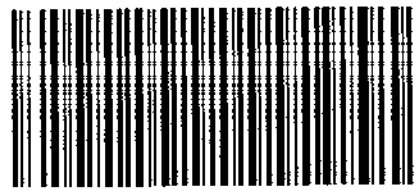


When recorded mail to:
Charles E. Maxwell, Esq.
MAXWELL & MORGAN, P.C.
Pierpont Commerce Center
4854 East Baseline Road, Suite 104
Mesa, Arizona 85206



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2012-0626618 07/17/12 03:29 PM
1 OF 1

PALUNDA

FOURTH AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR APACHE WELLS
MESA, MARICOPA COUNTY, ARIZONA

Prepared by:

Charles E. Maxwell, Esq.
Maxwell & Morgan, P.C.
Pierpont Commerce Center
4854 East Baseline Road, Suite 104
Mesa, Arizona 85206

671

**FOURTH AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

FOR APACHE WELLS

MESA, MARICOPA COUNTY, ARIZONA

Table of Contents

RECITALS	1
SECTION 1 - DEFINITIONS	2
1.1 Articles	2
1.2 Assessments	2
1.3 Assessment Lien	2
1.4 Association	2
1.5 Association Rules	2
1.6 Board	2
1.7 Bylaws	2
1.8 Common Area or Common Areas	2
1.9 Common Expenses	3
1.10 Declaration	3
1.11 Design Review Committee	3
1.12 Design Guidelines	3
1.13 Dwelling Unit	3
1.14 Eligible first Mortgage Holder	3
1.15 Exterior Alteration	3
1.16 First Mortgage	3
1.17 First Mortgagee	3
1.18 Improvement	3
1.19 Lessee	3
1.20 Lot	3
1.21 Maintenance Standard	4
1.22 Member	4
1.23 Owner	4
1.24 Person	4
1.25 Plat	4
1.26 Project Documents	4
1.27 Property or Project	4
1.28 Purchaser	4
1.29 Single Family	4

1.30	Single Family Residential Use	5
SECTION 2 - PROPERTY SUBJECT TO DECLARATION		5
SECTION 3 - USE RESTRICTIONS		5
3.1	Design Review and Architectural Control	5
3.2	Design Review Committee	5
3.3	Zoning Compliance and Set Back Requirements	7
3.4	Shared Cost of Boundary Fences and Retaining Walls	8
3.5	No Business	8
3.6	Pets	9
3.7	Clothes Lines	9
3.8	Signage	9
3.9	Solar Energy Devices	9
3.10	Vehicles	9
3.11	Vehicles Being Repaired	10
3.12	Repair of Improvements	10
3.13	Mineral Exploration	10
3.14	Drainage Easements	11
3.15	Variances	11
3.16	Easement Construction	11
3.17	Temporary Buildings	11
3.18	Lot Maintenance	12
3.19	Outside Speakers and Amplifiers	12
3.20	Lights and Street Lights	12
3.21	Utility Service	12
3.22	Machinery and Equipment	12
3.23	Window Covers	13
3.24	Nuisances	13
3.25	Garbage and Trash	13
3.26	Disease and Insects	13
3.27	Fires	13
3.28	Safe Condition	13
3.29	Encroachments	13
3.30	Restriction on Further Subdivision, Property Restrictions and Rezoning	14
3.31	Leasing of Lots	14
3.32	Flag Poles	14
3.33	Antennas and Satellite Dishes	14
3.34	Application of Project Documents to Non-Owners and Owners Responsibility for Such Persons	15
3.35	Grandfathered Conditions	15
3.36	Age Restrictions	15

3.37	Enforcement	16
SECTION 4 - LAND USE		16
SECTION 5 - EASEMENTS		17
5.1	Owners' Easements of Enjoyment	17
5.2	Utility and Drainage Easement	17
5.3	Easement in Favor of Association	17
SECTION 6 - THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS		18
6.1	Formation of Association	18
6.2	Board of Directors and Officers	18
6.3	Non-liability	18
6.4	Implied Rights	18
6.5	Identity of Members	18
6.6	Voting Procedures	19
6.7	Voting By Mail	19
6.8	Transfer of Membership	19
6.9	Conveyance or Encumbrance of Common Area	19
6.10	Suspension of Voting Rights	19
6.11	Association Rules	19
6.12	Indemnification	20
6.13	Records	20
6.14	Delegation of Powers	20
6.15	Emergency Powers	20
SECTION 7 - COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIENS THEREFOR		21
7.1	Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties	21
7.2	Annual Assessments	21
7.3	Assessment Period	22
7.4	Rate of Assessment	22
7.5	Special Assessments	22
7.6	Lot Specific Assessments	22
7.7	No Offsets	22
7.8	Purposes for Which Association's Funds may be Used	22
7.9	Rules Regarding Billing and Collection Procedures	23
7.10	Transfer, Refinance and Disclosure Fees	23
7.11	Fines and Penalties	23

7.12	Notice of Violation, Appeal and Payment of Fines and Penalties	23
7.13	Costs of Enforcement	24
7.14	Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association	24
7.15	Surplus Funds	25
7.16	Proof of Payment of Assessments	25
7.17	Subordination of the Lien to Mortgages	25
7.18	Reserve Fund	26
SECTION 8 - COMMON AREAS, IMPROVEMENTS AND MAINTENANCE		26
8.1	Improvements	26
8.2	Association Maintenance	26
8.3	Owner Maintenance	27
8.4	Assessment of Certain Costs of Maintenance and Repair	27
8.5	Improper Maintenance and Use of Lots	28
8.6	Maintenance Easement	28
SECTION 9 - INSURANCE		28
9.1	Scope of Coverage	28
9.2	Certificates of Insurance	29
9.3	Payment of Premiums	29
9.4	Insurance Obtained by Owners	30
9.5	Payment of Insurance Proceeds	30
9.6	Repair and Replacement of Damaged or Destroyed Property	30
SECTION 10 - MISCELLANEOUS		30
10.1	Enforcement	30
10.2	Administrative Law Proceedings	30
10.3	Run with the Land: Termination	31
10.4	Amendments	31
10.5	Conflicts	31
10.6	Violations and Nuisance	31
10.7	Violation of Law	31
10.8	References to this Declaration in Deeds	31
10.9	Remedies Cumulative	32
10.10	Gender	32
10.11	Topic Headings	32
10.12	Survival of Liability	32
10.13	Interpretation	32
10.14	Severability	32
10.15	Rule Against Perpetuities	32

10.16	Change of Circumstances	33
10.17	Joint and Several Liability	33
10.18	Attorneys' Fees	33
10.19	Views not Guaranteed	33

FOURTH AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR APACHE WELLS
MESA, MARICOPA COUNTY, ARIZONA

This Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions for Apache Wells, Maricopa County, Arizona, is made this 17th day of JULY, 2012.

RECITALS

Pursuant to Paragraph 8 of the "Apache Wells Homeowners Association, Inc. Revised Declaration of Covenants, Conditions and Restrictions" dated March 7, 1987 and recorded March 9, 1987 at Instrument No. 87-141009 (the "Original Declaration" for purposes of this document), the "Original Declaration" may be amended at any time by the approval of "a majority of the owners in number of lots", and to the extent the amendments are placed "in recordable form executed by the Company and filed with the proper office of record."

NOW THEREFORE, the Original Declaration is hereby amended and revoked in its entirety, as are the "Partial Revocation and Amendment of Revised Declaration of Covenants, Conditions & Restrictions" dated and recorded March 1, 1989, at Instrument No. 89-095493 (hereinafter sometimes referred to as the "Second Amended Declaration"), and the "Clarification of Declaration of Covenants, Conditions & Restrictions" dated and recorded October 26, 1990 at Instrument No. 90-482295 (sometimes referred to hereinafter as the "Third Amended Declaration"); and the following provisions of this Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions for Apache Wells (the "Declaration") are hereby imposed upon the Property as a result of the approval of not less than a majority of the owners of Lots in Apache Wells. As a result, it is hereby declared that all of the Property 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 properties reflected in the Plat. These easements, covenants, restrictions and conditions shall be deemed easements, covenants, restrictions and conditions running with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property described herein, or any part thereof, and shall inure to the benefit of each Owner thereof. **(Please note: Apache Wells is an age restricted community, and the age restrictions set forth herein will be enforced in strict accordance with applicable Federal, State and local laws.)**

THIS DECLARATION is designed for the mutual benefit of the Property. This Declaration hereby fixes the protective conditions upon and subject to which all Lots and portions of the Property shall be held, leased, sold, used and conveyed. Each such condition is for the mutual benefit of the Property and each Owner and shall run with the land, shall inure to and pass with each Lot or portion thereof in the Property, and shall apply to and bind the Owners thereof and their respective successors in interest. Each and every such condition is imposed upon the Property as a mutual, equitable servitude in favor of each and every Lot or portion thereof. (While this Declaration supersedes the Original Declaration in its entirety, including the above referenced prior recorded covenants, conditions and restrictions, the recording date of the Original Declaration shall and can be used for determining priority for lien purposes and such other rights beneficial to an association pursuant to statute, including A.R.S. §33-1807.)

SECTION 1 DEFINITIONS

The following defined terms have the meanings set forth hereafter whenever used herein:

1.1. Articles. The "Articles of Consolidation of Apache Wells Recreation Center, Inc. and Apache Wells Residents and Property Owners, Inc. Into Apache Wells Homeowners Association, Inc." which were filed in the Office of the Corporation Commission of the State of Arizona on or about February 13, 1987, and the "Articles of Amendment of Apache Wells Homeowners Association, Inc." which were filed in the office of the Corporation Commission of the State of Arizona on or about March 31, 1988, as said Articles may be amended from time to time.

1.2. Assessments. The annual, special and/or lot specific assessments levied and assessed against each Lot pursuant to Section 7 of this Declaration, and all other fees, charges, fines, penalties due the Association.

1.3. Assessment Lien. The lien granted to the Association by this Declaration to secure the payment of Assessments, including monetary penalties or other charges owed to the Association by a Lot Owner.

1.4. Association. The Arizona nonprofit corporation known as Apache Wells Homeowners Association, Inc., organized to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. To the extent the term "Company" is used in the Project Documents, it shall have the same meaning as "Association".

1.5. Association Rules. The restrictions, limitations, rules and regulations previously adopted by the Board on behalf of the Association or adopted hereafter pursuant to Section 6.11 of this Declaration, also known as Rules and Regulations, as the same may be amended from time to time.

1.6. Board. The Board of Directors of the Association.

1.7. Bylaws. "The Apache Wells Homeowners Association, Inc. Bylaws" dated March 3, 1987, including the subsequent Amendments dated March 8, 1988, January 17, 1995, January 13, 1998, and April 12, 2007, as such Bylaws may be amended from time to time.

1.8. Common Area or Common Areas. All Property and all Improvements located thereon owned by the Association for the common use and enjoyment of the Owners, including without limitation, any of the following: walkways; certain landscaped areas; and private recreational facilities within the Property. Unless the context indicates otherwise, Common Area or Common Areas may include any areas wherein the Association assumes administrative or maintenance responsibilities and all other items requiring maintenance, repair or replacement not otherwise the responsibility of any Lot Owner, municipality, governmental agency and/or utility.

1.9. Common Expenses. Expenditures made by or financial liabilities of the Association, together with any allocations to reserve funds.

1.10. Declaration. This Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions for Apache Wells set forth in this entire document, as the same may from time to time be amended.

1.11. Design Review Committee. The committee established pursuant to Section 3.2 of this Declaration. To the extent the phrase "Architectural Control Committee" is used in the Project Documents, it shall have the same meaning as "Design Review Committee".

1.12. Design Guidelines. The guidelines, restrictions, limitations, rules and regulations adopted by the Design Review Committee pursuant to Section 3.2 of this Declaration. To the extent the phrase "Architectural Control Rules" is used in the Project Documents, it shall have the same meaning as "Design Guidelines".

1.13. Dwelling Unit. Any building or portion of a building, lawfully situated upon a Lot and designated for independent ownership and intended for Single Family Residential Use.

1.14. Eligible First Mortgage Holder. A First Mortgagee who has requested notice of certain matters from the Association.

1.15. Exterior Alteration. Any construction, installation, addition, change, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon and which is visible from neighboring property.

1.16. First Mortgage. Any mortgage (which includes a recorded deed of trust or a recorded mortgage) which has priority over all other mortgages on the same Lot and which predates the Association's Assessment Lien.

1.17. First Mortgagee. The holder or beneficiary of a First Mortgage.

1.18. Improvement. Any structure, Dwelling Unit, fence, wall, mailbox, storage unit, shed, carport, patio, patio cover, garage, or any other addition, swimming pool, play equipment, gazebo, shade structure, sport court, driveway, parking area, or any trees, plants, shrubs or other soft-scape landscaping improvements of every type and kind that can exceed four (4) feet in height from ground level at maturity.

1.19. Lessee. A third-party lessee, sub-lessee, tenant or sub-tenant under a lease, oral or written, of any Lot. As used herein "a third-party" is a Person who is not an Owner.

1.20. Lot. Any parcel of real property designated as a Lot on the Plat and, where the context indicates or requires, shall include any Dwelling Unit or other Improvements situated on the Lot. Except for Lots combined prior to the recording of this Declaration and confirmed by the Association and the City of Mesa to constitute one Lot, if an Owner hereafter combines two or more Lots into one for a single use, the combined area shall nevertheless be considered as containing the

original number of Lots. To the extent the term "Residential Unit" is used in the Project Documents, it shall have the same meaning as "Lot".

1.21. Maintenance Standard. The standard of maintenance of Improvements established from time to time by the Board or designated committee or, in the absence of any standard established by the Board or designated committee, the standard of maintenance of Improvements generally prevailing throughout the Property.

1.22. Member. Any Person who is a member of the Association pursuant to Section 6 of this Declaration.

1.23. Owner. The record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee or tenant of a Lot. Owner shall not include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract until the seller has conveyed to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all moneys due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.24. Person. A natural person, corporation, business trust, estate trust, living trust, partnership, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity.

1.25. Plat. The Plats for Apache Wells Mobile Home Park which were recorded with the County Recorder of Maricopa County, Arizona, as set forth in Exhibit "A" attached hereto, as such Plat may be amended from time to time.

1.26. Project Documents. This Declaration, the Plat and the Articles, Bylaws, Association Rules and Design Guidelines, as the same be amended from time to time.

1.27. Property or Project. The real property described on the Plat, together with all Improvements located thereon, and all easements, rights and appurtenances belonging thereto, as more fully set forth on the Plat.

1.28. Purchaser. Any Person who by means of a voluntary or involuntary transfer becomes the Owner of a Lot.

1.29. Single Family. A group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related who maintain a common household in a Dwelling Unit.

1.30. Single Family Residential Use. The occupation or use of a Dwelling Unit by a Single Family in conformity with this Declaration and the requirements imposed by applicable City of Mesa zoning laws or other State, County or municipal rules and regulations.

SECTION 2 PROPERTY SUBJECT TO THE DECLARATION

This Declaration is being recorded to reaffirm and continue a general plan for the use of the Property and in order to protect and enhance the value, desirability and attractiveness of the Property. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners. The Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

SECTION 3 USE RESTRICTIONS

3.1. Design Review and Architectural Control. A purpose of this Declaration is to impose design review and architectural controls on the Property to assure aesthetic integrity, to protect the health and welfare of residents, to protect the natural environment and to prevent nuisances detrimental to other properties within the Project. In connection with such purposes, the Project is hereby made subject to the jurisdiction of the Design Review Committee (also known as the Architectural Control Committee in some of the Project Documents), and all Owners and users of the Property shall comply with the requirements of the Design Review Committee, including Design Guidelines (also known as the Architectural Control Rules in some of the Project Documents). Any such improvement standards, definitions and land use regulations are not to be confused with any land use regulations or definitions contained in the zoning ordinance of the City of Mesa, provided, however, in the event that any of the provisions of this Declaration conflict with any of the provisions of the zoning ordinances of the City of Mesa, as applicable to the Property, the more restrictive of the two shall govern.

3.2. Design Review Committee. The Design Review Committee of the Association shall be composed of not less than three (3) members appointed by the President and approved by the Board of the Association to serve at the discretion of the Board.

(a) It shall be the purpose of the Design Review Committee to review all plans for all Improvements, including Dwelling Units, to insure that they comply with the restrictions, covenants, conditions, Design Guidelines and Association Rules applicable to the Lots. No construction may begin or Exterior Alteration commenced on any Improvements, including Dwelling Units, until the written approval of same by the Design Review Committee has been obtained. Any Owner desiring the approval of the Design Review Committee for any construction, erection or installation, addition, Exterior Alteration, change or other work which alters the exterior appearance of his Lot or the Improvements located thereon shall submit to the Design Review Committee a written request for approval, specifying in detail the nature and extent of the construction, installation, addition, Exterior Alteration, change or other work which Owner desires to perform. Any Owner requesting approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may reasonably request. In the event that the Design Review Committee fails to approve or disapprove an application for approval within forty-five (45) days after its receipt of a fully compliant application, together with all supporting information, fees, plans and specifications requested by the Design Review Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who has requested approval of such plans. Unless appealed in writing to the Board within thirty (30) days following the date of a decision of the Design Review Committee, the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration. The Board can adopt Rules governing appeals and any process related thereto.

(b) No excavation or grading work shall be performed on the Lots without the prior written approval of the Design Review Committee (although all Lots must be maintained in a clean weed free condition).

(c) No Improvements or Exterior Alterations shall be constructed hereafter or installed on any Lot without the prior written approval of the Design Review Committee.

(d) No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including, but without limitation, the exterior color scheme, of any Lot or Dwelling Unit constructed on any Lot, or the Improvements located thereon, shall be made or done without the prior written approval of the Design Review Committee.

(e) The approval by the Design Review Committee of any construction, installation, addition, Exterior Alteration, repair, change or other work requiring approval pursuant to this Section shall not be deemed a waiver from the Design Review Committee's right to withhold approval of any construction, erection, installation, addition, Exterior Alteration, repair, change or other work subsequently submitted for approval.

(f) Upon receipt of approval from the Design Review Committee for any construction, erection, installation, addition, Exterior Alteration, repair, change or other work, the Owner who has requested such approval shall proceed to perform, construct or make the construction, erection, installation, addition, Exterior Alteration, repair, change or other work approved by the Design Review Committee as soon as practical, and shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed by the Design Review Committee.

(g) The Design Review Committee must approve in writing any change, deletion or addition to the plans and specifications previously approved by the Design Review Committee in writing, including plans deemed approved as a result of the Design Review Committee's failure to act. Failure to submit changes, deletions or additions of previously approved plans shall void the original approval.

(h) The Design Review Committee may charge a fee for reviewing requests for approval of any plans for development of any Lot or of any Exterior Alteration pursuant to this Section, which fee (if imposed) shall be payable at the time the application for approval is submitted to the Design Review Committee; otherwise the application will not be deemed to be complete.

(i) The approval required of the Design Review Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, State or City of Mesa law, statute, ordinance, rule or regulation.

(j) The Design Review Committee may require that an Owner, before commencing construction of any Improvements approved by the Design Review Committee, pay to the Association a deposit in any amount determined by the Board to be used by the Association to remove any construction debris from a Lot that is allowed to accumulate in violation of this Declaration or to repair any damage to the Common Area. The Design Review Committee, with the approval of the Board, shall also have the right to determine which portion, if any, of the deposit will be non-refundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of the construction of the Improvements, the removal of all construction debris from the Lot and the repair of any damage to the Common Area occasioned by such construction.

(k) All Improvements on Lots shall be of new construction or manufacture, unless otherwise approved in writing by the Design Review Committee. Notwithstanding anything herein to the contrary, no manufactured Dwelling Unit with an axle is permitted hereafter on any Lot, nor can any manufactured Dwelling Unit that is five (5) years old or older be placed on a Lot or moved from one Lot to another within the Property. ("Manufactured" includes pre-fabricated and modular Dwelling Units.)

3.3. Zoning Compliance and Set Back Requirements. All Improvements, including Dwelling Units, as defined in the City of Mesa zoning regulations, must be constructed on the Lots in compliance with these restrictions and the following set back requirements.

3.3.1. Set back requirements. All permanent Improvements on all Lots shall comply with all minimum yard set back requirements established by the applicable City of Mesa zoning ordinance as it may be amended from time to time. Without limiting the foregoing, the following set back requirements shall apply:

(a) As to Apache Wells Mobile Park Unit One, One-A, Two, Two-A, Five and Six, no closer than ten (10) feet from the front or the rear of any Lot, nor closer than five (5) feet from the side of any Lot.

(b) As to Apache Wells Mobile Park Section #2 Unit Three, Unit Three-A, Four and Four-A, no closer than fifteen (15) feet from the front of the Lot, nor closer than five (5) feet from the side of any Lot and the rear set back shall be no less than ten (10) feet on inside Lots and no less than ten (10) feet on TRACTS G & H.

(c) As to Apache Wells Mobile Home Unit Three-B, no closer than fifteen (15) feet from the front nor ten (10) feet from the rear of any Lot, nor closer than five (5) feet from the side of any Lot.

(d) As to Apache Wells Unit Four-B, no closer than twenty (20) feet from the front of the Lot, nor closer than five (5) feet from the side of any Lot, except those Lot sides facing a street, then not closer than ten (10) feet, nor closer than ten (10) feet from any rear Lot line. No mobile or manufactured home shall be allowed upon any Lot in said subdivision.

3.4. Shared Cost of Boundary Fences and Retaining Walls. The cost of fences and retaining walls constructed upon the dividing property line or boundary between Lots (the Boundary Fence) shall be shared on an equal basis between the adjacent Lot Owners. In the event any Boundary Fence is damaged or destroyed by some cause other than an act of the adjoining Owners, their agents, Lessees, licensees, guests or family members (including ordinary wear and tear and deterioration from the lapse of time), then in such event both such adjoining Owners shall, at their joint and equal expense, proceed forthwith to rebuild or repair the same to as good a condition as formerly existed. Notwithstanding the foregoing, in the event that a Boundary Fence is damaged or destroyed through the act of any Owner, or Owner's agents, Lessees, licensees, residents, invitees, guests or family members, it shall be the obligation of such Owner to rebuild and/or repair the Boundary Fence without cost to the other Owner or Owners.

3.5. No Business. Except as provided, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that real estate brokers, Owners and their agents may show Dwelling Units in the Properties for sale, or lease; nor shall any Lot be used as a hospital or sanitarium or other place for hire for the care or entertainment of persons, unless expressly required by law; nor shall anything be done on any Lot which may become an annoyance or nuisance to the neighborhood. Notwithstanding anything herein to the contrary, all Dwelling Units shall be used, improved and devoted exclusively to Single Family Residential Use. No trade or business of any kind may be conducted in or from any Lot, except that an Owner may conduct a business activity within a Dwelling Unit located on a Lot so long as the existence or operation of the business activity (i) is not apparent or detectable by sight, sound, or smell from the exterior of the Dwelling Unit; (ii) conforms to all City of Mesa zoning requirements; (iii) does not increase the liability or casualty insurance obligation or premium of the Association; (iv) is consistent with the residential character of the Project; and (v) does not constitute a nuisance or a hazardous or offensive use or generate excessive or unusual traffic or parking of vehicles in the vicinity of any Lot or the Common Areas, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in the previous sentence, shall be construed to have their ordinary and generally accepted meanings and shall include, without limitation, any occupation or work activity undertaken which involves providing goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

3.6. Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that cats, dogs and other household pets totaling no more than three (3) may be kept, provided they are not kept, bred, or maintained for any commercial purpose. No pet or other animal shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. No pet, including birds, shall be caged, chained or tied outdoors. No structure for the care, housing or confinement of any animal shall be maintained or suffered to exist so as to be visible from neighboring property. Upon written request of any Lot Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether for the purpose of this Section, a particular animal or bird is a generally recognized household pet, or a nuisance, or whether the number of pets in any Dwelling Unit or upon any Lot is reasonable. The Board shall have the right to prohibit maintenance of any pet which constitutes, in the sole and absolute discretion of the Board, a nuisance to any Lot Owner. All pets permitted herein and capable of being walked on a leash shall be kept on a leash not to exceed six (6) feet in length when outside a Dwelling Unit, and all pets shall be directly under the Lot Owner's control at all times when outside a Dwelling Unit or the fenced in back yard. No Lot Owner or any other lawful resident or guest or invitee thereof shall permit any pet to relieve itself on any portion of the Common Areas, sidewalks and/or roadways, it being understood that it shall be the responsibility of such Person to immediately remove any droppings from pets. In the event any unsanitary condition is created anywhere in the Project as a result of the violation of any portion of this Section, the Lot Owner will be assessed an amount per incident (such amount to be determined by the Board from time to time) for cleanup expenses by the Association as a Lot Specific Assessment and the Board may seek satisfaction thereof or any other relief relating thereto as permitted by law and by this Declaration, in addition to such other remedies available to the Association, including fines and penalties for violations.

3.7. Clothes Lines. No clothing or household fabrics shall be hung so as to be visible from neighboring property.

3.8. Signage. No advertising signs shall be displayed with the exception of one (1) "For Sale" sign not exceeding nine (9) sq. ft., and one (1) sign rider as permitted by law. No other signage shall be permitted except as set forth in the Design Guidelines or as expressly permitted by law.

3.9. Solar Energy Devices. No Dwelling Unit shall be constructed with any air conditioning, heating or environmental enhancement device on the roof, except that solar energy units may be mounted on the roof of the Dwelling Unit, provided that the solar unit is screened from view from any other Lot Owner or resident, unless otherwise permitted by law. To the extent permitted by law, no solar panels shall be installed on any Dwelling Unit or Lot without the prior written approval and authorization of the Design Review Committee and such installation must be performed by a licensed installer. If such approval is granted, the Design Review Committee may specify the size and type of solar panels allowed, and the location where they may be installed, to the extent permitted by law.

3.10. Vehicles. Subject to the Association Rules, all vehicles related to any Lot must be parked in the garage or carport of the applicable Dwelling Unit or related driveway, and no such vehicles shall be parked on any street. Except as set forth in the Association Rules or with the prior written approval of the Board, no mobile home, motor home, trailer, truck with a capacity of one (1) ton or more, camper, boat or other type of recreational vehicle shall be kept, placed, maintained,

constructed, reconstructed or repaired within the Project. Motor homes, boats, hang gliders and other recreational vehicles may be kept on site if stored in an enclosed area, such as a garage or screened carport approved by the Design Review Committee, subject to Design Guidelines, and not less than the following additional restrictions: (i) the same material of which the Dwelling Unit is constructed is to be used on the vehicle storage bay; (ii) the roof line of the vehicle storage bay must flow from the roof line of the Dwelling Unit - - no upward jogs; (iii) open types of materials may be used for enclosure/screening purposes, such as slatting and/or decorative blocks, provided that such materials give at least seventy-five percent (75%) coverage; and (iv) three sides of the vehicle storage bay must be screened. If the stored vehicle is a minimum of ten (10) feet behind the front line of the enclosure, doors may not be required; doors will, however, be required if the recreational vehicle is within ten (10) feet of the front of the storage bay. The provisions of this Section shall not apply to short term emergency vehicle repairs of not more than six (6) hours in any twenty-four (24) hour period, periodic social gatherings, prompt loading or unloading of household articles, or approved temporary construction shelters or facilities maintained during, and used exclusively in connection with the construction of any Improvement approved by the Design Review Committee. As with any of these covenants, conditions and restrictions, the Board may adopt Association Rules for the regulation of the admission and parking of vehicles within the Project, including the imposition of fines against the Owners who violate or whose invitees violate such rules. Any charges so assessed shall be Lot Specific Assessments. 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.

3.11. Vehicles Being Repaired. Abandoned or junked vehicles or vehicles under major repair while being repaired or restored, shall be kept in an enclosed garage. For the purposes of this Section, (i) "abandoned or junked vehicle" means a vehicle not currently licensed and/or registered, a vehicle with one or more flat tires for a period in excess of one week, and/or a vehicle or any major portion thereof which is incapable at the time at issue of movement under its own power and will remain so without major repair or reconstruction; (ii) "major repair" means the removal from any vehicle of a major portion thereof, including but not limited to the differential, transmission, head, engine block or oil pan; (iii) and "vehicle" means any self-propelled device in, upon, or by which any person or property is or may be transported upon a public highway.

3.12. Repair of Improvements. No Dwelling Unit or other Improvement on any Lot or other Property shall be permitted to fall into disrepair and each such Dwelling Unit or other Improvement shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished, including adequate siding. The Design Review Committee shall be the sole judge as to whether a Dwelling Unit or other Improvement is in need of repair or replacement and, if the repair(s) and/or replacement has not been completed within the time period referenced in any written notice of compliance, the Association may, but is not required to implement such repairs at the sole cost and expense of the Owner of the Lot, and any such cost and expense, plus a handling fee of twenty-five percent (25%), shall be added to the Owner's account as a Lot specific Assessment, in addition to any and all other rights and remedies available at law or in equity. In the event that any Dwelling Unit or other Improvement is damaged or destroyed, then, subject to the Design Review Committee approvals required in this Declaration, such Dwelling Unit or other Improvement shall be immediately repaired or rebuilt or shall be demolished.

3.13. Mineral Exploration. No Lot or other Property shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, earth or any

earth substance of any kind. Moreover, no well or septic tank shall be dug, drilled or installed without the prior written approval of the Design Review Committee, in addition to any permits that must be secured from applicable governmental agencies.

3.14. Drainage Easements. An Owner of a Lot shall not at any time hereafter fill, block or obstruct any drainage easements and drainage structures on the Properties, nor shall any Owner cause or suffer to be erected on any Lot, any building or obstruction for the purpose, directly or indirectly, of obstructing, blocking or filling any such drainage easement or drainage structure, and each Owner agrees to repair and maintain all such drainage easements and drainage structures on a Lot, including keeping the same free from debris, weeds and overgrowth, making good nevertheless, at his own expense, all damage which may be caused to the said drainage easements and structures on the Properties, and each Owner agrees to repair at his own expense, all damage to any structure or any Lot which may be caused, directly or indirectly, by his obstructing, blocking or filling any such drainage easement. Notwithstanding anything herein to the contrary, to the extent any such drainage easement or drainage structure is on a property line, the adjoining Lot Owners shall be equally responsible for the repair and maintenance of such drainage easements and drainage structures at their shared cost and expense, except if the repair or maintenance is required due to the negligent or intentional actions of one of the Owners, in which event the applicable Owner will be solely responsible for such repair and maintenance. In the event of a dispute between Owners with respect to such repair or maintenance or the cost related thereto, then, upon written request of either or both of such Owners addressed to the Board, the matter shall be submitted for resolution before the Board under such rules as may from time to time be adopted by the Board. The decision of the Board shall be final and conclusive. In the event an Owner(s) is responsible for any such repair or maintenance, but fails or refuses to perform the same at his or their own expense, the Association may, but is not required to perform such repair and maintenance and the cost thereof, plus a twenty-five percent (25%) surcharge, shall become a Lot Specific Assessment with respect to the responsible Owner(s) as more fully set forth in this Declaration.

3.15. Variances. The Board may, at its option and in extenuating circumstances, and following a written request for a variance from an Owner, grant variances from the restrictions, limitations, rules and regulations set forth in this Section 3, the Design Guidelines or the Association Rules, if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee, (ii) does not negatively affect property values, and (iii) the activity permitted under the variance will not have any substantial adverse effect on the other Owners or Lessees of the Project and is consistent with the quality of life intended for residents of the Project.

3.16. Easement Construction. Easements, as indicated upon the recorded Plat of this development, or in separate recorded documents, are reserved for the installation and maintenance of public service utilities, and other uses for public or quasi-public good. No buildings or other Improvements shall be placed upon such easements or any interference made with the free use of the same for the purpose intended, except as originally installed.

3.17. Temporary Buildings. No tent, shack, garage, barn or other outbuildings which is visible from neighboring property shall, at any time, be erected and used temporarily or permanently as a residence or for any other purpose, nor shall any recreational vehicle be used as a residence or for any other purpose on any of the Lots or streets in the Properties. No structure of any kind shall

be moved into any part of the Properties, except temporary buildings used by contractors in connection with construction work and then only as approved in writing by the Design Review Committee, it being the intent of this Declaration that all structures on any Lot shall be of new construction and constructed thereon, except as otherwise set forth in Section 3.2(k) above.

3.18. Lot Maintenance. Except for such planting and soft-scape landscaping that will not exceed four (4) feet in height from ground level at maturity and which is in an area not maintained by the Association, no planting or landscaping shall be done and no fence, hedges or walls shall be erected or maintained on any Lot without the prior written approval of the Design Review Committee. Further, and without limiting the foregoing, all Lots shall be maintained by their Owners free of weeds and debris; gravel shall be neatly raked; lawns shall be neatly mowed and trimmed; bushes shall be trimmed; and dead plants, trees, or grass shall be removed and replaced. The Design Review Committee shall be the sole judge as to whether a Lot is in need of maintenance and, if the maintenance has not been completed within the time period referenced in any written notice of compliance, the Association may, but is not required to implement such maintenance at the sole cost and expense of the Owner of the Lot, and any such cost and expense, plus a handling fee of twenty-five percent (25%), shall be added to the Owner's account as a Lot specific Assessment, in addition to any and all other rights and remedies available at law or in equity.

3.19. Outside Speakers and Amplifiers. No radio, stereo or other broadcast units of any kind and no amplifiers or loudspeakers of any kind shall be placed, allowed or maintained outside, or be directed to the outside of any Dwelling Unit without the prior written approval and authorization of the Design Review Committee.

3.20. Lights and Street Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot which in any manner will allow light to be directed or reflected on the Common Area, or any part thereof, or any other Lot, except as may be expressly permitted by the Association Rules, the Design Guidelines, or as approved in writing by the Design Review Committee. With respect to any exterior Improvement, prior written approval for exterior lighting must be secured from the Design Review Committee.

3.21. Utility Service. Except as approved in writing by the Design Review Committee, no lines, wires, or other devices for the communication or transmission of electronic current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same are contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Dwelling Units or other structures approved by or the Design Review Committee.

3.22. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Dwelling Unit, appurtenant structures, or other Improvements, and except that which the Association may require for the operation and maintenance of the Property.

3.23. Window Covers. Interior curtains, drapes, shutters or blinds may be installed as window covers. No aluminum foil, reflective material, newspaper or other materials not customarily made for use as window covers may be installed or placed upon the inside or outside of any Dwelling Unit or other structure. Exterior awnings, canopies, shutters and similar items may not be installed without prior written approval of the Design Review Committee, including as to color, style, design and materials.

3.24. Nuisances. No rubbish, debris or hazardous materials of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other Property, no items or materials shall be stored so as to be visible from neighboring properties, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Property or any portion thereof, or any activity thereon, unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to the occupants of such other Property. No other nuisance shall be permitted to exist or operate upon any Lot or other Property so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. The Board shall have sole discretion to determine whether a nuisance exists.

3.25. Garbage and Trash. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved by the Design Review Committee or required by City of Mesa. In no event shall such containers be maintained so as to be visible from neighboring property, except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. The Board shall have the right, in its sole discretion, to require all Owners to place their garbage or trash containers at a specific location for collection. Unless otherwise indicated by the Board, garbage or trash containers must be placed behind a site wall so as not to be visible from neighboring property. All rubbish, trash and garbage shall be removed from the Lots and Common Area and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. During construction of a Dwelling Unit on a Lot, the Owner of such Lot shall provide an enclosed rubbish container for each Lot and shall keep its Lot clean of construction trash at all times. In addition, each Owner shall during such construction be responsible to immediately clean up any trash, rubbish, debris, mud and dirt brought or tracked onto the Project in connection with such construction.

3.26. Disease and Insects. No Owner shall permit any thing or condition to exist upon any Property which shall induce, breed, or harbor infectious plant diseases or noxious insects.

3.27. Fires. Other than barbecues in properly constructed barbecue pits or grills, and fire pits or outside fireplaces in compliance with the Association Rules or the Design Guidelines, or as otherwise expressly permitted in such rules, no open fire shall be permitted on the Project nor shall any other similar activity or condition be permitted.

3.28. Safe Condition. Without limiting any other provision in this Section 3, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Area.

3.29. Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed

to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other public area from ground level to a height of eight (8) feet, without the prior written approval of the Design Review Committee.

3.30. Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board and the written approval of fifty-one percent (51%) of all the Lot Owners. Previously combined Lots may be separated into the Lots as originally platted with the approval of the Board and the City of Mesa, and such separated Lots shall thereafter be treated as individual Lots for all purposes as more fully set forth in this Declaration. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

3.31. Leasing of Lots. Whether or not expressly stated in any lease agreement, the terms of the Project Documents are deemed incorporated within and made a part of every lease agreement. (For definitional purposes, "lease" shall include any agreement or understanding whereby an Owner or other Person allows possession, use or occupancy of any portion of a Lot by another Person.) All Owners of Lots that are leased or subleased hereby grant to the Association a power of attorney to enforce against the Lessee the provisions of the Project Documents and to enforce against the Lessee those provisions of such leases or subleases that relate to violations by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors of the Project Documents or the lease agreement (except those provisions that relate to the payment of rent). The power of attorney granted hereby authorizes the Association to take any lawful action to enforce the Project Documents and the lease agreement, including, without limitation, bringing actions at law or in equity and to recover from the Owner and/or the Lessee against whom any enforcement effort or action is brought, the costs of enforcing the terms of the Project Documents and the lease or sublease with respect to violations thereof by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors. The "costs of enforcing" shall include properly levied fines and penalties, penalty late fees and interest, costs of collection (including all legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action), attorneys' fees, court costs, property damage, etc., and shall also constitute a Lot Specific Assessment subject to the provisions of Section 7 hereof.

3.32. Flag Poles. Lots shall be entitled to no more than one (1) flag pole. All flag poles shall require prior written approval of the Design Review Committee as to location, height, style, color, lighting and materials. Flag display shall be in accordance with applicable statutes.

3.33. Antennas and Satellite Dishes. To the extent restrictions are permitted by State and/or Federal statutes or rules, including FCC OTARD Rules, no antenna, satellite dish or other device for the transmission or reception of television or radio signals, or any other form of electromagnetic radiation, shall be installed on a Lot or the Dwelling Unit thereon except in accordance with the Design Guidelines, which Guidelines can require the same to be installed in the

least obtrusive location on a Lot while still providing for maximum reception, and such Guidelines may require the same to be painted the same color as the Improvement upon which the same is located. If any such device is not visible from neighboring property, no advance consent or approval shall be required. Notwithstanding the foregoing, nothing contained in this Section 3.33 shall be deemed to supersede or contradict applicable State and/or Federal statutes or rules, including FCC OTARD Rules.

3.34. Application of Project Documents to Non-Owners and Owner Responsibility for Such Persons. All persons within the Property are subject to and bound by the Project Documents and the Owner of a Lot to which such persons claim the right to be within the Property is responsible for insuring that such persons comply with the Project Documents. To the fullest extent permitted by law under any legal theory available at law or in equity, Owners are responsible for the actions or inactions and related consequences of the same of their agents, Lessees, licensees, invitees, guests and family members, and any costs and expenses incurred as a result of such actions or inactions shall also be the obligation of such Owner, and any amounts incurred, including all attorneys' fees and costs, shall constitute a Lot Specific Assessment subject to the provisions of Section 7 hereof.

3.35. Grandfathered Conditions. Any Improvement in existence on any Lot prior to the date of the recording of this Declaration that is not otherwise in violation of the Project Documents as they existed as of the date of the recording of this Declaration, shall not be in violation of this Declaration upon recordation hereof. Notwithstanding anything herein to the contrary, each Owner who claims to have a grandfathered Improvement on his Lot as of the date of the recording of this Declaration has the burden of proof in the event of a subsequent challenge that said Improvement pre-existed the date of the recording of this Declaration. Such burden of proof can be satisfied by providing the Association with documentation prior to the date of the recording of this Declaration that the Improvement at issue may constitute a violation of this Declaration upon recording in order to allow the Association to confirm in its records that the subject Improvement is in fact grandfathered. Nevertheless, to the extent an otherwise grandfathered Improvement is subsequently removed from the Lot or demolished, the grandfathering exemption will no longer exist and the Owner will not be permitted to replace the previously grandfathered Improvement. Further, this paragraph does not affect the requirement that all Owners comply with all City of Mesa, County, State or Federal laws or codes.

3.36. Age Restrictions. Every Lot must be occupied by at least one (1) person fifty-five (55) years of age or older ("Qualifying Occupant"), and no person who is less than eighteen (18) years of age shall occupy a Lot. The foregoing restrictions shall not prohibit the occupancy of a Lot by the following persons:

- (i) A person who is less than eighteen (18) years of age who is a guest or an invitee of a Qualifying Occupant for a period not to exceed ninety (90) consecutive days, and not to exceed a combined total of one hundred twenty (120) days in any consecutive twelve (12) month period;
- (ii) The surviving spouse or other surviving cohabitant of a deceased Qualify Occupant who was fifty-five (55) years old or older at the time of death; or

(iii) The spouse or other Occupants of a Lot wherein the Qualifying Occupant is advised by a medical doctor licensed in the State of Arizona to move to, or is placed in a facility for the care of the elderly or the infirmed on the advice of a medical doctor licensed by the State of Arizona.

The Board is authorized to publish, adhere to and enforce policies and procedures which demonstrate an intent to provide housing for persons fifty-five (55) years of age or older. The Board may adopt rules and regulations which are more restrictive than the provisions set forth above, provided that any such rules and regulations promote and preserve the Association as an active adult community and are consistent with the policies and procedures set forth above and with all applicable laws regulating age restrictions, including, without limitation, the Fair Housing Amendments Act of 1988 and the rules and regulations interpreting such Act published by the Department of Housing and Urban Development under 24 CFR Part 14, et al., and any amendments thereto.

In addition to the other enforcement powers given the Association, the Association shall have all remedies available for enforcing this or any other provision of the Project Documents, including, but not limited to: seeking injunctions and other legal remedies; imposing fines; suspension of voting rights; suspension of use of the recreational facilities; and assessing costs incurred in connection with such violation, including, but not limited to administration costs and attorneys fees and costs.

Notwithstanding anything contained in this Section 3.36 to the contrary regarding exceptions to the age restrictions, IN NO EVENT can less than eighty percent (80%) of the Lots (or such higher percentage to the extent required by law) at any time be occupied by persons, groups, or families where no individual is at least fifty-five (55) years of age or older.

3.37. Enforcement. The Association or its authorized agents may proceed directly with litigation or, upon reasonable written notice, enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot, including all attorneys' fees and costs, irrespective of whether litigation is filed. Such expenses, and such fines as may be imposed pursuant to this Declaration, the Articles, Bylaws, Association Rules and/or Design Guidelines, shall be a Lot Specific Assessment secured by an Assessment Lien upon such Lot and enforceable in accordance with the provisions of Section 7 hereof. All remedies available at law or equity shall be available in the event of any breach of any provision of the Project Documents by any Owner, Lessee or other Person.

SECTION 4 LAND USE

All Lots comprising the Property shall be designated as Single Family Residential Lots and shall be improved, used, and occupied in accordance with the provisions and conditions set forth under this Declaration, the other Project Documents and City of Mesa zoning ordinances; provided, however, such zoning use may be changed where such changes are not detrimental to the overall intent of this Declaration and where prior approval for such changes is obtained from the Design Review Committee, the Board, and any governmental agency having jurisdiction.

SECTION 5 EASEMENTS

5.1. Owners' Easements of Enjoyment.

(a) Every Owner or Lessee, and any Person residing with such Owner or Lessee, shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in this Declaration and as permitted by law.
- (ii) The right of the Association to regulate the use of the Common Area by the Association Rules, including rules that restrict the ability of guests and invitees to use the Common Area without visitor badges, use fees and/or the presence of a responsible adult resident of Apache Wells, and to prohibit access to such portions of the Common Area not intended for use by the Owners or Lessees.
- (iii) The right of the Association to suspend the right of an Owner or Lessee or such Owner's or Lessee's family, tenants and guests who use the Common Area if such Owner is more than twenty (20) calendar days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Lessee has violated any other provision of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation, unless a lesser or additional time period is referenced in the notice.

(b) If a Lot is leased or rented by the Owner thereof, the Lessee and the members of his family lawfully residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right, without the specific written consent of the Association, to use the Common Area until the termination or expiration of such lease.

5.2. Utility and Drainage Easement. There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television, electricity and drainage facilities. By virtue of this easement, and with the written permission of the Board, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on the Common Area or Lots, but no sewers, electrical lines, waterlines, or other utility or service lines may be installed or located on the Common Area or Lots, except as initially designed, approved and constructed or as approved in writing by the Board.

5.3. Easement in Favor of Association. Subject to prior written notice (except in the case of an emergency) the Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

- (a) For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of the Common Areas accessible only from such Lots;
- (c) For correction of emergency conditions on one or more Lots;
- (d) For the purpose of enabling the Association, the Board, the Design Review Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents; and
- (e) For inspection of the Lots (i) in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, Lessees, invitees and the other occupants of the Lot, or (ii) to satisfy the disclosure requirements, if any, of applicable law.

SECTION 6

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

6.1. Formation of Association. The Association is a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control. (*See also* Section 10.13 of this Declaration.)

6.2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. Any action reserved to the Association by this Declaration or the other Project Documents shall be in accordance with the majority vote of a quorum of the Board. Notwithstanding anything in the Project Documents to the contrary, Board Members must be Owners in good standing, meaning Owners whose rights are not subject to suspension pursuant to the provisions of Sections 5.1(a) (iii), 6.10 and 7.14(d) of this Declaration.

6.3. Non-liability. The Board, officers or committee members of the Association shall not be liable in damages to any Owner affected by this Declaration or to any other Person or entity, including the Association, by reason of a good faith mistake in judgment, negligence, omission, error or nonfeasance arising out of exercise of their rights, or performance of their duties called for hereunder, and every Owner of such property agrees that he will not bring any action or suit against the Board, officers or committee members of the Association to recover any such damages.

6.4. Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

6.5. Identity of Members. Membership in the Association shall be limited to Owners

of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

6.6. Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a Lot, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot, unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Lot on any specific issue, none of the votes as to that Lot shall be counted and all of the votes as to that Lot shall be deemed void.

6.7. Voting By Mail. When directors are to be elected or any other matter is submitted to a vote of the Members, such vote may be conducted by mail as provided in the Bylaws, as determined by the Board, or as otherwise required by law.

6.8. Transfer of Membership. The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon a recorded transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage 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 recorded transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

6.9. Conveyance or Encumbrance of Common Area. The Common Area shall not be transferred without the prior written consent or affirmative vote of Owners representing at least sixty-seven percent (67%) of the votes entitled to be cast by Members of the Association, or in such greater amounts to the extent required by law.

6.10. Suspension of Voting Rights. If an Owner otherwise entitled to vote is delinquent in the payment of Annual or Special Assessments, Lot Specific Assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Project Documents, the Board may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

6.11. Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), which shall

be binding upon all Persons subject to this Declaration and shall govern the use and/or occupancy of the Common Area or any other part of the Project. The Association Rules may include the establishment of a system of fines and penalties enforceable as Lot Specific Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area; provided, however, that the Association Rules may not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be available to each Owner. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and all other Persons having any interest in, or making any use of, the Property, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association for each Owner to review upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

6.12. Indemnification. To the fullest extent permitted by law, every director and every officer of the Association shall be indemnified by the Association, and every other person serving as an employee or agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association against all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association, or any settlement thereof, whether or not he is a director, officer or serving in such other specified capacity at the time such expenses are incurred; provided that the Board shall determine, in good faith, that such officer, director, or other person, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

6.13. Records. The Association shall, and to the extent required by law, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner the books, records and financial statements of the Association, together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, Design Guidelines and Association Rules.

6.14. Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles, Bylaws, Design Guidelines and Association Rules; provided, however, no such delegation to a professional manager or management company or otherwise shall relieve the Association of its obligation to perform any such delegated duty.

6.15. Emergency Powers. The Association, or any Person authorized by the Association,

may enter any Lot in the event of any emergency involving illness or potential danger to life or property without being deemed guilty of trespass. Such entry shall be made with as little inconvenience to the Owners as practicable, and the Association shall repair any damage caused thereby, unless covered by insurance carried by the Owner.

SECTION 7

COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIENS THEREFOR

7.1. Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties. Each Owner by becoming the Owner of a Lot, is deemed to covenant and agree to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to all attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties (collectively "Assessments"), whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes continuing record notice and perfection of the Assessment Lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to all attorneys' fees, incurred by the Association in enforcing the Project Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

7.2. Annual Assessments.

(a) In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents for each Assessment Period, the Board shall assess an Annual Assessment against each Lot. The Board shall not levy an Annual Assessment that is more than ten percent (10%) greater than the immediately preceding fiscal year's Annual Assessment (or the maximum increase allowed by law, whichever is greater) without the approval of a majority of the Members of the Association.

(b) The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are or will become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may, subject to the limit set forth in Section 7.2 (a) above, increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

7.3. Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year.

7.4. Rate of Assessment. The amount of the Annual Assessment for each Lot shall be the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of the Lots, less carry over funds from the prior year not designated as reserves or otherwise.

7.5. Special Assessments. The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, or to cover any unanticipated expense, provided that any Special Assessment shall have the assent of fifty-one percent (51%) of the votes entitled to be cast by Members who are voting in person, by mail or by absentee ballot at a meeting duly called for such purpose. Written notice of any meeting called for the purpose of obtaining the consent of the Members under this Section shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. The presence of Members or of ballots entitled to cast fifty-one percent (51%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting(s) may be called subject to the same notice and quorum requirement, but no such subsequent meeting shall be held more than fifty (50) days following the preceding meeting. When a Special Assessment is approved, each Lot Owner will be assessed a pro rata share of the total amount.

7.6. Lot Specific Assessments. Lot Specific Assessments shall be levied by the Board against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Project Documents that the Owner has refused to cure or remedy, including the failure to keep a Lot clean and free of excessive weed growth and keeping the Improvements thereon in good repair, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments. A Lot Specific Assessment may also be levied by the Board in its sole discretion against those Lots benefitting from a Common Expense where such a Common Expense benefits fewer than all of the Owners.

7.7. No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or that the Association is not enforcing the Project Documents.

7.8. Purposes for Which Association Funds may be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, 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 Project and the Owners by devoting said funds and property, among other things,

to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project and the Owners. 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: social interaction among Members and residents, maintenance of landscaping on Common Areas and public right-of-ways and drainage areas within the Project, recreation, liability insurance, communications, education, transportation, health, utilities, public services, safety, indemnification of officers and directors of the Association and any other purposes permitted by applicable statutes or the Project Documents.

7.9. Rules Regarding Billing and Collection Procedures. Annual Assessments and Lot Specific Assessments shall be collected in advance on an annual basis (or such other basis as may be selected by the Board, including monthly, quarterly or semi-annual installments). Special Assessments and Lot Specific Assessments may be collected as specified by the Board or the applicable Project Documents. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period. Nevertheless, successor Owners of Lots may be given credit for prepayments, on a prorated basis, made by prior Owners.

7.10. Transfer, Refinance and Disclosure Fees. To the extent not prohibited by applicable law, each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board to the extent not prohibited by applicable law. Fees charged pursuant hereto shall be secured by the Assessment Lien established pursuant to this Section.

7.11. Fines and Penalties. In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other residents of the Owner's Lot or any of the Owner's family, Lessees, guests, invitees, licensees, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

7.12. Notice of Violation, Appeal and Payment of Fines and Penalties.

(a) The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner, his family, Lessees, guests, licensees or invitees. A Notice of Violation may contain, in addition to any statutory requirements, (i) a description of the violation, (ii) the date the violation was observed, (iii) who observed the violation, (iv) the provisions of the Project Documents violated,

(v) the amount of the fine to be paid by the Owner or Lessee for such violation, (vi) the name of the person issuing the Notice of Violation, and (vii) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

(b) A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Dwelling Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

(c) The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee requests a hearing, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

(d) Any fines or penalty levied pursuant hereto shall be handled as a Lot Specific Assessment pursuant to this Section.

7.13. Costs of Enforcement. Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought, even if a concurrent right of collection exists against the Lessee. Such costs shall include, but not be limited to, all attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Assessment Lien established pursuant to this Section and constitute a Lot Specific Assessment.

7.14. Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association.

(a) Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within twenty (20) days after the Assessment, fee, charge, fine or penalty, or the installment thereof first became due shall bear interest from the due date at the rate of interest established from time to time by the Board, but in an amount not less than twelve percent (12%) per annum. In addition, the Board shall establish a monthly late fee to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty, or any installment thereof within twenty (20) days after such payment was due, but in an amount not less than the greater of fifteen dollars (\$15.00) or ten percent (10%) of the unpaid Assessment or installment thereof, or as otherwise limited by law.

(b) As set forth in this Section, the Association shall have an automatic lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late

charges, costs of collecting and all attorneys' fees levied against or charged to a Lot or the Owner thereof. Recordation of this Declaration shall constitute record notice and perfection of the Association's Assessment Lien. Further recordation of any claim of lien for Assessments is not required. Nevertheless, the Association may, at its option, record a notice of lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the notice of lien is recorded and the amount claimed to be past due as of the date of the recording of the notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, all attorneys' fees and the costs of preparing the notice of lien.

(c) Subject to any applicable statutes and the subordination provisions below, the Assessment Lien created by this Section shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body that are specifically related to some aspect of the referenced Lot.

(d) The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and all attorneys' fees remain delinquent, the obligated Owner's right to vote on any matter and/or the Owner's right to the use of all facilities that are part of the Common Area.

(e) The Board may, without notice or demand, enforce the lien established pursuant to this Section by foreclosure, or by instituting an action at law or in equity for a money judgment to recover the amount of the delinquent Assessment, or both, so long as the Association does not secure a double recovery, together with all fees, charges, fines and penalties, interest, late charges, costs of collection and attorneys' fees.

7.15. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, 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.

7.16. Proof of Payment of Assessments. The Association shall upon written demand, and in accordance with applicable statutes, furnish a certificate in writing signed by an officer of the Association whether the Assessments on a specified Lot have been paid. The Board in the issuance of these certificates may make a reasonable charge. In the absence of mistake or fraud, such certificates shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

7.17. Subordination of the Lien to Mortgages. The Assessment Lien provided for herein shall be subordinate to the lien of any First Mortgage that arose prior to the Association's Assessment Lien. Sale or transfer of any Lot shall not affect the Assessment Lien. Subject to the foregoing, the sale or transfer of any Lot pursuant to mortgage foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish such Assessment Lien 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. No breach of the covenants, conditions, or restrictions in this Declaration, nor the enforcement thereof, or of any lien provision

herein, shall defeat or render invalid the lien of any such First Mortgage made in good faith and for value and which predates the Association's Assessment Lien. However, all of the covenants, conditions and restrictions in this Declaration shall be binding upon any Owner whose title is derived through foreclosure or exercise of a power of sale. Moreover, the foreclosure of a First Mortgage or any proceeding in lieu thereof shall not affect any amount of the immediately preceding Owner due and owing the Association and the Association can pursue recovery all such amounts, including collection costs and attorneys' fees.

7.18. Reserve Fund. For the purpose of establishing or maintaining a reserve fund to be utilized by the Association for the periodic maintenance, repair and replacement of Improvements to the Common Area or to handle unexpected expenses, each Purchaser of a Lot hereafter shall pay to the Association immediately upon becoming an Owner of the Lot, a sum equal to the full Annual Assessment then in effect. Said amount shall be nonrefundable and shall not constitute an advance payment of Annual Assessments.

SECTION 8 COMMON AREAS, IMPROVEMENTS AND MAINTENANCE

8.1. Improvements. The Association may install Improvements in the Common Area, including any easements on Lots. The Association shall prevent any Lot Owner from removing or altering any such Improvements where such items have been installed on easements reserved for that purpose. Costs to the Association of such installation and/or prevention shall be included as part of the Assessments set forth above, with the Board determining whether the cost is an Annual Assessment, a Special Assessment or a Lot Specific Assessment.

8.2. Association Maintenance. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and the Improvements described above and may, without any approval by the Lot Owners, do any of the following:

(a) Reconstruct, repair, replace, maintain or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

(b) Construct, reconstruct, repair, maintain, replace or refinish any portion of the Common Area used as a road, street, walk, drive-way or flood control area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such areas);

(c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(e) Place and maintain signs as the Association may deem appropriate in connection with the Property at locations on or outside of the Common Area and the Property, and obtain permission from the Owners of land upon which such signs are located in connection with

landscaping, maintenance, and utilities for such signs;

(f) Paint, stripe, mark or otherwise place directional signage on roadways or curbing, or similar identification or safety devices as necessary, to the extent the same do not violate any City of Mesa requirements;

(g) Perform all landscaping and related services on Common Areas and other areas of Association responsibility, including mowing, trimming, planting, overseeding and the like, and to the extent that such areas cannot be accessed without crossing over a Lot(s), having the right to do so without being guilty of trespass;

(h) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration;

(i) Maintain the exterior side of perimeter walls bordering on Common Area, with all Owners subject hereto specifically agreeing to maintain (at such Owner's sole cost) the interior portion of such perimeter walls. Owners also shall be responsible for the cost to construct and maintain all perimeter wall modifications approved by the Design Review Committee or Association; and

(j) The Association, or its duly designated representative, shall maintain, manage and control the Common Areas and shall keep the Common Areas in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof. Except as otherwise set forth in this Declaration, the Association's costs of doing so shall be Common Expenses of the Association. As set forth above, such maintenance shall include maintenance, repair and replacement of all landscaping situated upon the Common Areas.

The Board shall be the sole judge as to the appropriate maintenance of the Common Area.

8.3. Owner Maintenance. Each Owner shall be responsible for maintaining his Lot. Each Owner shall be responsible for maintaining, repairing or replacing the buildings, Dwelling Unit, landscaping or other Improvements situated on his Lot. All buildings, Dwelling Units, landscaping, and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Design Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be visible from neighboring property.

8.4. Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of Common Area is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject as a Lot Specific Assessment. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a Lot Specific

Assessment.

8.5. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, interferes with an area of Association responsibility, or in the event any portion of a Lot is being used in a manner which violates this Declaration or any City of Mesa ordinance, or in the event the Owner of any Lot is failing to perform any of his obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition(s) which exists, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within the specified time period, the Board may cause such action to be taken at said Owner's cost and the Association or its representative can enter onto the Lot to perform such maintenance without being guilty of trespass. If at the expiration of the specified 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 and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject as a Lot Specific Assessment.

8.6. Maintenance Easement. The rights and duties of Owners of Lots with respect to common walls shall be as follows: each Owner and Lessee shall permit the Owner of adjoining Lots, or their representatives, contractors, or employees when reasonably required and in a reasonable manner, to enter his Lot (but not the Dwelling Unit thereon) for the purpose of repairing or maintaining any portion of such common wall that is accessible only by entering upon such adjoining Lot, without being guilty of trespass.

SECTION 9 INSURANCE

9.1. Scope of Coverage. The Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Property insurance on the Common Area insuring against all risk of direct physical loss, in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and all other portions of Property which the Association is obligated to maintain under this Declaration, and shall also include cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

(c) Workman's Compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(d) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association, the Board, and where applicable, the Owners;

(e) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the First Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

(f) If the Property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended; and

(g) "Agreed Amount" and "Inflation Guard" endorsements.

9.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Section shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Section may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

9.3. Payment of Premiums. The premiums for any insurance obtained by the Association shall be included in the budget of the Association and shall be paid by the Association.

9.4. Insurance Obtained by Owners. Each Owner shall be responsible for obtaining insurance for his own benefit and at his own expense covering his Lot and the Improvements located thereon, and his personal property and fixtures located on his Lot, and providing personal liability coverage.

9.5. Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Section, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust, and the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

9.6. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The Association shall pay the cost of repair or replacement in excess of insurance proceeds and reserves. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any State or local health or safety statute or ordinance, and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

SECTION 10 MISCELLANEOUS

10.1. Enforcement. The Association or any Owner shall have the right but not the obligation to enforce the Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the Association shall be entitled to recover from the nonprevailing party all attorneys' fees, costs and expert witness fees incurred by the Association. Notwithstanding anything herein to the contrary, only the Association shall be permitted to enforce provisions of this Declaration regarding the collection of Assessments, including enforcement of the Association's Assessment Lien.

10.2. Administrative Law Proceedings. In the event the Association is required to incur any expense, including attorneys' fees and costs, as a result of the direct or indirect actions of any Owner, the Association shall be entitled to recover all such expenses incurred, including all attorneys' fees and costs, against the applicable Owner, regardless of whether formal proceedings are actually filed, pursued or awarded, and all such expenses shall constitute a Lot Specific Assessment subject to the provisions of Section 7 hereof, including being secured by the Association's Assessment Lien. This includes, but is not limited to Administrative Law Judge proceedings, Registrar of Contractor proceedings, Department of Fire, Building and Life Safety proceedings, Office of Administrative Hearings proceedings, or any other administrative or

governmental proceeding or process. Moreover, and without limiting the foregoing, to the extent the Association is successful in opposing any claims filed against it in any such proceedings, whether or not the Association is declared to be the prevailing party, the Association shall be entitled to and shall be awarded all attorneys' fees, costs and expert witness fees incurred by the Association against the Owner responsible for filing any such claims in the first instance, and all such amounts shall constitute a Lot Specific Assessment subject to the provisions of Section 7 hereof.

10.3. Run with the Land: Termination. The provisions hereof shall run with the land and shall be binding upon all parties and all persons claiming under them. This Declaration shall remain and be in full force and effect for a term of thirty-five (35) years from the date this Declaration is recorded. Thereafter, this Declaration shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked by an instrument in writing, executed and acknowledged by the then Lot Owners of not less than ninety percent (90%) of the Lots subject hereto, and by the approval of not less than sixty-seven percent (67%) of the "Eligible First Mortgagees" (which is defined to mean those First Mortgagees who have filed a written request with the Association requesting notice of certain matters as set forth above), which said instrument shall be recorded in the Maricopa County Recorder's Office, Arizona, not earlier than ninety (90) days prior to the expiration of the initial effective period hereof, or any ten (10) year extension.

10.4. Amendments. At any time this Declaration may be amended by an instrument in writing, executed by the then Lot Owners of more than fifty percent (50%) of the Lots in the Project. Any amendment approved pursuant to this Section 10.4 of this Declaration shall be signed by the President of the Association and shall become effective upon recordation of the same with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section 10.4.

10.5. Conflicts. If any of the provisions of this Declaration conflict with any other provisions herein or incorporated herein, the more restrictive of the two shall govern. If any paragraph, section, sentence, clause or phrase of the provisions hereof shall be or become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases herein contained shall not be affected thereby.

10.6. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be, but is not required to be enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Association or any Owner.

10.7. Violation of Law. Any violation of any State, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration, a nuisance and subject to any or all of the enforcement procedures set forth herein.

10.8. References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration, but regardless of whether any such reference is made in any deed

or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his heirs, executors, successors and assignees.

10.9. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive. For example, the pursuit of a foreclosure action not resulting in a recovery or a full recovery shall not preclude the Association from pursuing a money judgment, or vice versa, so long as the Association does not secure a double recovery. Likewise, pursuit of an injunction shall not preclude the Association from pursuing a foreclosure and/or a money judgment.

10.10. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

10.11. Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or this Declaration.

10.12. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.

10.13. Interpretation. Except for judicial construction, the 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 Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, Association Rules or Design Guidelines, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Design Guidelines, the Bylaws shall control. In the event of any conflict between the Association Rules or Design Guidelines, the more restrictive provision of said documents shall control.

10.14. 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.

10.15. Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest. The "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are

living at the time the period of perpetuities starts to run on the challenged interest.

10.16. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

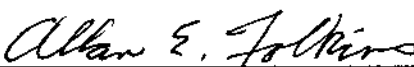
10.17. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.

10.18. Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents or to defend any administrative proceeding, the Association shall be entitled to recover from the other party all attorneys' fees, costs and expenses incurred in any such action.

10.19 Views not Guaranteed Although certain Lots at any point in time may have particular views, no express or implied easements exist for views or for the passage of light and air to any Lot. The Association makes no representation or warranty whatsoever, express or implied, concerning the view which any Lot will have, whether at the date this Declaration is recorded or thereafter. Further, the payment of any premium for any Lot does not constitute a guarantee of any view the Lot may have now or in the future. Any view which exists at any point in time for a Lot may be impaired or obstructed by further construction within the Association or by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other Property.

IN WITNESS WHEREOF, the undersigned President of the Apache Wells Homeowners Association, Inc. hereby certifies that the forgoing Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions for Apache Wells was approved by a majority of the Owners of Lots as required by Paragraph 8 of the Original Declaration, and further certifies that this Declaration shall become effective immediately upon recordation with the County Recorder of Maricopa County, Arizona.

APACHE WELLS HOMEOWNERS ASSOCIATION, INC.

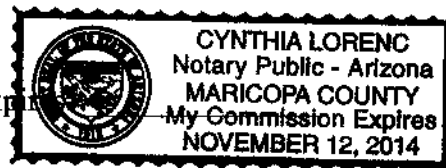

Allan E. Folkins, President

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me on July 17, 2012, by Allan E. Folkins, as President of the Apache Wells Homeowners Association, Inc., in his/her official capacity on behalf of the Association.

Cynthia Lorenc
Notary Public

My commission expires



\\Maxlaw\\company\\TMFILES\\Apache Wells\\Apache Wells (General)\\GOV\\Fourth Amended and Restated CC&R's110302.wpd

EXHIBIT "A"

Lots 1 through 35, 36 (36B), 37 (37B), 42 through 155, 156 (157), 158 through 221, 228 through 260, 261 (262), and 263 through 324, inclusive, APACHE WELLS UNIT ONE, and related Tracts, pursuant to the Plat recorded at Book 141 of Maps, Page 43, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 222 through 227, 225A, 325 through 327, 2115 and 2121, inclusive, APACHE WELLS UNIT ONE-A, pursuant to the Plat recorded at Book 141 of Maps, Page 43, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 360 through 431, 432 (435), 433, 434, 436 (440), 437 (438), 439, and 441 through 453, inclusive, APACHE WELLS UNIT TWO, pursuant to the Plat recorded at Book 141 of Maps, Page 43, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 330 through 344, 345 (346), and 347 through 355, inclusive, APACHE WELLS UNIT TWO-A, pursuant to the Plat recorded at Book 141 of Maps, Page 43, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 1319 through 1338, 1339 (1340), and 1341 through 1581, inclusive, APACHE WELLS UNIT THREE, pursuant to the Plat recorded at Book 141 of Maps, Page 43, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 1275 through 1317, inclusive, APACHE WELLS UNIT THREE-A, pursuant to the Plat recorded at Book 141 of Maps, Page 43, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 1164 through 1274, and 1583 through 1590, inclusive, APACHE WELLS UNIT THREE-B, pursuant to the Plat recorded at Book _____ of Maps, Page _____, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 813 through 1006, 1082 through 1108, and 1127 through 1163, inclusive, APACHE WELLS UNIT FOUR, pursuant to the Plat recorded at Book 141 of Maps, Page 80, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 1007 through 1081, and 1109 through 1126, inclusive, APACHE WELLS UNIT FOUR-A, pursuant to the Plat recorded at Book 141 of Maps, Page 80, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 701 through 722, inclusive, APACHE WELLS UNIT FOUR-B, pursuant to the Plat recorded at Book 141 of Maps, Page 80, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

Lots 454 through 525, inclusive, APACHE WELLS UNIT FIVE, pursuant to the Plat recorded at Book _____ of Maps, Page _____, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.

And Lots 526 through 626, inclusive, APACHE WELLS UNIT SIX, pursuant to the Plat recorded at Book 141 of Maps, Page 43, and Instrument No. 87-141009, records of the Maricopa County Recorder, Arizona.