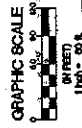
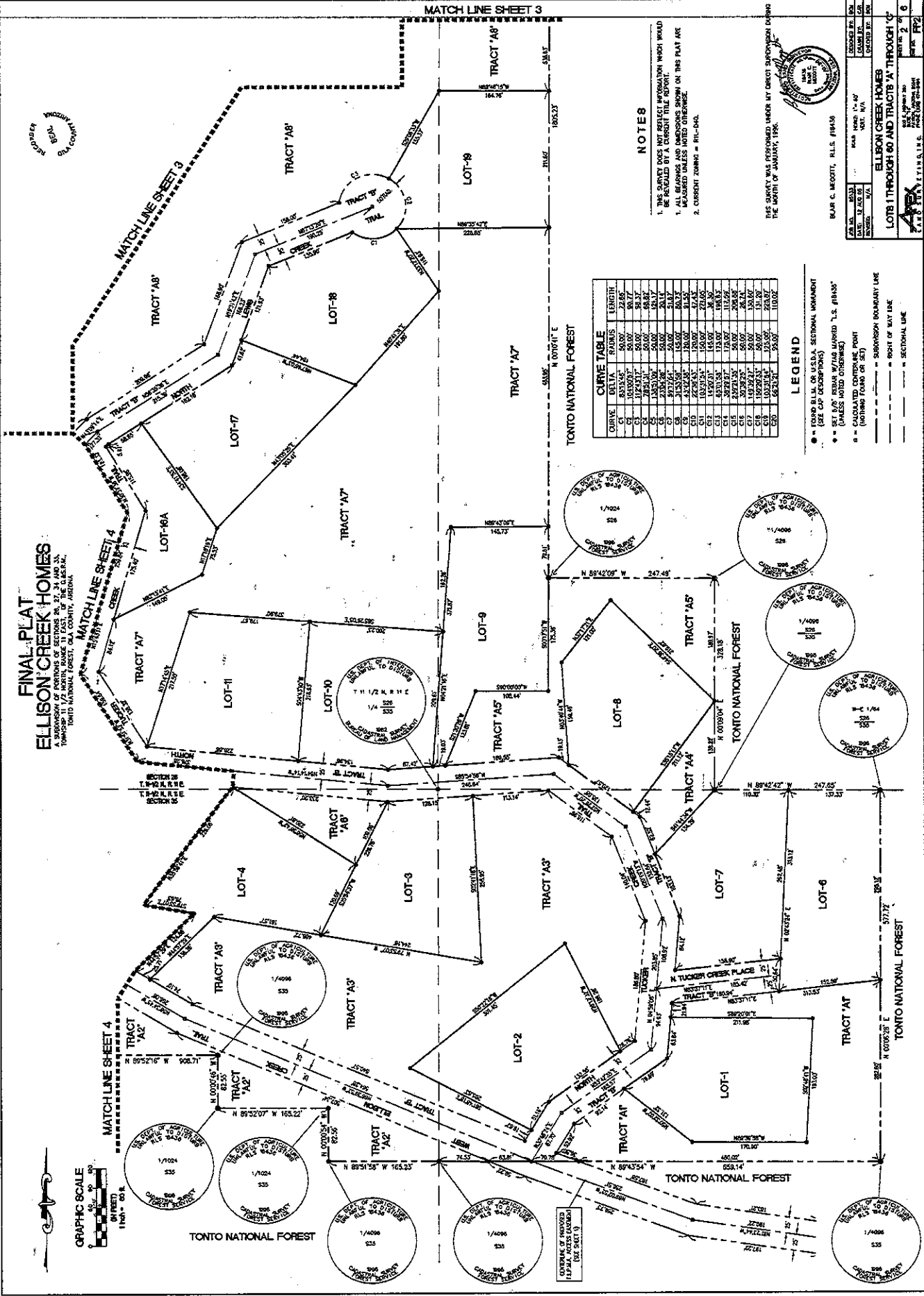


769 B

FINAL PLAT ELLISON CREEK HOMES

A SUBDIVISION OF PORTIONS OF SECTIONS 26, 27, 28 AND 33,
TOWNSHIP 11, RANGE 11 EAST, OF THE CLARK R.R.,
TONTON NATIONAL FOREST, OLA COUNTY, ARIZONA.



CURVE	DELTA	RADIUS	LENGTH
C1	83°53'45"	50.00'	27.65'
C2	103°05'27"	50.00'	50.77'
C3	103°05'27"	50.00'	50.77'
C4	72°58'11"	50.00'	48.82'
C5	135°53'04"	50.00'	18.13'
C6	83°53'45"	50.00'	27.65'
C7	83°53'45"	50.00'	27.65'
C8	83°53'45"	50.00'	27.65'
C9	83°53'45"	50.00'	27.65'
C10	83°53'45"	50.00'	27.65'
C11	83°53'45"	50.00'	27.65'
C12	83°53'45"	50.00'	27.65'
C13	83°53'45"	50.00'	27.65'
C14	83°53'45"	50.00'	27.65'
C15	83°53'45"	50.00'	27.65'
C16	83°53'45"	50.00'	27.65'
C17	83°53'45"	50.00'	27.65'
C18	83°53'45"	50.00'	27.65'
C19	83°53'45"	50.00'	27.65'
C20	83°53'45"	50.00'	27.65'

NOTES

1. THIS SURVEY WAS MADE BY THE METHOD OF TRIANGULATION WHICH WOULD BE RECALLED BY A CURVED TITLE REPORT.
1. ALL BEARINGS AND DIMENSIONS SHOWN ON THIS PLAT ARE MEASURED UNLESS NOTED OTHERWISE.
2. CURRENT ZONING = RL-104L.



BLAIR C. MEOTTI, R.L.S. #19438

DATE	1-14-21	SCALE	1" = 40'
PROJECT	ELLISON CREEK HOMES		
SHEET	2	TOTAL SHEETS	6
PREPARED BY	APR ENGINEERING, INC.		

LEGEND

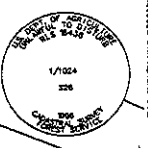
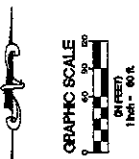
- = TONTO N.F. OR U.S.D.A. SECTIONAL MONUMENT (SEE CAP OR DESCRIPTIONS)
- = SET 5/0" BEAR W/100 WOODEN "L.S. #843"
- = CALCULATED CENTERLINE POINT (NONE FOUND OR SET)
- = SURVEYOR BOUNDARY LINE
- = RIGHT OF WAY LINE
- = SECTIONAL LINE

769 A

769 C

FINAL PLAT ELLISON CREEK HOMES

A SUBDIVISION OF PORTIONS OF SECTIONS 24, 27, 28 AND 29,
TOWNSHIP 11 N, RANGE 11 E, OF THE 6th R.M.,
TONTON NATIONAL FOREST, OLD COUNTY, ARIZONA.

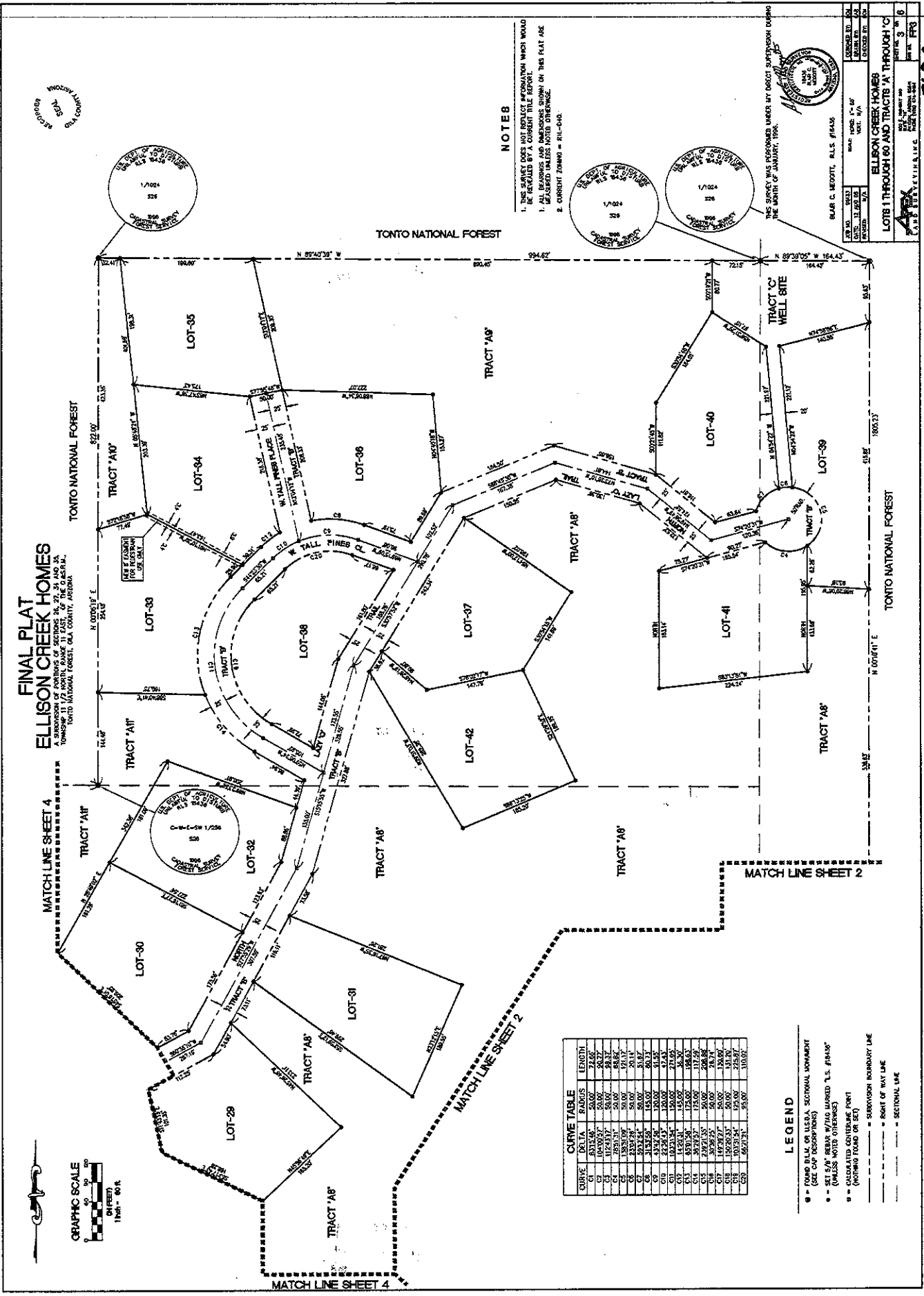


NOTES

1. THIS PLAT AND ALL PERTINENT INFORMATION WHICH WOULD BE REVEALED BY A CURRENT TITLE REPORT.
1. ALL BEARINGS AND DIMENSIONS SHOWN ON THIS PLAT ARE MEASURED UNLESS NOTED OTHERWISE.
2. CURRENT ZONING = R1-60B.

THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF JANUARY, 1988.

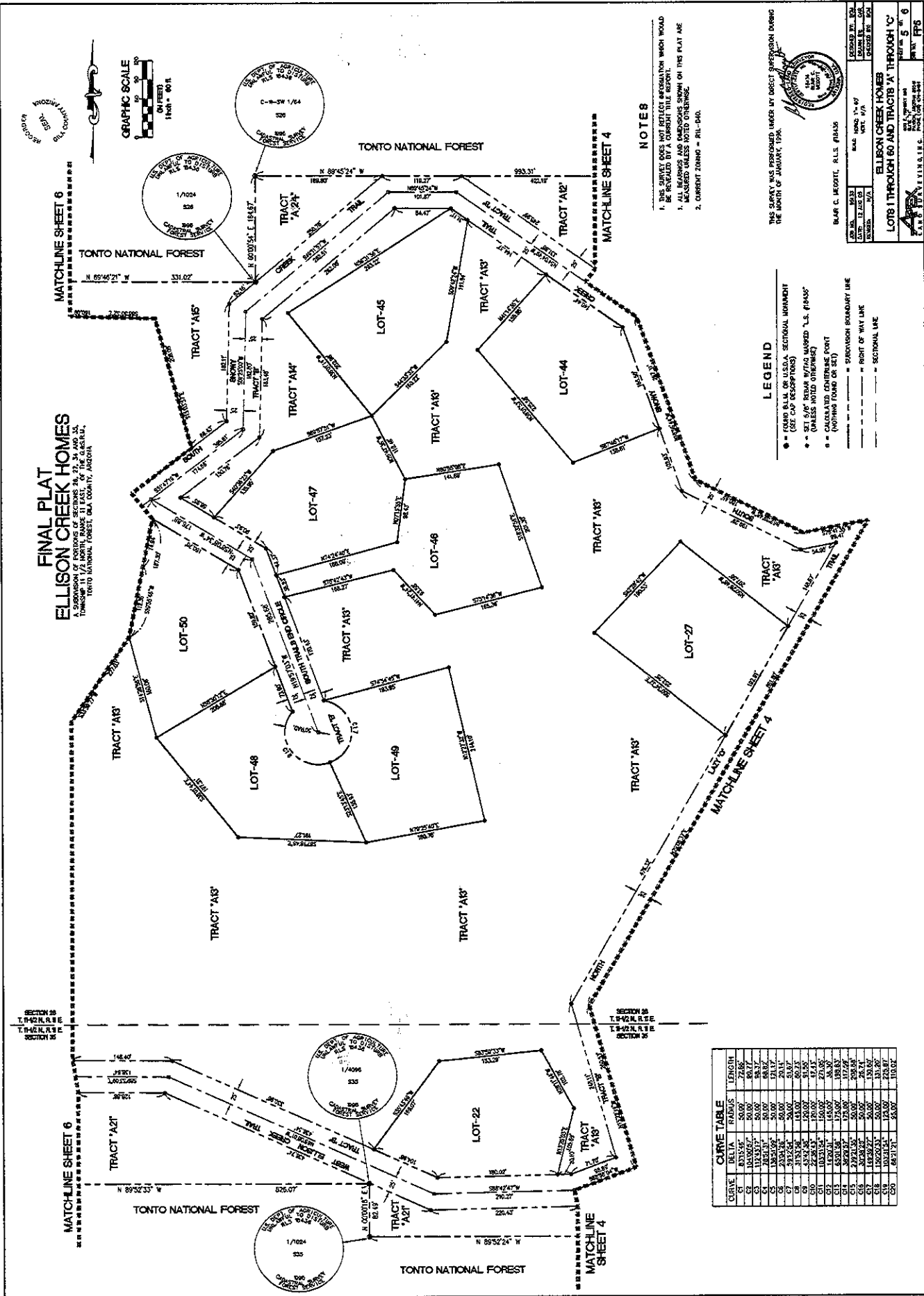
DATE	11/22/88
BY	GARY C. SCOTT
SCALE	AS SHOWN
PROJECT NO.	1234
SECTION	3 of 6
PLAT NO.	769 C



CURVE	DELTA	RADIUS	LENGTH
C1	83.1546	50.00	24.69
C2	112.4117	50.00	49.32
C3	75.1311	50.00	45.84
C4	103.1797	50.00	51.17
C5	53.2454	50.00	31.82
C6	31.2558	15.00	60.73
C7	22.2413	10.00	41.43
C8	10.2334	50.00	27.69
C9	14.2011	15.00	58.39
C10	11.2011	15.00	58.39
C11	2.9713	50.00	29.88
C12	1.0272	50.00	10.76
C13	1.0272	50.00	10.76
C14	1.0272	50.00	10.76
C15	1.0272	50.00	10.76
C16	1.0272	50.00	10.76
C17	1.0272	50.00	10.76
C18	1.0272	50.00	10.76
C19	1.0272	50.00	10.76
C20	1.0272	50.00	10.76

- ### LEGEND
- FOUND BULL ON USBA SECTIONAL MONUMENT (SEE CAP DESCRIPTIONS)
 - SET 5/8" REBAR WITH MARKED "L.S. 1884" (UNLESS NOTED OTHERWISE)
 - CALCULATED CENTERLINE POINT (POINTING TOWARD OR SET)
 - SURVEYOR BOUNDARY LINE
 - - - RIGHT OF WAY LINE
 - SECTIONAL LINE

769 C



FINAL PLAT
ELLISON CREEK HOMES
 A SUBDIVISION OF PORTIONS OF SECTIONS 24, 27, 34 AND 35,
 TOWNSHIP 12N, RANGE 10E, COUNTY OF MARICOPA,
 GRAND CANYON NATIONAL FOREST, GILA COUNTY, ARIZONA



GRAPHIC SCALE
 0 100 200
 FEET

1/1024
 338
 C-9-SW 1/4

1/1024
 338
 C-9-SW 1/4

1/1024
 338
 C-9-SW 1/4

TONTO NATIONAL FOREST

TONTO NATIONAL FOREST

NOTES

1. THIS PLAT DOES NOT REPRESENT A SECTION MONUMENT WHICH WOULD BE REQUIRED BY ARIZONA STATUTES.
2. ALL BEARINGS AND DIMENSIONS SHOWN ON THIS PLAT ARE MEASURED UNLESS NOTED OTHERWISE.
3. CURRENT ZONING - RL-100.

LEGEND

- FOUND B.L.M. OR U.S.G.A. SECTIONAL MONUMENT (SEE CAP DESCRIPTIONS)
- SET 5/2" IRON NAIL OR WOOD "L.S. #10" (UNLESS NOTED OTHERWISE)
- SECTION BOUNDARY LINE
- - - RIGHT OF WAY LINE
- - - SECTIONAL LINE

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH
C1	83.15°	50.00'	72.85'
C2	103.31°	50.00'	88.17'
C3	123.47°	50.00'	103.49'
C4	143.63°	50.00'	118.81'
C5	163.79°	50.00'	134.13'
C6	183.95°	50.00'	149.45'
C7	204.11°	50.00'	164.77'
C8	224.27°	50.00'	180.09'
C9	244.43°	50.00'	195.41'
C10	264.59°	50.00'	210.73'
C11	284.75°	50.00'	226.05'
C12	304.91°	50.00'	241.37'
C13	325.07°	50.00'	256.69'
C14	345.23°	50.00'	272.01'
C15	365.39°	50.00'	287.33'
C16	385.55°	50.00'	302.65'
C17	405.71°	50.00'	317.97'
C18	425.87°	50.00'	333.29'
C19	446.03°	50.00'	348.61'
C20	466.19°	50.00'	363.93'



BLAIR C. MEOTTI, P.E., P.L.L.C.
 12345
 12345
 12345

ELLISON CREEK HOMES
 LOTS 1 THROUGH 60 AND TRACTS 'A' THROUGH 'C'
 12345
 12345
 12345

When Recorded, Mail to:

Susan Reed
614 W Ocotillo Rd
Phx., AZ 85013-1161

Gila County, AZ
Linda Haught Ortega, Recorder
03/30/2006
02:22PM
Doc Code: DRES

Doc Id: 2006-005512
Receipt #: 43265
Rec Fee: 53.00



2006-005512

Page: 1 of 45
03/30/2006 02:22P
53.00

Gila County, AZ

DRES

Caption Heading/Title: Declaration of Covenants,
Conditions and Restrictions for
Ellison Creek Subdivision

Do Not Remove This Sheet, It Is Part Of The Recorded Document



**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ELLISON CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ELLISON CREEK is made this 30th day of March, 2006, by ELLISON CREEK CABIN OWNERS' ASSOCIATION, an Arizona nonprofit corporation (the "Declarant").

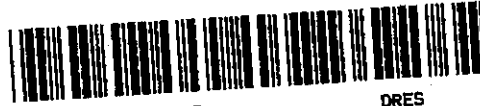
WITNESSETH:

WHEREAS, Declarant intends to and does hereby establish for its own benefit, for the benefit of Owners, as defined herein, and for the mutual benefit of all future owners or occupants of the Property, as said Property, is now and may subsequently be constituted, and each part thereof, certain easements and rights in, over and upon the Property, and certain mutually beneficial covenants, conditions, restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant intends that the owners, mortgagees, occupants and all other persons hereafter acquiring any interest in the Property or any part thereof, shall at all times enjoy the benefits of, and shall hold, sell and convey their interests subject to the rights, easements, covenants, conditions, restrictions, and obligations set forth in this Declaration, all of which are hereby declared to be in furtherance of a general plan to promote and protect the cooperative aspect of such development and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property;

WHEREAS, Declarant desires that the Property continue to operate in a manner consistent with the original character, intent and philosophy established under the former United States Forest Service use permits, with minor exceptions. This character, intent and philosophy allows for enjoyment of the Property in a rustic, cabin environment which avoids such improvements as paved roads, lot fencing, non-earthtone colors, excessive storage and inoperable equipment.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions hereinafter set forth.



Gila County, AZ

DRES

2006-005512
Page: 3 of 45
03/30/2006 02:22P
53.00

ARTICLE 1

DEFINITIONS

As used herein, unless otherwise specified or unless the context otherwise requires, the following words and phrases shall have the meanings set forth below.

1.1 "Accessory Use" means a use naturally and normally incidental to, subordinate to, and devoted exclusively to the permitted main use of a Lot.

1.2 "Additional Maintenance Areas" means those portions of the Property, if any, which, pursuant to future action of the Association, are to be maintained by the Association.

1.3 "Additional Property" means any real property, together with the Improvements located thereon, situated within the vicinity of the Property.

1.4 "Administrative Fees" means any and all amounts incurred by the Association in connection with the administration and enforcement of this Declaration, the Association Rules, and related Association matters.

1.5 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 4.5 of this Declaration.

1.6 "Architectural Control Committee" means the committee of the Association to be created pursuant to Article 6 of this Declaration.

1.7 "Articles" means the Articles of Incorporation of the Association as filed with the Arizona Corporation Commission, as may be amended from time to time.

1.8 "Assessment" means an Annual Assessment, Special Assessment, Emergency Assessment or Remedial Assessment levied pursuant to Article 4 of this Declaration.

1.9 "Association" means Ellison Creek Cabin Owners' Association, an Arizona nonprofit corporation, its successors or assigns.

1.10 "Association Rules" means any rules and regulations adopted by the Board pursuant to Section 3.7.1, and any architectural, construction and landscaping standards, and procedures for applying for approval, as determined and adopted by the Architectural Control Committee pursuant to Section 3.7.2.

1.11 "Board" means the Board of Directors of the Association.

1.12 "Building" means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels, located on a Lot, and forming a part of such Lot.



- 1.13 "Bylaws" means the Bylaws of the Association, as may be amended from time to time.
- 1.14 "Common Area" means Tracts A1 through A23; B and C on the Plat, and all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.
- 1.15 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.16 "Declarant" means the Association, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.
- 1.17 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as it may from time to time be amended.
- 1.18 "Dwelling" means any Building or portion thereof which is situated on a Lot and designed and intended for independent ownership and used as a private residence or sleeping place of one or more human beings.
- 1.19 "Emergency Assessment" means any assessment levied and assessed pursuant to Section 4.8 of this Declaration.
- 1.20 "Improvement" means any and all Dwellings, Buildings, private streets, garages, carports, driveways, parking areas, fences, walls, perches, patios, plantings, planters, trees, shrubs, grass and other landscaping Improvements of every type and kind, and all other structures of every kind, nature or description.
- 1.21 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot, including an assignee of a lease.
- 1.22 "Lien" means both voluntary and involuntary liens.
- 1.23 "Lot" means each parcel of real property in the Property as shown with a separate and distinct number on the Plat, exclusive of the Common Area. Where the context requires, the term shall include any Dwelling, Building, structure or other Improvement situated on the Lot.
- 1.24 "Manager" means that person or entity employed from time to time by the Board to manage the affairs of the Association if so desired by the Association.
- 1.25 "Member" means any person who holds a membership in the Association.
- 1.26 "Mortgage" means and refers to all instruments establishing a security interest, including deeds of trust.
- 1.27 "Mortgagee" means the beneficiary of a Recorded deed of trust or the holder of a



Gila County, AZ

DRES

Recorded mortgage.

1.28 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741, et seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the trustor shall be deemed to be the Owner. In the case of the Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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

MAP # 769 A THROUGH F

1.30 "Plat" means the plat of Ellison Creek Recorded in Book __, page __, records of Gila County, Arizona, and all amendments, supplements and corrections thereto, and any subdivision plat Recorded against all or any part of the Additional Property, and all amendments, supplements and corrections thereto.

1.31 "Property" means Lots 1 through 60, inclusive, of all Tracts of Ellison Creek as legally described on Exhibit "A" attached hereto and incorporated herein by this reference, together with all Improvements thereon, and only such Additional Property as is annexed and specifically made subject to this Declaration by the Declarant pursuant to Article 11 of this Declaration titled "Integrated Nature of the Covered Property."

1.32 "Public Drainage Easement" means an easement over, under, upon, and through an area as shown on the Plat for drainage purposes. The Association, Gila County and/or the United States Forest Service (the "USFS") may construct or maintain drainage facilities on or under the land in the Public Drainage Easement.

1.33 "Public Utility Easement" means an easement over, under, upon, and through an area as shown on the Plat for the purpose of maintaining public utilities, including water, sewer, electric, telephone, cable television, refuse collection and emergency vehicle access.

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

1.35 "Remedial Assessment" means any assessment levied and assessed pursuant to Section 4.10 of this Declaration.

1.36 "Resident" means each individual occupying or residing in any Dwelling.



1.37 "Special Assessments" means any assessment levied and assessed pursuant to Section 4.7 of this Declaration.

1.38 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation not greater than the elevation of the base of the object being viewed.

1.39 "Water Commissioner" means the individual appointed to such position in accordance with the Bylaws.

1.40 "Yard" means the grounds surrounding the Improvements and appurtenances thereto situated on a Lot, and includes the front, side and rear ground areas.

ARTICLE 2

PROPERTY SUBJECT TO DECLARATION

2.1 IMPOSITION OF COVENANTS AND RESTRICTIONS: This Declaration is being recorded to establish a general plan for the development, sale, lease and use of the Property in order to protect and enhance the value and desirability of the Property. The Declarant declares that all of the Property shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person or entity by so doing thereby acknowledges that this Declaration sets forth a general scheme for the use, development, sale and lease of the Property and evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 ANNEXATION OF ADDITIONAL PROPERTY: The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof.

2.3 DISCLAIMER OF REPRESENTATIONS: Declarant makes no representations or warranties whatsoever that: (i) the Property will be completed in accordance with the plans for the Property as they exist on the date this Declaration is Recorded; (ii) any Property subject to this



Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

ARTICLE 3

THE ASSOCIATION

3.1 ORGANIZATION: The Association is an Arizona nonprofit corporation, which corporation shall be the governing body for all of the Owners for the maintenance, repair, replacement, administration and operation of the Common Area and all other property the Association is required or permitted to maintain pursuant to this Declaration, and shall have the duties and powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall for any reason be amended, or otherwise changed or interpreted, so as to be inconsistent with this Declaration. In the event of any conflict or inconsistency, this Declaration shall control.

3.2 MEMBERS:

3.2.1 Qualifications: Each Owner of a Lot shall automatically, upon becoming an Owner, become a Member of the Association and shall remain a Member until such Owner ceases to own a Lot.

3.2.2 Membership Rights and Duties: Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws and the Association Rules, as said documents may be amended from time to time.

3.2.3 Transfer of Membership: The rights and obligations of any Member shall be appurtenant to ownership of the Lot, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Lot, and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant to the Lot to the new Owner thereof.

3.3 VOTING:

3.3.1 Number of Votes: Each Member shall be entitled to one (1) vote for each Lot owned. When more than one person is the Owner of a Lot, all such persons shall be Members. The vote for each such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

3.3.2 Joint Owners' Disputes: The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that the joint Owners are unable to agree among themselves as to how their one (1) vote shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a Lot, it will thereafter be



conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast for a particular Lot, none of said votes shall be counted and all of the votes shall be deemed void.

3.3.3 Election and Removal of Board of Directors: Cumulative Voting Features:

Every Member entitled to vote at any election of directors of the Board may cumulate his vote and cast as many votes in the aggregate as such Member is entitled to vote with respect to Lot(s) owned by such Member, multiplied by the number of directors to be elected at the meeting. Each Member may cast the whole number of votes, either in person or by proxy, for one (1) candidate, or may distribute such votes among two (2) or more such candidates. The entire Board or any individual director may be removed from office with or without cause by vote of the majority of the voting power of the Members; provided, however, unless the entire Board is removed, an individual director shall not be removed prior to the expiration of his term of office if the number of votes against the resolution for his removal or not consenting in writing to such removal would be sufficient to elect the director if voted cumulatively at an election at which the same number of votes were cast and the entire number of directors authorized at the time of the most recent election of the directors were then being elected. If any or all of the directors are so removed, new directors may be elected at the same meeting.

3.4 DUTIES OF THE ASSOCIATION: In addition to the powers delegated to it by the Articles, and without limiting the generality thereof, the Association shall have the obligation to perform through its Board each of the following duties:

3.4.1 Maintenance and Management of Common Areas. Additional Maintenance Areas:

3.4.1.1 To maintain in a safe condition, manage, maintain, repair, replace and preserve all of the Common Area, including private roads and all Improvements presently or hereafter located thereon and thereunder.

3.4.1.2 The Association shall have the right, but not the obligation, to maintain Additional Maintenance Areas. In the event the Association maintains Additional Maintenance Areas, the cost of such maintenance shall be funded through Assessments levied equally on all Lots.

3.4.2 Rubbish Collection: To provide refuse pickup and debris disposal for the Common Area, excluding collection of rubbish and garbage for all Lots unless approved by the Board.

3.4.3 Insurance: To obtain and maintain in force, to the extent reasonably available, the following policies of insurance:

3.4.3.1 Fire and extended coverage insurance on the Common Area, the amount of such insurance to be not less than one hundred percent (100%) of the aggregate full insurable value.

3.4.3.2 General comprehensive public liability insurance against claims for personal or bodily injury, death or property damage with limits with regard to injury or death of not less than One Million Dollars (\$1,000,000.00) per occurrence with Two Million



Dollars (\$2,000,000.00) aggregate; and with limits of not less than Fifty Thousand Dollars (\$50,000.00) per occurrence in respect of property damage, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction. Said liability insurance shall name and separately protect as insureds each Owner, the Association, the Board and their representatives and employees, and the Members (as a class), with respect to any liability arising out of the maintenance or use of the Common Area, the ownership of any and all real and personal property held by the Association, and the activities of the Association.

3.4.3.3 Such other insurance, including director and officer insurance (errors and omissions), and worker's compensation liability insurance to the extent necessary to comply with any applicable law, faithful performance and fidelity bonds to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property and such indemnity and other bonds as the Board shall deem necessary or expedient to carry out the Association's functions or to protect the Association or the Owners.

3.4.3.4 The Association shall maintain blanket fidelity bonds for all officers, directors, trustees, employees of the Association and all other persons handling or responsible for funds of or administered by the Association. Such bonds shall be in an amount no less than the estimated maximum funds, including reserve funds, in the custody of the Association or the management agent at any given time during the term of the bond. Such fidelity bonds shall name the Association as an obligee, shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar term, and shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association.

3.4.4 Rule Making: To make, establish, promulgate, amend and repeal the Association Rules.

3.4.5 Architectural Control Committee: Committee List: To appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Declaration. To create and maintain a current list of all committees and members thereof, which list shall be kept at the office of the Association.

3.4.6 Taxes and Assessments: Pay all taxes and assessments that are or could become a lien on the Common Area or other property owned by the Association.

3.4.7 Enforcement of Restrictions and Rules: To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association Rules.

3.4.8 Budgets and Financial Statements: To cause financial statements for the Association to be regularly prepared and copies to be made available to each Member of the Association.



3.4.8.1 A pro forma operating statement (budget) for each fiscal year (which shall include a reserve for the repair and replacement of Common Area facilities, if any) shall be available not less than sixty (60) days before the beginning of each fiscal year of the Association.

3.4.8.2 An annual report consisting of the following shall be available to any Owner within one hundred twenty (120) days after the close of the fiscal year:

- (i) A balance sheet as of the end of the fiscal year.
- (ii) An operating (income) statement for the fiscal year.
- (iii) A statement of changes in financial position for the fiscal year.

3.4.8.3 The annual report referred to in Section 3.4.8.2 shall be prepared by an independent public accountant in accordance with Arizona Revised Statutes pertaining to the Planned Community Act.

3.4.8.4 If the report referred to in Section 3.4.8.2 above is not prepared by an independent public accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

3.4.8.5 Upon the written request of any first Mortgagee, an audited annual statement will be made available within ninety (90) days after the close of the fiscal year or within thirty (30) days of the request, whichever occurs later. The Association may require that the first Mortgagee requesting an audited annual statement pay the cost of the audit or some portion thereof.

3.5 POWERS AND AUTHORITY OF THE ASSOCIATION: The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Arizona, subject only to those limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws or this Declaration, including without limitation, the power:

3.5.1 Assessments: To levy Assessments against Lots and to enforce payment of such Assessments, all in accordance with the provisions of Article 4 hereof.

3.5.2 Right of Entry and Enforcement: To enter upon any Lot (excluding the interior of any Dwelling thereon) or any Common Area for the purpose of (i) ascertaining whether the provisions of this Declaration and the Association Rules have been or are being complied with, (ii) enforcing by peaceful means any of the provisions of this Declaration or the Association Rules, or (iii) maintaining or repairing any such area as required to be maintained by this Declaration or the Association Rules. Such entrance shall be after twenty-four (24) hours prior written notice to the Owner, or such greater notice as may be required by any provision hereof; provided, however, that such entrance shall be permitted without any prior notice whatsoever in the event of an emergency. The Association also shall have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence



and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Association Rules, and to enforce, by mandatory injunction or otherwise, all of the provisions thereof. In addition, or as an alternative method of enforcing this Declaration and the Association Rules, the Board may impose monetary penalties, temporary suspensions of an Owner's rights as a Member or other appropriate discipline for failure to comply with the provisions of this Declaration or the Association Rules, provided that the notice and the opportunity for a hearing are given to the accused Member in accordance with the requirements of this Declaration or the Bylaws before a decision to impose discipline is reached.

3.5.3 Easements and Access Areas: To grant and convey to any third party, easements and access ways in, on, over or under any Common Area for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder (i) overhead or underground lines, cables, wires, conduits or other devices for the transmission of electricity for lighting, heating, power, security system, telephone, cable television and other purposes; (ii) public sewers, storm water drains and pipes, water systems, water, heating and gas lines or pipes; and (iii) any similar public or quasi-public Improvements or facilities.

3.5.4 Transfer, Dedication and Encumbrance of the Common Area: To sell, transfer or encumber all or any portion of the Common Area, and any other portion of the Property owned by the Association, to an Owner, person, firm or entity, whether public or private, and to dedicate or transfer all or any portion of the Common Area or other property owned by the Association to any public agency, authority, or utility for such purposes. No such sale, transfer, encumbrance or dedication shall be effective unless an instrument signed by Members representing ninety percent (90%) of the total voting power of the Association has been Recorded, agreeing to such sale, transfer, encumbrance or dedication, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance. Notwithstanding the foregoing or anything herein to the contrary, no vote of the Members shall be required in connection with the conveyance by the Association of fee title to the Lots to the prospective Owners thereof following completion of the land exchange with the USFS.

3.5.5 Employment of Agents: To employ the services of any Person or corporation as managers, or other employees to manage, conduct, and perform the business, obligations and duties of the Association as may be directed by the Board and to enter into contracts for such purpose. Such agents shall have the right to ingress and egress over such portions of the Property as is necessary for the performance of such business, duties and obligations.

3.5.6 Employment of Professional Advisors: To employ professional counsel and obtain advice from such Persons, firms or corporations, including but not limited to, recreation experts, architects, engineers, planners, lawyers and accountants.

3.5.7 Borrowing of Money: To borrow and repay monies for the purpose of maintaining and improving the Common Area and to encumber property of the Association as security for the repayment of such borrowed money, subject to Article 3.5.4 above.

3.5.8 Create Classes of Service and Make Appropriate Charges: To create, in its sole discretion, various classes of service and to make appropriate charges therefore to the users thereof,



including but not limited to such other rules and regulations as the Board deems proper (i.e., trash collection service). In addition, the Board shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain. Without limiting the generality of the foregoing, and in addition to the foregoing, except as otherwise provided herein, the Board may negotiate contracts and grant commercial concessions over, and with respect to, portions of the Common Area (i.e., such as for tree cutting), provided that any such contract or grant having a term of more than one (1) year shall require the vote or written approval of a majority of the voting power of the Association.

3.5.9 Services: To contract for or otherwise provide for all services necessary or convenient to the management, maintenance and operation of the Property, including the Common Area.

3.6 LIMITATIONS ON POWERS OF THE BOARD:

3.6.1 Vote of Members Required: Notwithstanding anything herein to the contrary, the Board shall not take any of the following actions without the prior vote or written consent of a majority of the voting power of the Association:

3.6.1.1 Enter into a contract with a third person or entity wherein such person or entity will furnish goods or services for the Common Area, and Additional Maintenance Areas, or to the Association for a term longer than one (1) year with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by the Arizona Corporation Commission or successor thereof, provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and

(ii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits short rate cancellation by the insured.

3.6.1.2 Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a director or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

3.6.1.3 Sell during any fiscal year personal property of the Association having an aggregate fair market value greater than five percent (5 %) of the budgeted gross expenses of the Association for that fiscal year.

3.6.1.4 Fill any vacancy on the Board created by the removal of a member of the Board until the next annual meeting whereby the Members shall elect such Board member to finish the term of the removed Board member.

3.6.2 Termination of Agreements: Notwithstanding anything herein contained to the contrary, any agreement for professional management of the Property, or any other contract



providing for services, must provide for termination by either party without cause or payment of a termination fee on not more than thirty (30) days written notice and a maximum contract term of one (1) year.

3.7 THE ASSOCIATION RULES:

3.7.1 Adopted by the Board: By a majority vote of the Board, the Association may, from time to time, adopt, amend, and repeal such rules and regulations (the "Association Rules") as it may deem reasonable, including the establishing of monetary fines or penalties for violations of such Association Rules or this Declaration. Should 25% of all members sign a petition objecting to the fines as established by the Board, the Board shall call a Special Meeting for a vote by the membership wherein the membership can overrule with a majority vote the fines objected to in the petition. If the Special Meeting notice includes provision for alternative fines, such discussion will also be held and voted on at that time. The Association Rules shall govern the use of the Common Area by any Owner, or by any invitee, licensee or Lessee of such Owner, by the family of such Owner, or by any invitee, licensee or Lessee of the family of such Owner, provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or the Bylaws. A copy of the Association Rules as they may be amended, adopted or repealed from time to time, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between any of the Association Rules and any of the other provisions of this Declaration, or the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of such inconsistency.

3.7.2 Adopted by the Architectural Control Committee: In addition, the Architectural Control Committee may adopt standards for architecture, construction and landscaping, and may adopt procedures for making, hearing and ruling on such applications. Such standards and procedures, when adopted by the Architectural Control Committee and delivered to each Owner, as set forth above, shall be Association Rules, subject to the same provisions and enforcement procedures, except application shall not be discriminatory enforcement.

3.7.3 Gun Control: The firing of any type of gun, including but not limited to hand guns, shotguns, rifles, pellet guns, pellet rifles, BB guns or any other type of firearm shall be prohibited within the Property, and all state and county laws in the State of Arizona shall also apply in addition to the aforementioned prohibition of firing such firearms.

3.8 PERSONAL LIABILITY: No member of the Board or the Architectural Control Committee, or any officer of the Association, or the manager, shall be personally liable to any Owner, or to another party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Architectural Control Committee, the manager or any other representative or employee of the Association, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct.



ARTICLE 4

ASSESSMENTS

4.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS: Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, and whether or not any Improvements exist on such Lot, is deemed to covenant and agree, for each Lot owned, to pay Assessments to the Association in accordance with this Declaration. All Assessments, together with interest, reasonable attorneys' fees and all costs incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Each Assessment, together with interest, costs, reasonable attorneys' fees and related Administrative Fees, shall also be the personal obligation of the Person who is the Owner of such Lot at the time the Assessments became due, and shall not pass to successors in title unless expressly assumed by them, however, all perfected liens shall be liens on the interests of successive Owners of the Lots subject thereto, except as otherwise provided herein for Mortgagees. No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by non-use of the Common Area, or any part thereof, or abandonment of the Lot.

4.2 TRANSFER FEE: Each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of a Lot (other than the first Owner of a Lot) a transfer fee in such amount as is established from time to time by the Board to cover the expenses of the Association (or its Management/Accounting company) to change its records, to administer the change in ownership, and to pay any ancillary expenses related thereto.

4.3 PURPOSES OF ASSESSMENTS: Assessments levied shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property, the improvement, operation and maintenance of the Common Area, Public Drainage Easements and Additional Maintenance Areas, and the performance of the duties of the Association as set forth in this Declaration.

4.4 OPERATING FUND: There shall be an operating fund, into which the Association shall deposit all monies paid to it as:

- (i) Annual Assessments;
- (ii) Emergency Assessments;
- (iii) Special Assessments;
- (iv) Remedial Assessments;
- (v) Transfer and Miscellaneous fees; and



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(vi) Income attributable to the operating fund;

and from which the Association shall make disbursements in performing the functions for which the foregoing Assessments are levied.

4.5 ANNUAL ASSESSMENTS:

4.5.1 Levy and Enforcement of Annual Assessments: In order to provide for the operation and management of the Association and to provide funds for the Association to pay all common expenses and to perform its duties and obligations under this Declaration, the Articles and the Bylaws, including the establishment of replacement and maintenance reserves, the Board shall assess against each Lot an Annual Assessment.

4.5.2 Amount of Annual Assessments: Beginning with the first fiscal year of the Association, the amount of the Annual Assessment for each Lot shall be determined by the Board at least thirty (30) days prior to the commencement of each fiscal year based on the budget for such fiscal year called for by Section 3.4.8 above.

4.5.2.1 Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Association, the Annual Assessment shall be no more than Two Hundred Dollars (\$200.00), which may be prorated through the balance of the initial assessment year.

4.5.2.2 Except as otherwise provided herein, the total Annual Assessment and any Special Assessments or Emergency Assessments shall be assessed equally against all of the Lots.

4.5.3 Commencement Date for Annual Assessments: The Annual Assessment hereunder shall commence to accrue on all Lots on the date ("Initial Commencement Date") which is the first day of the first month following the first Recording of a deed conveying a Lot to any Owner other than the Association.

4.5.4 Increase of Annual Assessments: The maximum Annual Assessment for each succeeding fiscal year may be increased each year above the maximum Annual Assessment for the previous year without a vote of the Members, in an amount no more than allowed under the Arizona Revised Statutes pertaining to the Planned Community Act. Any increase in the Annual Assessment which exceeds the allowable increase shall be made only upon the affirmative vote or written consent of two-thirds (2/3) of the voting power of the Members who are voting as set forth below in Section 4.9.

4.5.5 Reserve Fund: For purposes of creating reserves to ensure payment when due of the cost of capital expenditures relating to the repair and replacement and improvement of the Common Area and equipment and fixtures in the Common Area, a portion of the Annual Assessment shall constitute a non-refundable contribution to the reserve fund of the Association. The specific items for which such contribution shall be made and the amount of such contribution in respect of each such item shall be determined by the Board, acting in its sole discretion, at the time it adopts the



budget for the Annual Assessment in accordance with this Declaration. All such contributions shall be collected annually as provided herein, shall be accounted for separately and shall be held in trust and used to pay for each specific capital expenditure in such manner and at such times as the Board, acting in its sole discretion, shall determine. Immediately upon receipt, all such capital contributions shall be deposited in an interest-bearing account or accounts, in any insured financial institution as may be determined by the Board by resolution, or invested in certificates of deposit issued by a bank or financial institution having assets in excess of Five Hundred Million Dollars (\$500,000,000.00).

4.5.6 Reserve Studies: The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement and improvement reserves for the association; provided, however, (i) no such report or study shall be required until at least three (3) years have elapsed from the date Assessments begin to accrue; and (ii) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (iii) in establishing repair and replacement and improvement reserves for the Association, in addition to the recommendation of any such studies or reports and other relevant factors, the Board may take into account (a) the past incidences of required repairs for the Association; and (b) projected funds available to the Association pursuant to future Capital Reserve funds paid pursuant to Section 4.5.5 of this Declaration.

4.6 ASSESSMENT ROLL: An assessment roll shall be accurately maintained and available in the office of the Association for inspection at all reasonable times by any Owner or his duly authorized representative. Said assessment roll shall indicate for each Lot, the name and address of the Owner thereof, all Assessments levied against each Owner and his Lot, and the amount of said Assessments paid and unpaid.

4.7 SPECIAL ASSESSMENTS: In addition to the Annual Assessment authorized above, the Board may levy, during any fiscal year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of an Improvement upon the Common Area, including the necessary fixtures and personal property related thereto; provided, that any Special Assessment shall be made only upon the vote or written consent of two-thirds (2/3) of the voting power of the Members voting in person or by proxy at a meeting duly called for such purpose in accordance with Section 4.9 below.

4.8 EMERGENCY ASSESSMENTS: If the Assessments levied are, or will become, inadequate to meet all expenses incurred hereunder for any reason, including the nonpayment of any Owner's Assessments on a current basis, the Board shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noted as to the reason therefore, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis. The aggregate Emergency Assessment in any fiscal year cannot exceed an amount equal to ten percent (10%) of the budgeted gross expenses of the Association for the fiscal year without the consent of two-thirds (2/3) of the voting power of the Members voting in person or by proxy at a meeting duly called for such purpose in accordance with Section 4.9 below.

4.9 NOTICE AND QUORUM REQUIREMENTS FOR ANY ACTION AUTHORIZED UNDER SECTIONS 4.5.4, 4.7 AND 4.8: Written notice of any meeting called for the purpose of taking any action authorized under Section 4.5.4, 4.7 or 4.8 of this Declaration shall be sent to all Members not less than ten (10) days and not more than fifty (50) days in advance of the meeting. At



the first such meeting called, the presence in person or by proxy of Members entitled to cast sixty percent (60%) of all the total votes of the Members shall constitute a quorum. If the required quorum is not present at any such meeting, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.10 REMEDIAL ASSESSMENTS: The Board may levy Remedial Assessments against any Lot to reimburse the Association for costs incurred in bringing such Lot and its Owner into compliance with provisions of this Declaration or the Association Rules. A Remedial Assessment shall be due thirty (30) days after the Board gives written notice thereof to the Owner subject thereto. The provisions of Section 4.9 shall not apply with respect to the imposition of Remedial Assessments.

4.11 DUE DATES OF ASSESSMENTS: CERTIFICATE REGARDING ASSESSMENTS:

4.11.1 Due Dates: The first Annual Assessment shall be adjusted according to the number of months remaining in the first fiscal year. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period in accordance with Section 4.5.2. Written notice of all Assessments shall be sent to each Owner subject thereto. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration. The Annual Assessments may be collected annually or on such other basis as may be selected by the Board. Emergency Assessments and Special Assessments shall be due and payable at the time and in the manner specified by the Board.

4.11.2 Certificate of Payment: The Board shall, upon written request therefore from any Owner or his Mortgagee or title company, and for a preset charge determined by the Board at the annual meeting, furnish a certificate to such Person or entity, signed by an officer of the Association or its agent, setting forth whether all Assessments on a specified Lot have been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

4.11.3 Priority of Application of Payment: Any monies paid by an Owner to the Association shall be applied in the following priority:

- (i) monetary penalties;
- (ii) late fees;
- (iii) interest;
- (iv) Transfer fees



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- (v) Use fees;
- (vi) Remedial Assessments;
- (vii) Emergency Assessments;
- (viii) Special Assessments; and
- (ix) Annual Assessments.

Notwithstanding the foregoing, the misapplication of funds by the Association to a lower priority item of indebtedness shall not extinguish a higher priority indebtedness.

4.12 EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION:

In the event of a default in payment of any Assessment when due, such Assessment shall be deemed to be delinquent. Each Owner vests in the Association or it assigns the right and power to bring all actions at law, liens, foreclosures or other remedies provided herein against the Owners for the collection of delinquent Assessments. In the event an attorney or attorneys, or other collection type of organization, are employed for collection of any Assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees, costs and Administrative Fees thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In addition to any other remedies herein or by law provided, the Association may enforce the obligations of the Owners to pay the Assessments provided for herein, and each of them, in any manner provided by law or in equity, and without any limitation of the foregoing by any or all of the following procedures:

4.12.1 Suspension of Rights: Monetary Penalties: The Board may: (i) suspend such Owner's right to use the Common Area; (ii) suspend such Owner's right to vote on the affairs of the Association for any period during which any Assessment against such Owner's Lot remains unpaid, provided that this provision shall not operate or be construed to deny or restrict ingress or egress of any Owner to his Lot; and/or (iii) impose reasonable monetary penalties pursuant to a monetary penalty schedule established by the Board.

4.12.2 Enforcement by Suit: The Board may commence and maintain a suit at law or in equity against an Owner or prior Owner to enforce said Assessment obligation, such suit to be maintained in the name of the Association. Any judgment rendered in any such action shall include the amount of the delinquency, with interest thereon at a rate not to exceed eighteen percent (18%), established by the Board, during the period of delinquency from the date of the delinquency, and all court costs, reasonable attorneys' fees, late fees, Administrative Fees and other collection costs, in such amount as the court may adjudge against the delinquent Owner.

4.12.3 Enforcement by Lien: There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Association of any and all Assessments levied against any and all Lots under this Declaration, together with interest thereon at the rate not to exceed eighteen percent (18%) during the period of delinquency from the date of delinquency, and all



costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees, late fees and Administrative Fees. At any time after the occurrence of any default in the payment of such Assessment, the Association or any authorized representative may, but shall not be required to, make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within thirty (30) days after such demand, or at any time after the delinquency, if no written demand is made, the Association may elect to file and caused to be Recorded a notice of assessment and claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a notice of assessment and claim of lien shall be executed and acknowledged by any officer of the Association or its agent, and shall contain substantially the following information:

- (i) The name of the delinquent Owner;
- (ii) The legal description of the Lot against which the claim of lien is made;
- (iii) The total amount of the delinquency, interest thereon, collection costs, reasonable attorneys' fees (with any proper offset allowed), late fees and Administrative Fees;
- (iv) That the notice of assessment and claim of lien is made by the Association pursuant to this Declaration; and
- (v) That a lien is claimed against said Lot in an amount equal to the amount stated and any subsequent and any subsequent amounts which will accrue during the term of delinquency according to this Declaration.

4.12.3.1 Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment, as the laws of the State of Arizona may from time to time be changed or amended. The Association shall have the power to bid in at any foreclosure sale, trustee's sale or judgment sale and to purchase, acquire, lease, hold, mortgage and convey any Lot. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law and the Owner shall be deemed to have contractually agreed to payment of such costs and expenses upon the Recording of this Declaration.

4.12.3.2 The proceeds of any foreclosure, trustee's sale or judgment sale provided for in this Declaration first shall be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of such charges and unpaid Assessments hereunder or any liens, shall be paid to the defaulting Owner.

4.12.3.3 Any purchaser at such sale shall thereupon be entitled to a deed to the Lot and immediate possession of the Lot and shall have the right to apply to a court of competent jurisdiction for such orders as may be reasonable for the purpose of acquiring and possessing the Lot.



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It shall be a condition of such sale, and the deed so made shall specifically so state, that the interest in the Lot sold is subject to this Declaration.

4.12.3.4 Upon the timely curing of any default for which a notice of assessment and claim of lien was Recorded by the Association, the officers of the Association or its agent are hereby authorized to cause to be Recorded an appropriate release of such lien.

4.13 ASSIGNMENT OF RENTS:

4.13.1 To the Association: As security for the payment of all such liens, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of said Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration, or the Bylaws or the Articles, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time, upon ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. The entering upon and taking possession of said Lot, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default hereunder nor invalidate any act done pursuant to this Declaration.

4.13.2 Mortgagee Exemption: The assignment of rents and powers described in Section 4.13.1 shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first Mortgage on any Lot, or any part thereof, to do the same or similar acts.

4.14 SUBORDINATION TO CERTAIN LIENS: The lien of the Assessments shall be prior to all encumbrances made by the Owner or imposed by legal process upon any Lot except taxes, bonds, assessments and other levies, which, by law, are prior thereto, whether the notice of assessment and claim of lien is Recorded prior to, or subsequent to, any such encumbrances, except that the lien of the Assessments shall be subordinate to the lien of any first Mortgage in favor of any Mortgagee provided, such first Mortgage is made in good faith and for value and Recorded prior to the Recording of a notice of assessment and claim of lien for said Assessments. The sale or transfer of any Lot shall not defeat or affect the Assessment Lien. However, the sale or transfer of any Lot which is subject to any first Mortgage described above pursuant to a foreclosure or trustee's sale under such Mortgage shall extinguish the lien of such Assessments as to payments thereof which become due prior to such sale or transfer, except for the personal obligation of the Owner at the time the Assessments became due. No such sale or transfer shall relieve such Lot or the purchaser thereof from liability for any Assessments thereafter becoming due or from the lien thereof.

4.15 INCOME TAX ELECTIONS: The Board shall have the right, executable in its sole discretion, to elect to report the receipts, expenses, deductions and credits, if any, of the Association for income tax purposes pursuant to Section 528 of the Internal Revenue Code of 1986, as amended, or any comparable statute or amendment thereto hereinafter enacted.



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ARTICLE 5

COVENANTS AND USE RESTRICTIONS

In addition to all other covenants and restrictions contained herein, the following covenants and restrictions shall govern the use and occupancy of the Property:

5.1 RESIDENTIAL USE: No part of any Lot shall be used for other than private dwelling purposes and Accessory Uses, subject to the following:

(i) the right to undertake any other activity thereon not otherwise prohibited by this Declaration, when such activity has been expressly approved in advance by the Association (such other activities being hereby expressly declared to be Accessory Uses). Notwithstanding the foregoing, no Lot shall be used as the primary location or sale office of any Accessory Use.

(ii) the right of each Owner to use any part of the Lot for permanent year round occupancy with the following exceptions, as determined by the Board:

(A) Based on availability of water to all Lots, the Association may impose such usage restrictions as determined by the Board to be in the best interest of the Association.

(B) Based on the requirements of any local jurisdiction, ordinance or law for the Association to provide snow removal on the private roads of the Association in order for Owners to have access to their Lot(s), the Board may prohibit the use of such Lot for a specific time in order to meet such requirement. Notwithstanding the foregoing, each Owner, including any Lessee, invitee, guest or visitor of an Owner, hereby relieves the Association, the Board, its officers, agents and employees, from any liability or requirements of the Association or the Board to have the private roads cleared of snow at any time for ingress to or egress from a Lot. Each Owner, Lessee, invitee, guest or visitor shall be solely responsible for their own safety and ability to use the private roads of the Association for ingress and egress, including medical emergency situations, and shall hold harmless the Association, Board, its officers, committee members, agents and employees, from and against any and all claims arising out of failure of the private roads to be cleared from snow by the Association or the Board.

5.2 TIME-SHARING PROHIBITED: No Owner shall create undivided use, occupancy or ownership interests or any other interests in a Lot for time-sharing or similar periodic use or occupancy purposes. The purpose of this restriction is to prohibit shared ownership or other arrangements regarding any Lot which result in the interval use of such Lot based on allotted use or occupancy periods and to prevent the overburdening of Common Area facilities. Notwithstanding the foregoing, this provision shall not be construed to prevent joint ownership of any Lot, provided that such joint ownership does not result in the type of use or occupancy sought to be prohibited under this



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Section 5.2.

5.3 ALTERATIONS AND IMPROVEMENTS: No Improvements of any type or any structural or any other alteration to any Improvements, or any exterior additions or modifications to any Improvements (including but not limited to painting, basketball courts and solar panel installations), shall be made, constructed or maintained upon any Lot until the plans and specifications therefore showing the appearance, height, materials and color therefore, a plot plan showing the location thereof and appropriate grading plans for the site upon which any Improvement is to be or is located shall have been approved by the Architectural Control Committee in the manner set forth herein. All alterations and Improvements may be subject to timetables (for commencement and completion) as established by the Architectural Control Committee. In addition, all Improvements, alterations, additions, or modifications shall be subject to the ordinances of Gila County, Arizona. In addition to the provisions of this Declaration, each and every Owner shall be subject to the Association Rules, including, but not limited to architectural and landscaping rules.

5.4 LANDSCAPING: No excessive planting of grass, trees, plants, planter bed, pool, landscape watering system or structure shall be added or modified without approval of the Architectural Control Committee. Care must be taken by each Owner not to impede the drainage as established by the Declarant or as approved by the Architectural Control Committee.

5.4.1 Removal: Native trees or bushes within the Yard of a Lot may not be removed except those trees or bushes that should be removed according to the then current guidelines established by the USFS for proper maintenance of the forest in a healthy and natural condition. Notwithstanding the foregoing, an Owner shall remove (i) trees that are dangerous, (ii) hanging limbs or branches of trees, bushes or other vegetation and (iii) other hazardous conditions existing on such Owner's Lot. The Association has the right to remove or add trees on the Common Areas according to the same USFS guidelines. The Association shall adhere to such USFS guidelines unless determined to be unreasonable and objected to by the affirmative vote of two-thirds of the voting power of the Board.

5.4.2 Excess Watering: Owners are prohibited from the use of excessive water for plants, trees or bushes on a Lot or Common Area adjacent to a Lot or for other purposes. The Architectural Control Committee may require the removal of non-native trees, bushes and other plants that Architectural Control Committee determines, in its sole discretion, use excessive water or detract from the natural appearance of the forest. The Board, in its sole discretion, upon recommendations of the Water Commissioner, may install a water meter to the Lot of an Owner who is using water in excessive amounts for landscaping purposes or other external uses on such Lot or adjacent Common Areas. The cost of installation of such water meter shall be at the expense of the Owner who is in violation of this Article by using excessive water. Said costs shall include labor and materials and shall become a Remedial Assessment for the violating Owner. The Board, in its sole discretion, shall determine, upon recommendations of the Water Commissioner, if an Owner is using excessive water for any reason whatsoever, including but not limited to landscaping, dishwashers and washing machines. The Board, in its sole discretion, also may take other appropriate action against an Owner who has been determined to be using excessive water, including but not limited to levying a Remedial Assessment against such Owner, enforceable as provided in Article 4 of this



Declaration, and/or imposing a fine against such Owner.

5.4.3 Metered Water Use: The Association, upon the affirmative vote or written consent of more than fifty percent (50 %) of the voting power of the Members, may implement and install a water meter system for each and every Lot for the purpose of charging each Owner for the water usage on such Owner's Lot. The cost of such meter and the installation thereof shall be payable by each Owner, and shall be assessed as a Remedial Assessment enforceable in the manner provided in Article 4 of this Declaration. The amount of any charges for water usage, including surcharges for excessive use, shall be determined by the Board.

5.5 MAINTENANCE BY OWNER: Except as otherwise provided herein, the Owner of each Lot shall maintain all Improvements on his Lot in a clean and attractive condition, and without limiting the generality of the foregoing, the Owner of each Lot shall:

(i) keep his Lot free from rubbish, litter and other material that is not used for outdoor purposes;

(ii) rake and clean all leaves, branches and other forest debris, a minimum of thirty (30) feet away from any Improvement on a Lot; provided, that, depending on the grading of a Lot, as defined by the USFS, an Owner shall comply with any other applicable minimum safety standards for clearing of such Lot, in accordance with the then currently published material from the USFS or as published by the Architectural Control Committee; and

(iii) based on a minimum of one (1) annual inspection by the Architectural Control Committee, comply with any notice given by the Architectural Control Committee to repair, replace, refurbish, remove or otherwise maintain all Improvements on the Lot, including but not limited to the roofs, painting, fireplaces, grounds, auxiliary buildings or any other situation the Architectural Control Committee feels the need to address. Owners shall comply with the notice received from the Architectural Control Committee within the time period specified in the notice.

5.6 PROHIBITED ITEMS: In order to keep the Property in line with the same guidelines established under the USFS rules and regulations, and specifically to maintain the open natural forest environment, the following shall be prohibited on any Lot:

(i) fencing of a Lot with any type of material including, but not limited to, wood, railroad ties (except for erosion purposes), barbed wire, trees, concrete or any other material. It is the intention to have open and natural space;

(ii) outhouses;

(iii) pools;

(iv) satellite dish/antennae in excess of two (2) feet in diameter (other than an approved community satellite dish or standard TV antennae);



- (v) horse stables; and
- (vi) excessive exterior lighting.

5.7 POWER TOOLS AND OTHER EQUIPMENT: No power tool, communication equipment or other device shall be used on the Property that causes undue noise, except for chain saws that are used to remove trees or to saw wood and only then for the shortest time possible.

5.8 OBNOXIOUS AND OFFENSIVE ACTIVITIES: No obnoxious or offensive activity shall be carried on, in or upon any Lot or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may in any way interfere with the quiet enjoyment by each of the Owners of their respective Lots, or which shall in any way increase the premiums for insurance.

5.9 ANTENNAS AND EXTERIOR APPLIANCES:

5.9.1 Antennas: No towers, antennas, aerials, or other facilities for the reception or transmission of radio or television broadcasts or other means of communication shall be erected and maintained or permitted to be erected and maintained on any Lot except by installations inside of Improvements constructed on said Lot without the prior written consent of the Architectural Control Committee.

5.9.2 Wiring: No wiring for electrical or telephone installations, television antennas, security systems, machine or air conditioning units, or appliances shall be permitted on the exterior of any Improvement nor shall it protrude through the walls or roof of any Improvement except as permitted by the Board or the Architectural Control Committee pursuant to Article 6 hereof titled "Architectural Control."

5.9.3 Exception for Cable: This Section 5.9 shall not apply to, nor restrict, master antennas and head end systems for a cable television system installed or approved by the Association or by a franchise cable television operator.

5.10 SEPTIC TANKS: All septic tanks are to be installed within the Lot and are to be properly maintained and cleaned to prevent contamination of the surrounding areas.

5.11 COMPLIANCE WITH LAWS: Each Owner shall promptly comply with all laws, statutes, ordinances, rules and regulations of federal, state or municipal governments or authorities applicable to the use and occupancy of, and construction and maintenance of, any Improvements.

5.12 EXTRACTION OF MINERALS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels or mineral excavations be permitted on any Lot or within five hundred (500) feet below the surface of any Lot and 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.



5.13 COMMERCIAL AND PROFESSIONAL USE: No Lot shall be used in a manner which results in the unreasonable use (quantity of use or otherwise) of any portion of the Common Area. Nothing herein shall be deemed to prevent the reasonable leasing of any Lot from time to time by the Owner thereof for residential purposes only and subject to all the provisions of this Declaration and the Association Rules.

5.14 GRADES, SLOPES AND DRAINAGE: No Owner of any Lot shall in any manner alter, modify or interfere with the grades, slopes or drainage on any Lot or on the Common Area unless such modification is first deemed necessary for control of erosion and not detrimental to any other Lot or Common Area, as determined by the Architectural Control Committee. Maintenance and management of water drainage on each Lot shall be the responsibility of the Owner of the Lot.

5.15 USE OF IMPROVEMENTS DURING CONSTRUCTION: DILIGENCE IN CONSTRUCTION: No Improvement upon any Lot shall be occupied until the same is completed and made to comply with the restrictions, covenants and conditions contained in this Declaration. Any Improvement that is partially or totally destroyed or damaged shall be removed, repaired or replaced within a reasonable time after such destruction or damage occurs and subject to the requirements of this Declaration, by the then Owner or Owners of that portion of the Lot or Lots upon which the destroyed or damaged Improvement was or is located. All work of construction, removal or repair of any Improvement upon any Lot shall be prosecuted diligently and continuously from the time of commencement thereof until the same shall be fully completed, except to the extent prevented by strikes, lockouts, boycotts, the elements, war, inability to obtain materials, acts of God or similar causes.

5.16 CHEMICALS: The Architectural Control Committee shall have the power, but not the duty, from time to time to determine that the use of particular chemicals on any Lot constitutes or would constitute a clear danger to the Residents, and to publish the names of such chemicals and prohibit their use. No chemical so prohibited shall be used on or above any Lot. Additionally, the Architectural Control Committee may prohibit specified chemicals, including but not limited to pesticides and herbicides, from use on or above the open surface area of any Lot, or above any Lot, whether once or intermittently or continuously, if such chemical or any product or residue thereof does or may seep, drain, flow, drift or otherwise migrate into any natural or artificial waterway or body of water existing in the Property, into or above any part of the Common Area, or into or above any other Lot.

5.17 TYPES OF PLANTS AND TREES: The Architectural Control Committee shall have the power, but not the duty, from time to time, to determine that the use of particular plants on any Lot or Common Area which are not consistent with the natural environment of Ellison Creek or the Tonto National Forest shall be prohibited. No plant so prohibited shall be used on any Lot or Common Area.

5.18 EXTERIOR LIGHTING: All exterior lighting of a Lot shall be subject to approval of the Architectural Control Committee. The use of exterior lighting shall be limited to that needed for safety. All exterior lights shall be mounted on a Building and must be shielded so that the light emitting there from shines directly on the Yard in which the Building is situated or on the entrances to such Building, and does not spill over onto other Lots.



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5.19 OPEN FIRES: Exterior fires and barbecues shall be prohibited except in confined pits or barbecue facilities designed for such purpose; provided, that USFS guidelines and fire restrictions for the surrounding forest area shall be followed unless determined to be unreasonable by the affirmative vote of two-thirds of the voting power of the Board. No refuse shall be burned on the Property.

5.20 NOISE: No power tools, speaker, horn, whistle, bell or other similar sound facility or equipment which is capable of producing any sound in excess of sixty-five (65) decibels measured at a point one hundred (100) feet from (i) the outside of any Improvement within which the sound emanates or (ii) the speaker or other similar sound facility or equipment from which the sound emanates, shall be permitted upon any Lot. No activity shall be undertaken or permitted upon any Lot, which activity causes any sound, whether intermittent, recurrent or continuous, in excess of forty-five (45) decibels measured at any point on the boundary line of said Lot. Decibel measurements shall be the average of at least three (3) and at most five (5) decibel readings taken by a qualified engineer. In the event an Owner is in violation of this Section 5.20, the cost of retaining the qualified engineer may be assessed against the Owner as a Remedial Assessment. The foregoing provisions of this Section 5.20 shall not, however, prohibit the installation or use of devices designed and used solely for security purposes. Normal working tools for repair or work to be performed in the maintenance of or addition to a Lot may be used after 6:00 a.m. but no later than sundown daily.

5.20.1 Noise Enforcement: Upon notice by any member either by phone call, e-mail, fax or other media to the Chairperson of the Rules & Regulation Committee (RRC) that excessive and continuous sounds are coming from one particular lot or lots within the ECCOA boundaries, the RRC Chairperson shall notify the violating lot owner(s) by sending a "Courtesy Letter" to cease and desist from making any such excessive and continuous noise. The RRC Chairperson shall also request the complaining (Complainant) owner to forward a written complaint to the association regarding the "Noise" problem. A copy of this Noise clause will also be sent to the violating lot owner.

Should a second complaint be filed by any lot owner in the same manner and method as in the paragraph above, the RRC Chairperson may, but is not required to, investigate in any manner it so chooses the authenticity of the complaint. The RRC shall notify the violating lot owner to immediately cease and desist or face a fine of \$100 per day, after the right to be heard by at least one member of the RRC and one member of the Board, all in accordance with the Hearing and Fining Procedures as described in the RRC Guidelines.

5.20.2 Request for Decibel Noise Rating: Any party involved to the filing of a noise complaint, (Complainant, Respondent, RRC or Board) may request at anytime a Noise Decibel Rating to be conducted by a Noise Engineer qualified as an expert to ascertain the level of noise coming from the Respondent's lot. Should the noise level not reach the required noise violation level as stated in 5.20 above, then the requesting party shall be liable for all costs relating to the testing, including the Engineer's costs. Should the decibels reach or exceed the noise level as stated in 5.20 above, then the violating lot owner shall be liable for all such costs on the noise level rating.



5.21 SIGNS: The only signs permitted on any Lot or Improvement shall be:

5.21.1 One (1) sign of customary size for offering of signed property for sale or for rent shall be allowed. Any Lessee or occupant shall be bound to comply with the provisions of the Declaration and the Owner shall be primarily responsible for such compliance by a Lessee or occupant. The Board, in its sole discretion, may establish a minimum term for which a Lot may be rented, however, such minimum term shall be not less than one (1) month.

5.21.2 Each Lot may have one residential identification sign of a face area of five hundred seventy-six (576) square inches or less for identification of the occupant and Lot number in a style designated or approved by the Architectural Control Committee.

5.21.3 Such multiple signs for administration and directional purposes as are required by the Association.

5.21.4 Such signs as may be necessary to advise of Association Rules or to caution or warn of danger and as are approved by the Board.

5.21.5 Such signs as may be required by law.

5.21.6 There shall not be used or displayed on any Lot or Improvement any signs except those mentioned above, or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental, except as may be approved in advance by the Architectural Control Committee. All permitted signs must be painted, lettered and constructed in accordance with the Association Rules.

5.22 ANIMALS. PETS: No animal of any kind shall be permitted which, in the opinion of the Board, makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Property for any commercial purposes. Pets shall not be allowed loose or unsupervised on any part of the Property without the prior written permission of the Board. The Board may establish fines for violation of this section, which fines shall be enforceable in the same manner as for an Assessment Lien. Where such written permission is granted, the privilege is revocable if the animal becomes obnoxious to other Residents, in which event the Owner or person having control of the animal shall be given a written notice to correct the problem. If not corrected, the Owner, upon written notice, will be required to remove the animal from the Property. The written notices provided for herein shall be issued by the Board.

5.23 PARKING RESTRICTIONS: No Owner shall do anything that will in any manner prevent the private roads from at all times being free and clear of all obstructions and in a safe condition for vehicular use. So that the Association may function in an orderly manner, it shall be the duty and obligation of every Owner on behalf of himself, his family, Lessees, servants, guests and invitees, to observe and enforce the parking restrictions. It shall further be the duty and obligation of the Board to observe and determine that the following parking restrictions are followed and enforced:

5.23.1 No inoperative vehicles of any kind shall be stored or parked on any Lot. Inoperative vehicle shall be defined as any motor vehicle that does not have current license plates



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and/or is not in working order.

5.23.2 No motor homes, trailers of any kind, boats, all-terrain vehicles or other recreational means of transportation, commercial vehicles (except those used during construction of the Improvements), truck campers, whether attached or detached, shall be stored for a period of more than two (2) consecutive weeks in a six (6) month period on the Common Area or Lot of any Owner, unless otherwise approved by the Architectural Control Committee or permitted by the Association Rules pertaining to such vehicles as approved by the Board.

5.23.3 In addition to the other enforcement provisions contained within this Declaration, the Board may have any offending vehicle upon a Lot removed from the Lot to a commercial storage lot after notice to the Owner, if reasonably possible, or after written notice to the Owner that the vehicle will be towed if it is not brought into compliance, if such notice is consistent with safe practice. The Recording of this Declaration shall be deemed to put every Owner, Lessee, guest and invitee on notice of this provision as though the Common Areas and Lots were posted in accordance with applicable statutes of the State of Arizona and ordinances of Gila County or its successor. Any car parked on the private roads that blocks other vehicles from passing may be removed without notice.

5.24 NONCOMPLIANCE. In the event an Owner shall fail to comply with any of the provisions of this Article 5, the Association shall notify such Owner in writing of such specific lack of compliance, which notice shall specify the nature of such lack of compliance. If the Owner fails to remedy such lack of compliance within the time period as may be specified in the notice, or, in the alternative, fails to deliver written notice to the Board or Architectural Control Committee within ten (10) days from receipt of such notice requesting a hearing before the Board or Architectural Control Committee with regard to the matters of noncompliance set forth in such notice, the Association or its authorized agents shall have the right to enter upon such Owner's Lot for the purpose of remedying the matters set forth in the notice, and shall not be liable for trespass in connection with such entry. If the Owner timely requests a hearing before the Board or Architectural Control Committee, the Board or Architectural Control Committee shall schedule a hearing and shall provide the Owner with at least seven (7) days written notice as to the date, time and place thereof. At the hearing, the Owner will have an opportunity to discuss with the Board or the Architectural Control Committee the merits of the claims set forth in the Association's original notice of noncompliance, and the Board or the Architectural Control Committee will determine what action, if any, need be taken by the Owner and the time within which it must be accomplished. The decision of a majority of the members of the Board or the Architectural Control Committee present at the hearing will be binding upon the Association and the Owner, subject only to an appeal to the Board within twenty (20) days of the Architectural Control Committee's decision. In the event it is determined that the Owner has not complied with any of the provisions of this Article 5, the Board or the Architectural Control Committee shall establish a reasonable time within which the Owner shall so comply. The cost to the Association of this Section 5.24 shall be assessed to the Owner as a Remedial Assessment, enforceable in the manner provided in Article 4 of this Declaration. The authority of the Board to require the painting or other maintenance of the Dwelling shall be limited to those portions of the Dwelling Visible From Neighboring Lots or from the Common Area.

5.25 EXCEPTIONS: The covenants, conditions and restrictions set forth in this Article 5 titled



"Covenants and Use Restrictions," and in Article 6 titled "Architectural Control" shall not and do not apply to any of the following:

- (i) Any act done or proposed to be done upon the Property, or any condition created thereon, by any utility company (including, but not limited to, companies furnishing electric, gas, water, telephone, cable television and/or sewer service to all or parts of the Property), or the agents or employees of any such company, which act could be done by such company were this Declaration not made.
- (ii) Any act done or proposed to be done upon the Property, or any condition created thereon, which act or condition has been approved in advance by the Board or the Architectural Control Committee acting within its authority as set forth in Article 6 of this Declaration; and
- (iii) Any act done or proposed to be done upon the Property, or any condition created thereon, by any person pursuant to court order, or the order of any public officer or public agency; provided, however, that the orders contemplated in this subparagraph are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for nonperformance, and are not those orders which result from the application of private parties or are merely permissive.

ARTICLE 6

ARCHITECTURAL CONTROL

6.1 ARCHITECTURAL CONTROL COMMITTEE:

6.1.1 Purpose: It is the intention of Declarant, while imposing the within covenants, conditions and restrictions in order to provide for the orderly maintenance of the Property, to provide through the Architectural Control Committee described herein a means by which the architectural standards set forth in this Declaration, in the Association Rules, and as ad hoc decisions of the Architectural Control Committee, will be enforced for proper development and operation of the Property.

6.1.2 Establishment of Committee: The Architectural Control Committee shall consist of no less than three (3) individuals or more than seven (7) individuals. At least one (1) member of the Architectural Control Committee shall also be a member of the Board, but no more than two-thirds (2/3) of the Architectural Control Committee may also be Board members. The Architectural Control Committee may be subdivided into various subcommittees, such as a landscaping committee, as determined by the Board.

6.1.3 Appointment, Removal and Resignation: The right to appoint and remove all members of the Architectural Control Committee shall be vested in the Board; provided, that a member of the Architectural Control Committee may be removed at any time by a



majority vote of the voting power of the Members.

6.1.4 Vacancies: Vacancies on the Architectural Control Committee, however caused, shall be filled by vote of a majority of the members of the Board. A vacancy shall be deemed to exist in case of the death, resignation or removal of any member of the Architectural Control Committee. Failure of the Board to fill any vacancy in the Architectural Control Committee shall not prevent:

(i) the running of the sixty (60) day automatic approval period specified in Section 6.4 below; or

(ii) action by the Architectural Control Committee on any matter to the extent that a majority thereof each join in and consent thereto.

6.2 MEETINGS: The Architectural Control Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the members of the Architectural Control Committee, at a meeting or otherwise, shall constitute the act of the Architectural Control Committee, unless the unanimous decision of the Architectural Control Committee is specifically required under any provision of this Declaration. The Architectural Control Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Notwithstanding the foregoing or anything in this Declaration to the contrary, the Board shall have veto power to change any decisions of the Architectural Control Committee by an affirmative vote of seventy-five percent (75%) of the Board.

6.3 DUTIES: It shall be the duty of the Architectural Control Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to establish and administer Association Rules pertaining to architecture and landscaping, to ensure that any Improvements constructed or installed on the Property by anyone conform to plans approved by the Architectural Control Committee, to perform other duties delegated to it by the Board within the time periods set forth herein, and to carry out all other duties imposed upon it by this Declaration. The Architectural Control Committee, in its own name or on behalf of the Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Improvements on the Property or any portion thereof.

6.3.1 Appeal Process: Any Owner who submits a request to the Architectural Control Committee or any Board member who objects to the decisions of the Architectural Control Committee on the request submitted, may, within fifteen (15) days of such decision by the Architectural Control Committee, after being properly notified of such decision by the Architectural Control Committee, appeal the decision to the Board. Such appeal must be in writing and submitted to the President of the Board requesting a hearing on the decision of the Architectural Control Committee and stating that the appealing party (Owner or Board member) objects to the decision of the Architectural Control Committee. Such appealing party must also send a copy of the appeal letter to the Architectural Control Committee. The Board shall arrange a time and place to hear the appeal and shall notify the objecting party, the Board and the Architectural Control Committee of the time and place for the hearing. Such hearing shall take place as soon as possible, but in no event later than sixty (60) days from the date the President of the Board received the appeal notice.



6.4 OPERATION OF COMMITTEE:

6.4.1 Documents Required: The Architectural Control Committee may require the submission to it of any or all of the following documents and such additional documents that it determines to be reasonably appropriate to the activity for which consent is requested:

- (i) all required documents, if any, set forth the Association Rules, including, without limitation, soil reports, if required by the Architectural Control Committee;
- (ii) a written description of the proposed activity;
- (iii) plans and specifications;
- (iv) schematics;
- (v) elevations;
- (vi) a plot plan showing the location of the proposed Improvement; and
- (vii) timetables.

6.4.2 Information Required; Time of Application: All submissions to the Architectural Control Committee shall:

- (i) show the address of the party submitting the same and the Lot number where the proposed Improvement will be erected;
- (ii) be in as many copies as there are members of the Architectural Control Committee;
- (iii) be deemed made when actually received in complete form by the Architectural Control Committee and the Architectural Control Committee has requested no further information or revision; and
- (iv) state in writing the specific matters for which approval is sought.

6.4.3 Committee Discretion: The Architectural Control Committee, before giving such approval, may require that changes be made to comply with the requirements of this Declaration, the Association Rules and such additional requirements as the Architectural Control Committee may, in its absolute discretion, impose as to structural features of any proposed Improvement, the type of material used, or other features or characteristics thereof not expressly covered by any provisions of this Declaration, including the location of any proposed Improvement with respect to the topography and finished ground elevation. The Architectural Control Committee may also require that the exterior finish and color, the architectural style or character of any proposed Improvement which constitutes a Building or other Improvement, and the landscaping plan, if any, be such as in the discretion of the Architectural Control Committee shall be deemed suitable in view of the general



architectural style and character of existing Improvements within the Property.

6.4.4 Conditional Approval: The Architectural Control Committee, before giving its approval, may impose conditions or require changes to be made which in its discretion are required to ensure that the proposed Improvement will not detract from the appearance of the Property, or otherwise create any condition unreasonably disadvantageous to other Owners or detrimental to the Property as a whole.

6.4.5 Evidence of Approval: One of the sets of submissions to the Architectural Control Committee shall be retained by it. In the event the Architectural Control Committee approves or is deemed to have approved the activity for which consent is required, such consent shall be endorsed on all copies and all but one set shall be mailed by the Architectural Control Committee, postage prepaid, to the address specified by the submitting party, unless such party shall elect to accept delivery thereon in person or by agent so authorized in writing.

6.4.6 Automatic Approval: If the Architectural Control Committee fails to mail its certificate with regard to any matter submitted to it hereunder within sixty (60) days after submission of all materials required to be submitted, it shall be conclusively presumed that the Architectural Control Committee has approved the specific matters as to which approval was sought in the submission. It shall thereupon be the duty of the members of the Architectural Control Committee, forthwith upon the request of the submitting party, to sign and acknowledge a certificate evidencing such approval.

6.4.7 Fees: As a condition precedent to its consideration of or action upon any material or matter submitted to it hereunder, the Architectural Control Committee shall be entitled to receive a sum fixed by it from time to time on behalf of the Association for each set of plans, specifications, drawings or other material so submitted to offset the Association's costs. Notwithstanding the provisions of Section 6.4.2, until the requisite sum, if any, shall have been paid to it as provided herein, any material delivered to the Architectural Control Committee shall not be considered to have been submitted for the purposes of this Declaration.

6.4.8 Records of Committee Action: All actions of the Architectural Control Committee shall be noted in the minutes of the Board.

6.4.9 Recording of Approval: A certificate of the Architectural Control Committee may, but shall not be required, to be Recorded by the Architectural Control Committee or any member thereof, or by the party submitting the material concerning which the certificate was made.

6.4.10 Sole Discretion of Committee: All action by the Architectural Control Committee authorized in this Declaration shall be within its sole discretion but subject to the veto power of the Board set forth in Section 6.2 above.

6.4.11 No Exemption: No Owner shall be exempt from this Article.

6.4.12 Professional Advisors: The Architectural Control Committee, from time to time or as a continuing service, shall have the right to employ professional advisors for the purpose of



reviewing submitted plans, with the reasonable cost thereof to be paid by the Owner submitting the plans, provided that the Owner shall have approved in advance a cost estimate from the professional advisor proposed to be engaged by the Association with respect to such review.

6.5 ACCESS TO PROPERTY: Each member of the Architectural Control Committee, the Board or any other agent or employee of the Board, shall at all reasonable hours following not less than twenty-four (24) hours advance notice, except in the event of an emergency, have the right of access to any part of the Property, and to any Improvements being built thereon, for the purpose of inspection relative to compliance with this Declaration.

6.6 WAIVER: The approval or disapproval by the Architectural Control Committee of any plans, specifications, drawings, grading plans, heights, or any other matters submitted for approval or consent shall not be deemed to be a waiver of its right to approve, disapprove, object or consent to any of the feature or elements embodied therein when the same features or elements are embodied in other plans, specifications, drawings or other matters submitted to the Architectural Control Committee.

6.7 LIABILITY: Neither the Association, the Board, the Architectural Control Committee nor any of their respective members shall be responsible for any defects in any building, Improvement or other structure or planting erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications, color scheme, timetable or other material approved by them or any conditions or requirements that they may have imposed with respect thereto, nor shall the Association, the Board, the Architectural Control Committee or any of their respective members have any liability for the inability of anyone to obtain a building permit for the construction or alteration of any Improvement pursuant to plans and specifications approved by the Architectural Control Committee.

6.8 SECURITY DEPOSIT: The approval for any Improvements may be conditioned upon the posting of a security deposit in favor of the Association, in an amount specified by the Architectural Control Committee, or other security satisfactory to the Architectural Control Committee, to be used to ensure that any damage or destruction of the Common Area resulting from the construction or installation of the Improvements shall be repaired. Upon completion of such Improvements and repair by the Owner of any damage to said areas resulting therefrom, such security deposit shall be returned. The posting of security shall not relieve any Owner from liability for damage or destruction of said areas caused by the Owner or the agents or contractors of the Owner, and such liability shall not be limited to the amount of such security.

ARTICLE 7

DESTRUCTION

7.1 RECONSTRUCTION WITHOUT ELECTION OF OWNERS: In the event of a total or partial destruction of any portion of the Common Area, and if the available proceeds of the insurance carried pursuant to Section 3.4.4 are sufficient to cover not less than ninety percent



(90%) of the cost of repair or reconstruction thereof, the same shall be repaired and rebuilt promptly unless within sixty (60) days from the date of such destruction, not less than seventy-five percent (75%) of the voting power of the Members present and entitled to vote, in person or by proxy, at a duly noticed and called annual or special meeting of the Members at which a quorum is present, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board shall cause to be executed, acknowledged and Recorded a certificate declaring the intention of the Owners to rebuild, which certificate shall be executed by any officer or agent of the Association duly authorized by the Board to execute the same.

7.2 RECONSTRUCTION BY CONSENT OF OWNERS: If the proceeds of such insurance are less than ninety percent (90%) of the costs of reconstruction, such reconstruction may nevertheless take place if a majority of the voting power of the Members present either in person or by proxy and entitled to vote at a duly noticed and called annual or special meeting of the Members at which a quorum is present, elect to rebuild. In the event of an election to rebuild, a certificate shall be executed, acknowledged and Recorded as provided for in Section 7.1 above.

7.3 COST OF REPAIR: SPECIAL ASSESSMENT: In the event of a determination to rebuild pursuant to either Section 7.1 or 7.2, the cost of repair or replacement in excess of insurance proceeds and reserves, if any, shall be paid by the Owners. Each Owner shall be obligated to contribute to the Association as a Special Assessment such funds as shall be necessary to pay his proportionate share of the cost of reconstruction over and above the insurance proceeds and reserves, if any. The proportionate share of each Owner (for each Lot owned) as to such Special Assessment shall be equal to a fraction, the numerator of which is one (1) and the denominator of which is the number of Lots in the Property, and such Special Assessment shall be due and payable in full within thirty (30) days after written notice thereof. The Special Assessment for reconstruction shall be enforceable in the manner provided in this Declaration for any other Assessment.

7.4 OBLIGATION OF BOARD: It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of such reconstruction at the earliest possible date.

7.5 DETERMINATION NOT TO REBUILD: If a certificate of intention to rebuild has not been Recorded within nine (9) months from the date of any partial or total destruction of the Common Area, or if reconstruction and rebuilding has not actually commenced within such nine (9) month period, then any insurance proceeds available for such rebuilding 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 used to offset future Assessments either (i) by retention by the Association as an additional capital reserve, or (ii) by use for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing a majority of the voting power of the Association.

7.6 DAMAGE TO LOT: Any restoration and repair of any damage to a Lot shall be made by and at the individual expense of the Owner of such Lot, to the extent not covered by insurance



maintained by such Owner. If an Owner fails to make such restoration or repair of his Lot, the Board may, in accordance with this Declaration, take appropriate remedial action.

ARTICLE 8

CONDEMNATION

8.1 TAKING OF ENTIRE COMMON AREA: In the event the entire Common Area is taken under the power of eminent domain, any award received on account of the taking shall be paid to the Association, as trustee, for distribution to the Owners, subject to (i) all unpaid Assessments of each Owner, together with any interest charges or fees attributable thereto, and (ii) the rights of Mortgagees encumbering each such Owner's Lot. The proportionate interest of each Owner in such proceeds shall be equal to a fraction, the numerator of which is the number of Lots owned by an Owner and the denominator of which is the total number of Lots in the Property.

8.2 PARTIAL TAKING OF COMMON AREA: In the event of a partial taking of the Common Area, the Association shall use all amounts awarded to it on account of such taking to acquire and improve other real or personal property to replace the Common Area that was taken; provided, however, that the Association shall not be obligated to replace such real or personal property if seventy-five (75%) of the voting power of the Association elects to retain the condemnation award in the funds of the Association, subject to the provisions of Section 12.9. If the Members of the Association do not elect, within sixty (60) days after the taking of the Common Area, to retain the condemnation award, the Board may proceed with such acquisition and improvement of new property and may levy a Special Assessment on the Owners in accordance with Section 4.7, to raise any funds needed for such purpose in excess of the condemnation award. If the Members do not approve such Special Assessment, the Board shall perform such repair and restoration work and make such acquisitions as are possible with the available funds.

8.3 TAKING OF LOTS: In the event of a taking of any Lot or Lots or any portion thereof, those Owners whose Lots are completely or partially taken shall be entitled to retain any award made to them, subject to (i) all unpaid Assessments of each Owner, together with any interest or fees attributable thereto, and (ii) the rights of any Mortgagees encumbering each such Owner's Lot. Nothing contained in this Article shall be deemed to limit the right of an Owner to pursue all available legal remedies and to obtain all compensation to which he may be entitled by reason of the taking of his Lot. Upon the complete taking of a Lot, the Owner of such Lot shall cease to be a Member of the Association.

8.4 FULL OR PARTIAL TAKING OF LOT(S) OPTION: Notwithstanding anything herein to the contrary, in the event of the full or partial taking of a Lot due to no fault of the Owner, the Association may convey replacement land to such Owner from the nearest Common Area upon approval by the Architectural Control Committee and provided that such conveyance has been approved by sixty-seven percent (67%) of the voting power of the Association, as evidenced by a Recorded instrument signed by Members representing sixty-seven percent (67%) of the total voting power of the Association. Notice of the proposed conveyance must be sent to every Member not less than thirty (30) days and not more than sixty (60) days in advance. In the event of any such conveyance of Common Area, the Owner whose Lot was taken shall assign to the Association any



and all awards made to such Owner for the full or partial taking of the Lot. In addition, the Owner whose Lot is taken shall bear the full cost of removing any Improvement on such Lot and putting said Lot back to its natural condition as if the Lot had never been occupied. The Owner shall bear all the costs for any and all Improvements necessary to the replacement Lot including, but not limited to, the removing of septic tanks and the moving of any existing building from the original Lot to the replacement Lot.

ARTICLE 9

EASEMENTS

9.1 USE OF THE COMMON AREA: Declarant hereby reserves and grants to each Owner a non-exclusive easement for use and enjoyment over all of the Common Area. Said easements are appurtenant to and shall pass with the title to every Lot. Said easements are for the benefit of the Lots, the Owners of the Lots, and each of them, their respective families, guests, invitees, Lessees, contract vendors, and such other classes of Persons as to whom the Board may, from time to time and subject to published rules and regulations, extend the privilege of use and enjoyment of the Common Area for all of the purposes and uses hereinabove set forth. In furtherance of the establishment of these easements, the individual warranty deeds to the Lots and sales contracts for the Lots, may, but shall not be required to, set forth the foregoing easements (expressly and/or by reference to this Declaration). The right of each Owner, and of such Owner's family, guests, invitees, Lessees and contract vendors, to use and possess the Common Area, as set forth herein, shall be subject and governed by the provisions of this Declaration, the Association Rules, the Articles and the Bylaws, and such other rules and regulations as may hereafter be adopted by the Board from time to time. The Association shall have the authority to lease or to grant licenses or concessions with respect to all or any part of the Common Area, subject only to the provisions of this Declaration, the Association Rules, the Articles and the Bylaws; provided, however, that any charges levied against the general public for any particular facilities shall not be less than charges levied against Owners for the same use of the same facilities.

9.2 EASEMENT FOR ACCESS: The Common Areas shall be and hereby are made subject to an easement in favor of each adjoining Lot for access to make necessary repairs, maintenance and reconstruction upon said adjoining Lots and Improvements thereon.

9.2.1 Owner Liability: Any damage caused by such entry shall be repaired at the expense of the Owner whose Lot was the subject of the repair work that led to such entry.

9.2.2 Reasonable Access: Any such entry shall be made only at reasonable times and with as little inconvenience as possible to the Association and other Owners.

9.3 PUBLIC UTILITY EASEMENT: There shall be and hereby is created an easement over, upon, under and through an area as shown on the Plat for the purpose of use, maintenance and repair of public utilities including water, sewer, electric, telephone, cable television, refuse collection and emergency vehicle access for the benefit of all Owners and the Association.



9.4 DRAINAGE EASEMENTS AMONG OWNERS: Wherever drainage flows from one Lot onto, under or through one or more other Lots, said drainage flow shall not be impeded, diverted or otherwise changed unless such diversion is necessary and approved by the Architectural Control Committee.

9.5 DRAINAGE EASEMENTS ON THE COMMON AREAS:

9.5.1 Public Drainage Easement: Public drainage easements may be created for drainage and/or flood control purposes. Public drainage easements shall be maintained by the Association except that the County of Gila may construct or maintain drainage facilities on or under the land designated as a public drainage easement.

9.5.2 Flow to be Unobstructed: No structure, fence or planting other than turf shall be placed or permitted within (i) any existing drainage areas or (ii) any public drainage easement that could impede the flow of runoff water.

9.6 TO THE ASSOCIATION: There is hereby reserved and granted to the Architectural Control Committee, the Board and the Association, their agents and employees, such easements as are necessary to perform the duties and obligations of the Association, the Board and the Architectural Control Committee as are set forth in this Declaration, the Bylaws, the Articles and the Association Rules, including, but not limited to, the right of access at all reasonable hours (following not less than twenty-four (24) hours advance notice except in the event of an emergency) to any part of the Property (excluding the interior of any Dwelling), and any Improvements being built thereon, for the purpose of inspection relative to compliance with the Declaration, the Bylaws, the Articles and the Association Rules, and such access shall not be considered a trespass.

9.7 COVENANTS RUNNING WITH THE LAND: Each of the easements provided for in this Declaration shall be deemed to be established upon the Recording of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots and the Common Area, as the case may be, and superior to all other encumbrances applied against or in favor of any portion of the Property which is the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual warranty deeds to the Lots may, but shall not be required to, set forth said easements.

9.8 DOCTRINE OF MERGER NOT APPLICABLE: The doctrine of merger shall not apply to easements between adjacent Lots for access, use and drainage, and common ownership of one or more such Lots shall not extinguish or merge said easements.

9.9 OWNERS' INTERESTS IN UTILITY EASEMENTS:

9.9.1 On Common Areas and Other Lots: Whenever sanitary sewer house connections and/or electricity, gas, water, telephone or cable television lines are installed within the Property, which connections or any portion thereof lie in or upon the Common Area or Lots owned by Persons other than the Owner of the Lot served by said connections, the Owner of any Lot served by said connections shall have the right, and is hereby granted an easement to the full extent necessary therefore:



(i) with the prior written approval of the Board or the Architectural Control Committee, to enter upon the Common Area or to have the utility companies enter upon the Common Area in or upon which said connections, or any portion thereof, lie in order to modify, repair, replace and generally maintain said connections strictly in accordance with approved architectural plans, as and when the same may be necessary, and

(ii) to enter upon Lots or to have the utility companies enter upon Lots in or upon which said connections, or any portion thereof, lie in order to repair, replace and generally maintain said connections strictly in accordance with approved architectural plans, as and when the same may be necessary as set forth below.

9.9.2 Shared Utility Connections: Whenever sanitary sewer house connections and/or water house connections of electricity, gas, telephone or cable television lines are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to full use and enjoyment of such portions of said connections as serve his Lot, unless otherwise specified in this Declaration.

9.9.3 Resolution of Disputes: In the event of a dispute between Owners with respect to the repair or rebuilding of utility service connections, or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board, in which event the Board shall resolve the dispute and make a Special Assessment against any or all of the Owners involved, which shall constitute a Special Assessment within the meaning of Section 4.7 of this Declaration, but shall not require the consent or approval of the Members of the Association, or any percentage of them, notwithstanding anything herein to the contrary.

ARTICLE 10

ENFORCEMENT

10.1 ALL REMEDIES ARE AVAILABLE: In the event of any default by any Owner under the provisions of this Declaration, the Articles, the Bylaws or the Association Rules, and upon the failure of any Owner to comply with any requirement or restriction thereof, the Association and its successors and assigns, the Board and its agents, or any of them, shall have all the rights and remedies which may be provided for in this Declaration, the Bylaws, the Articles or the Association Rules, or which may be available at law or in equity, and may prosecute any action or other proceeding against such defaulting Owner and/or other Persons for enforcement of any Lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction or specific performance, or for judgment or payment of money and collection thereof, or the right to take possession of the Lot and to sell the same as hereinabove provided, or for any combination of remedies, or for any other relief. The Association and the Board, and the agents of each, shall have the authority to correct such default and to do whatever may be necessary for such purpose. Any Owner may enforce this Declaration, the Articles, the Bylaws and the Association



Rules against any other Person or entity if the Association fails, within a reasonable time after written request, to do so.

10.2 EXPENSE OF ENFORCEMENT IS LIEN ON LOT: All expenses of the Association in connection with such actions or proceedings, including court costs and attorneys' fees, Administrative Fees and all damages, together with interest thereon at the maximum rate charged for Veterans Administration or Federal Housing Administration mortgages during the period in question, until paid, shall be charged to such defaulting or non-complying Owner, and shall be a lien on such Owner's Lot, and upon all Improvements to his Lot, which lien shall be enforceable as a Remedial Assessment in the manner set forth in Article 4.

10.3 CUMULATIVE REMEDIES: Any and all such remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or by the Board. The provisions of this Article are available in addition to the provisions of Article 6.

10.4 LIEN FOR UNSUCCESSFUL SUIT BY OWNER: Should any Member institute suit against the Association, and should the Association be successful or sustained in its position in such suit, then such Member shall be required to reimburse the Association for its legal expenses incurred, including but not limited to attorneys' fees, fees of experts, court costs and other expenses reasonably incurred by the Association, and the amount to which the Association is entitled shall be a lien against the Owner's Lot as provided in and enforceable pursuant to the provisions of Article 4.

ARTICLE 11

INTEGRATED NATURE OF THE COVERED PROPERTY

11.1 MERGERS, CONSOLIDATIONS OR AFFILIATION: Upon a merger, consolidation or affiliation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving, consolidated or affiliated association, or, alternatively, the properties, rights and obligations of the other association may, by operation of law, be added to the properties, rights and obligations of the Association. The surviving or consolidated Association may administer this Declaration together with the covenants and restrictions established upon any other property as one plan.

11.2 LIMITATION UPON ANNEXATION: Notwithstanding anything herein to the contrary, no annexation of additional real property shall have the effect of overburdening the Common Areas or of substantially increasing the Assessments of Owners unless the same has been approved by a majority of the voting power of the Association.

ARTICLE 12

GENERAL PROVISIONS



Gila County, AZ

DRES

12.1 AMENDMENTS:

12.1.1 By Owners: Except as otherwise provided, this Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the voting power of the Association. Any amendment must be Recorded prior to becoming effective.

12.1.2 Compliance with Law: No provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of any law.

12.1.3 Application: No amendment or termination of this Declaration that does not apply to all of the Property then covered by this Declaration shall be made or Recorded as to any portion of the Property without the written consent of all of the record Owners of such affected portion.

12.2 NOTICES: Notices provided for in this Declaration shall be in writing and shall be addressed to the Person intended to receive the same, at the following addresses:

(i) If to the Association, to the address of its management office, if professional management is obtained, if not, to the address of the President of the Association or such other address as the Association may provide to the Owners.

(ii) If to the Architectural Control Committee, to the address of the management office, if professional management is obtained, if not, to the address of the President of the Association or such other address as the Association may provide to the Owners.

(iii) If to an Owner, to the address of the Lot owned by such Owner or any other address designated in writing by such Owner to the Association.

The Association and the Architectural Control Committee may designate a different address or addresses for notices by giving written notice of such change of address to all Members of the Association. Any Owner may designate a different address or addresses for notices to such Owner by giving written notice of such change of address to the Association. Notice addressed as provided above shall be deemed given when deposited in the United States Mail or when delivered in person with written acknowledgment of the receipt thereof.

12.3 SEVERABILITY: If any provision of this Declaration, the Articles, the Bylaws, or any section, sentence, clause, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Declaration, the Articles and the Bylaws, and of the application of any such section, sentence, clause, phrase, or word in any other circumstance, shall not be affected thereby.

12.4 INAPPLICABILITY TO PROPERTY OF PUBLIC ENTITY: The provisions hereof shall be inapplicable to any portion of the Property now owned or hereafter acquired by the State of Arizona or a political subdivision thereof.

12.5 VIOLATION AND NUISANCE: Every act or omission whereby any provision of this



Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Association or any Owner or Owners.

12.6 VIOLATION OF LAW: All activities shall be in conformance with the laws and ordinances of Gila County, Arizona and the State of Arizona. Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy or use of the Property or any portion thereof is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

12.7 BREACH: No breach of any of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

12.8 CONSTRUCTION OF DOCUMENT: This Declaration shall be construed in accordance with the laws of the State of Arizona.

12.9 SPECIAL MORTGAGE REQUIREMENTS:

12.9.1 Notice of Delinquency: A first Mortgagee at its request is entitled to written notification from the Association of any default by the Owner of the Lot that is subject to a Mortgage in favor of said Mortgagee, if such Owner's obligations under the constituent documents are not cured within sixty (60) days.

12.9.2 Mortgagees Entitlement to Notice: Upon written request, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners whose property is subject to such Recorded Mortgage.

12.9.3 Right of First Refusal Restricted: Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal."

12.9.4 Non-Liability for Assessment Prior to Foreclosure: Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for any unpaid Assessments levied against such Lot, which Assessments accrued prior to the acquisition of title to the Lot by such first Mortgagee.

12.9.5 Right to Examine Books: First Mortgagees shall have the right to examine the books and records of the Association.

12.9.6 Reserve Fund: An adequate reserve fund for replacement of the Common Area Improvements must be established and must be funded by regular annual payments, rather than by Special Assessments.

12.9.7 Acts Requiring Prior Written Approval of Mortgagee: Notwithstanding anything



to the contrary which may be set forth in this Declaration, the Articles or the Bylaws, unless at least seventy-five percent (75%) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) have given their prior written approval, the Association shall not:

(i) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, or the maintenance of Common Areas;

(ii) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;

(iii) Fail to maintain in accordance with Section 3.4.4 fire and extended coverage on the Common Area and other Association property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(iv) By act or omission, seek to abandon, partition, subdivide, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Owners shall not be deemed a transfer within the meaning of this clause;

(v) Use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such areas; or

(vi) Amend any part of Section 12.9 or 12.10.

12.9.8 Notice of Taking or Damaging: Any of the first Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a lien or charge against all or any portion of the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and the first Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

12.10 GENERAL MORTGAGEE PROVISIONS:

12.10.1 Right to Encumber: Any Owner may encumber his Lot by Mortgage.

12.10.2 Not Required to Cure Breach: A Mortgagee who acquired title by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of this Declaration which is non-curable or of a type which is not feasible to cure or which is not practical to cure and does not materially affect the Association or any other Owner.

12.10.3 Rights on Resale After Foreclosure: It is intended that any loan to facilitate the resale of any Lot after foreclosure or deed in lieu of foreclosure is a loan made in good faith and for value and entitled to all of the rights and protections afforded to Mortgagees hereunder.



12.10.4 Limit on Amendments Not Signed by Mortgagee: No amendment to Section 12.9 shall affect the rights of a Mortgagee under any Mortgage Recorded prior to recordation of such amendment who does not join in the execution thereof.

12.10.5 Right to Attend Meetings: Because of its financial interest in a Lot, a Mortgagee may appear (but may not vote) at meeting of the Owners and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or Assessments.

12.10.6 Information Given to Board: A Mortgagee is authorized to furnish information to the Board concerning the existence of any loan encumbering a Lot.

12.10.7 Insurance Loss Payable: All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the Mortgagees as insured parties, as their interests may appear.

12.10.8 Mortgagee Protection Superior: In the event of a conflict between any provisions of Section 12.9 titled "Special Mortgage Provisions" and Section 12.10 titled "General Mortgage Provisions," Section 12.9 shall control. In the event of a conflict between any provision of Sections 12.9 and 12.10 and any other provisions in this Declaration, the language contained in Sections 12.9 and 12.10 shall control.

12.11 TERM: This Declaration and the covenants, conditions, and restrictions contained herein, as amended from time to time, shall be and remain in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded, after which time said Declaration shall be extended automatically for successive periods of ten (10) years each, unless amended or terminated in accordance with the provisions hereof, except that if Arizona statutes require a higher percentage of approval for termination, such higher percentage shall be required.

12.12 PLURALS: GENDER: Whenever the context so requires, the use of the singular shall include and be construed as including the plural, and the masculine shall include the feminine and neuter.

12.13 HEADINGS: Section headings and table of contents are inserted for convenience only and are not intended to be a part of this document, or in any way to define, limit, or describe the scope or intent of the particular section to which they refer.

12.14 CAPITALIZATION: Capitalization of a common noun or predicate adjective indicates the term is used as defined in Article 1, unless the context requires otherwise.

12.15 PERPETUITIES AND RESTRAINTS ON ALIENATION: If any of the covenants, rights, privileges or duties created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last of the now living descendants of the President of the United States, George W. Bush, and the Governor of Arizona, Janet Napolitano.



EXHIBIT "A"

GILA AND SALT RIVER MERIDIAN, Gila County, Arizona
T. 11 1/2 N., R. 11 E.

sec.26--SW¹/₄SW¹/₄SW¹/₄,
 S¹/₂SW¹/₄NW¹/₄SW¹/₄SW¹/₄,
 SE¹/₄NW¹/₄SW¹/₄SW¹/₄,
 S¹/₂NE¹/₄NW¹/₄SW¹/₄SW¹/₄,
 E¹/₂SW¹/₄SW¹/₄, SE¹/₄SW¹/₄,
 E¹/₂SW¹/₄NE¹/₄SW¹/₄,
 S¹/₂SE¹/₄NW¹/₄NE¹/₄SW¹/₄,
 S¹/₂S¹/₂NE¹/₄NE¹/₄SW¹/₄,
 SE¹/₄NE¹/₄SW¹/₄,
 SW¹/₄SW¹/₄NW¹/₄NW¹/₄SE¹/₄,
 W¹/₂W¹/₂SW¹/₄NW¹/₄SE¹/₄,
 W¹/₂W¹/₂NW¹/₄SW¹/₄SE¹/₄,
 W¹/₂NW¹/₄SW¹/₄SW¹/₄SE¹/₄,
 SW¹/₄SW¹/₄SW¹/₄SE¹/₄,
 W¹/₂W¹/₂SE¹/₄SW¹/₄SW¹/₄SE¹/₄.

sec.27--E¹/₂SE¹/₄SE¹/₄SE¹/₄, S¹/₂SE¹/₄NE¹/₄SE¹/₄SE¹/₄;

sec.34--N¹/₂S¹/₂NE¹/₄NE¹/₄NE¹/₄NE¹/₄, N¹/₂NE¹/₄NE¹/₄NE¹/₄NE¹/₄;

sec.35--N¹/₂S¹/₂N¹/₂NW¹/₄NW¹/₄NW¹/₄,
 N¹/₂N¹/₂NW¹/₄NW¹/₄NW¹/₄,
 N¹/₂NW¹/₄NE¹/₄NW¹/₄NW¹/₄,
 N¹/₂SW¹/₄NW¹/₄NE¹/₄NW¹/₄NW¹/₄,
 SE¹/₄NW¹/₄NE¹/₄NW¹/₄NW¹/₄,
 NE¹/₄NE¹/₄NW¹/₄NW¹/₄,
 N¹/₂N¹/₂NE¹/₄NW¹/₄,
 NE¹/₄NW¹/₄SW¹/₄NW¹/₄NE¹/₄NW¹/₄,
 N¹/₂NE¹/₄SW¹/₄NW¹/₄NE¹/₄NW¹/₄,
 N¹/₂N¹/₂SE¹/₄NW¹/₄NE¹/₄NW¹/₄,
 N¹/₂N¹/₂SW¹/₄NE¹/₄NE¹/₄NW¹/₄,
 NW¹/₄SE¹/₄NE¹/₄NE¹/₄NW¹/₄,
 NE¹/₄SE¹/₄NE¹/₄NE¹/₄NW¹/₄,
 N¹/₂SE¹/₄SE¹/₄NE¹/₄NE¹/₄NW¹/₄,
 N¹/₂NW¹/₄NW¹/₄NE¹/₄,
 N¹/₂S¹/₂NW¹/₄NW¹/₄NE¹/₄,
 N¹/₂S¹/₂S¹/₂NW¹/₄NW¹/₄NE¹/₄.

Containing 142.34 Record (142.23 Surveyed) acres, more or less.



Gila County, AZ
Linda Haught Ortega, Recorder
07/20/2007
12:52PM
Doc Code: ARES

Doc Id: 2007-012168
Receipt #: 57491
Rec Fee: 13.00

ROB WANNER

When recorded, return to:
Rob Wanner
14926 E. Sierra Madre Drive
Fountain Hills, AZ 85268



2007-012168

Page: 1 of 2
07/20/2007 12:52P
13.00

**FIRST AMENDMENT TO THE
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ELLISON CREEK**

This First Amendment is made the 9th day of July, 2007, by Ellison Creek Cabin Owners Association Inc., an Arizona nonprofit corporation (the "Association").

WHEREAS the Association previously executed that certain Declaration of Covenants, Conditions and Restrictions for Ellison Creek recorded on March 30, 2006, in the office of the County Reorder of Gila County, Arizona, in recording No. 2006-005512 (the "Declaration").

WHEREAS

Underlined Terms in this First Amendment shall have the meanings given to such terms in the Declaration, and

WHEREAS said Declaration sets forth the definition of Common Area as inclusive of "Tracts A1 through A23, B and C" on the Plat of Ellison Creek Homes, and

WHEREAS the Association has discovered an error in the Plat which misstated the number of tracts used within the Declaration, and

WHEREAS the Declaration provides in Article 12.1.1 that the Declaration may be amended by an instrument signed by not less that 75% of the voting power of the Association, and

WHEREAS the Association has obtained written consent to amend the Declaration as set forth herein, said consent being obtained from not less that 75% of the voting power of the Association.

NOW THEREFORE, the Association hereby amends the Declaration as follows:

Article 1.14 is hereby modified to read in its entirety as follows:

1.14 "Common Area" means Tracts A1 through A24, B and C on the Plat, and all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest.

Except as amended by this First Amendment, all provisions, terms and conditions of the Declaration, as previously stated and recorded, shall remain in full force and effect.



Gila County, AZ

ARES

2007-012168

Page: 2 of 2
07/20/2007 12:52P
13.00

IN WITNESS WHEREOF, the Association has executed this First Amendment on the date stated above.

Ellison Creek Cabin Owners Association, Inc.
An Arizona nonprofit corporation

By Rob Wannex
Its President

By June R. Nickell
Its Secretary

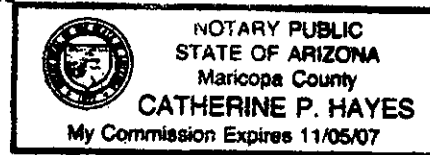
STATE OF ARIZONA)
County of Maricopa)

ss.

The foregoing instrument was acknowledged before me this 16 day of July, 2007 by Rob Wannex, the President of Ellison Creek Cabin Owners Association, Inc.

11/05/07
My Commission Expires

Catherine P. Hayes
Notary Public



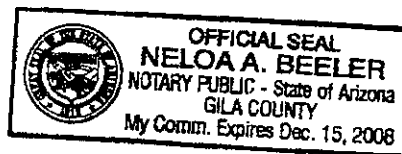
STATE OF ARIZONA)
Gila County of Maricopa)

ss.

The foregoing instrument was acknowledged before me this 12 day of July, 2007 by June Nickell, the Secretary of Ellison Creek Cabin Owners Association, Inc.

12-15-08
My Commission Expires

Neloa A. Beeler
Notary Public



UNOFFICIAL COPY



Gila County, AZ
Linda Haught Ortega, Recorder
02/01/2006
11:27AM
Doc Code: E

Doc Id: 2006-001813
Receipt #: 41406
Rec Fee: 14.50

Recorded at Request of
Tonto National Forest
Jim Young
2324 E. McDowell Rd.
Phoenix, Az 85006

JIM YOUNG



2006-001813
Page: 1 of 6
02/01/2006 11:27A
14.50

Gila County, AZ

E

Authorization ID: TON485
Contact ID: ELLISON CREEK ASSOCIATION
Expiration Date: XXX

FS-2700-9j (8/99)
OMB No. 0596-0082

U. S. DEPARTMENT OF AGRICULTURE
Forest Service
PRIVATE ROAD EASEMENT
Act of October 21, 1976 (P. L. 94-579);
36 CFR 251.50; et seq

ELLISON CREEK CABIN OWNERS ROAD

THIS EASEMENT, dated this 23 rd day of November, 2005, from the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to the ELLISON CREEK CABIN OWNERS ASSOCIATION of the State of Arizona, hereinafter called Grantee

WITNESSETH:

WHEREAS, Grantee has applied for a grant of an easement under the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761), for a road over certain lands owned by the United States in the County of Gila, State of Arizona and administered by the Forest Service, Department of Agriculture.

NOW THEREFORE, Grantor, for and in consideration of the payment of an annual use fee paid by Grantee does hereby grant to Grantee, subject to existing easements and valid rights, a nonexclusive easement for use of a road, along and across a strip of land, over and across the following described lands in the County of Gila, State of Arizona:

GILA AND SALT RIVER BASE AND MERIDIAN
T. 11 1/2 N., R. 11 E.,
sec. 35, NW1/4NE1/4

The location of said easement is shown and specifically described on the plat recorded on August 2, 2005, as Map No. 2924 (specifically Sheet 2), Fee No. 2005-013713 official records of Gila County, Arizona. Said easement encloses 0.91 acres of National Forest System land, more or less.

Said easement shall be 25 feet on each side of the centerline with such additional width as required for accommodation and protection of cuts and fills. If the road is located substantially as described herein, the centerline of said road as constructed is hereby deemed accepted by Grantor and Grantee as the true centerline of the easement granted.

This grant is made subject to the following terms, provisions, and conditions applicable to Grantee, its permittees, contractors, assignees, and successors in interest.

- A. Grantee shall comply with applicable Federal or State law and shall comply with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes, if those standards are more stringent than applicable Federal standards.
- B. The rights herein conveyed do not include the right to use the road for access to developments for short- or long-term residential purposes, unless and until the Grantor and the Grantee agree upon traffic control regulations, rules, and other provisions to accommodate such use of the road.
- C. Upon change in ownership of the land or facility served by this road, the rights granted under this easement may be transferred to the new owner upon written notification to the Forest Supervisor.
- D. This easement shall continue for as long as the property served is used for access to private single family residences on the Grantee's land served by this road; Provided, That the Grantor shall review the terms and conditions of this easement at the end of each 30-year period from the date of issuance, and may incorporate in the easement such new terms, conditions, and stipulations as existing or prospective conditions may warrant. These shall have the same force and effect in the future as if incorporated in this grant.
- E. All construction or reconstruction of the road shall be in accordance with plans, specifications, and written stipulations approved by the Grantor prior to beginning such construction or reconstruction.
- F. Grantee shall have the right to cut timber upon the easement area to the extent necessary for maintaining the road. Timber so cut shall, unless otherwise agreed to, be cut into standard log lengths or other products as specified by the authorized officer and decked along the road for disposal by the owner of such timber.
- G. The Grantee shall maintain the right-of-way clearing by means of chemicals only after the Grantor has given specific written approval. Application for such approval must be in writing and must specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.
- H. The Grantee shall provide maintenance so that there is no damage on adjacent National Forest land. The Grantee shall construct and maintain lead-off drainage and water barriers as necessary to prevent erosion.
- I. Grantee shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use authorized by this easement. The initial payment is set at \$62.63 for the remainder of the calendar year. Payments for each subsequent calendar year shall be the amount of \$62.63 adjusted using the Implicit Price Deflator-Gross National Product index (IPD-GNP), or other factor selected by the Forest Service, to reflect more nearly the current fair-market value of the use. At intervals to be determined by certain changes in the indexes used to establish the linear rights-of-way fee schedule, the fee shall be reviewed and adjusted as necessary to assure that it is commensurate with the value of the rights and privileges authorized. Failure of the holder to pay the annual payment, late charges, or other fees or charges shall cause the permit to terminate.
- J. Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any fee amount not paid within 30 days from the date the fee or fee calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the fee or fee calculation financial statement is due.



In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.

A penalty of 6 percent per annum shall be assessed on the total amount delinquent in excess of 90 days and shall accrue from the same date on which interest charges begin to accrue.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or the appeal decision.

If the fees become delinquent, the Forest Service will:

Liquidate any security or collateral provided by the authorization.

If no security or collateral is provided, the authorization will terminate and the holder will be responsible for delinquent fees as well as any other costs of restoring the site to its original condition including hazardous waste cleanup.

Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 *et seq.* Delinquencies may be subject to any or all of the following conditions:

Administrative offset of payments due the holder from the Forest Service.

Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).

The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, *et seq.*)

- K. This easement shall terminate in the event an easement is granted subsequently by the United States to a public road agency for operation of this road as a public highway.
- L. Grantee shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with existing Federal and State laws.
- M. Grantee shall indemnify the United States for any and all injury, loss, or damage, including fire suppression costs the United States may suffer as a result of claims, demands, losses, or judgments caused by the Grantee's use or occupancy under this easement.
- N. Upon termination of this easement, the Grantee shall remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the Grantor, unless otherwise waived in writing. If the Grantee fails to remove the structures or improvements within a reasonable period, as determined by the Grantor, the Grantor may remove and dispose of any improvements and restore the area and all costs shall be paid by the Grantee.

If the Grantor waives the removal of the improvements and restoration of the site, all improvements shall become the property of the United States.



The foregoing notwithstanding, this easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, and assignees:

1. The right to cross and recross the road at any place by any reasonable means and for any purpose in such manner as will not interfere unreasonably with Grantee's use of the road.
2. The right to all timber now or hereafter growing on the right-of-way, subject to Grantee's right to cut such timber as herein provided.
3. The right alone to extend rights and privileges for use of the road constructed on the premises to other users, provided that nonfederal users shall bear a fair share of the current replacement cost less depreciation of the road and shall reconstruct the road as necessary to accommodate their use.
4. The Grantor reserves the right to use or authorize the use of the road by other Federal agencies, without cost other than the performance or payment, as it may elect, for its proportionate share of maintenance costs.
5. The Grantor retains the right to occupy and use the right-of-way, and to issue or grant rights-of-way for other land uses, for other than road purposes, upon, over, under, and through the easement area provided that the occupancy and use do not interfere unreasonably with the rights granted herein.
6. The right to terminate this easement if the Grantor assumes jurisdiction and control of the road as a Forest Development Road and issues a replacement easement providing only for use of the road. The replacement easement shall be in the current standard format, which provides the Grantee the right to use the road for the purposes and for the period authorized by this easement, subject to such traffic control regulations and rules as Grantor may impose reasonably upon or require of other users of the road without unreasonably reducing the rights herein granted.

The Grantor may take action to suspend, revoke, or terminate this easement under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes in 7 CFR 1.130-1.151. An administrative proceeding is not required when the easement terminates on the occurrence of a fixed or agreed-upon condition, event, or time.



ACCEPTANCE: On this 25th day of January, 2006, I, the undersigned, as the Grantee, have read, understand, and accept the terms and conditions of this easement.

ELLISON CREEK CABIN OWNERS ASSOCIATION

Susan Reed
SUSAN REED
President

ACKNOWLEDGMENT

STATE OF ARIZONA)

COUNTY OF Marcopa) ss:

The foregoing instrument was acknowledged before me this 25th day of January, 2006 by Susan Reed, who being by me duly sworn that she signed said instrument under authority duly given, and she executed same as the freewill act and deed for the consideration and purposes therein contained.

Michelle M. Brown
Notary Public

My commission expires: March 20, 2009



According to the Paperwork Reduction Act of 1995, no persons are required to respond to this collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

2924A

RECORD OF SURVEY

RETRACEMENT, SUBDIVISION AND MONUMENTATION OF A PORTION OF SECTIONS 26, 27, 34 AND 35 TOWNSHIP 11 1/2 NORTH, RANGE 11 EAST OF THE GILA AND SALT RIVER MERIDIAN, TONTO NATIONAL FOREST, GILA COUNTY, ARIZONA

RECORDED
SEAL
COUNTY ARIZONA

STATE OF ARIZONA, COUNTY OF GILA
I HEREBY CERTIFY THAT THE FOREST SERVICE, U.S.D.A.
AND RECORDED AT THE REQUEST OF **ELIUS C. CARR**
DATE **12-2-05** **ELIUS C. CARR**
WITNESS MY HAND AND OFFICE SEAL OF THE DAY AND YEAR
LINDA HAUGHT ORTEGA, GILA COUNTY RECORDER
By *Carla Smith* Deputy
Fax # 2005-013713

FOR: ELIUS C. CARR
OWNERS ASSOCIATION
SUBDIVISION
TOWNSHIP 11 NORTH, RANGE 11 EAST
PHOENIX, AZ 85013
PH: (480) 274-7787

APPROVED TO RECORD
Surveyor Responsible For Accuracy
DATE **12-2-05**
Shirley A. Smith
GILA COUNTY COMMUNITY DEVELOPMENT DIVISION

AT THE REQUEST OF:
FOREST SERVICE, U.S.D.A.
TOWNSHIP 11 NORTH, RANGE 11 EAST
2324 E. MADWELL RD.
PHOENIX, AZ 85006
PH: (480) 235-5372



- LEGEND
- R - RECORD
 - M - MEASURED
 - C - CALCULATED
 - ⊙ - FOUND MONUMENT
 - - CORNER MONUMENTED
 - ⊔ - CORNER AND ACCESSORY DESCRIPTION SEE SHTS 3-6

THIS SURVEY WAS PERFORMED UNDER MY SUPERVISION DURING THE MONTH OF JANUARY, 1998.

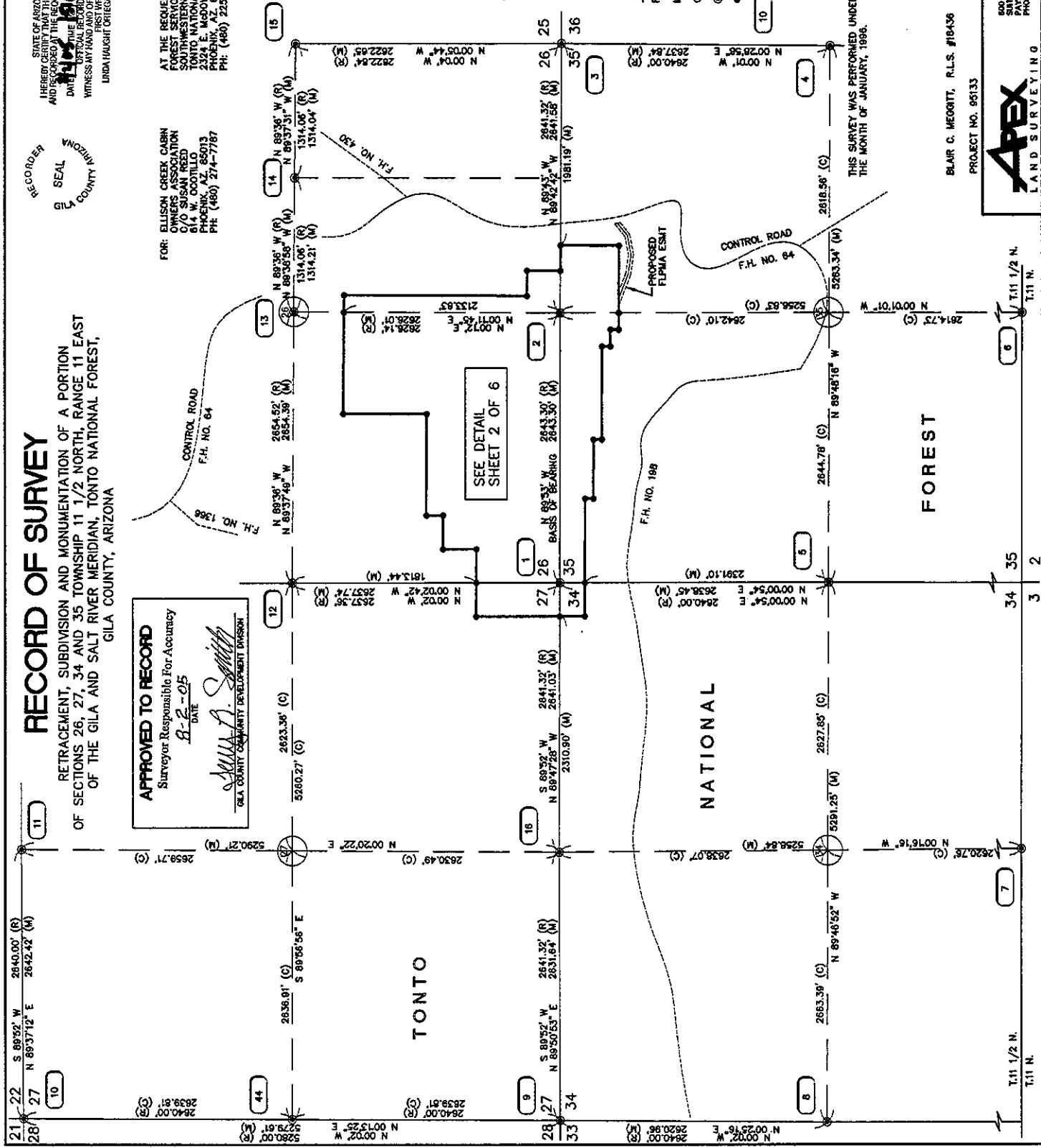


BLAIR C. MCORITT, R.L.S. #18436
PROJECT NO. 95133
SHEET 1 OF 6



600 EAST HORNWAY 280
MESA, ARIZONA 85241
PHONE (602) 474-8444

2924A



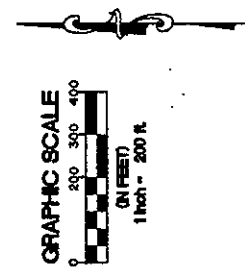
SEE DETAIL SHEET 2 OF 6

1:11 1/2 N.
1:11 N.

29246

RECORD OF SURVEY

RETRACEMENT, SUBDIVISION AND MONUMENTATION OF A PORTION OF SECTIONS 26, 27, 34 AND 35 TOWNSHIP 11 1/2 NORTH, RANGE 11 EAST OF THE GILA AND SALT RIVER MERIDIAN, TONTO NATIONAL FOREST, GILA COUNTY, ARIZONA



- LEGEND**
- R = RECORD
 - M = MEASURED
 - C = CALCULATED
 - ⊙ = FOUND MONUMENT
 - = CORNER MONUMENTED
 - = CORNER AND ACCESSORY DESCRIPTION SEE SHITS 3-6

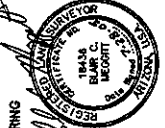
TONTO NATIONAL FOREST

TONTO NATIONAL FOREST

ENCLOSURES 142.23 AC±

SEE SHEETS 3 THRU 6 FOR MONUMENT DESCRIPTIONS

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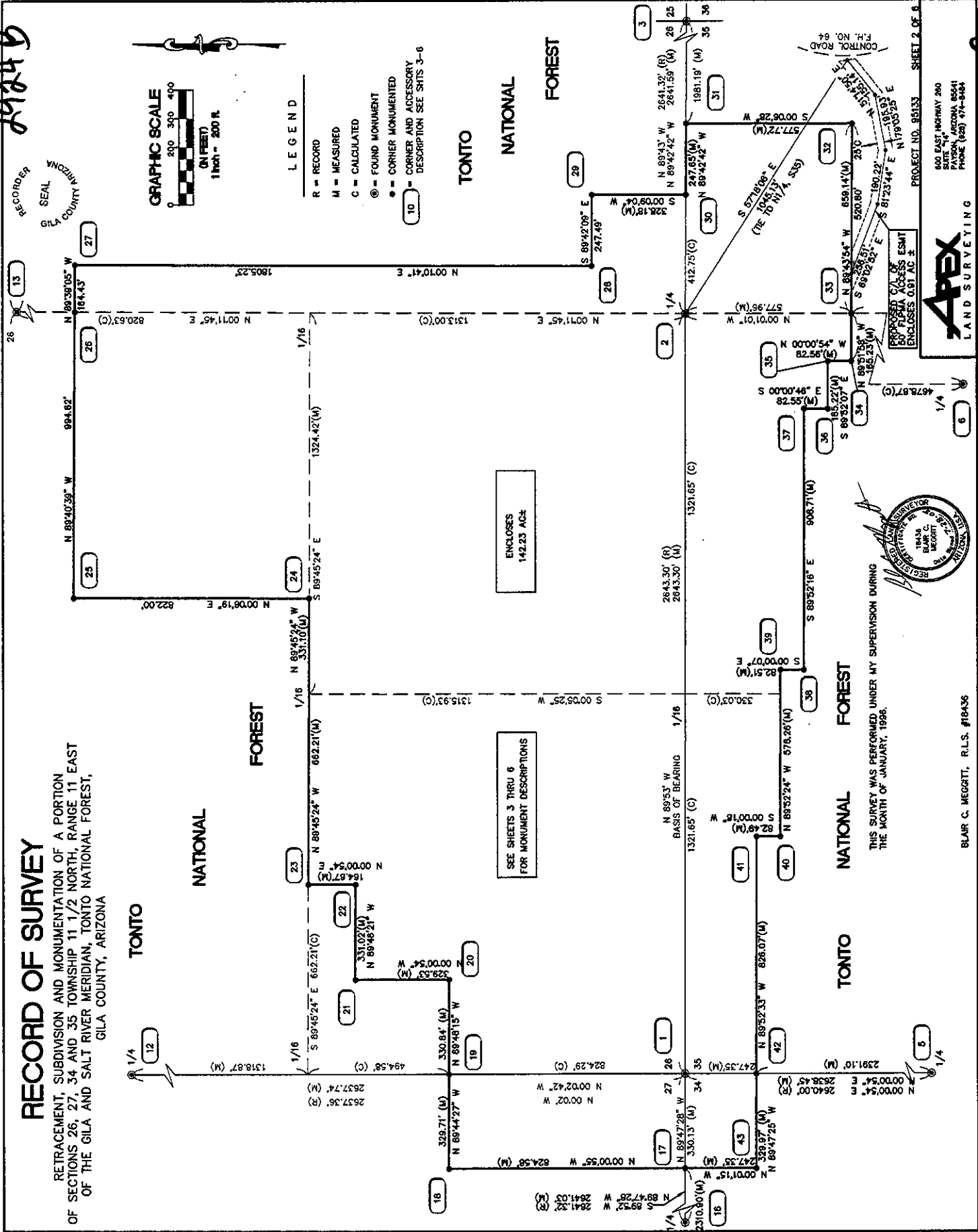
Apex
LAND SURVEYING

PROJECT NO. 95153 SHEET 2 OF 8

600 EAST HIGHWAY 200
PAUSDEN, ARIZONA 85541
PHONE (602) 974-8484

BLAIR C. MEGGITT, R.L.S. #18436

29246



RECORD OF SURVEY

RETRACEMENT, SUBDIVISION AND MONUMENTATION OF A PORTION OF SECTIONS 26, 27, 34 AND 35 TOWNSHIP 11 1/2 NORTH, RANGE 11 EAST OF THE GILA AND SALT RIVER MERIDIAN, TONTO NATIONAL FOREST, GILA COUNTY, ARIZONA

RECORDED
SEAL
GILA COUNTY ARIZONA

9
CORNER NO. 9

FOUND A LIMESTONE 12" X 8" X 16" ABOVE GROUND, LOOSELY SET, WITH ONE CHISELED MARK ON SOUTH SIDE, AND THREE FAINT CHISELED MARKS ON EAST SIDE, IN THE CENTER OF A 2' DIAMETER MOUND OF STONE, FROM WHICH:

- (FOUND ACCESSORIES)
(R)= 36" PINE N28°W 65.14' (129 LINKS)
FD.= 32" PINE SNAG N26°W 69.60' (93 LINKS)
(R)= 15" OAK N32E 82.36' 69.21'
(R)= 10" OAK S77E 33.86' (51 LINKS)
FD.= 10" OAK S77E 36.64'
(R)= 10" PINE S22°W 38.28' (58 LINKS)
FD.= 26" PINE S28°W 37.44'



SET A STANDARD 3-1/4" ALUMINUM CAP, ON A 3/4" X 30" ALUMINUM ROD 6" IN GROUND (TO BEDROCK) IN A 4' DIAM. MOUND OF STONE TO TOP, FROM WHICH:

- (SET ACCESSORIES)
15" PINE S66°E 81.14' TO A 16d NAIL SET IN NORTH EAST SIDE
4" PINE S44°E 3.61' TO A 16d NAIL SET IN WEST SIDE
4" PINE S60°W 7.55' TO A 16d NAIL SET IN SOUTH SIDE

10
CORNER NO. 10

FOUND A SANDSTONE 12" X 10" X 16" ABOVE GROUND, LOOSELY SET, WITH TWO CHISELED MARKS ON THE SOUTH SIDE AND THREE CHISELED MARKS ON THE EAST SIDE, WITH A MOUND OF STONE TO THE WEST, FROM WHICH:

- (FOUND ACCESSORIES)
(R)= OAK INSIDE 80.15' (122 LINKS)
FD.= STUMP HOLE AND OAK SPROUTS N00E 81.2'



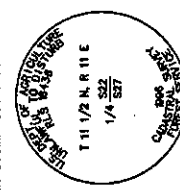
SET A STANDARD 3-1/4" ALUMINUM CAP, ON A 3/4" X 30" ALUM. ROD 28" IN GROUND (6" ABOVE) IN A 4' DIAM. MOUND OF STONE (DEPOSIT ORIG. STONE IN MOUND), FROM WHICH:

- (SET ACCESSORIES)
15" PINE S66°E 81.14' TO A 16d NAIL SET IN NORTHEAST SIDE
15" PINE S66°E 81.14' TO A 16d NAIL SET IN NORTH SIDE

11
CORNER NO. 11

FOUND A SANDSTONE 14" X 5" X 8" ABOVE GROUND, FIRMLY SET, WITH A 1/4" CHISELED MARKING ON THE NORTH SIDE AND A FAINT "/> CHISELED MARK ON THE TOP, FROM WHICH:

- (FOUND ACCESSORIES)
(R)= 14" PINE N44°E 40.26' (81 LINKS)
(R)= 12" PINE S44°E 40.26'
(R)= 12" JUNIPER S32°W 38.28' (58 LINKS)
FD.= 25" JUNIPER STUMP S31°W 38.44'



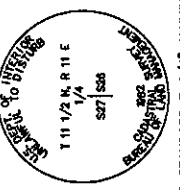
SET A STANDARD 3-1/4" ALUMINUM CAP, ON A 3/4" X 30" ALUM. ROD 24" IN GROUND (6" ABOVE) IN A 2-1/2' DIAM. MOUND OF STONE (DEPOSIT ORIG. STONE IN MOUND), FROM WHICH:

- (SET ACCESSORIES)
10" PINE S75°W 17.50' TO A 16d NAIL SET IN NORTH SIDE
8" PINE S04°W 38.92' TO A 16d NAIL SET IN EAST SIDE

12
CORNER NO. 12

FOUND A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A 2' X 3' MOUND OF STONE, FROM WHICH:

- (FOUND ACCESSORIES)
(R)= 12" PINE S71°E 12.54' (19 LINKS)
(R)= 12" X 1/8" PINE STUMP N70°E 11.86'
(R)= 21" PINE N49°30'W 61.38' (93 LINKS)
FD.= 18" PINE N53°W 61.18'
(R)= 9" PINE S62°E 56.78' (86 LINKS)
FD.= 10" PINE S65°E 57.14'
(R)= 4" PINE S28°W 10.89' (16.5 LINKS)
FD.= 9" PINE S32°W 11.00'



13
CORNER NO. 13

FOUND A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND, FROM WHICH:

- (FOUND ACCESSORIES)
(R)= 10" PINE N50°E 40.59' (61.5 LINKS)
FD.= 12" PINE N61°E 40.38'
(R)= 12" PINE S04°W 19.59' (30 LINKS)
FD.= 14" PINE S01°W 19.50'



FOUND A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 40" ABOVE GROUND WITH A 2' MOUND OF STONE NORTH, FROM WHICH:

- (FOUND ACCESSORIES)
(R)= 6" JUNIPER S53°E (15 LINKS)
FD.= 6" JUNIPER S53°E 9.78'
(R)= 10" JUNIPER S46°W (31.5 LINKS)
FD.= 11" JUNIPER (DEAD) S45°W 20.76'

14
CORNER NO. 14

FOUND A SANDSTONE 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 40" ABOVE GROUND WITH A 2' MOUND OF STONE NORTH, FROM WHICH:

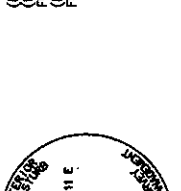
- (FOUND ACCESSORIES)
(R)= 10" PINE N43°E 40.28' (81 LINKS)
FD.= 11" PINE N45°E 40.26'
(R)= 18" PINE N35°W 42.24' (64 LINKS)
FD.= 17" PINE N35°W 42.18'
(R)= 24" JUNIPER N84°E 65.34' (99 LINKS)
FD.= 25" JUNIPER N01°E 65.34'
(R)= 22" JUNIPER S30°W 68.44' (134 LINKS)



15
CORNER NO. 15

FOUND A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND WITH A 3' DIAMETER MOUND OF STONE WEST, FROM WHICH:

- (FOUND ACCESSORIES)
(R)= 10" PINE N43°E 40.28' (81 LINKS)
FD.= 11" PINE N45°E 40.26'
(R)= 18" PINE N35°W 42.24' (64 LINKS)
FD.= 17" PINE N35°W 42.18'
(R)= 24" JUNIPER N84°E 65.34' (99 LINKS)
FD.= 25" JUNIPER N01°E 65.34'
(R)= 22" JUNIPER S30°W 68.44' (134 LINKS)



16
CORNER NO. 16

FOUND A LIMESTONE 11" X 7" X 6" ABOVE GROUND, FIRMLY SET, WITH 1/4" CHISELED ON THE NORTH AND A FAINT MARK ON TOP, FROM WHICH:

- (FOUND ACCESSORIES)
(R)= 9" PINE N50°E 28.4'
FD.= 8" PINE S46°E 26.36'
(R)= 10" OAK S25°W 35.6'
FD.= 19" OAK S25°W 35.84'



PROJECT NO. 95133
SHEET 4 OF 6
APEX LAND SURVEYING
400 EAST HAWKEYE AVE
PAYSON, ARIZONA 85541
PHONE (602) 471-8464



THIS SURVEY WAS PERFORMED UNDER MY SUPERVISION DURING THE MONTH OF APRIL, 1996.

BLAIR C. MEGGITT, R.L.S. #15436

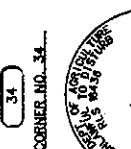


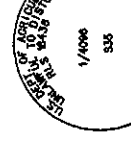


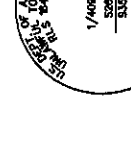
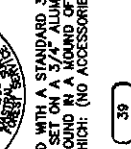
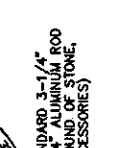
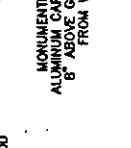
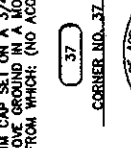
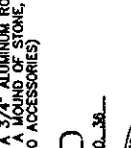
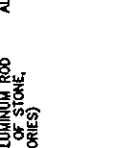
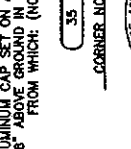

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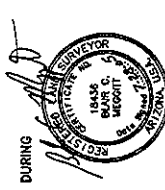
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RECORD OF SURVEY

RETRACEMENT, SUBDIVISION AND MONUMENTATION OF A PORTION OF SECTIONS 26, 27, 34 AND 35 TOWNSHIP 11 1/2 NORTH, RANGE 11 EAST OF THE GILA AND SALT RIVER MERIDIAN, TONTO NATIONAL FOREST, GILA COUNTY, ARIZONA

<p>CORNER NO. 30</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 31</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 32</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 33</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 34</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 7" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 35</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 7" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 36</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 37</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 38</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 9" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 39</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 7" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 40</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 41</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 42</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 43</p>  <p>MONUMENTED WITH A STANDARD 3-1/4" ALUMINUM CAP SET ON A 3/4" ALUMINUM ROD 6" ABOVE GROUND IN A MOUND OF STONE, FROM WHICH: (NO ACCESSORIES)</p>	<p>CORNER NO. 44</p>  <p>BY SINGLE PROPORTIONATE MEASUREMENT, SET A STANDARD 3-1/4" ALUMINUM CAP ON A 3/4" x 36" ALUMINUM ROD 20" IN GROUND, IN A 3" DIAM. MOUND OF STONE. NO REMAINS WERE FOUND OF THE ORIGINAL CORNER STONE OR ACCESSORIES, FROM WHICH: (SET ACCESSORIES)</p> <p>JUNIPER POST 27.94' TO A 16d NAIL SET IN NORTHWEST SIDE 3" PINE S65 W 6.02' TO A 16d NAIL SET IN NORTH SIDE</p>
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THIS SURVEY WAS PERFORMED UNDER MY SUPERVISION DURING THE MONTH OF APRIL, 1996.

BLAIR C. MEGGITT, R.L.S. #18436

PROJECT NO. 95133 SHEET 9 OF 9
APEX LAND SURVEYING
500 EAST HAWKWAY 260
PAYSON, ARIZONA 85541
PHONE (928) 474-4464

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