

When recorded, return to:

Lake Patagonia Ranch Property
Owners Association A
HC 2 Box 314
Nogales, Arizona 85621
Attention: Secretary



2009-06038
Page 1 of 17
Requested By: PATRICIA M. RITTER
SUZANNE BAINZ, RECORDER
SANTA CRUZ COUNTY, ARIZONA
07-01-2009 01:16 PM Recording Fee \$26.00

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LAKE PATAGONIA RANCH PROPERTY OWNERS ASSOCIATION A**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Lake Patagonia Ranch Property Owners Association A (hereinafter termed this "Declaration") is made as of the 18 day of April, 2009.

Whereas, Declarations of Covenants, Conditions and Restrictions for Lake Patagonia Ranch Property Owners Association A were recorded in the Office of the Santa Cruz Recorder on September 7, 1988 in **Docket 480 at page 931** et. seq.; and April 3, 1990 in **Docket 524 at page 558** et. seq.; and July 24, 1991 in **Docket 561 at page 774** et. seq.; and August 21, 1992 in **Docket 591 at page 886** et. seq.; and April 26, 1993 in **Docket 610 at page 94** et. seq. The Plat is recorded in the Survey Map of Record in the Office of the Santa Cruz Recorder, Book 4 of Maps, Pages 29, 36 and 42.

Whereas, Article XII of such Declaration provides that it may be amended with the approval of two-thirds (2/3) of the total votes cast by the Membership, provided that the amendment is signed by the President and Secretary of Lake Patagonia Ranch Property Owners Association A, certifying that such amendment was approved by the requisite percentage of Owners; and

Whereas, not less than two-thirds (2/3) of the Membership cast votes to amend and restate the Declaration of Covenants, Conditions and Restrictions for Lake Patagonia Ranch Property Owners Association A,

NOW THEREFORE, all of the property described as Lake Patagonia Ranch Units 2, 4 and 6, a subdivision of Santa Cruz County, Arizona, and more specifically described in Exhibit A, shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. These easements, covenants, restrictions, and conditions shall run with title to any

Parcel within the Property, shall bind all parties having or acquiring any right, title, or interest in the Property and shall inure to the benefit of each such Owner.

The Declaration of Covenants, Conditions and Restrictions for Lake Patagonia Ranch Property Owners Association A, which was recorded in the office of the Santa Cruz County Recorder on September 7, 1988 in Docket 480 at page 931 et seq. and all the Declarations referenced above are superseded in their entirety by this Amended and Restated Declaration and such previously recorded Declarations will no longer be in effect as of the date of recording of this Amended and Restated Declaration. All other Declarations for Lake Patagonia Ranch Property Owners Association A are also superseded in their entirety by this Amended and Restated Declaration of Covenants, Conditions and Restrictions.

ARTICLE 1 **DEFINITIONS**

The following words, phrases or terms used in this Declaration shall have the following meanings:

"Annual Assessment" shall mean the Assessments imposed for annual expenses pursuant to **Article 7** of the Declaration below.

"Architectural Committee" shall mean the committee to be created pursuant to **Article 4** of this Declaration.

"Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

"Assessable Property" shall mean any Parcels within the Property. Any portion of a Lot or Tract which has been issued an individual Santa Cruz County Assessor parcel number constitutes a separate Parcel subject to assessment and entitling the Owner thereof to one vote.

Lot splits shall occur when any Lot or Tract is split into two or more new Parcels with individual Santa Cruz County Assessor parcel numbers. Owners of each of the new Parcels become entitled to one vote per new Parcel owned. Each new Parcel shall be subject to assessment by the Association, regardless whether a new Parcel is sold.

Lot combinations shall occur when two or more Lots or portions of a Lot are assembled into one Parcel with a single Santa Cruz County Assessor parcel number. The voting rights and assessment liabilities of the former Lots or portions of Lots will be eliminated. The new Parcel assigned a single Santa Cruz Assessor parcel number shall entitle the Owner to a single vote and be subject to assessment as a single Parcel by the Association.

Parcels 1 through 14, 16, 17, 38 through 44, Lake Patagonia Ranch Unit 6, according to the Survey Map of Record in the Office of the Santa Cruz County Recorder, Book 4 of Maps, Page 42

Parcels 15, 18 through 37, 45 through 58, Lake Patagonia Ranch Unit 6, according to the Survey Map of Record in the Office of the Santa Cruz Recorder, Book 4 of Maps, Page 42

By Robert Russell
President

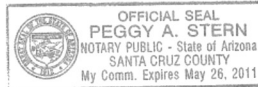
STATE OF ARIZONA)
COUNTY OF SANTA CRUZ) ss.

The foregoing instrument was acknowledged before me this 2 day of JUNE 2009, by the President of Lake Patagonia Ranch Property Owners Association A, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Peggy A Stern
Notary Public

NOTARY SEAL:



My Commission Expires: 5-26-2011

By Patricia Beth
Secretary

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss.

The foregoing instrument was acknowledged before me this 5th day of JUNE 2009, by the Secretary of Lake Patagonia Ranch Property Owners Association A, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Marsha K. Griep
Notary Public

NOTARY SEAL:



My Commission Expires: 10-31-2009

Exhibit "A"
Legal description of the Property
Lake Patagonia Ranch Property Owners Association A

Parcels 3 through 70, Lake Patagonia Ranch Unit 2, according to the Survey Map of Record in the Office of the Santa Cruz County Recorder, Book 4 of Maps, Page 29

Parcels 1 through 43, Lake Patagonia Ranch Unit 4, according to the Survey Map of Record in the Office of the Santa Cruz County Recorder, Book 4 of Maps, Page 36

"**Assessment**" shall mean the charges levied and assessed each year against each Membership pursuant to **Article 7** hereof.

"**Assessment Lien**" shall mean the lien created and imposed by **Article 7**.

"**Association**" means Lake Patagonia Ranch Property Owners Association A, an Arizona nonprofit corporation, its successors and assigns.

"**Board**" shall mean the Board of Directors of the Association.

"**Bylaws**" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

"**Common Expenses**" shall mean the expenses of operating the Association.

"**Community Documents**" shall mean the Declaration, Bylaws, Articles of Incorporation, Guidelines and any rules and regulations adopted by the Association.

"**Covenants**" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

"**Declaration**" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as amended or supplemented from time to time.

"**Deed**" shall mean a Deed or other instrument conveying the fee simple title in any portion of the Property from one Owner to another Owner.

"**Guidelines**" or "**Design Guidelines**" shall mean those architectural or design guidelines established by the Architectural Committee pursuant to the provisions of **Article 4** below.

"**First Mortgage**" shall mean a deed of trust or mortgage Recorded against a Parcel which has priority over all other deeds of trust or mortgages recorded against the same Parcel.

"**Improvements**" shall mean all infrastructure improvements, streets, walls, landscaping, buildings, including Residences and other structures constructed by any Builder or their respective contractors and subcontractors on the Property subject to this Declaration.

"**Lot**" shall mean any part of the Property designated as a residential Lot on a Plat, where the context indicates or requires any Improvements constructed from time to time thereon.

"Maintenance Charges" shall mean any and all costs assessed pursuant to **Article 10** hereof.

"Member" shall mean any Person holding a Membership in the Association pursuant to this Declaration.

"Membership" shall mean a Membership in the Association and the rights granted to the Owners pursuant to **Article 6** hereof to participate in the Association.

"Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any portion of the Property, but excluding those who hold such title merely as security for the performance of an obligation. In the case of any portion of the Property the fee simple title to which is vested of Record in a seller under a valid and outstanding Agreement or Contract of Sale, as defined in the applicable Arizona statutes, legal title shall be deemed to be in the purchaser under such Agreement or Contract of Sale. In the case of any portion of the Property the fee simple title to which is vested of Record in a trustee pursuant to the applicable Arizona statutes, legal title shall be deemed to be in the Trustor. An Owner shall include any Person who holds record title to any portion of the Property in joint ownership with any other Person or who holds an undivided fee interest in such Parcel.

"Parcel" shall mean any portion of a Lot or Tract which has been issued an individual Santa Cruz County Assessor parcel number which shall constitute a separate Parcel subject to assessment and entitling the Owner thereof to one vote.

"Person" shall mean a natural person, corporation, partnership, limited liability company, trustee or any other legal entity.

"Plat" shall mean that Final Plat of Lake Patagonia Ranch Property Owners Association A recorded in Book 4 of Maps, Pages 29, 36 and 42, Official Records of Santa Cruz County, Arizona, and any other subdivision plat Recorded with respect to any portion of the Property and with respect to any portion of the Annexable Property which is annexed to the Property.

"Property" shall mean the real property legally described in **Exhibit "A"** attached hereto and incorporated herein by this reference, together with all Improvements constructed thereon from time to time.

"Residence" shall mean any building or portion of a building situated upon a Parcel designed and intended for use and occupancy as a residence by a single family.

"Recording" or **"Recordation"** shall mean placing an instrument of public record in the office of the County Recorder of Santa Cruz County, Arizona, and **"Recorded"** shall mean having been so placed of public record.

14.7 Waiver. The waiver of or failure to enforce any breach or violation of this Declaration will not be deemed a waiver or abandonment of any provision of the Declaration or a waiver of the right to enforce any subsequent breach or violation of the Declaration. The foregoing shall apply regardless of whether any Person affected by the Declaration (or having the right to enforce the Declaration) has or had knowledge of the breach or violation.

IN WITNESS WHEREOF, the undersigned certifies that this Amended and Restated Declaration was approved by the requisite number of votes of the Members.

CERTIFICATION

At a duly noticed vote by mail with the polls closing on April 18, 2009, the undersigned President and Secretary of the Lake Patagonia Ranch Property Owners Association A hereby certify that this Amended and Restated Declaration was approved by votes cast by not less than two-thirds (2/3) of the Membership.

ARTICLE 14
MISCELLANEOUS

14.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

14.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

14.3 References to the Covenants in Deeds. Deeds to, and instruments affecting, any Tract, Parcel or any part of the Property may contain the Covenants herein set forth by reference to this Declaration; but regardless whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee/Owner or other Person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

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

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

14.6 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Santa Cruz County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner. Notice may also be given by posting on the Association's website or near the mailboxes. Notwithstanding any provision in the Community Documents to the contrary, any notification or vote required to be given or mailed may be transmitted electronically with the written consent of the Owner.

"Resident" shall mean each natural person legally occupying or residing in a Residence.

"Special Assessment" shall mean any Assessment levied and assessed pursuant to **Article 7** hereof.

"Tract" shall mean any portion of the Property which is subdivided as a separately divisible parcel of real property pursuant to a Plat, whether or not designated on the Plat as a "Tract," "Parcel" or other designation, but is not a Lot.

"Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a Person six feet (6') tall, standing on the same plane as the object being viewed at a distance of one hundred feet (100') or less from the nearest boundary of the property being viewed.

ARTICLE 2
PLAN OF DEVELOPMENT

2.1 General Declaration Creating the Property. All Lots, Tracts and Parcels within the Property shall be held, conveyed, hypothecated, encumbered, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that any portions of the Property which are dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration or the Covenants herein contained while owned by the public or the governmental entity, although any restrictions imposed in this Declaration upon the Owners or the Residents concerning the use and maintenance of such portion or portions of the Property shall at all times apply to the Owners and the Residents. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property, and is established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of the Association, all Owners and Residents and their successors in interest. By acceptance of a Deed or by acquiring any interest in any portion of the Property, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the Covenants now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development, sale, and use of the Property and hereby evidences his interest that all Covenants contained in this Declaration shall run with the land and be binding upon all subsequent and future owners, grantees, purchasers, assignees, tenants and transferees thereof. Each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. All Owners

and their successors, assigns and grantees, covenant and agree that the Lots, Tracts, Parcels Memberships in the Association and the other rights appurtenant to such Lots, Tracts and Parcels shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot, Tract or Parcel even though the description in the instrument of conveyance or encumbrance may refer only to the Lot, Tract or Parcel.

2.2 Association Bound. Upon recordation with the Santa Cruz County Recorder's Office, the Covenants shall be binding upon and shall benefit the Association.

ARTICLE 3 PERMITTED USES AND RESTRICTIONS

3.1 Residential Use. All Parcels shall be used as single family residential use.

3.2 Utilities Required. All Residences shall include water flush toilets. All bathrooms, toilets or other sanitary conveniences shall be located within the Residence and all waste water shall be discharged into county approved septic sewage disposal systems to be installed by the Parcel Owner. Grey water recycling and irrigation is permitted so long as it is conducted in accordance with the Santa Cruz County building code.

3.3 Setbacks. All structures (other than allowed fences) shall be located on the building site in conformance with Santa Cruz County setback requirements.

3.4 Vehicle Repair. No motor vehicle (including boats, snowmobiles and motorcycles), which is under repair or is otherwise inoperable, shall be placed or permitted to remain on any road or on any Parcel, unless, if located on a Parcel within the confines of an enclosed garage or other enclosed structure.

3.5 Animals. No swine of any kind shall be raised, bred or kept on any Parcel. While the use of the Parcel for limited ranching purposes is allowed, no stockyards, or dairy cows, horseback riding stables or any other activity which would create excessive dust, noise or obnoxious odors as determined by Santa Cruz County or the Board shall be permitted.

3.6 Burning. All fireplace chimneys and outlets from stoves, heating appliances and outside fire boxes must be protected from sparks by capping or screening. No campfires are allowed. No outdoor incinerators shall be kept or maintained within the Property.

3.7 Nuisance. No noxious or offensive activities shall be carried on upon any Parcel nor shall anything be done thereon which may be or may become an

11.2 Rights of Enforcement of Provisions of This and Other Instruments.

The Association, as the agent and representative of the Members, shall have the right to enforce the provisions of this Declaration. Any Member may enforce the provisions of this Declaration at any time by any appropriate action and whether or not the Association takes any action to enforce the provisions of this Declaration.

11.3 Contracts with Others for Performance of Association's Duties.

Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one (1) or more directors or officers of the Association, or members of any committee, is employed by, or otherwise connected with the contracting party or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may neither deliberate not vote on the matter, and must leave the room during the deliberations and vote.

ARTICLE 12 AMENDMENTS

12.1 Amendments. This Declaration may be amended by Recording with the County Recorder of Santa Cruz County, Arizona, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted and shall certify that, at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws, the adoption of the Amendment was approved by Owners casting at least two-thirds (2/3) of the votes then entitled to be cast (and not two-thirds (2/3) of a quorum).

ARTICLE 13 BOARD OF DIRECTORS POWER TO ENFORCE

13.1 Board of Directors Power to Enforce. The Board of Directors shall have the authority to enforce all uses and restrictions contained in this Declaration and all decisions of the Architectural Committee. The Board shall act as the final arbiter of any dispute related to the uses and restrictions contained in **Article 3** and all Design Guidelines contained in or enacted under **Article 4**. The Board shall act as the final interpreter of any of the provisions in this Declaration and all rules or decisions of the Architectural Committee under **Article 4**. Nothing contained in this Article 13 shall limit the Association's right to file legal actions for the collection of assessments, or to enjoin violations. The Board of Directors, in its sole discretion, may grant variances or otherwise elect not to proceed with enforcement action of any provisions contained in **Article 3** and **Article 4** of this Declaration.

venue of the American Arbitration Association. The arbitrator's award shall be final and binding. If either party shall refuse to participate in good faith under the provisions of this **Article 9**, the other may file a petition in the Santa Cruz County Superior Court to compel compliance.

ARTICLE 10 MAINTENANCE

10.1 Improper Maintenance and Use of Parcels and Tracts. In the event any portion of any Tract or Parcel is so maintained as to present a public or private nuisance, or as to detract from the appearance or quality of the surrounding Tracts, Parcels or other areas of the Property which are affected thereby or related thereto, or in the event any portion of a Tract or Parcel is being used in a manner which violates this Declaration, or in the event the Owner of any Tract or Parcel is failing to perform any of its obligations under this Declaration or the Design Guidelines, the Board 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 that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken (either by undertaking such corrective actions or bringing suit to compel the offending Owner to undertake such corrective action) and the cost thereof, together with any attorney's fees, including any attorney's fees and cost awarded by an Administrative Law Judge pursuant to §41-2198 et. al., expended by the Association in connection therewith, shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Tract or Parcel is subject, if any, and shall be secured by the Assessment Lien.

ARTICLE 11 RIGHTS AND POWERS OF ASSOCIATION

11.1 Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers may encompass any and all things which a Person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effecting the purposes set forth in this Declaration. A copy of the Community Documents of the Association shall be available for inspection within a reasonable time period upon the receipt of a written request presented to the Board.

annoyance or a nuisance. Hunting, discharging of firearms and indiscriminate use of vehicles creating dust or excessive noise shall be considered a nuisance and are hereby prohibited.

3.8 Trash and Unsightly Conditions. All Parcels shall be kept free of debris and trash so as not to cause an unsightly or dangerous condition. The Association, upon ten (10) days written notice to the Parcel Owner, shall have the right to remove any debris or trash from the Parcel. The Parcel Owner agrees to pay to the Association, upon demand, all costs incurred in the removal of such debris including, but not limited to reasonable attorney fees and costs expended to recover the Association's incurred costs.

3.9 Walls and Fences. Solid walls or fences of any type that exceed six (6) feet in height are discouraged. No such wall or fence shall be erected without the prior written approval of the Board and Santa Cruz County.

3.10 Signs. No signs, other than one normal "For Sale" or "For Rent" sign, not to exceed eighteen inches by twenty-four inches (18" X 24") and one sign rider not to exceed six inches by twenty-four inches (6" X 24"), shall be allowed on any Parcel. Political signs shall be allowed to the minimum requirements of Arizona law.

3.11 Environmental Protections. No portion of the Property shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this Section, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; the Arizona Environmental Quality Act, Laws 1986, Chap. 368; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

3.12 Property Restrictions. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Resident or other Person against any Parcel or any part of the Property without the provisions thereof having been first approved in writing by the Board, and any such instrument which is Recorded without such approval being evidenced thereon shall be null and void. Notwithstanding the foregoing or anything else in this Declaration to the contrary, no such instrument Recorded by an Owner shall operate to modify or amend this Declaration but, in the event that such covenants, conditions and restrictions impose restrictions on the use or occupancy of the real property subject to such instrument which are more restrictive than the restrictions set forth in this Declaration, the more restrictive

provisions shall prevail. No application for rezoning, variances or use permits pertaining to any portion of the Property shall be filed with any governmental authority by any Person unless the application has first been approved by the Board, and the proposed use otherwise complies with this Declaration.

3.13 Right of Entry. During reasonable hours and upon reasonable prior notice to the Owner or other Resident of a Lot, Tract or Parcel, any member of the Architectural Committee or the Board, or any authorized representative thereof, shall have the right to enter upon and inspect any Lot, Tract or Parcel, and the Improvements thereon and the garages, except for the interior portions of any completed Residences that are not garages, 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.

3.14 Perimeter and Party Walls. The perimeter fence as shown on the map of the Property which adjoins the rear property line of Unit 6 parcels 45, 48, 49, 52, 53, 54, 55, 56, 57 and 58 is the responsibility of each Parcel owner to properly maintain, repair and replace the fence where the fence adjoins each Parcel. In the event of a failure to do so by the adjacent Owner, the Association shall have the right to do so at the expense of the Owner and shall have the right, through its officers and agents, to enter upon the Owner's Parcel for the purpose of performing the maintenance. Failure of the Owner to reimburse the Association for its costs so incurred, within ten (10) days of notice thereof by the Association, shall entitle the Association to a lien for all costs incurred and to pursue all available assessment enforcement remedies as provided for under the Declaration.

ARTICLE 4 ARCHITECTURAL CONTROL

4.1 Architectural Guidelines.

- (a) Not more than one single family detached Residence, with normal and customary outbuildings, such as a garage, a guesthouse, a barn, a tackroom, and an equipment room shall be allowed for each 180,000 square feet of Parcel area. No mobile homes or trailers are allowed.
- (b) The minimum size of the interior floor space of Residences, exclusive of carports, garages, breezeways, patios, terraces, and porches, shall be 1500 square feet.
- (c) The maximum height of any building shall not exceed 25 feet above the adjacent average finish grade to the highest roof ridge, peak, or parapet. Chimneys and other similar architectural features are excluded.

and property, among other things, services, projects, programs, studies and systems, within or without the Property, which may be necessary, desirable or beneficial to the general common interests of the Property, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: public right-of-way and drainage areas within or serving the Property, obtaining of liability insurance, supplying of other public services, providing for communication and transportation within and dissemination of information concerning the Property, obtaining legal and accounting services for the Association, indemnification of officers and directors of the Association, purchasing insurance and generally for the benefit of the Members and the Residents. The Association may also expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

8.2 Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Assessments, Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

8.3 Insurance. The Association may maintain insurance against liability, including directors and officer's liability insurance, and/or such other insurance as the Board determines appropriate with the amount and type of coverage to be determined by the Board.

ARTICLE 9 CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

9.1 Exclusions. The provisions in this *Article 9* shall not apply to actions by the Association to recover delinquent assessments, and to actions by the Association to enforce the Community Documents. This Article shall apply to all other disputes related to the Community Documents whether between Owners, or between Owner(s) and the Association.

9.2 Negotiation. In any dispute not excluded above, the parties shall meet in person and attempt to discuss a resolution.

9.3 Arbitration. If the parties are not able to resolve the matter through negotiation, each shall choose an arbitrator. Those two (2) arbitrators shall choose a third. The first two (2) arbitrators shall have no further involvement in the matter. The matter shall be heard by the third arbitrator. The arbitration shall be conducted according to the rules of the American Arbitration Association, but not under the

7.3.4 The Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments without a foreclosure of the lien for such Assessments, and the same shall not constitute a waiver of the lien for such Assessments.

7.4 Computation of Annual Assessments; Annual Budget. The Board shall adopt a budget for each fiscal year of the Association, which budget shall serve as the basis for determining the Annual Assessments for the applicable fiscal year (subject to the limitations below). Within a reasonable period following the meeting of the Board at which it adopts the budget for the year in question, the Board shall deliver or mail to each Owner a copy of the budget and a statement of the amount of Annual Assessments to be levied against such Owner's Parcel(s) for that year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the assessments provided for therein) for the year immediately preceding shall remain in effect. Except as provided below, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners.

7.5 Due Dates. Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent. There shall be a late fee on each assessment or installment payment thereof not paid within sixty (60) days of its due date.

7.6 Special Assessments. The Association may set a special assessment in addition to the regular assessment, if the Board determines that such is necessary to meet the primary purposes of the Association. Special Assessments shall be assessed uniformly among the Owners.

7.7 Transfer Fee. The Board, in its sole discretion, may impose reasonable transfer and disclosure fees. The Board may suspend or reinstate the transfer and disclosure fee by resolution approved by a majority of the Board and recorded in the minutes of the Association. Each Person who purchases a Parcel while a transfer and disclosure fee is in effect shall pay such fee to the Association immediately upon becoming the Owner of the Parcel.

ARTICLE 8 USE OF FUNDS

8.1 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual Assessments, Special Assessments and fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Members and Residents by devoting said funds

(d) The exterior wall and roof materials, flashing, gutters, vents, metal chimneys, etc. shall be finished or coated so as to minimize reflections on adjacent or neighboring properties. Earth tones of indigenous hues will be encouraged.

(e) Architectural styles deemed by the Architectural Committee as incompatible or inappropriate to the area shall not be approved.

(f) All structures shall be constructed in compliance with the latest adopted edition of the Santa Cruz County Building Code and Regulations.

4.2 Architectural Approval Required. No Improvement which would be Visible From Neighboring Property, or which would cause any Person or thing to be visible from Neighboring Property, shall be constructed or installed on any Lot, Tract or Parcel without the prior written approval of the Architectural Committee which shall have the authority to regulate the external design and appearance of the Lots, Tracts and Parcels and all Improvements constructed thereon. No addition, alteration, repair, change or other work which in any way alters the exterior appearance of any part of a Lot, Tract or Parcel, or any Improvements located thereon, which are or would be Visible From Neighboring Property shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee their written request for approval specifying in detail the nature, kind, shape, height, color, materials, floor plans, and location of the addition, alteration, repair, change or other work which the Owner desires to perform.

Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may reasonably request. The Architectural Committee shall have the specific authority to establish a fee to be paid for the review process, which fee may include charges for an architect or engineer. The Architectural Committee may decline to process a request if the fee is not paid. If the Architectural Committee fails to approve or disapprove an application submitted for approval within sixty (60) days after an application has been submitted to the Architectural Committee, then the submittal shall be deemed approved if in compliance with the Restrictions set forth herein.

The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval. The Architectural Committee shall have absolute discretion in rejecting any proposed improvement for any reason, including, but not limited to, aesthetics. The Architectural Committee shall have the right to waive a particular prohibition

contained in these Restrictions where a hardship would otherwise exist, provided such waiver does not abrogate the overall stated intention and purpose hereof. All subsequent additions to or changes or alterations in any of the above referred to improvements shall also be subject to the prior approval of the Architectural Committee on the same basis set forth above.

4.3 Review of Plans. In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures and location in relation to surrounding structures, topography and finish-grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee pursuant to this **Article 4** if the Architectural Committee determines, in its sole and absolute discretion, that:

- (a) The proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration;
- (b) The proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guideline;
- (c) The proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements in the Property, or with Improvements previously approved by the Architectural Committee but not yet constructed;
- (d) The proposed construction, installation, addition, alteration, repair, change or other work is not aesthetically acceptable in the sole and absolute discretion of the Architectural Committee;
- (e) The proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect the appearance of the Property;
- (f) The proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Property; or
- (g) The proposed installation or alteration of landscaping desired to be installed does not comply with the restrictions and limitations thereon set forth in the Guidelines, including, without limitation, the provisions of the Guidelines which provide for the maintenance of natural desert vegetation and limit the area of turf within the Property.

7.3.2 The Board may invoke any or all of the sanctions provided for herein or in this Declaration, or any other reasonable sanction, to compel payment of any Assessment or installment thereof, not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

- (a) **Interest and Late Fees.** The Board may impose late fees equal to ten percent (10%) of any assessment or installment thereof that is not paid within sixty (60) days of the date due, and interest in such amounts as it determines are appropriate from time to time but not more than twenty percent (20%) per annum, subject to any limitations stated herein or imposed by law which such amounts shall be secured by the aforementioned liens;
- (b) **Collection of Delinquent Amount.** In the event an assessment is not paid within sixty (60) days of the date due, the Board may institute an action at law for a money judgment, foreclosure of the lien or any other proceeding to recover the Delinquent Amount;
- (c) **Recording of Notice.** In the event an assessment is not paid within sixty (60) days of the date due, the Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in this Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of recording the notice, processing the delinquency and recording a notice of satisfaction of the lien; and
- (d) **Foreclosure of Lien.** Anytime after an assessment has been delinquent for greater than sixty (60) days, the Board may foreclose the Recorded lien against the Parcel in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency).

7.3.3 It shall be the duty of every Owner to pay all Assessments with respect to the Owner's Parcel in the manner provided herein. Such Assessments, together with interest and costs of collection as provided for herein and in this Declaration, shall, until paid, be a charge and continuing servitude and lien upon the Parcel against which such Assessments are made, provided, however, that the lien for such Assessments shall be subordinate to only those matters identified in this Declaration. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided for in this Declaration or the Bylaws, or otherwise available at law or in equity for the collection of all unpaid Assessments, interest thereon, costs of collection thereof and reasonable collection agency fees and attorneys' fees, including any attorney's fees and cost awarded by an Administrative Law Judge pursuant to §41-2198 et. al.

with interest, costs and attorneys' fees as provided in this **Section 7.1**, shall also be the personal obligation of the Person who was the Owner of such Parcel at the time such Assessments arose with respect to such Parcel. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using his, her or its Parcel, or by leasing or otherwise transferring occupancy rights of a Parcel. Neither shall an Owner be relieved from the obligation to pay any of the Assessments on the contention the Owner did not receive a coupon book or invoice. Upon transfer by an Owner of fee title to the Owner's Parcel and with written notice to the Board, such transferring Owner shall not be liable for any Assessments thereafter levied against such Parcel. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws.

7.2 Purpose of Assessments. The assessments levied by the Association shall be used to benefit the residents in the Association, and for all purposes set forth in the Community Documents, including but not limited to, management fees and insurance premiums.

7.3 Lien for Assessments; Foreclosure.

7.3.1 There is hereby created and established a lien in favor of the Association against each Parcel which shall secure payment of all present and future penalties, fines, late fees, interest for late payment or Assessments assessed or levied against such Parcel or the Owner thereof (together with any other amounts levied against such Parcel or the Owner thereof pursuant to this Declaration or the Articles, the Bylaws or the rules and regulations of the Association). This lien shall be prior and superior to all other liens affecting the Parcel in question, except: (a) taxes, bonds, assessments and other levies which, by law, are superior thereto; and (b) the lien or charge of any First Mortgagee made in good faith and for value. The liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale or transfer of any Parcel pursuant to a First Mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Parcel from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

The approval required by the Architectural Committee pursuant to this **Article 4** shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this **Article 4** shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

4.4 Architectural Committee. The Board may appoint an Architectural Committee. The Board may replace any Member of the Architectural Committee which it has appointed at any time with or without cause. In the event the Board does not appoint an Architectural Committee for any reason, the Board shall exercise the authority granted to the Architectural Committee under this Declaration. The Architectural Committee may enact Design Guidelines subject to approval of the Board. The Design Guidelines may include, without limitation, provisions regarding (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography, (ii) placement of Residences and other Improvements, (iii) landscape design, content and conformance with the character of the Property and permitted and prohibited plants, (iv) requirements concerning exterior color schemes, exterior finishes and materials, (v) signage and (vi) perimeter and screen wall design and appearance. The decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration, but shall be subject to appeal to the Board as the final arbiter, and the decision of the Board in all cases shall be final and binding. The Association may record a Notice of Noncompliance for any Improvement that is installed in violation of this Declaration.

**ARTICLE 5
ORGANIZATION OF ASSOCIATION**

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation chartered with the duties and invested with the 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.

5.2 Board of Directors and Officers; Management. The affairs of the Association shall be conducted by the Board elected in accordance with this Declaration and the Articles and Bylaws, and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as they may be amended from time to time. The Board shall be composed of at least five (5) directors. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the

Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

5.3 Role of Association. The Association is intended to be an "umbrella" organization whose primary responsibilities will be:

- (a) Appointment of individuals to serve on the Architectural Committee pursuant to the provisions of **Article 4** above; and
- (b) In the exercise of its discretion, the enforcement of the Covenants contained in this Declaration.

5.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member or officer of the Association.

ARTICLE 6 MEMBERSHIPS AND VOTING

6.1 Owners of Parcels. Each Owner of a Parcel shall automatically be a Member of the Association. Each such Membership shall be appurtenant to and may not be separated from ownership of the Parcel to which the Membership is attributable, and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not cause there to be more Memberships than the number established for purposes of this **Section 6.1**. Each Member shall have one (1) Membership for each Parcel owned by such Owner within the Property as identified by an individual Santa Cruz County parcel number. Notwithstanding the fact that Owners of Tracts shall be subject to the Covenants contained in this Declaration which are specifically applicable to the Tracts, Memberships within the Association shall be based upon the ownership of Parcels identified by an individual Santa Cruz County parcel number and not upon the ownership of a Tract or Lot. In the event of a Parcel split, as described more completely in **Article 1** Assessable Property, Owners of each of the new Parcels automatically hold one Membership per new Parcel. In the event of Parcel combinations as described more completely in **Article 1** Assessable Property, the Memberships of the former Parcels consolidated into a single Parcel shall be eliminated. The Owner of the new Parcel assigned a single Santa Cruz Assessor parcel number shall hold a single Membership attributed to the newly consolidated Parcel.

6.2 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice

of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one Person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

6.3 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and the Bylaws, as the same may be amended from time to time.

6.4 Transfer of Membership. The rights and obligations of the Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Parcel and then only to the transferee of ownership of the Parcel. A transferor of a Parcel must notify the Board of the transfer in writing, and remains jointly liable with the transferee for all obligations hereunder until the transferor so notifies the Board. A transfer of ownership of a Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of the Parcel shall operate to transfer the Membership(s) appurtenant to said Parcel to the new Owner thereof.

ARTICLE 7 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Assessment Right; Covenants to Pay. In order to provide funds to enable the Association to meet its obligations, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Assessments shall be for common expenses and, except as otherwise provided below, shall be allocated equally among all Parcels, as identified by an individual Santa Cruz County Assessor parcel number. Each Owner, by acceptance of his, her or its deed with respect to a Parcel, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Parcel. Late charges shall be subject to any limitations imposed by the applicable Arizona law or other applicable law, as amended from time to time. The Owner shall also pay all of the Association's costs and attorneys' fees, including any attorney's fees and costs awarded by an Administrative Law Judge pursuant to §41-2198 et. al., incurred by the Association in seeking to collect such Assessments and other amounts. The Assessments with respect to a Parcel, together