

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
OF  
WILD HORSE SUBDIVISION**

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This Declaration is made on this 12th day of March, 1996, by Tust No. 306791 of Pioneer Title Agency, Inc. (hereinafter referred to as "Declarant").

WITNESSETH:

1. Declarant is the owner of the following described property:  
  
Lots 1-77 Wild Horse Subdivision.
2. The Wild Horse Subdivision is subject to the provisions of the Master Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements for 3 Canyons Ranch ("3 Canyons CC&R's").

NOW THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions stated below (hereinafter the "Declarant"), all of which are for the purpose of setting forth the general scheme for development of the Property, protecting the value and desirability of the Property, and this Declaration shall run with the land and shall be binding upon all persons having or acquiring any right, title or interest in the Property, or any portions thereof and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
DEFINITIONS**

**Section 1. "Association"** shall mean and refer to Wild Horse Homeowners' Association, it's successors and assigns.

**Section 2. "Common Elements/Common Element Easement"** shall mean all landscaping, drainage improvements, drainage easement or other elements built by the Declarant along private roadways and/or related improvements located on any center island of a private street or improvements located on the easement for entry monuments, entry gate and open space areas relating thereto.

**Section 3. "Declarant"** shall mean Pioneer Title as Trustee of Trust No.306791, or its successor designated in a recorded writing.

**Section 4. "Developer"** shall mean San Pedro Development II, Inc., or any successor designated in writing by Declarant.

**Section 5. "Development Period"** shall terminate upon conveyance of the last Lot from Declarant to an Owner or such earlier date as Declarant shall state by written notice of the Association.

**Section 6. "Lot" and "Unit"** shall be synonymous and shall mean and refer to parcels numbered 1 through 77 shown upon the recorded subdivision Plat.

**Section 7. "Master Association"** shall mean the 3 Canyons Ranch Master Homeowners Association.

**Section 8. "Member"** shall mean and refer to every person or entity who holds membership in the Association.

**Section 9. "Mortgage"** shall mean any mortgage, deed or trust or other security instrument by which a dwelling unit or any part thereof is encumbered and the term "First Mortgagee" means the holder of any Mortgage under which the interest of any Owner of a unit is encumbered and which Mortgage has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments.

**Section 10. "Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to Lots numbered 1-77 including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 11. "Plat"** shall mean the Plat recorded in the office of the Cochise County, Arizona Recorder in Book 13 at Pages 74 – 74D of Maps and Plats.

**Section 13. "Property" or "Properties"** shall mean and refer to that certain real property hereinabove described as:

Lots 1-77 Wild Horse Subdivision.

**Section 14. "Roadways" and "Streets"** shall mean those private street designated as streets of the Property as shown on the Plat and improvement plans associated therewith.

**Section 15. "3 Canyons CC&R's"** shall mean the Master Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements for 3 Canyons Ranch as recorded on October 5<sup>th</sup>, 1995 at Fee #951024838, as may be amended from time to time, in the records of Cochise County, Arizona.

## **ARTICLE II (NAME OF ASSOCIATION)**

**Section 1. Association.** The affairs of the Association shall be conducted by Developer.

**Section 2. Right of Inspection.** A Member or the First Mortgagee of any Lot shall have the right at reasonable times to inspect the books and records of the Association.

**Section 3. Right of Notice.** Each First Mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the performance by the Member/Owner of a unit encumbered by the Mortgage in favor of such Mortgagee of any obligation under this Declaration or under the Articles of Incorporation, Bylaws, Rules and Regulations of the Association which is not cured within sixty (60) days.

**Section 4. Management and Service Contracts.** Any agreement with the Association for professional management of the subdivision, or any other contract providing for services of the Developer shall not exceed three (3) years.

**Section 5. Maintenance by Association.** Except as otherwise stated herein, the Association shall be responsible for maintenance, repair and replacement of private streets, private drainage easements, entry gates and all common elements.

**Section 6. Taxes/Insurance.** The Association shall be responsible for all ad valorem taxes upon Common Elements and for such liability and property damage insurance on Common Elements, as approved by the Board of Directors of the Association.

**Section 7. Liability.** No member of the Board of Directors of the Association, the Architectural Committee, or any other committee of the Association, no officer, and no manager or other employee of the Association shall be personally liable to any Member or Lot Owner or to any other person, or the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, Board of Directors (or any Director), Architectural Committee or other committee (or member thereof), manager, any representative or employee of the Association or any committee, committee member or officer, provided however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith and has engaged in willful or intentional misconduct.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Every Owner of a Lot numbered 1 through 77 shall be a Member of the Association and such Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2.** The Association shall have two (2) classes of voting Membership.

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Member until termination of Class B Membership. Each Class A Member shall be entitled to one (1) vote for each Lot in which he holds the interest required for Membership. When more than one (1) person holds the interest required for Membership, all such persons shall be Members, but the vote for 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. Notwithstanding the above, Class A Members shall be entitled to vote only on the annual budget, until termination of the Development Period, at which time full voting rights shall accrue to all Class A Members.

Class B: The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds a fee interest. The Class B Membership shall cease and be converted to Class A Membership upon the earlier to occur of (a) termination of Development Period, or (b) written notice of termination from Declarant or ten (10) years from the date of recording.

#### **ARTICLE IV PROPERTY RIGHTS**

**Section 1. Private Residential Use.** The Property shall be used solely for single family residential purpose; provided, however, Declarant and Developer shall have the right to erect and maintain such sales and construction models, signs, office areas and related facilities as they deem appropriate for sales on the Property.

**Section 2. Sign Easement.** Any areas on the Property owned by Declarant may be designated by Declarant as a "sign easement" and shall be used for purposes of erecting and maintaining such signs as Declarant shall determine and a valid easement for such purposes is hereby declared to exist for the benefit of Declarant and Developer during the Development Period.

#### **ARTICLE V COVENANT FOR ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligations of Assessments.** The Owner of each Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to perform all obligations of the Association or reasonably related thereto; and improvements and landscaping, if any, on any Common Element or easement Property serving the Association. The Association shall also pay assessments to the Master Association. All such dues, charges and assessments imposed by the Association shall be paid on a periodic basis in regular installments as the Board of Directors shall determine.

**Section 3. Annual Assessment.** All assessments may be from time to time specifically determined and authorized by the Board of Directors. The Association is specifically authorized and encouraged to seek public and private funds to help defray, in whole or in part, the expenses for which assessments would be necessary. To the extent received, such funds shall be used to reduce the assessments otherwise required by the annual budget.

A. Computation of Assessment. Effective January 1, 1997, it shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the Membership, to prepare a budget covering the estimated costs of operating the Association during the coming year and a reserve fund for deferred capital expenditures or deferred maintenance as the Board shall determine. A copy of the budget showing the amount of the assessment to be levied against each class of Lot Owner for the following year shall be delivered to each Owner at the meeting. The budget and any assessments shall become effective unless disapproved at the meeting by a vote of a least a majority of the total Association votes. In the event the Membership disapproves the proposed budget or, if the Board fails for any reason to determine the budget for the succeeding year, then and until such time as the budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year. The annual fee shall not exceed Two Hundred Fifty Dollars (\$250.00) per year until such time as control of the Board is in the Owner's and the Owner's vote to raise the annual fee above this amount.

Notwithstanding anything to the contrary stated herein, the provisions of this Declaration regarding payment of assessments shall not apply to any unoccupied lot owned by the Declarant. As used herein, "unoccupied" shall mean a Lot which is not occupied as a residence. In consideration of the foregoing, the Declarant agrees that if, during its Class B Membership, the total assessments levied are insufficient to meet the operating expenses of the Association, Declarant shall pay the deficiency. After Declarant's Class B Membership ceases, the Declarant shall not be required to pay a deficiency nor shall unoccupied Lots owned by Declarant be subject to an assessment.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment 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, and non-periodic repair or replacement of a capital

improvement, provided that any such assessment shall have the assent of a majority of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized Under Section 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxys entitled to cast sixty percent (60%) of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Except as otherwise stated in this Article, both annual and special assessments must be fixed at a uniform rate for all Lots subject to assessment, and may be collected on a monthly basis or prepaid on a semi-annual basis.

**Section 7. Date of Commencement of Monthly Assessment.** The assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of a Lot.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay any assessment, or foreclose the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of or abandonment of his or her Lot.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. A violation of these restrictive covenants, or any one or more of them, shall not affect the lien of any Mortgage now of record, or which may hereafter be placed of record upon Lots or any part thereof.

## **ARTICLE VI ARCHITECTURAL CONTROL**

**Section 1.** Except for improvements and dwelling units constructed by Declarant or Developer, no dwelling unit, building, wall or other exterior structure or improvement of any kind shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition to or

change or alteration of any improvement be made upon a Lot until the detailed plans and specifications showing nature, kind, shape, style, height, materials, color and location of the same shall have been submitted to and approved in writing by the Architectural Committee (“AC”). The Developer or agent designated by Developer shall act as the initial Architectural Committee. A fee for plan review shall be paid at the time of the submittal of the plans based on fifteen cents (\$.15) per square feet of improved living area. The Architectural Committee may, at its sole discretion, hire the service of experts of its choice. After (i) termination of the development period, and (ii) resignation of Developer as Architectural Committee, the Board of Directors of the Association shall act as the Architectural Committee or may appoint an Architectural Committee composed of three or more representatives. The Architectural Committee shall have the exclusive right, exercisable in its sole discretion, to promulgate written rules, regulations and restrictions (hereinafter the “AC Rules”) concerning any construction, change or alteration to be made on or concerning any improvement and landscaping on lots; to amend such rules, regulations or restrictions so promulgated, or waive any AC Rules provided that in no event shall any waiver be effective unless in writing and signed on behalf of the Architectural Committee by a person duly authorized to sign such waiver and further provided that no such waiver shall be deemed a waiver of the right to enforce these covenants and restrictions or the right to enforce any such rules, regulations or restrictions promulgated by the Architectural Committee as to others.

**Section 2.** Any Owner or potential purchaser of a Lot shall, prior to submitting any plans and specifications to the Architectural Committee for approval, request in writing of the Committee a copy of any current AC Rules, regulations and restrictions promulgated by the Committee. The Owner will also submit complete improvement plans, soils test and pay all fees set out herein. In the event said Board or its designated committee fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to it, it shall be presumed that the Board disapproves said plans and no construction, change or alteration shall be permitted. The plans and specifications to be submitted to the Architectural Committee shall be submitted in duplicate and shall be sealed by a registered architect. The Committee shall retain one (1) copy of said plans and specifications and, upon approval, the other copy shall be returned to the Owner with the signature of the Committee and the date of approval. Application for approval of plans and specifications shall be accompanied by the payment of a fee as designated in the rules promulgated by the Committee. Approval of plans and specifications shall be in the sole discretion of the Architectural Committee.

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**Section 3.** No dwelling unit shall be occupied until Cochise County has issued an occupancy permit and construction has been completed pursuant to plans approved by the Architectural Committee. Each Owner shall have a maximum of twelve (12) months from the date of approval of plans by the Architectural Committee for completion of improvements in accord with those approved plans.

**Section 4.** . All construction shall be completed within eight (8) months from start thereof unless a waiver and extension of time is issued by the Architectural Committee. For the purposes of



this paragraph, “start” shall mean the date of issuance of a building permit for an improvement on the lot.

**Section 5.** Each Lot and dwelling unit to be constructed thereon shall be subject to restrictions as to size, height, location, and placement of structures and fencing as set forth in the 3 Canyons CC&R’s. Without limiting the provisions of the 3 Canyons CC&R’s, the applicable restrictions within this Association, and to be enforced by the AC, which may be more restrictive than the restrictions of the 3 Canyons CC&R’s, are as follows:

- |   |          |
|---|----------|
| a. Maximum building height (from grade)<br>(using Cochise County’s definition of building height) | 22 feet  |
| b. Maximum number of stories  | 1        |
| c. Building setback<br>Front, Side or Rear  | 100 feet |
| d. Fencing and walls setback<br>Front, Side, or Rear  | 100 feet |
| e. Fencing height   | 6 feet   |

Notwithstanding the above minimum setback requirements, the authority to prescribe setback requirements as the Committee shall deem appropriate for a particular Lot and dwelling unit to be constructed thereon, taking into consideration the particular characteristics of the Lot including the configuration thereof. The minimum setback requirements may be modified in order to allow development of a particular Lot. The Committee shall also have the right to approve the building site, orientation and location of the dwelling unit thereon.

**Section 6.** The Architectural Committee shall have the right and privilege to require a fee equal to its actual cost of review and expenses of expert advice in connection with said review of \$.15 per square foot of improved living area, whichever is less.

**Section 7.** The Architectural Committee shall not be liable in damages to anyone or to any owner or owners of land subject to these covenants by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval or failure to approve any such plans. Anyone submitting plans to the Architectural Committee, and any person acquiring ownership in any portion of the Property waives his claim for any such damages.

**Section 8.** The Architectural Committee or its duly appointed agent for such purpose shall have the right to grant variances as to any of the provisions of the AC Rules or to waive any such provisions as it shall, in its sole discretion, determine upon good cause shown. Any such variance or waiver so granted shall be in writing and shall be made prior to the time that the subject matter set forth in the written variance or waiver is acted upon or implemented unless otherwise expressly

stated in such written variance or waiver. Any such variance or waiver so granted as to any particular subject matter shall not constitute a similar or dissimilar variance or waiver as to any other matter affecting the same Lot or any other Lot, it being deemed that any such variance or waiver so granted shall be limited solely to the variance or waiver set forth in writing by the Architectural Committee or its duly appointed agent for said purpose.

## **ARTICLE VII MAINTENANCE**

**Section 1. Landscaping.** The general scheme and type of landscaping shall be the native growth as provided in the AC Rules, including existing grasslands, oaks and mesquite trees. The AC Rules contain a list of approved and prohibited plants. The AC Rules shall be available to all Owners through the Association. No living plants, shrubs or trees shall be placed or maintained upon any unenclosed patio or yard area on the Property or any Lot unless a detailed landscaping plan shall have been first approved by the Architectural Committee as meeting the criteria for permitted and prohibited plants, shrubs and trees as stated in the AC Rules. Lot Owners shall provide and maintain all landscaping on their individual Lots. The Association shall be responsible for maintenance of any landscaping on Common Elements. The native growth of the Property, including grass lands, mesquite and oak trees, shall not be destroyed or removed from any portion of the Property except as provided in Article VIII and as may be necessary for permitted and approved improvements. If any natural growth is removed or destroyed without the approval of the Architectural Committee, or where not necessary for construction of approved improvements, the Architectural Committee may require the replacement of same and the cost shall be added as an additional assessment to be paid by the responsible Owner and said cost shall become due with the next assessment payment or as otherwise determined by the Architectural Committee. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on his Lot (including setback areas and Common Areas) neatly trimmed. All such areas shall be kept free of trash and other unsightly material and shall maintained all paved and concrete areas, including driveways, roadways and parking areas, in good condition and repair. The Association has the right, at any time to enter upon and maintain landscaping and natural growth on any Lot when the Board of Directors of the Association determines that such maintenance is required in order to maintain the Lot in a clean and attractive condition, and the Owner of such Lot has failed to perform the maintenance after written notice and demand from the Association. The cost of such action by the Association may be added to the assessment obligation upon determination by the Board of Directors.

**Section 2. Exterior Maintenance.** All maintenance and repair of dwelling units and other improvements upon any Lot, together with erosion protection originally installed by Developer on any Lot, shall be the responsibility of the Owner of such Lot and shall be performed so as to maintain the improvements on each Lot in a manner which reflects a well maintained quality neighborhood. The Owner of any Lot upon which the Declarant has erected a masonry screen wall shall maintain the wall and any gate on Owner's Property in good

condition. The Owner of any Lot on which Declarant has planted buffer landscaping shall maintain such landscaping in good condition and shall replace dead, dying or diseased plants with like kinds of plants. If any dwelling unit or wall is destroyed or otherwise damaged by any cause, the Owner shall complete rebuilding or repair on or before six (6) months from date of the damage. If any Owner fails to comply with this Section, the Association may, at its option, enter upon the Lot and perform such maintenance as it shall deem appropriate and the actual cost of such performance shall be added to the Owner's current assessment.

**Section 3. Private Road and Private Drainage Maintenance.** All maintenance and repair of private roads and private drainage facilities as originally installed by the Developer shall be the responsibility of the Association.

## **ARTICLE VIII USE RESTRICTIONS**

**Section 1.** All Lots are hereby restricted to residential dwellings of not less than 2000 square feet single family residential use and customary accessory improvements, including patio walls, swimming pool, recreation court, guest house no greater than 1,200 square feet of heated and cooled living space which must be located within 50 feet of the main residence, one storage shed not to exceed 600 square feet in size and 10 feet in height which must be located within 50 feet of the main residence and no such other related improvements shall be allowed without the specific consent of the Architectural Committee. All garages must be built of the same material as the residence and attached, as a part thereof. All buildings or structures erected upon said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises, and no subsequent buildings or structures other than single family residential units shall be built on any Lot where the Declarant therefore programmed for or constructed a dwelling unit. No structures of temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding or storage shed shall be placed on any portion of the premises at any time as a residence or for any other purpose either temporarily or permanently, except upon prior written consent of the Architectural Committee. No structure of a temporary nature shall be used for living purposes during construction before it is completed. No prefabricated residences or mobile homes shall be placed on the Property.

**Section 2.** Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, Developer or any builder designated by Declarant and taking title of a Lot for the purpose of resale, to maintain such signs, construction equipment and sales facilities on the Property, in the sole opinion of Declarant, as may be reasonably required, convenient or incidental to the sale of Lots or homes, including without limitation, a business office, storage area, construction yard, signs, model units and sales offices. Developer shall have the right to assign these rights to any successor or assign.

**Section 3.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, provided however, that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes and provided they are not, based on number or noise created, in the opinion of the Board of Directors, a nuisance.

**Section 4.** No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on a Lot (except as stated above in Section 2), nor shall the Property be used in any way or for any purpose which may endanger the health or safety or unreasonably disturb the Owner of any unit or any resident thereof. However, the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, of the Developer, its agents and assigns, during the construction and sale period and signs required by legal proceeding under state law. It is herein expressly permitted for purposes of resale one sign as approved by the Architectural Committee. No other sign of any kind or design shall be allowed.

**Section 5.** All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring units and streets. All rubbish, trash or garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. No rubbish, trash, garbage or landscape trimmings shall be deposited outside the perimeter wall of any Lot. All clotheslines shall be confined to patio areas. The Board of Directors of the Association may require all Owners to subscribe to a trash pick up service if public trash pick up service is not available. Each Owner shall be solely responsible for the fees in connection with the service to each such Owner's Lot. In no event shall trash or trash containers be maintained so as to be visible from the street or from any other Lot, except to make such available for trash pick up, and then only for the shortest reasonable time necessary to accomplish collection. No incinerators shall be kept or maintained in any Lot or parcel.

**Section 6.** No apparatus, including without limitation, evaporative coolers, heating and cooling units (except for customary vents and chimneys), shall be placed on a Lot or on the roof of any unit, unless approved by the Architectural Committee in its sole discretion and screened from view by a parapet wall or other screen which screen shall not exceed 4 feet in height and as the Architectural Committee shall require.

**Section 7.** No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave, television or other similar signals, shall be placed or maintained upon any Lot except as may be permitted by the Architectural Committee. In no event shall free-standing antennas be allowed except for satellite television dishes which are fully screened so as not to be visible from neighboring Lots, Common Areas and roadways. Regardless of the above the Architectural Committee shall approve the placement of an 18 inch or less satellite dish on a roof provided that it is screened by a parapet or other screen as is acceptable to the Architectural Committee.

**Section 8.** Except as otherwise specifically allowed in writing by the Architectural Committee (a) no boats, travel trailers, buses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except (i) within an enclosed garage as permitted by Architectural Committee, (ii) an area not visible from the Lots or properly screened in a manner approved by the Architectural Committee, or (iii) as permitted under (c) below; (b) no vehicle shall be repaired, serviced or rebuilt in and Lot or upon the

Common Areas; and (c) nothing shall be parked on the private streets, except in such parking areas as may be designated by the Association. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

**Section 9.** Unless otherwise waived in writing by the Architectural Committee, each dwelling unit and other improvements shall be built and maintained as follows:

- (A) All exterior lights must be located and maintained in a manner which, in the opinion of the Architectural Committee, prevents glare and unreasonable interference with surrounding dwelling units. All lights must be attached to the residence or other permitted structures. No free standing lighting is allowed except for low voltage lighting in the driveway area.
- (B) Roof materials on dwelling units and any solar devices to be placed upon a roof must be approved by the Architectural Committee. Solar devices shall be integrated into roof design or concealed by parapet walls from view of other Lots and from the street. A flat roof on any dwelling unit shall be designed so that a continuous parapet wall surrounds the roof and conceals the roof from view of other Lots and from the street. Any roof, other than a flat roof must be covered with mission tile, copper roofing (no shine) or the equivalent acceptable to the Architectural Committee. Asphalt tile roofs are not permitted.
- (C) Garage doors shall be located away from adjacent streets or as approved by the Architectural Committee.
- (D) Mailboxes must be uniform, in a style and size selected by the AC.

**Section 10.** No improvement or structure whatsoever, other than improvements constructed by Declarant, Declarant's designated builder or Developer, may be erected, placed or maintained on any Lot in said Property without the prior approval of the Architectural Committee.

**Section 11.** No single family dwelling placed on or erected on a Lot shall be occupied in any manner while in the course of construction nor at any time prior to its being fully completed and issued an occupancy permit. Nor shall any residence when completed be in any manner occupied until made to comply with the approved plans, the requirements herein and all other conditions and restrictions hereinafter set forth.

**Section 12.** No owner shall permit or suffer anything to be done or kept about or within his Lot which will obstruct or interfere with the rights of other Owners, Occupants or Persons authorized to the use and enjoyment of their respective Lot or Common Areas, or annoy them by unreasonable noises, odors, activities or otherwise, nor shall an Owner commit or permit any nuisance or commit or suffer any illegal act to be committed therein or thereabout.

**Section 13.** No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause or may cause, in the opinion of the Architectural Committee, such Lot to appear in any unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

**Section 15.** No portion of a Lot shall be used in any manner to explore for or remove any oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

**Section 16.** Without limiting any other provision of this Section, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and shall correct and repair any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Areas.

**Section 17.** Other than barbecues, and property constructed barbecue pits or grills or fire pits constructed upon approval of the Architectural Committee, no open fires shall be permitted on the Lots nor shall any similar activity or condition be permitted.

**Section 18.** Drainage ways shall conform to the requirements of all lawful public authorities including the Cochise County engineer to the full extent of the authority given such agency by law. No established drainage on a Lot shall be altered in any way except upon the approval of Cochise County and the Architectural Committee. No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the line or within any area designated by recorded plat or otherwise as a "drainage easement". Landscaping shall be of passive nature to retain any water runoff from improved areas within a Lot. No additional runoffs into any drainage area or other Lots shall be permitted.

**Section 19.** No Lot subject to this Declaration shall be resubdivided, except as approved by the Architectural Committee.

**Section 20.** Grading of Lots be approved by the Architectural Committee in review of the proposed plans shall be kept to a minimum to preserve natural vegetation. The grading of all Lots shall be limited to roads, driveways and building envelopes. Building envelopes shall contain buildings, pools and perimeter enclosures.

**Section 21.** No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all time be kept in good condition and repair and adequately painted or otherwise finished. The Association has the right, at any time to enter upon and maintain buildings and structures on any Lot when the Board of Directors of the Association determines that such maintenance is required and the Owner of such lot has failed to perform the maintenance after written notice and demand from the Association. The cost of such action by the Association may be added to the assessment obligation of that Owner upon determination by the Board of Directors.

**Section 22.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structure, or other improvements; (b) that which Declarant or the Association may require for the operation and maintenance of the Subdivision.

**Section 23.** A Lot may not be further subdivided or separated into smaller lots or parcels by any Owner, and a portion of any Lot may not be conveyed or transferred by any Owner.

**Section 24.** Except as may be provided by the Declarant or Association, all wires, lines, etc. shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved by the Architectural Committee.

**Section 25.** During reasonable hours and upon actual receipt of at least 72 hours advance notice to the Owner or occupant of a Lot, a member of the Board or an Architectural Committee, or an authorized representative of either shall have the right to enter upon and inspect any Lot and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry. Owner, occupant or their representative must be present.

**Section 26.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development and sale or leasing of Lots.

**Section 27.** It is intended that the Lots shall be used solely for residential use. There shall be no commercial or similar establishments including without limitation retail, industrial or office uses and there shall be no churches or schools located on any of the Lots. Notwithstanding the foregoing, home office use shall be allowed provided no retail or manufacturing use is involved and providing that there is not excessive traffic caused thereby.

**Section 28.** The only perimeter fencing allowed within any Lot shall be a wood fence or masonry wall unless specific written permission is obtained from the Architectural Committee.

**Section 29.** No windmills may be erected on any Lot.

**Section 30.** All residences and other structures shall be constructed to minimally comply with the requirements of the State of Arizona building codes, and if not in existence, with Pima County building codes.

## **ARTICLE IX EASEMENTS**

**Section 1. Blanket Easement.** There is hereby created a blanket easement upon, across, over and under the Property for installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone and electricity, and a master television antenna system. By virtue of the easement, it shall be expressly permissible for each individual Owner or public service utility company or municipality to erect and maintain the necessary facilities and other necessary equipment or lines in said Property and to affix and maintain electrical and/or telephone wires, circuits and conduits above, across and under the Units, including the roof and exterior walls of each Unit. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Developer (during the Development Period) and (after the Development Period) approved by the Architectural Committee. No walls may be constructed on or within any easements for utilities. The blanket easement shall in no way affect any other recorded easements on said premises.

**Section 2. Encroachment Easement.** All Lots shall be and are hereby declared to be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by Declarant and Developer, and also by and other original builder which has caused the construction in accord with plans approved by the Architectural Committee, and such action, in the sole opinion of Declarant, was not willful and is diminimus in nature. A valid easement for said encroachments and for the maintenance of the same, so long as they stand, shall and does exist. Declarant shall have the right to record any notice of such easement as Declarant shall determine.

## **ARTICLE X GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding the above, if there is a dispute as to enforcement of or interpretation of any portion of this document during the Development Period, the Declarant or its designated agent, shall have sole authority to issue a decision as to the dispute or interpretation. Any such decision shall be final and binding on all Owners of the Property.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.



**Section 3. Revocation and Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

This Declaration shall not be revoked unless the Owners of eighty percent (80%) of all Lots and first mortgagees consent and agree to such revocation by written instruments duly recorded. This Declaration shall be amended, except as otherwise herein provided, unless the Owners of eighty percent (80%) of the Lots and all first mortgagees consent and agree to such amendment by written instrument duly recorded. Any amendment to this Declaration may also be evidenced by a recorded certificate of the secretary of the Association certifying that, at a meeting of the owners duly called, the owners of fifty-one percent (51%) of the lots consented to such amendment, and that all first mortgagees have given written consent to such amendment, and that copies of such written consents are in the corporate records of the Association.

Notwithstanding the foregoing amendment procedure, (a) the Declarant expressly reserves the right to amend this Declaration at any time prior to the termination of the Development Period and any such amendment shall be effective whether it applies uniformly or non-uniformly to the Property or any Lot; (b) no amendment shall be effective during the Development Period unless signed by Declarant; and (c) any such amendment signed by Declarant shall be effective whether or to such amendment shall impact any prior vested right of interest whether resulting from ownership or any portion of the Property or otherwise.

Notwithstanding any of the foregoing provisions of this Declaration pertaining to site planning, zoning and buffering of adjoining residential subdivisions, including building height restrictions, it shall not be amended without written permission of the Cochise County Board of Supervisors.

**Section 4. Interpretation.** If there is any conflict among or between this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association or the Rules and Regulations of the Association, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to such Articles of Incorporation, then to such Bylaws and then such Rules and Regulations.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 13 day of March, 1996.

Pioneer Title Agency, Inc. An Arizona Corporation, as Trustee under Trust No. 306791.

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

STATE OF ARIZONA        )  
                                      )ss.  
County of Cochise        )

The foregoing instrument was acknowledged before me this 13 day of March, 1996, by R. Keith Newlon, as Trust Officer for Pioneer Title Agency, Inc., an Arizona Corporation, under Trust No. 306791.

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