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Gila County, AZ  
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PAM CLARK/REALTY EXECUTIVE



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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BOULDER CREEK

This Declaration is made on June 14, 2006 by SPIRIT ROCK INVESTMENTS, LLC, a limited liability corporation duly organized and existing under the laws of the State of Arizona ("Declarant"), which executes this Declaration of Covenants, Conditions and Restrictions to run with the real property and for the purposes described.

### RECITALS

WHEREAS, Declarant is the owner and developer of certain real property known and designated as Boulder Creek located in Gila County, Arizona ("Property") and more particularly described in Exhibit "A" Legal Description, attached and incorporated by this reference;

WHEREAS, it is the desire of Declarant to establish and secure the enforcement of covenants, conditions and restrictions upon the uses and development of the Property.

WHEREAS, Declarant wishes to provide for certain procedures whereby the Owners of Homesites shall have the right to enforce such covenants, conditions and restrictions through a Homeowners' Association in the future,

NOW THEREFORE, Declarant creates the following covenants, conditions and restrictions:

### I. GENERAL DECLARATION

A. Purposes. The purposes of the covenants, conditions and restrictions are, among other things, to enhance and protect the value, attractiveness and desirability of the Property and to ensure the usage of the Property for attractive residential uses only, to prevent nuisances, to maintain the desired tone of the Property, to further the harmonious development of the Property and to secure to each Owner the full benefit and enjoyment of his or her Homesite in the Property.



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B. Property Subject to Restrictions. All of the Property shall be held, conveyed, encumbered, leased, used, occupied, sold and improved subject to this Declaration.

C. Run with the Land. All of the covenants, conditions and restrictions shall constitute covenants running with the land and shall be binding upon Declarant, the Homeowners' Association, all Owners and all of their successors and assigns.

## II. DEFINITIONS

A. "Architectural Control Committee" shall mean the committee responsible for reviewing, approving or disapproving architectural design plans and specifications required to be submitted before any building of any structure may commence, pursuant to Article VI.

B. "Architectural Rules" shall mean the rules and regulations adopted by the Architectural Control Committee.

C. "Assessments" shall mean all regular assessments, special assessments or charges authorized in the Declaration.

D. "Assessment Lien" shall mean the lien for regular assessments, special assessments or charges provided for in Paragraph IV.H.

E. "Board" shall mean the board of directors of the Homeowners' Association created by the Homesite Owners in accordance with the rules set forth herein.

F. "By-Laws" shall mean the by-laws of Boulder Creek of Payson Homeowners' Association, Inc., and amendments.

G. "Commencement Date" shall mean the date on which the first Homesite is sold to an Owner.

H. "Common Area" shall mean the Common Area, together with those facilities, trails, roads, etc. which by the terms of this Declaration or by contract become the responsibility of the Homeowners' Association.

I. "Common Expense" shall mean an expense incurred by the Homeowner's Association that is regular and usual to accomplish its purposes.

J. "Homesite" or "Homesites" shall mean and refer to any plot of land shown as a numbered lot upon the recorded subdivision map or plat of the Boulder Creek property.



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K. "Improvement" shall mean, but not exclusively, any driveway, excavation, grading, landscaping, outdoor lighting or structure of any kind built on a Homesite.

L. "Member" shall mean a person who is a Member of Boulder Creek Homeowners' Association created hereunder.

M. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title or an equitable title when purchasing under a contract to any Homesite which is part of the Property, but specifically excluding those having such interests merely as a security for the performance of an obligation.

N. "Plans" shall mean complete architectural drawings and other plans and specifications showing the nature, kind, shape, site, exterior, material and the like required to be submitted to the Architectural Committee.

O. "Plat Map" (Exhibit B) shall mean the map recorded in the Official Records of Gila County, Arizona covering any or all of the Property, and amendments. The Plat Map is not annexed, but is incorporated and made a part hereof.

P. "Property" shall mean that certain real property described and depicted in Exhibits "A & B" and such additional real and personal property as may hereafter be brought within the jurisdiction of the Association.

Q. "Residence" shall mean any structure built upon a Homesite in which a Single Family Unit dwells.

R. "Single Family Unit" shall mean a group of one or more persons related by blood, marriage or legal adoption, or a group of not more than three persons not so related, who maintain a common household.

S. "Specific Assessment" shall mean any assessment specifically assigned to the Owner/Owners of a designated Homesite(s).

T. "Structure" shall mean, but is not limited to, any accessory, attachment, equipment, fence, garage, obstruction, pool, residence, spa or utility of any kind built on a Homesite.





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### III. EASEMENTS

In order to provide the Common Areas, utilities and maintenance of amenities to benefit Owners of Homesites in Boulder Creek, Declarant has established and reserved easements of use on the Subdivision Plat Map recorded with the Official Records of Gila County. Declarant also has the right to reserve additional easements, if it is determined after consultation with the Homeowners' Association that such easements will enhance property values or benefit Owners in some way.

A. Reservation. Declarant reserves all easements depicted or referred to in the Subdivision Plat Map or any other instrument with respect to the Properties recorded in the Official Records of Gila County, Arizona, and there is created a blanket easement upon, across, over, under, in and about said Property for ingress, egress, installation, replacement, repair and maintenance directly or indirectly pertaining to all utilities, including, but not limited to, water, sanitation, gas, electricity, telephone and cable.

1. By virtue of such easements, it shall be expressly permissible for each utility company to maintain any necessary equipment, fixtures, wires, conduits, etc. in or about the aforesaid Property.

2. Notwithstanding anything to the contrary in this Paragraph III.A., no sewer lines, electrical lines, water lines, gas lines, cable lines or other utilities may be affixed, installed, erected or relocated in or about the Property except as initially directed or approved by Declarant, or thereafter approved by the Board of Directors, as the case may be.

3. These easements shall in no way affect any other recorded easements concerning the Property.

B. Accessibility. No building shall be built on any of the recorded easements, and such easements shall at all times be open and accessible to utility companies, their agents, employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right of reasonable access to carry out any of the purposes for which the easements are reserved, and each of whom shall have a responsibility to repair and restore the pre-existing surface condition and appearance of any portion of the Property where they have performed work.



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#### IV. HOMEOWNERS' ASSOCIATION RIGHTS & RESPONSIBILITIES

Specific rights, powers and obligations of Owners and the Association are established by this Declaration. The Association is to be established to own, manage, maintain, operate and control the Common Areas, trails, private roadways, signage, and other areas of common responsibility within the Property for the benefit of the Owners, to enforce this Declaration, and oversee the Architectural Control Committee. An initial set of use restrictions (Section V) is established to promote and enhance the aesthetic environment and to protect the vitality and sense of community within Boulder Creek. These use restrictions will be enforced by the Declarant and eventually by the Homeowners' Association.

A. Establishment and Purpose of Homeowner's Association. There is hereby created The Boulder Creek of Payson Homeowners' Association, duly registered as an Arizona non-profit Corporation. The purpose of the Association is to maintain and enhance the Common Area, private roadways within the Property, entrance and street signage, gates, or lighting which are shared by Owners of the entire Property, and to maintain and/or improve a trail system within the Property. The Homeowners' Association will also oversee the Architectural Control Committee, deciding upon its composition of members and negotiating or adjudicating any disputes between individual Owners and the Architectural Control Committee. The Association shall perform its functions in accordance with this Declaration, its adopted By-Laws and Arizona Law.

B. Membership in Homeowners' Association. Each and every Owner, in accepting a deed or contract for any Homesite, whether or not it shall be so expressed in such deed or contract, automatically becomes a Member of the Association and agrees to be bound by such use restrictions as are enumerated in Section V of this Declaration, as well as such reasonable rules and regulations as may, from time to time, be established by the Association in its By-Laws. The membership will entitle each Owner, or Co-owners who would represent a voting block, to one vote in the affairs of the Association.

C. Association Duties. In furtherance of its purposes, the Association shall provide necessary and appropriate action for the maintenance, repair, replacement and management of the facilities referred to in Paragraph IV.A. above. The Association may, but shall not be obligated to, establish a recycling program for Boulder Creek Owners and/or provide services for Members of the Association such as landscape maintenance, pest control, security, caretaker, garbage disposal and similar services. Any income received as a result of recycling efforts shall be used to reduce Common Expenses. The cost of any other of such services may be included in the Common Expenses. Nothing listed above should be relied upon as a representation of what services, if any, will be provided by the Association, and the Board shall make a determination that any such





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services provided are of equal or better quality and cost relative to such services as are available from outside Vendors.

D. Establishment of Homeowners' Association Board of Directors. The Association shall be governed by a Board of Directors, elected and operating in accordance with the By-laws of the Boulder Creek Homeowners Association. Declarant will act as the Board until such time as 75% of the Homesites have been sold. At such time, a general election shall be held to determine the persons who will serve as the initial Directors.

E. Association Powers. The Association shall have the powers necessary to carry out its purposes as described in this Declaration, whether or not specifically set forth herein, including the power to enter into contracts with third parties to perform all or part of its functions, and to enter upon a Homesite, if reasonably necessary, to accomplish its purpose.

F. Association Assessments. Each Owner and Homeowner Association Member is obligated to pay: (i) regular assessments for normal maintenance and repair and reserves along with Association insurance and operating costs to be determined by the Association (ii) special assessments for capital improvements to be established from time to time by the Association as determined by a two-thirds majority vote of Members. The Board shall on an annual basis make a determination as to the estimated costs of the maintenance, repair and replacement of the Common Areas, including any reserves necessary for future capital expenditures. Assessments shall be charged to each Owner on a uniform basis per Homesite. Assessments may be collected on a monthly, quarterly or annual basis as determined by the Board.

G. Assessment Payments. Each Owner shall be responsible to pay the regular assessment commencing on the first day of the month following the date of recordation of the deed or purchase contract wherein the Owner acquired legal, beneficial or equitable title to the Homesite. The initial regular assessment shall be seven-hundred and twenty dollars (\$720) per year. The Owner acquiring his or her interest from Declarant during the calendar year shall be obligated for a prorata portion thereof. The Board shall fix the amount of the regular assessment at least thirty (30) days prior to the end of the calendar year. Written notice of the assessment and due date shall be sent to every Owner.

H. Delinquency. Each Owner shall be personally responsible for his or her share of the Assessments imposed by the Association. Failure to pay such assessments within fifteen (15) days of the due date thereof shall result in a lien being placed upon such Owner's Homesite, in the amount of the delinquent payment, late payment penalties,



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interest, and costs or attorney's fees. The obligation to pay same shall be a continuing lien on the Homesite, if and when the title is passed to a successor. Such Owner's right to a vote in the Association shall be forfeited until such time as payment of the assessment has been made.

I. Declarant's Rights and Responsibilities. With respect to each Homesite owned by it, Declarant shall not necessarily be responsible for paying assessments in amounts comparable to the Owners. However, Declarant shall be responsible to provide labor, material and/or monies in sufficient amounts, not to exceed the amount of the normal Homesite assessments for each Homesite owned by it, if necessary to fulfill the Association's maintenance responsibilities. After 75% of the Homesites have been sold, Declarant shall continue to have a vote in the Homeowners' Association for each of the Homesites owned by it, but such votes shall be reduced proportionally if Declarant is paying assessments in amounts that are less than the those of the Owners.

J. Common Area. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

1. This Declaration and any other applicable covenants or By-Laws.
2. The right of the Declarant or Association to adopt rules, regulations or policies regulating the use and enjoyment of the Common Area, including rules restricting use and limiting number of occupants and guests who may use the Common Area.
3. The right of the Association to dedicate or transfer all or any part of the Common Areas to governmental entities.

## V. CONTROLS AND USE RESTRICTIONS

The following restrictions shall apply to all of the Homesites until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Paragraph IV.A. & B. of the Declaration.

A. Single Family Residential. All Homesites shall be used, improved and devoted exclusively to Single Family Residential use.

B. Site Built. All Structures and Improvements built on a Homesite shall be of new construction and no structure shall be a mobile home, a manufactured home or a home that is moved from any other location onto a Homesite.



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**C. Prohibition of Offensive Activities.** No activity shall be permitted on any Homesite which is noxious, offensive or limits the enjoyment of other Homesite owners in the neighborhood. This includes but is not limited to:

1. Any outside burning of trash, leaves or debris at any time by Owners, Builders, their designees or any other persons. Fires in barbecues and appropriate non-flammable containers or fire pits of a safe and moderate size is permissible.
2. Dumping of leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, or waterway, or elsewhere within the Property, except that fertilizers may be applied to landscaping provided care is taken to minimize runoff. Declarant and, if approved by the Architectural Control Committee, Builders may bury rocks and trees removed from a building site on such building site.
3. Use and discharge of firecrackers and fireworks.
4. Accumulation of rubbish, trash, recyclable materials or garbage except between regular garbage pickups, and then only in approved containers.
5. Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and Association shall have such right, provided such right shall not materially diminish the value of or unreasonably interfere with the use of any Homesite without the Owner's consent.
6. Any business, trade or similar activity, except that an Owner residing in a Residence may conduct "discreet business activities" within the Residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve regular visitation of the Residence by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, as may be determined in the reasonable discretion of the Board.
7. Sprinklers, irrigation systems or wells that draw upon surface or underground water, except that Declarant and the Association shall have the





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right to draw upon such water in order to benefit the entire Property in a recreational use or to create a water feature to be enjoyed by all Owners in a Common Area. Certain exceptions to this may be permissible on Homesites where pre-existing wells are located, but any such exceptions shall only be set forth in writing at the time of initial conveyance of the Homesite by Declarant.

C. Storage of Automobiles and other Vehicles. No motorized or non-motorized vehicle may be parked or stored on any part of any Homesite, easement, right of way or in the street adjacent to Homesite, unless such vehicle is concealed from public view.

D. Pets. A reasonable number of generally recognized house or yard pets, as allowed by local zoning and use restrictions, may be maintained on any Homesite, and then only if such pets are kept or raised thereon solely as domestic pets and not for commercial purposes and if they are kept restrained when outside the Residence.

E. Horses. Homesites #2, #3, #6, #7, #8, #9, #10, #15 and #16 will be the only Homesites in Boulder Creek on which horses will be allowed. Not more than two (2) horses may be stabled or corralled on a Homesite and only then within a structure within a building envelope on the Homesite, all in compliance with state and local ordinance. Stalls and corrals will be kept clean and pest free so as not to disturb other Owners.

F. Landscaping. All forest land outside of a building envelope will be left natural without introduced grasses or plants and without removal of living trees having a circumference of one foot or more, unless expressly permitted by Declarant or Association.

G. Exterior Antennae, Aerials, Satellite Dishes, Wires, Air conditioning units, Solar Panels, Storage Sheds or other apparatus of any kind need to be completely contained within the Residence or otherwise hidden from public view.

H. Improper Maintenance or Use of Homesites. In the event any portion or the whole of any Homesite is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Homesites and Property, or in the event any portion of a Homesite is being used in a manner which violates this Declaration or any Plat Map of the subdivision or local zoning ordinances, or in the event the Owner of any Homesite is failing to perform any of its obligations under this Declaration or other controlling documents, the Declarant or the Association may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner. Unless corrective action is commenced within 14 days and completed within 30 days, the Declarant or the Association may cause such action to be taken at said Owner's cost.



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The cost thereof shall become a lien with delinquency payment penalties against the Homesite.

## VI. ARCHITECTURAL AND DESIGN STANDARDS

In order to develop and protect Boulder Creek's special character, the Declaration sets forth specific rights and powers for its development. Specific rights include the right of the Declarant to establish design guidelines and criteria for the development of Boulder Creek. Such guidelines will be administered by the Architectural Control Committee. Preliminary guidelines will be set forth in this Declaration.

A. General. No land leveling, excavation, grading, planting, landscaping, residence, outbuilding, fence or wall, or other improvement of any kind shall be commenced on any Homesite, until the plans and specifications showing the nature, kind, shape, materials, floor plans, and locations shall have been submitted to and approved by the Architectural Control Committee ("Committee") and a copy thereof has been lodged permanently with the Committee. The Committee shall have the right to refuse to approve any such plans or specifications which are not suitable or desirable in its opinion for aesthetic reasons, or not in accordance with the overall theme of Boulder Creek, or any other reason. It shall have the right to assess the suitability of the proposed building or other structure, and the materials which are to be used, the site upon which it is proposed to be erected, the harmony with surroundings, and the effect of the proposed structure on the outlook from adjacent or neighboring property. All plans must also comply with the requirements of Gila County and the Town of Payson.

B. Establishment. The Declarant will establish an Architectural Control Committee to perform the functions set forth in this Declaration and will adopt procedural rules and regulations, including procedures for preparation, submission and determination of applications for approvals required by this Declaration. The Committee will initially consist of Declarant, who may designate one or more representatives to act for it. Committee Members need not be architects, Owners or residents. After 75% of the Homesites have been sold (or at such earlier date as Declarant elects), the Association, by majority vote, shall select the Architectural Control Committee Members.

C. Meetings. A quorum for Committee meetings will consist of a majority of regular Committee Members and the concurrence of a majority of the regular Committee Members will be necessary for any decision of the Committee. Frequency and time/date/place of meetings will be decided by the Committee as circumstances will dictate.



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D. Guidelines.

1. The Committee will promulgate an outline of minimum acceptable construction standards; provided however, that such outline will serve as a minimum guideline and the Committee shall not be bound thereby. The Committee may establish general provisions applicable to all of the properties as well as specific provisions for each particular Homesite.

2. Any residential unit constructed on a Homesite will contain a minimum of 2,500 square feet of living area under roof, exclusive of garage basements, patios, breezeways and porches.

3. Natural materials are preferred for use on exteriors of Residences, i.e., rock and wood, in order to blend harmoniously with the surrounding forest.

4. Colors of paint used on exteriors, although not prescribed, shall be subdued in hue and tone, and also found naturally in the surrounding environment.

E. Variances. The Committee may permit variances from any of the particular restrictive covenants contained in this Declaration or its established guidelines. The Committee will consider variances upon submission of such documents and items deemed appropriate in connection with such variance.

F. Fees & Assistance. The Architectural Control Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers or other qualified persons as deemed necessary to perform the review.

G. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Architectural Control Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modification, nor for ensuring the building codes and other governmental requirements. In all such matters, the Homeowners' Association and the Architectural Control Committee and all persons comprising these bodies shall be defended and indemnified by the Association.

H. Enforcement. Any structure, improvement or landscaping placed or made in violation of this Article or the Design Guidelines shall be deemed non-conforming. Upon





written request from the Declarant, the Architectural Control Committee or the Board, Owners shall at their own cost and expense remove such structure or improvement and restore the property to the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the rate of 18% per annum, may be assessed against such Homesite and collected as a Specific Assessment.

I. Timeline and Obligation to Build. In order to provide a "community" for the residents of Boulder Creek in a timely manner, a timeline for construction of residences shall be established. Deadlines for this building of Residence timeline will be: (i) no more than one (1) year shall elapse between the purchase of the Homesite by the initial purchaser and the submittal of architectural design plans for approval to the Architectural Control Committee; (ii) no more than one (1) year shall elapse between the approval of architectural plans and the start of construction; (iii) no more than one (1) year shall elapse between the beginning of construction and substantial completion of the Residence. This provision provides for at least three years for an Owner to build a Residence on the purchased Homesite. If these deadlines are not met, Declarant and the Homeowners' Association shall be given the right to re-purchase the non-conforming Homesite at a price of the original purchase price plus four percent (4%) interest per year. This provision establishes Declarant's and the Homeowners' Association's right to an "Option to Buy" a Homesite that is not in compliance with this timeline, but it does not bind either the Declarant or the Homeowners' Association to exercise such right.

## VII. DISPUTE RESOLUTION

In order to encourage the amicable resolution of disputes involving property within Boulder Creek, all persons having an interest in the property, including the Declarant, the Association, and each Owner, are required to submit certain types of claims to the dispute resolution procedures set forth in this Section before a lawsuit may be filed. Through communication, negotiation, mediation and, if necessary, arbitration of disputes, each party can help to avoid the monetary and emotional costs of litigation.

A. Consensus for Association Litigation. Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval of at least 75% of the Voting Members. This section shall not apply, however, to (a) actions brought by the Association to enforce this Declaration (b) the collection of assessments; (c) proceedings involving ad valorem taxation; or (d) counterclaims brought



by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved and instituted by the percentage of votes as provided above.

B. Alternative Method for Resolving Disputes. The Declarant, the Association, its officers, directors, and committee members, Owners, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article agree to encourage the amicable resolution of disputes involving the Property, without the emotional and financial costs of litigation. Toward that end, the Declarant, or the Association by approval of 75% of the Voting Members, may hereafter establish rules and procedures for mandatory arbitration.

C. Mandatory Procedures.

1. Notice. In any rules for mandatory arbitration that may hereafter be established, the following minimum notice provisions by the complaining party ("Claimant") to both the Association and the party about whom the claim is being made ("Respondent") shall be observed:

(a) the nature of the Claim, including Persons involved and Respondent's role in the Claim;

(b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) Claimant's proposed remedy; and

(d) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

2. Negotiation and Mediation.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties), Claimant shall then follow such rules for mandatory arbitration as may have been established pursuant to Paragraph VII-B.



## VIII. GENERAL PROVISIONS

This Declaration must be able to change over time to accommodate changing circumstances, to address new problems and to incorporate new provisions or revise existing provisions to help the Association operate more efficiently. Therefore, this Article sets forth procedures for amending the Declaration, as well as other provisions designed to facilitate the smooth operation of the community.

A. Term. Unless otherwise provided by Arizona Law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least 75% of total Homesites within the Property. Nothing in this instrument shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

B. Amendment.

1. By Declarant. Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rules, regulations, or judicial determination; (ii) to ensure that title insurance companies generally will agree to issue title insurance coverage on the Homesites; (iii) to enable any institutional or governmental lender, or any purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Homesites. In addition, so long as the Declarant owns more than 25% of the Homesites within the Property, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon the rights of any Owner.

2. By Homeowners' Association. Except as otherwise specifically provided above, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing not less than 75% of the total number of votes in the Association.

3. Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Public Records unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. No amendment may revoke, remove, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.





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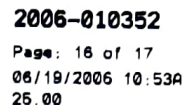
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C. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

D. Compliance. Every Owner and occupant of any Homesite shall comply with this Declaration and the By-Laws of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available in law or in equity, by the Association or by an aggrieved Owner(s).

E. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Homesite shall give the Board of Directors at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Homesite, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. No transfer of title shall operate to extend the time requirements of Paragraph VI-I.

F. Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in this Declaration or the Articles of Incorporation of the Homeowners' Association, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Specific Assessment with respect to the Homesite(s) involved in the action.





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## **EXHIBIT "A"**

**Lots 1 through 20 and Tracts A, B and C of BOULDER  
CREEK AMENDED according to Map No. 770A through  
770E, Official records of Gila County, Arizona.**

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