorney's fees, in bringing claims against Owners or defending claims brought by Owners in a legal action or an administrative proceeding, including but not limited to, proceedings before an Administrative Law Judge and proceedings in Superior Court, the Association shall be entitled to recover its attorney's fees and costs from the Owner involved in the action or proceeding if the Association is the prevailing party.

8.13 Waiver. Any right or remedy provided for in this Declaration shall not be deemed to have been waived by any act or omission, including without limitation any acceptance of payment or partial performance or any forbearance, except by an instrument in writing specifying such right or remedy and executed by the person against whom enforcement of such waiver is sought.

8.14 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

8.15 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

8.16 Mortgages. Each Owner shall have the right, subject to the provisions hereof, to encumber such Owner's Lot with a Mortgage. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, lien or security interest, which encumbers or purports to encumber any portion of the property other than such Owner's Lot.

8.17 Annexation With Approval of Members. Upon the written consent or affirmative vote of at least two-thirds (2/3) of the Members of the Association present in person or by absentee ballot at a meeting duly called for such purpose, the Association may annex real property to the provisions of this Declaration by recording in the Official Records of Coconino County, Arizona, a "Supplemental Declaration" describing the real property being annexed. Any Supplemental Declaration shall be signed by the President and Secretary of the Association and the Owner or Owners of the properties being annexed, and any annexation under this paragraph shall be effective upon its recordation. At such time as such real property has been included (annexed) under this Declaration, the Owners of the Lots in the annexed property shall have the same rights, duties and obligations under this Declaration as the Owners of Lots initially covered by this Declaration and vice versa.

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Amended and Restated Declaration have been approved by the required percentage of the Owners.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**RAILROAD SPRINGS 66 HOMEOWNERS' ASSOCIATION**

By \_\_\_\_\_  
Its: President

STATE OF ARIZONA        )  
  ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared \_\_\_\_\_, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

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

Notary Seal:

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

Lots 1 through 120, inclusive, and Tracts A, B and C of the Final Plat of Railroad Springs 66 Subdivision as recorded in Case 7 Maps 68, 68A, 68B and 68C records of Coconino County, Flagstaff, Arizona;

Lots 121 through 263, inclusive, and Tracts H and L of the Final Plat of Railroad Springs 66, Unit 2 as recorded in Case 8 Maps 36, 36A, 36B and 36C records of Coconino County, Flagstaff, Arizona;

Lots 264 through 435, inclusive, and Tracts G, N, and O of the Final Plat of Railroad Springs 66 Unit 3 as recorded in Case 8 Maps 96, 96A, 96B and 96C records of Coconino County, Flagstaff, Arizona;

and

A portion of a parcel of land described in Docket 1143, Page 69 of the Records of Coconino County, Arizona, situated in the West ½ of Section 20 and the East ½ of Section 19, Township 21 North, Range 7 East, Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

From the Center ¼ of said Section 20, said point being a found RR Spike, thence S 88° 41' 04" W [Basis of Bearing (Center ¼, Section 20 to North ¼, Section 20): N 00° 24' 28" W (Docket 653, Page 13) (R1)] along the East-West centerline of said Section 20, for a distance of 1327.30 feet to the Center-West 1/16th corner of said Section 20, said point being a found ARENCO Cap, said point also being the TRUE POINT OF BEGINNING;

thence S 00° 18' 15" E, along the West 1/16<sup>th</sup> line of said Section 20, for a distance of 115.57 feet [Record: S 00° 23' 25" E for 115.60 feet (Book 4 of Maps, Page 58 (R3))] to a found ARENCO Cap, said point being on the North Right-of-Way line of State Highway 66 (formerly U.S. Highway 66) as described in Docket 276, Page 210, said right-of-way line being 50.00 feet Northerly of the centerline of said State Highway 66;

thence S 88° 25' 59" W, along said North Right-of-Way line, for a distance of 648.16 feet to a set ½" rebar w/ Cap 14671, said point being a concentric tangent spiral point;

thence Southwesterly along said North Right-of-Way line, along a concentric spiral curve to the right, the centerline spiral curve having delta angle of 01° 10' 19" and a final radius of 4583.66 feet, for a spiral length of 187.50 feet, the chord of said right-of-way curve bears S 88° 49' 21" W for 186.47 feet, to a set ½" rebar w/ Cap 14671, said point being a spiral curve point;

thence Northwesterly along said North Right-of-Way line, along a curve to the right, having a central angle of 06° 12' 55.5" and a radius of 4533.66 feet, for a distance of 491.81 feet, the chord of said curve bears N 87° 17' 18" W for 491.57 feet, to a found ARENCO Cap, said point being a nontangent point on the Section line between said Sections 19 and 20;

thence N 00° 23' 49" W, along said section line, for a distance of 16.12 feet to a found ARENCO Cap, from which the ¼ corner between said Section 19 and 20 bears N 00° 12' 48" W a distance of 65.68 feet, said point being a nontangent point of curvature;

thence Northwesterly along said North Right-of-Way line, along a curve to the right, having a central angle of 10° 51' 44.9" and a radius of 4517.63 feet, for a distance of 856.48 feet, the chord of said curve bears N 78° 43' 46" W for 855.20 feet, to a set ½" rebar w/ Cap 14671, said point being a concentric curve spiral point;

thence Northwesterly along said North Right-of-Way line, along a concentric spiral curve to the right, the centerline spiral curve having delta angle of 01° 10' 19" and a beginning radius of 4583.66 feet, for a spiral length of 187.50 feet, the chord of said right-of-way curve bears N 72° 11' 49" W for 162.08 feet, to a found ARENCO Cap, said point being a nontangent point on said concentric spiral curve on the West-East-East 1/256th line of said Section 19;

thence N 00° 13' 18" W, along said West-East-East 1/256th line, for a distance of 1170.61 feet [Record: 1170.00 feet (Docket 1111, Page 283 (R10))] to a found ARENCO Cap, said point being the C-W-E-NE 1/256th corner of said Section 19;

thence N 89° 43' 04" E, along the North 1/16th line of said Section 19, for a distance of 991.28 feet [Record: 991.38 feet (Docket 1143, Page 68 (R11))] to a found ARENCO Cap, said point being the North 1/16<sup>th</sup> corner between said Sections 19 and 20;

thence N 00° 15' 45" W, along the section line between said Sections 19 and 20, for distance of 1326.49 feet to a found U.S. Forest Service cap, said point being the North section corner of said Sections 19 and 20;

thence N 89° 36' 37" E, along the North section line of said Section 20, for a distance of 771.79 feet to a set ½" rebar w/ Cap 14671, said point being on the South Right-of-Way line of Santa Fe Railway as described in Docket 242, Page 610 (R12);

thence S 64° 40' 20" E, along said South Right-of-Way line, for a distance of 476.83 feet to a set ½" rebar w/ Cap 14671, said point being a point of curvature;

thence Southeasterly along said South Right-of-Way line, along a curve to the left, having a central angle of 27° 04' 00" and a radius of 1536.98 feet, for a distance of 726.07 feet, the chord of said curve bears S 78° 12' 20" E for 719.34 feet, to a set ½" rebar w/ Cap 14671, said point being a point of tangency;

thence N 88° 15' 40" E, along said South Right-of-Way line, for a distance of 453.25 feet [Record: 451.90 feet (R12)] to a set ½" rebar w/ Cap 14671, said point being a point of curvature;

thence Southeasterly along said South Right-of-Way line, along a curve to the right, having a central angle of 12° 25' 17" and a radius of 1336.98 feet, for a distance of 289.85 feet, the chord of said curve bears S 85° 31' 42" E for 289.28 feet, to a set ½" rebar w/ Cap 14671, said point being on the North-South centerline of said Section 20, from which the North ¼ of said Section 20 bears N 00° 25' 17" W a distance of 372.57 feet;

thence S 00° 25' 17" E, along said North-South centerline, for a distance of 441.07 feet to a found ARENCO Cap, said point being the Northeast parcel corner of a parcel described in Docket 1104, Page 555 (R2);

thence S 89° 35' 15" W, along the North parcel line of said Parcel (R2), for a distance of 208.79 feet [Record: West for 208.71 (R2)] to a found ARENCO Cap;

thence S 00° 27' 10" E, along the West parcel line of said Parcel (R2), for a distance of 208.70 feet [Record: South for 208.71 feet (R2)] to a found ARENCO Cap, said point being the Northwest parcel corner of a parcel of land described in Docket 653, Page 14 (R1);

thence S 00° 21' 12" E, along the West parcel line of said Parcel (R1), for a distance of 283.72 feet [Record: S 00° 24' 33" E for 284.00 feet (R1)] to a set ½" rebar w/ Cap 14671, said point being on the North 1/16th line of said Section 20, from which the C-N 1/16th corner of said Section 20 bears N 89° 05' 20" E a distance of 208.71 feet;

thence S 89° 05' 20" W, along said North 1/16<sup>th</sup> line, for a distance of 448.88 feet to a found 1" rebar;

thence continue S 89° 09' 31" W, along said North 1/16<sup>th</sup> line, for a distance of 161.03 feet [Record: S 89° 05' 19" W for 161.04 feet (R3)] to a found Cap 11369;

thence continue S 89° 09' 31" W, along said North 1/16<sup>th</sup> line, for a distance of 222.49 feet [Record: S 89° 05' 19" W for 222.59 feet (R3)] to a found Cap 11369;

thence continue S 89° 09' 31" W, along said North 1/16<sup>th</sup> line, for a distance of 283.83 feet [Record: S 89° 05' 19" W for 283.71 feet (R3)] to a found ARENCO cap, said point being the NW 1/16<sup>th</sup> corner of said Section 20, said point also being the Northwest parcel corner of a parcel described in Docket 442, Page 211 (R4);

thence S 00° 37' 39" W, along the West parcel line of said Parcel (R4) and along a parcel described in Docket 391, Page 553, for a distance of 260.29 feet [Record: 261.04 feet (R4)] to a found 1" iron pin, said point being the Northwest parcel corner of a parcel described in Docket 1621, Page 611 (R5);

thence S 01° 08' 36" E, along the West lot line of said Lot 12, for a distance of 59.83 feet [Record: 60.00 feet (R5)] to a found 1" iron pipe, said point being the Northwest corner of Lot 12, Ponderosa Park No. 1 as recorded in Book 2, Map 47 (R6);

thence S 00° 28' 21" E, along the West lot lines of Lots 11 through 9, for a distance of 180.01 feet [Record: 180.00 feet (R6)] to a set ½" rebar w/ Cap 14671, said point being the Northeast corner of a parcel of land described in Docket 865, Page 936 and Docket 1665, Page 111 (R7);

thence S 89° 31' 39" W, along the North parcel line of said Parcel (R7), for a distance of 6.24 [Record: S 88° 11' 00" W for 6.00 feet (R7)] feet to a found Cap 18215;

thence S 00° 35' 33" E, along the West parcel line of said Parcel (R7), for a distance of 119.92 feet [Record: S 00° 19' 00" E for 120.00 feet (R7)] to a found Cap 18215;

thence N 89° 38' 38" E, along the South parcel line of said Parcel (R7), for a distance of 5.99 feet [Record: N 88° 11' 00" E for 6.00 feet (R7)] to a set ½" rebar w/ Cap 14671, said point being the Northwest lot corner of Lot 7, (R6);

thence S 00° 25' 46" E, along the West lot line of said Lot 7, for a distance of 60.03 feet [Record: 60.00 feet (R6)] to a set ½" rebar w/ Cap 14671, said point being the Northwest parcel corner of a parcel of land described in Docket 1238, Page 994 (R8);

thence S 88° 04' 14" W, along the North parcel line of said Parcel (R8), for a distance of 6.00 feet [Record: S 88° 11' 00" W for 6.00 feet (R8)] to a set ½" rebar w/ Cap 14671;

thence S 00° 25' 46" E, along the West parcel line of said Parcel (R8), for a distance of 60.03 feet [Record: S 00° 19' 00" E for 60.00 feet (R8)] to a set ½" rebar w/ Cap 14671;

thence N 88° 04' 14" E, along the South parcel line of said Parcel (R8), for a distance of 6.00 feet [Record: N 88° 11' 00" E for 6.00 feet (R8)] to a set ½" rebar w/ Cap 14671, said point being the Northwest lot corner of Lot 5 (R6);

thence S 00° 25' 46" E, along the West lot line of Lots 5 through 1 (R6), for a distance of 290.14 feet [Record: 290.00 feet (R6)] to a found ¾" iron pipe, said point being the Southwest lot corner of said Lot 1;

thence N 89° 41' 25" E, along the South lot line of said Lot 1, for a distance of 1.68 feet to a set ½" rebar w/ Cap 14671, said point being the Northwest parcel corner of a parcel described in Docket 941, Page 968 and Docket 823, Page 692 on the aforementioned West 1/16<sup>th</sup> line of said Section 20;

thence S 00° 18' 35" E, along said West parcel line, for a distance of 284.24 feet [Record: S 00° 22' 38" E for 284.32 feet (R3)] to the TRUE POINT OF BEGINNING.

AND

A portion of a parcel of land described in Docket 1143, Page 69 of the Records of Coconino County, Arizona, situated in the West ½ of Section 20, Township 21 North, Range 7 East, Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at the North ¼ of said Section 20, said point being a found U.S. Forest Service Cap, thence S 00° 25' 17" E [Basis of Bearing (North ¼, Section 20 to Center ¼, Section 20): S 00° 24' 28" E (Docket 653, Page 13) (R1)] along the North-South centerline of said Section 20, for a distance of 169.26 feet to a set ½" rebar w/ Cap 14671, said point being a nontangent point of curvature on the North Right-of-Way line of Santa Fe Railway as described in Docket 242, Page 610 (R12);

thence Northwesterly along said North Right-of-Way line, along a curve to the left, having a central angle of 10° 57' 42" and a radius of 1536.98 feet, for a distance of 294.05 feet, the chord of said curve bears N 86° 15' 29" W for 293.60 feet to a set ½" rebar w/ Cap 14671, said point being a point of tangency;



thence S 88° 15' 40" W, along said North Right-of-Way line, for a distance of 453.25 feet [Record: 451.90 feet (R12)] to a set ½" rebar w/ Cap 14671, said point being a point of curvature;

thence Northwesterly along said North Right-of-Way line, along a curve to the right, having a central angle of 27° 04' 00" and a radius of 1336.98 feet, for a distance of 631.59 feet, the chord of said curve bears N 78° 12' 20" W for 625.73 feet, to a set ½" rebar w/ Cap 14671, said point being a point of tangency;

thence N 64° 40' 20" W, along said North Right-of-Way line, for a distance of 61.58 feet to a set ½" rebar w/ Cap 14671, said point being on the North section line of said Section 20;

thence N 89° 36' 37" E, along said North section line, for a distance of 1412.99 feet to the POINT OF BEGINNING.

NES # 96-007.