

Joe Shirley, Jr.
Supervisor, District I

Tom M. White, Jr.
Chairman, District II

Barry Weller
Vice Chairman, District III

**NOTICE OF PUBLIC MEETING AND AGENDA OF
THE APACHE COUNTY BOARD OF SUPERVISORS,
December 16, 2014
Board of Supervisors' Hearing Room, First Floor
75 West Cleveland Street
St. Johns, Arizona
8:30 a.m. MST**

**Invocation by Invitation.
Pledge of Allegiance.**


1. Discussion and possible approval of **CONSENT ITEMS**: All items indicated by an asterisk (*) will be handled by a single vote as part of the consent agenda, unless a Board Member or the County Manager objects at the time the agenda item is called.

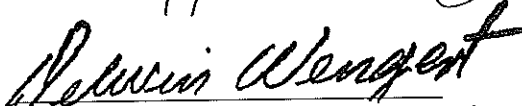
County Manager/Clerk of the Board:

- *A. Request approval of demands dated December 2, 2014 – December 16, 2014. Demands are payments made by the County. Specific details of the demands may be requested through the County public record request process.
2. District III: Discussion and possible approval to apply for membership to the Coalition of Arizona/New Mexico Counties for stable economic growth. The annual membership dues are \$2,600.00.
3. Finance Department: Request authorization to transfer budget contingency money to General Fund budgets that were overrun at the close of fiscal year 2014.
4. County Attorney's Office: Discussion and possible approval of updated settlement agreement between Apache County and Wenima Development to resolve tax court litigation on the classification of property owned by Wenima Development.
5. County Attorney's Office: Request authorization to enter a professional services contract with Karpel for designing updating, maintaining and servicing a new case management system for the Attorney's Office.

6. Engineering Department: Discussion and possible approval to enter into a Memorandum of Understanding between the Navajo Nation Department of Transportation and Apache County.
7. Community Development Department: Consideration and possible approval to accept the resignation of Tom Tilford from the Planning & Zoning Commission and appoint Dean Wade as Planning & Zoning Commission member for a 4 year term: Appoint Mike Barker as alternate commissioner.
8. Community Development Department: Following a Public Hearing, consideration and possible approval of a Vicinity Plan and Preliminary Plat for Cattle Kates Condominium Subdivision. Property located at 80 Main Street, Greer, Arizona 102-11-001L.
9. Community Development Department: Following a Public Hearing, consideration and possible approval of a Vicinity Plan and Preliminary Plat for Four Seasons Condominium Subdivision. Property located at 28 Main Street, Greer, Arizona 102-14-006.
10. Jason Baran, Salt River Project: Update on Environmental Protection Agency (EPA) regulations on coal powered plants.
11. Clerk of the Board: Selection of Chairman and Vice Chairman of the Board for 2015.
12. Call to the Public: Individuals may address the Board on any relevant issue for an amount of time determined by the Chairman. At the close of the call to the public, Board members may not respond to any comments but may respond to criticism, ask staff to review a matter, or ask that a matter be placed on a future agenda.

Pursuant to the Americans with Disabilities Act, the Apache County Board of Supervisors endeavors to ensure the accessibility of its meetings to all persons with disabilities. If you need an accommodation for a meeting, please contact the Clerk of the Board's office at (928)337-7503, TDD (928)-337-4402 at least 48 hours prior to the meeting (not including weekends or holidays) so that an accommodation can be arranged. One or more members of the Board of Supervisors may participate telephonically or through video communication.

Posted: 12/11/14 at 2:55 a.m. (p.m) by 


Delwin Wengert, Clerk of the Board

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: (Individual, Organization, or County Department)

Finance Department

Date/Signature:

Describe in detail what you want to say to the Board and what action you want the Board to take:

Approval of Demands

BOS Meeting Date Requested

PRE-AGENDA ITEM REVIEW

Review Routing / /Legal / /Finance / /Purchasing / /Human Resource / /Other:

Legal Review:

Signature:

Finance Review:

Signature:

Human Resources Review:

Signature:

Other Review:

Signature:

Reviews completed, item approved for Agenda.

Supervisor/Board Clerk's Initials



Accounts Payable Invoice Report

Payment Date Range 12/02/14 - 12/11/14

Report By Vendor - Invoice

Detail Listing

Invoice Number	Invoice Description	Status	Held Reason	Invoice Date	Due Date	G/L Date	Received Date	Payment Date	Invoice Net Amount
Vendor 3039 - 4 RIVERS EQUIPMENT LLC									
327346	Parts to be utilized for grader #210's	Paid by Check #1026626		11/19/2014	12/03/2014	12/03/2014	11/25/2014	12/03/2014	4,562.28
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
2015-00000738	Repairs and Maintenance	1	Each	4,562.2800	4,562.28				
	205-4700-43900 (Roads-Roads Ganado-Repairs and Maintenance)					4,562.28			
	Invoice Items			1					
Vendor 1701 - ALLEGRA									
315204	Advertising	Paid by Check #1026802		11/24/2014	12/10/2014	12/10/2014	12/04/2014	12/09/2014	2,444.50
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Advertising	1	Each	2,444.5000	2,444.50				
	205-4700-43400 (Roads-Roads Ganado-Advertising)					2,444.50			
	Invoice Items			1					
Vendor 2769 - ARIZONA FURNISHINGS									
88388	FURNITURE STJ CENTER	Paid by Check #1026635		08/14/2014	12/03/2014	12/03/2014	11/25/2014	12/03/2014	8,273.69
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
2015-00000079	Assets under \$5000 - BRAWNEY TABLES -	2	Each	299.8500	599.70				
	351-9400-46000 (Post Secondary Education-Technology for Education-Assets under \$5000)					599.70			
2015-00000079	Assets under \$5000 - TASK CHAIRS	80	Each	87.5600	7,004.80				
	351-9400-46000 (Post Secondary Education-Technology for Education-Assets under \$5000)					7,004.80			
2015-00000079	Assets under \$5000 - TAXES	1	Each	669.1900	669.19				
	351-9400-46000 (Post Secondary Education-Technology for Education-Assets under \$5000)					669.19			
	Invoice Items			3					
88430	FURNITURE STJ CENTER	Paid by Check #1026635		08/19/2014	12/03/2014	12/03/2014	11/25/2014	12/03/2014	3,497.17
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
2015-00000079	Assets under \$5000 - SEMINAR TABLE	2	Each	244.9500	489.90				
	351-9400-46000 (Post Secondary Education-Technology for Education-Assets under \$5000)					489.90			
2015-00000079	Assets under \$5000 - SEMINAR TABLE	6	Each	244.9500	1,469.70				
	351-9400-46000 (Post Secondary Education-Technology for Education-Assets under \$5000)					1,469.70			
2015-00000079	Assets under \$5000 - SEMINAR TABLE	4	Each	237.8500	951.40				
	351-9400-46000 (Post Secondary Education-Technology for Education-Assets under \$5000)					951.40			



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2015-00000079	Assets under \$5000 - SHIPPING AND HANDLING	1	Each	330.0000	330.00			
	351-9400-46000 (Post Secondary Education-Technology for Education-Assets under \$5000)					330.00		
2015-00000079	Assets under \$5000 - TAXES	1	Each	256.1700	256.17			
	351-9400-46000 (Post Secondary Education-Technology for Education-Assets under \$5000)					256.17		
	Invoice Items	5						

Vendor **1066 - AVAYA COMMUNICATIONS**

2733298325	Telephone Services	Paid by Check #1026639		11/10/2014	12/03/2014	12/03/2014	12/01/2014	12/03/2014	1,381.19
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Telephone Services	1	Each	1,381.1900	1,381.19				
	100-0400-43210 (General Fund-Board of Supervisors - Gen-Telephone Services)					1,381.19			
	Invoice Items	1							

Vendor **1074 - AZ DEPT OF HEALTH SERVICES**

ADHS112014	Professional Services	Paid by Check #1026815		12/02/2014	12/10/2014	12/10/2014	12/03/2014	12/09/2014	1,275.00
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Professional Services	1	Each	1,275.0000	1,275.00				
	212-5125-43100 (Health Services-Vital Records-Professional Services)					1,275.00			
	Invoice Items	1							

Vendor **1077 - AZ DEPT OF RISK MANAGEMENT**

NOV2014	Risk Management	Paid by Check #1026816		12/09/2014	12/10/2014	12/10/2014	12/09/2014	12/09/2014	2,274.83
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Risk Management	1	Each	2,274.8300	2,274.83				
	341-2114 (Juvenile Jail District-Risk Management)					751.98			
	100-2114 (General Fund-Risk Management)					399.64			
	227-2114 (Juvenile High Risk Court-Risk Management)					3.09			
	239-2114 (Local Court Automation-Risk Management)					1.52			
	241-2114 (State Aid to Probation-Risk Management)					166.10			
	244-2114 (Probation Services-Risk Management)					123.62			
	245-2114 (CASA-Risk Management)					2.62			
	246-2114 (Adult Intensive Supervision-Risk Management)					356.04			
	249-2114 (Juvenile Treatment Services-Risk Management)					6.16			
	251-2114 (J.I.P.S-Risk Management)					35.50			
	254-2114 (State Adult Enhancement Fund-Risk Management)					304.42			



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Detail Listing

Invoice Items 3

Vendor **1234 - BLUE HILLS ENVIRONMENTAL**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number		
0008P	Pass Through Funding							32,025.84	
	Pass Through Funding	1	Each	32,025.8400	32,025.84				
	702-0400-49200 (Waste Tire Disposal-Board of Supervisors - Gen-Pass Through Funding)						32,025.84		
				Invoice Items				1	

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number		
9167313	Refuse Disposal							1,026.98	
	Refuse Disposal	1	Each	1,026.9800	1,026.98				
	100-1500-43740 (General Fund-Grounds and Maintenance-Refuse Disposal)						1,026.98		
				Invoice Items				1	

Vendor **1164 - BRADCO**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number		
31915	Heating Oil							3,457.16	
	Heating Oil	1	Each	3,457.1600	3,457.16				
	100-1500-43770 (General Fund-Grounds and Maintenance-Heating Oil)						1,728.58		
	340-3400-43770 (Jail District-Jail-Heating Oil)						1,728.58		
				Invoice Items				1	

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number		
32171	Heating Oil							1,898.39	
	Heating Oil	1	Each	1,898.3900	1,898.39				
	100-1500-43770 (General Fund-Grounds and Maintenance-Heating Oil)						1,898.39		
				Invoice Items				1	

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number		
32366	Fuel							23,197.39	
2015-00000741	Fuel Oil/Diesel - Diesel fuel	1	Each	16,520.8800	16,520.88				
	205-4400-41260 (Roads-Roads Puerco-Fuel Oil Diesel)						16,520.88		
2015-00000741	Gasoline - Unleaded gasoline	1	Each	6,676.5100	6,676.51				
	205-4400-41160 (Roads-Roads Puerco-Gasoline)						6,676.51		
				Invoice Items				2	



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P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
32032	Heating Oil							4,679.97
	Paid by Check #1026829			11/18/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014
	Heating Oil	1	Each	4,679.9700	4,679.97			
	100-1500-43770 (General Fund-Grounds and Maintenance-Heating Oil)					2,339.99		
	340-3400-43770 (Jail District-Jail-Heating Oil)					2,339.98		
	Invoice Items			1				
32556	Heating Oil							5,996.50
	Paid by Check #1026829			11/24/2014	12/10/2014	12/10/2014	12/04/2014	12/09/2014
	Heating Oil	1	Each	5,996.5000	5,996.50			
	100-1500-43770 (General Fund-Grounds and Maintenance-Heating Oil)					5,996.50		
	Invoice Items			1				

Vendor **1937 - BURNHAM MORTUARY**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
14EG078	Indigent Burial							2,090.00
	Paid by Check #1026830			12/02/2014	12/10/2014	12/10/2014	12/09/2014	12/09/2014
	Indigent Burial	1	Each	2,090.0000	2,090.00			
	100-5140-43175 (General Fund-Public Fiduciary-Indigent Burial)					2,090.00		
	Invoice Items			1				

Vendor **1457 - MELODY CAPPS**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
2014002	Professional Services							1,360.00
	Paid by Check #1026659			11/30/2014	12/03/2014	12/03/2014	12/01/2014	12/03/2014
	Professional Services	1	Each	1,360.0000	1,360.00			
	100-0200-43100 (General Fund-Attorney-Professional Services)					1,360.00		
	Invoice Items			1				

Vendor **1716 - CHEVRON USA INC**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
611691	GASOLINE							1,338.34
	Paid by Check #1026665			11/22/2014	12/03/2014	12/03/2014	11/24/2014	12/03/2014
	Gasoline	1	Each	669.2300	669.23			
	100-3700-41160 (General Fund-Juvenile Probation-Gasoline)					669.23		
	Gasoline	1	Each	41.1800	41.18			



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100-3700-41160 (General Fund-Juvenile Probation-Gasoline)					41.18
Gasoline	1	Each	13.2500	13.25	
100-0404-41160 (General Fund-Board of Supervisors - MGR-Gasoline)					13.25
Travel and Training Expense	1	Each	207.0200	207.02	
205-4800-43310 (Roads-Roads Chinle-Travel and Training Expense)					207.02
Travel and Training Expense	1	Each	163.6100	163.61	
100-2800-43310 (General Fund-Recorder-Travel and Training Expense)					163.61
Travel and Training Expense	1	Each	51.6000	51.60	
100-9100-43310 (General Fund-School Superintendent-Travel and Training Expense)					51.60
Travel and Training Expense	1	Each	99.0200	99.02	
205-4400-43310 (Roads-Roads Puerco-Travel and Training Expense)					99.02
Travel and Training Expense	1	Each	93.4300	93.43	
100-1500-43310 (General Fund-Grounds and Maintenance-Travel and Training Expense)					93.43
Invoice Items			8		

Vendor **1118 - COCONINO COUNTY**

5	Professional Services	Paid by Check #1026834		10/29/2014	12/10/2014	12/10/2014	12/04/2014	12/09/2014	3,733.33
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Professional Services	1	Each	3,733.3300	3,733.33				
	100-0100-43100 (General Fund-Assessor-Professional Services)					3,733.33			
	Invoice Items			1					

Vendor **2186 - COMMUNITY COUNSELING CENTERS INC**

ASCO11031410	Court Ordered Evaluations	Paid by Check #1026668		11/12/2014	12/03/2014	12/03/2014	11/25/2014	12/03/2014	2,400.00
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Court Ordered Evaluations	1	Each	2,400.0000	2,400.00				
	212-5100-44420 (Health Services-Health Services-Court Ordered Evaluations)					2,400.00			
	Invoice Items			1					

Vendor **1407 - CREATIVE MULTIMEDIA INC (CMI)**

OCTNOV2014	Professional Services	Paid by Check #1026838		12/03/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014	23,048.00
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		



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Professional Services	1	Each	23,048.0000	23,048.00				
205-4300-43100 (Roads-Roads Engineer-Professional Services)							19,133.00	
370-0400-43100 (Flood Control-Board of Supervisors - Gen-Professional Services)							3,915.00	
Invoice Items	1							

Vendor **1792 - CRESTLINE SPECIALTIES INC**

H165708501039	promotion supplies	Paid by Check #1026670		11/06/2014	12/03/2014	12/03/2014	11/25/2014	12/03/2014	1,873.94
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>		<i>Contract Number</i>	
2015-00000658	Supplies - promotion supplies	1	Each	1,873.9400	1,873.94				
	212-5127-41000 (Health Services-Teen Pregnancy Prevention-Supplies)						936.97		
	212-5645-41000 (Health Services-Health Start-Supplies)						936.97		
	Invoice Items	1							

Vendor **1125 - DELL COMPUTER CORPORATION**

XJKNCW76	Computers	Paid by Check #1026841		11/25/2014	12/10/2014	12/10/2014	12/03/2014	12/09/2014	1,779.62
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>		<i>Contract Number</i>	
2015-00000750	Assets under \$5000 - 2--OptiPlex 7010 mini towers	1	Each	1,779.6200	1,779.62				
	202-8030-46000 (County Library-E-Rate-Assets under \$5000)						1,779.62		
	Invoice Items	1							

Vendor **3670 - COLLIN J DEWITT**

9	Professional Services	Paid by Check #1026673		11/21/2014	12/03/2014	12/03/2014	11/26/2014	12/03/2014	1,600.00
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>		<i>Contract Number</i>	
	Professional Services	1	Each	1,600.0000	1,600.00				
	100-0400-43100 (General Fund-Board of Supervisors - Gen-Professional Services)						1,600.00		
	Invoice Items	1							

Vendor **1546 - FLEET PRIDE**

65264704	Motor oil to be utilized for County	Paid by Check #1026847		11/28/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014	1,177.00
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>		<i>Contract Number</i>	
2015-00000472	Oil - 55 GAL DRUM 5W30 SYNBLEND	2	Each	550.0000	1,100.00				



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2015-00000472	Sales Tax	205-4700-41150 (Roads-Roads Ganado-Oil)	1	Each	77.0000	77.00	1,100.00
		205-4700-41150 (Roads-Roads Ganado-Oil)					77.00
		Invoice Items	2				

Vendor **1135 - FRONTIER**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
6400DEC14	Telephone Services							1,741.89
	Paid by Check #1026692							
	Telephone Services	1	Each	1,741.8900	1,741.89			
	100-0405-43210 (General Fund-Human Resources-Telephone Services)					23.54		
	100-0463-43210 (General Fund-BOS - District III-Telephone Services)					23.54		
	100-1100-43210 (General Fund-Information Technology Service-Telephone Services)					47.08		
	212-5100-43210 (Health Services-Health Services-Telephone Services)					70.62		
	212-5122-43210 (Health Services-Injury Prevention-Telephone Services)					47.08		
	212-5127-43210 (Health Services-Teen Pregnancy Prevention-Telephone Services)					47.08		
	212-5300-43210 (Health Services-Tobacco Prevention-Telephone Services)					94.16		
	212-5350-43210 (Health Services-Smoke Free AZ-Telephone Services)					47.08		
	100-2200-43210 (General Fund-Communications-Telephone Services)					23.54		
	100-2400-43210 (General Fund-Community Development-Telephone Services)					94.16		
	212-5632-43210 (Health Services-Well Woman Health Check-Telephone Services)					47.08		
	212-5130-43210 (Health Services-Immunization-Telephone Services)					141.23		
	212-5634-43210 (Health Services-WIC-Telephone Services)					94.16		
	100-2800-43210 (General Fund-Recorder-Telephone Services)					70.62		
	212-5645-43210 (Health Services-Health Start-Telephone Services)					70.62		
	100-3500-43210 (General Fund-Adult Probation-Telephone Services)					353.09		
	212-5655-43210 (Health Services-Focus A Plan (PHEP)-Telephone Services)					94.16		
	100-3900-43210 (General Fund-Sheriff-Telephone Services)					282.43		
	212-5128-43210 (Health Services-AZNN Grant Exp.-Telephone Services)					70.62		
	Invoice Items	1						

Vendor **4214 - GOLD HEATING AND COOLING**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
S12031421	New furnace and installation							2,020.59
	Paid by Check #1026861							
2015-00000780	Repairs and Maintenance - Purchase and	1	Each	2,020.5900	2,020.59			
	202-8010-43900 (County Library-Buildings-Repairs and Maintenance)					2,020.59		
	Invoice Items	1						



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Detail Listing

Vendor **1199 - GRAVES PROPANE CO INC**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
1162892	Butane							1,085.66
	Butane	1	Each	1,085.6600	1,085.66			
	100-1500-43720 (General Fund-Grounds and Maintenance-Butane)					1,085.66		
	Invoice Items						1	

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
1162895	Butane							1,238.16
	Butane	1	Each	1,238.1600	1,238.16			
	100-1500-43720 (General Fund-Grounds and Maintenance-Butane)					1,238.16		
	Invoice Items						1	

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
1162896	Butane							1,009.56
	Butane	1	Each	1,009.5600	1,009.56			
	100-1500-43720 (General Fund-Grounds and Maintenance-Butane)					504.78		
	341-3700-43720 (Juvenile Jail District-Juvenile Probation-Butane)					504.78		
	Invoice Items						1	

Vendor **1192 - HILLYARD INC**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
601401085	Cleaning Supplies							1,121.60
2015-00000762	Cleaning and Sanitation Supplies - Cleaning	1	Each	1,121.6000	1,121.60			
	340-3400-41250 (Jail District-Jail-Cleaning and Sanitation Supplies)					1,121.60		
	Invoice Items						1	

Vendor **1487 - JCG TECHNOLOGIES INC**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
4472	LIberty upgrade							1,514.71
2015-00000705	Computer Software Under \$5,000 - LIberty	1	Each	1,514.7100	1,514.71			
	100-3050-42200 (General Fund-Jury Fees and Expenses-Computer Software Under \$5000)					1,514.71		
	Invoice Items						1	



Accounts Payable Invoice Report

Payment Date Range 12/02/14 - 12/11/14

Report By Vendor - Invoice

Detail Listing

Vendor **1351 - KATHLEEN M MCGUIRE PSY D LLC**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
NOV2014	Professional Services							1,785.00
	Professional Services	1	Each	1,785.0000	1,785.00			
	289-3510-43100 (Community Punishment-Sex Offender-Professional Services)					1,635.00		
	249-3700-43100 (Juvenile Treatment Services-Juvenile Probation-Professional Services)					150.00		
	Invoice Items				1			

Vendor **1729 - LAW OFFICE OF MARSHA GREGORY**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
201411	Professional Services							8,500.00
	Professional Services	1	Each	8,500.0000	8,500.00			
	100-3000-43100 (General Fund-Public Defender-Professional Services)					8,500.00		
	Invoice Items				1			

Vendor **3846 - MCCOOK BOILER AND PUMP COMPANY**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
102914ADVANCE	BOILER REPAIRS							2,244.00
2015-00000772	Repairs and Maintenance - BOILER REPAIRS	1	Each	2,244.0000	2,244.00			
	340-3400-43900 (Jail District-Jail-Repairs and Maintenance)					2,244.00		
	Invoice Items				1			

Vendor **1154 - NATIONWIDE**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
2015-00000277	NATION - Nationwide Retirement							1,605.00
	Accounts Payable - 12/04/2014 Deduction	1	Each	1,605.0000	1,605.00			
	100-2230 (General Fund-Voluntary Withholding)					850.00		
	205-2230 (Roads-Voluntary Withholding)					5.00		
	285-2230 (Case Processing Assistance-Voluntary Withholding)					90.00		
	297-2230 (Fill the Gap, Courts-Voluntary Withholding)					660.00		
	Invoice Items				1			



Accounts Payable Invoice Report

Payment Date Range 12/02/14 - 12/11/14

Report By Vendor - Invoice

Detail Listing

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
60234604DEC14	Butane							1,155.15
	Paid by Check #1026882			12/04/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014
	Butane	1	Each	1,155.1500	1,155.15			
	205-4700-43720 (Roads-Roads Ganado-Butane)					1,155.15		
			Invoice Items		1			

Vendor **1885 - NAVOPACHE ELECTRIC COOPERATIVE**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
7098300NOV14	Electricity							1,055.48
	Paid by Check #1026557			11/09/2014	12/02/2014	12/02/2014	11/25/2014	12/02/2014
	Electricity	1	Each	1,055.4800	1,055.48			
	100-1500-43710 (General Fund-Grounds and Maintenance-Electricity)					1,055.48		
			Invoice Items		1			

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
2822905DEC14	Electricity							6,902.17
	Paid by Check #1026884			12/03/2014	12/10/2014	12/10/2014	12/09/2014	12/09/2014
	Electricity	1	Each	6,902.1700	6,902.17			
	340-3400-43710 (Jail District-Jail-Electricity)					6,902.17		
			Invoice Items		1			

Vendor **1783 - NEW WORLD SYSTEMS CORPORATION**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
39432	Computer Software							3,000.00
	Paid by Check #1026885			11/30/2014	12/10/2014	12/10/2014	12/09/2014	12/09/2014
	Computer Software	1	Each	3,000.0000	3,000.00			
	100-1101-48560 (General Fund-IT Capital Improvements-Computer Software)					3,000.00		
			Invoice Items		1			

Vendor **3155 - PHIL STRATTON ELECTRIC IN**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
6662	Installation of new Transformer							1,313.35
	Paid by Check #1026893			12/08/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014
2015-00000724	Repairs and Maintenance - Installtion of new	1	Each	1,313.3500	1,313.35			
	340-3400-43900 (Jail District-Jail-Repairs and Maintenance)					1,313.35		
			Invoice Items		1			



Accounts Payable Invoice Report

Payment Date Range 12/02/14 - 12/11/14

Report By Vendor - Invoice

Detail Listing

Vendor **1497 - PIMA COUNTY MEDICAL**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
2561	Autopsy							2,200.00
	Paid by Check #1026734			11/10/2014	12/03/2014	12/03/2014	11/25/2014	12/03/2014
	Autopsy	1	Each	2,200.0000	2,200.00			
	212-3800-43170 (Health Services-Medical Examiner-Autopsy)					2,200.00		
			Invoice Items		1			

Vendor **1562 - PITNEY BOWES RESERVE ACCOUNT**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
11784394DEC14	Postage							5,000.00
	Paid by Check #1026955			11/18/2014	12/11/2014	12/11/2014	12/11/2014	12/11/2014
	Postage	1	Each	5,000.0000	5,000.00			
	100-0400-43230 (General Fund-Board of Supervisors - Gen-Postage)					5,000.00		
			Invoice Items		1			

Vendor **4198 - QED INC**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
S3875476001	NEW TRANSFORMER							1,931.42
	Paid by Check #1026896			11/12/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014
2015-00000735	Repairs and Maintenance - NEW TRANSFORMER	1	Each	1,931.4200	1,931.42			
	340-3400-43900 (Jail District-Jail-Repairs and Maintenance)					1,931.42		
			Invoice Items		1			

Vendor **1709 - SHI INTERNATIONAL CORP**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
B02730935	software							9,678.44
	Paid by Check #1026914			11/13/2014	12/10/2014	12/10/2014	12/04/2014	12/09/2014
2015-00000704	Computer Software Under \$5,000	1	Each	9,678.4400	9,678.44			
	100-3900-42200 (General Fund-Sheriff-Computer Software Under \$5000)					4,839.22		
	340-3400-42200 (Jail District-Jail-Computer Software Under \$5000)					4,839.22		
			Invoice Items		1			

Vendor **1719 - SHOW LOW FORD INC**

P.O. Number	Item Description	Quantity	U/M	Amount/Unit	Total Amount	Vendor Catalog Part Number	Contract Number	
60119451	radiator and labor							1,699.81
	Paid by Check #1026916			11/24/2014	12/10/2014	12/10/2014	12/04/2014	12/09/2014



Accounts Payable Invoice Report

Payment Date Range 12/02/14 - 12/11/14

Report By Vendor - Invoice

Detail Listing

2015-00000766	Repairs and Maintenance - radiator and install	1	Each	1,699.8100	1,699.81				
	205-4500-43900 (Roads-Roads Round Valley-Repairs and Maintenance)								1,699.81
	Invoice Items								1

Vendor **2893 - SPORTS WORLD INC**

8045	WELLNESS EVENT SHIRTS-	Paid by Check #1026922		09/25/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014	2,542.75
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
2015-00000504	Special Event Expenses - LAYOUT	1	Each	45.0000	45.00				
	100-0407-41114 (General Fund-Wellness-Special Event Expenses)					45.00			
2015-00000504	Special Event Expenses - LONG SLEEVE SHIRTS	200	Each	11.7500	2,350.00				
	100-0407-41114 (General Fund-Wellness-Special Event Expenses)					2,350.00			
2015-00000504	Special Event Expenses - SCREENS	4	Each	15.0000	60.00				
	100-0407-41114 (General Fund-Wellness-Special Event Expenses)					60.00			
2015-00000504	Special Event Expenses - XXLG CHARGE	39	Each	2.2500	87.75				
	100-0407-41114 (General Fund-Wellness-Special Event Expenses)					87.75			
	Invoice Items								4

Vendor **1054 - THE AARONS COMPANY LLC**

APACHE1412	Professional Services	Paid by Check #1026767		11/30/2014	12/03/2014	12/03/2014	12/01/2014	12/03/2014	3,000.00
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Professional Services	1	Each	3,000.0000	3,000.00				
	100-0404-43100 (General Fund-Board of Supervisors - MGR-Professional Services)					3,000.00			
	Invoice Items								1

Vendor **1109 - TRINITY SERVICES GROUP INC**

1457300131	Food Supplies	Paid by Check #1026936		11/06/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014	3,545.81
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Food Supplies	1	Each	3,545.8100	3,545.81				
	340-3400-41220 (Jail District-Jail-Food Supplies)					3,545.81			
	Invoice Items								1
1457300131A	Food Supplies	Paid by Check #1026936		11/13/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014	3,984.75
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Food Supplies	1	Each	3,984.7500	3,984.75				
	340-3400-41220 (Jail District-Jail-Food Supplies)					3,984.75			



Accounts Payable Invoice Report

Payment Date Range 12/02/14 - 12/11/14

Report By Vendor - Invoice

Detail Listing

		Invoice Items		1					
1457300131B	Food Supplies	Paid by Check #1026936		11/20/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014	3,683.68
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Food Supplies	1	Each	3,683.6800	3,683.68				
	340-3400-41220 (Jail District-Jail-Food Supplies)					3,683.68			
		Invoice Items		1					
1457300131C	Food Supplies	Paid by Check #1026936		11/27/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014	3,605.25
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Food Supplies	1	Each	3,605.2500	3,605.25				
	340-3400-41220 (Jail District-Jail-Food Supplies)					3,605.25			
		Invoice Items		1					

Vendor **3452 - UNITED RENTALS**

124308166001	backhoe rental	Paid by Check #1026937		11/26/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014	4,822.60
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
2015-00000732	Infrastructure - backhoe w/ hammer attachment	1	Each	4,822.6000	4,822.60				
	205-4800-48800 (Roads-Roads Chinle-Infrastructure)					4,822.60			
		Invoice Items		1					

Vendor **1733 - VERITAS RESEARCH CONSULTING**

VRC115	Professional Services	Paid by Check #1026781		12/01/2014	12/03/2014	12/03/2014	12/01/2014	12/03/2014	3,560.00
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
	Professional Services	1	Each	3,560.0000	3,560.00				
	100-0400-43100 (General Fund-Board of Supervisors - Gen-Professional Services)					3,560.00			
		Invoice Items		1					

Vendor **4220 - WALETA LAKE HAVASU CITY**

106	REGISTRATIONS	Paid by Check #1026940		12/04/2014	12/10/2014	12/10/2014	12/08/2014	12/09/2014	2,400.00
<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>		
2015-00000838	Registrations - REGISTRATIONS	1	Each	2,400.0000	2,400.00				
	240-3400-47940 (Jail Enhancement-Jail-Registrations)					2,400.00			
		Invoice Items		1					



Accounts Payable Invoice Report

Payment Date Range 12/02/14 - 12/11/14

Report By Vendor - Invoice

Detail Listing

<i>P.O. Number</i>	<i>Item Description</i>	<i>Quantity</i>	<i>U/M</i>	<i>Amount/Unit</i>	<i>Total Amount</i>	<i>Vendor Catalog Part Number</i>	<i>Contract Number</i>
2015-00000778	Tires	1	Each	3,767.0700	3,767.07		
	100-3900-41130 (General Fund-Sheriff-Tires)					3,767.07	
			Invoice Items		1		

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: (Individual, Organization, or County Department)

District III

Date/Signature: 12-9-14 DWengert

Describe in detail what you want to say to the Board and what action you want the Board to take:

Discussion and possible approval to apply for membership to the Coalition of Arizona/New Mexico Counties for stable Economic Growth. The annual membership dues are \$2,600.00.

BOS Meeting Date Requested _____

PRE-AGENDA ITEM REVIEW

Review Routing / /Legal / /Finance / /Purchasing / /Human Resource / /Other: _____

Legal Review: _____

Signature: _____

Finance Review: _____

Signature: _____

Human Resources Review: _____

Signature: _____

Other Review: _____

Signature: _____

Reviews completed, item approved for Agenda. Supervisor/Board Clerk's Initials _____

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: (Individual, Organization, or County Department)

Finance

Date/Signature:

Describe in detail what you want to say to the Board and what action you want the Board to take:

Request authorization to ~~transfer~~ transfer budgeted Contingency Money to General Fund budgets that were ^{overrun} Overrun at the Close of Fiscal Year 2014.

BOS Meeting Date Requested _____

PRE-AGENDA ITEM REVIEW

Review Routing / /Legal / /Finance / /Purchasing / /Human Resource / /Other: _____

Legal Review: _____

Signature: _____

Finance Review:

Signature: _____

Human Resources Review: _____

Signature: _____

Other Review: _____

Signature: _____

Reviews completed, item approved for Agenda.

Supervisor/Board Clerk's Initials _____



Expense Budget by Organization Report

Through 06/30/14

Prior Fiscal Year Activity Included

Organization	Amended Budget	Current Month		YTD		Budget - YTD		Rec'd
		Transactions	% used/	Transactions	% used/	Transactions	% used/	
Fund 100 - General Fund								
EXPENSE								
Department 0200 - Attorney	852,604.00	144,299.19		969,428.36		(116,824.36)		114
Department 0400 - Board of Supervisors - Gen	400,000.00	(3,468.60)		471,734.56		(71,734.56)		118
Department 0918 - Constable, Puerco	27,925.00	3,978.21		34,773.85		(6,848.85)		125
Department 0919 - Constable, St Johns	25,525.00	5,174.88		26,566.64		(1,041.64)		104
Department 0920 - Constable, Round Valley	25,525.00	4,392.27		26,949.48		(1,424.48)		106
Department 1500 - Grounds and Maintenance	820,056.00	117,813.51		892,824.01		(72,768.01)		109
Department 1800 - J.P. - Puerco	279,569.00	37,478.47		283,499.59		(3,930.59)		101
Department 2020 - Springerville Magistrate	38,000.00	5,605.60		43,722.69		(5,722.69)		115
Department 2800 - Recorder	492,230.00	60,164.28		494,425.70		(2,195.70)		100
Department 3000 - Public Defender	400,000.00	46,586.99		419,493.63		(19,493.63)		105
Department 3900 - Sheriff	2,521,752.00	322,436.29		2,797,336.58		(275,584.58)		111
Department 5400 - AHCCCS/ALITCS	1,078,500.00	219,891.82		1,101,915.82		(23,415.82)		102

Beth Bond

Subject: FW: Agenda Item
Attachments: Settlement Agreement - Wenima Development v.3.doc

From: Joe Young [<mailto:JYoung@apachelaw.net>]
Sent: Friday, November 21, 2014 2:02 PM
To: Beth Bond
Subject: Agenda Item

Beth, I need an agenda item on the attached agreement for the Board. Long story short, this agreement was approved by the Board a long time ago, but because of some conflict with some non-essential language in the contract, was never finalized.

Discussion and possible approval of an updated settlement agreement between Apache County and Wenima Development to resolve tax court litigation on the classification of property owned by Wenima Development.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE of claims ("Agreement") is entered into by and between Apache County, a political subdivision of the State of Arizona (the "County") and Wenima Development, LLC an Arizona limited liability company ("Claimant").

WITNESSETH:

WHEREAS, Claimant disputes the assessed classification made by the County in reference to certain property owned by Claimant both currently, and in previous years; and

WHEREAS, the County believes that Claimant's demand that County return previously paid taxes is legally insufficient; and

WHEREAS, the parties wish to settle all disputes which may exist between them; and

WHEREAS, the parties have agreed to certain settlement terms; and

WHEREAS, the parties have agreed to enter into this Settlement Agreement and General Release,

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and sufficient consideration, receipt of which is hereby acknowledged, the parties agree as follows:

- A. The County and Claimant agree that Claimant's real property located near Springerville, Arizona shall be classified as Agricultural for the current year, and for all years since 2003. County and Claimant agree that County has previously refunded Claimant with overpayment of taxes for tax years 2010, 2011, 2012, such amount representing the excess real property tax based for those years due to Claimant's property not being classified as Agricultural. Additionally, County and Claimant agree that for the tax years 2003, 2004, 2005, 2006, 2007, 2008, and 2009, Claimant shall be credited the difference between the amount actually taxed, and the amount that would have been taxed had Claimant's property been classified as Agricultural, that amount equaling \$76,629.37. This amount shall be credited to future tax bills that become due and owing by Claimant, but shall not be refunded in cash. County's obligation to credit said amount shall be forgiven in its entirety in the event Claimant sells or otherwise becomes dispossessed of the entirety of the real property. The credit contemplated in this agreement is a negotiated settlement, and does not run with the land. However, as long as Claimant retains ownership of any portion of the real property, said property shall continue to be classified as Agricultural.
- B. Claimant for himself, his heirs, executors, administrators, assigns, and successors, agrees as follows:
 1. To forever fully release, remise, acquit and discharge the County, Apache County, and its and their predecessors and successors, and its agents, attorneys, employees

and assigns (hereafter collectively referred to as ("Releases")), and covenant not to sue or otherwise institute or cause to be instituted or any way participate in (except at the request of the County) legal or administrative proceedings against Releases with respect to any matter, including, without limitation, any matter arising out of or connected with any dispute relating to property classification or valuation for the tax year 2013 or earlier and causes of action of every nature, kind and description, in law, equity, or otherwise, whether or not now known or ascertained, which heretofore do or may exist.

2. That it is waiving any rights it may have had or now has to pursue any and all remedies available to it under any cause of action in relation to the classification of its property for 2013 or any preceding years.
 3. That Claimant will not, except as may be mandated by statutory or regulatory requirements or as may be required by legal process, disclose to others the fact or terms of this settlement, the amounts or terms referred to in this Agreement, or the fact of settlement or the existence of a dispute, including the facts giving rise to the dispute. Claimant understands that this covenant of non-disclosure is a material inducement to the County for the making of this settlement and that, for the breach thereof the County will be entitled to pursue its legal and equitable remedies, including, without limitation, the right to seek injunctive relief.
 4. Nothing in this Section B shall prevent either party to initiate a court action or otherwise sue to enforce the provisions of this Agreement.
- C. The County and Claimant, for itself, any owner or member, any heirs, executors, administrators, assigns, and successors, jointly agree as follows:
1. That nothing contained in this Agreement shall constitute or be treated as an admission by County or Claimant of liability, of any wrongdoing, or of any violation of law.
 2. That if any provision of this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce all remaining provisions to the extent permitted by law.
 3. That this Agreement shall bind and benefit Claimant's members, owners, administrators, successors, assigns, and each of them; it shall also bind and benefit the County and its successors and assigns.
 4. That this Agreement shall be deemed to have been entered into in the State of Arizona and shall be construed and interpreted in accordance with the laws of that state.
 5. That each party hereby agrees that, even in the event facts or laws used to reach the settlement constituting the basis of this Agreement may change, or be revealed to be different than currently understood, this Agreement shall be and will remain effective notwithstanding any such difference in fact or change in law.

6. That this Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one agreement. Execution of a facsimile copy shall have the same force and effect as execution of an original, and a facsimile signature shall be deemed an original and valid signature.
7. That they have read and understand this Agreement, and that they affix their signatures hereto voluntarily and without coercion.

Wenima Development, LLC, an
Arizona limited liability company

By Lenard Toye, Manager

Apache County, a political subdivision
of the State of Arizona

By _____
Its _____

BOARD OF SUPERVISOR'S AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: (Individual, Organization, or County Department)

Michael B. Whiting, Apache County Attorney

Date/Signature: _____

Describe in detail what you want to say to the Board and what action you want the Board to take:

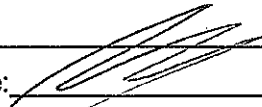
County Attorney: Request authorization to enter a professional services contract with Karpel for designing, updating, maintaining and servicing a new case management system for the Attorney's Office.

BOS Meeting Date Requested December 16, 2014

PRE-AGENDA ITEM REVIEW

Review Routing / /Legal / /Finance / /Purchasing / /Human Resource / /Other: _____

Legal Review: _____

Signature: 

Finance Review: _____

Signature: _____

Purchasing Review: _____

Signature: _____

Human Resources Review: _____

Signature: _____

Other Review: _____

Signature: _____

Reviews completed, Item approved for Agenda.

Supervisor/Board Clerk's Initials _____

BOARD ACTION TAKEN

/ /Approved / /Disapproved / /Deleted / /Continued to: _____

Signature Clerk of Board _____

**COUNTY PROSECUTOR'S OFFICE
APACHE COUNTY, AZ**

CONTRACT FOR



PROSECUTORbyKarpel®



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This agreement between Karpel Computer Systems Inc., a Missouri corporation, doing business as Karpel Solutions (hereinafter referred to as "Karpel Solutions") and Apache County, a political subdivision of the State of Arizona (hereinafter referred to as "Client") is for the purposes of reviewing this proposal and to enter into this contract including the Master Terms and Conditions set forth below wherein Karpel Solutions agrees to sell licenses for its copyrighted software program known as PROSECUTORbyKarpel® (hereinafter referred to as "PbK").

1. CONFIDENTIALITY STATEMENT

This document is the intellectual property of Karpel Solutions. Client agrees that the information contained within this proposal is proprietary information and that it shall not disclose, reproduce in any format, or use any of the terms, data, or any other material contained herein outside of Apache County or for any other purposes other than to evaluate this contract. If the Client is required by statute or case law to disclose any information in this agreement then Client shall notify Karpel Solutions three (3) business days prior to the release. This agreement does not limit Client the right to use information contained within this contract if it is obtained from another source without restriction. Any subsequent revisions, addendums, or amendments to this document shall be covered under the terms of this confidentiality agreement by reference.

2. SCOPE OF WORK

The following Scope of Work represents the services required to reach the proposed solution and a successful project. Karpel Solutions will perform all work in accordance with the descriptions, scopes and specifications hereafter described.

PROSECUTORbyKarpel Implementation Timeline

<u>Deadline</u>	<u>Task Description</u>	<u>Days out</u>
December 21, 2014	Final Contracts, Implementation Agreement signed and Project Kickoff Meeting. Review this schedule. Minimum Server and Workstation requirements are explained. Legacy Application Analysis and Legacy Database is given to Karpel to begin the data conversion.	120
January 20, 2015	Server & PC assessment completed and any necessary hardware or software ordered to meet PBK Installation Prerequisites.	90
February 19, 2015	<u>First 4 hr webinar with System Administrators. PBK Overview WITH the 1st data conversion complete!</u> Project Team is selected including Karpel Staff and Customer System Administrators. (One Customer System Administrator must be a Policy Setting Attorney). PBK Pre-load configuration is explained and initial Document Templates are received. 4-hour workflow pre-configuration is conducted.	60
February 19, 2015	Server Connection Credentials to the Sever are given to Karpel. Installation of PBK on the server by Karpel. Karpel Support Installation and application testing on each workstation should begin at this time.	60
March 6, 2015	Additional Legacy Data, additional Legacy Documents and a fully complete PBK Pre-Load Spreadsheet is received by Karpel.	45
March 6, 2015	Training Schedule is completed with assignment of all office staff to specific training sessions. The Policy Setting Attorney must attend the Initial Configuration, Case Initiation and Event Entry sessions at a minimum. Training room and equipment are verified.	45
March 20, 2015	<u>2nd Data Conversion Review Webinar</u> - Karpel will install the preliminary data conversion on the Customer's production site for this Webinar including completed Document templates and Event Entry Configuration. Customer must validate the accuracy of Defendants, Co-Defendants, Cases, Court Dates, Events, Dispositions, and Financials over the next two weeks.	31
April 6, 2015	<u>Document template conversion review</u> - customer will review converted templates for accuracy and report any inaccuracies to Karpel over the next two weeks.	14
April 15, 2015	Complete installation and testing of all workstations.	5
April 17, 2015	Final Legacy Data received by Karpel.	3



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April 20, 2015

3rd and Final Data Conversion is loaded on the production site. Karpel trainers arrive at the Training Room. Final Configuration of PBK is performed with all System Administrators present. User Training begins. Customer begins using PBK in a live state.

Go Live

This schedule will be modified as mutually agreed upon by Client and Karpel Solutions.

DOCUMENT CONVERSION AND SCOPE OF WORK

Document conversion consists of Karpel Solutions converting existing Microsoft Word®, Microsoft Works® and Corel WordPerfect® documents provided by Client up to the time of training as outlined in the Project Timeline listed above into a format that can be utilized by PbK on a best effort basis. Karpel Solutions does not support nor will convert customized macros, auto-text files or other custom programming items not a part of the ordinary functionality of Microsoft Word®, Microsoft Works® and Corel WordPerfect®

3. OTHER INFORMATION

Any additional work requirements outside the scope of this proposal will be presented in the form of a change order and must be approved by client prior to start of such work. No additional charges will be incurred without prior written approval from client.

4. GENERAL CLIENT RESPONSIBILITIES

In order for the project to be completed on time and on budget, Client shall provide at a minimum:

1. Access to client facilities, computers, servers, network infrastructure and software as deemed necessary by the Karpel Solutions project manager.
2. Access to systems and equipment as required by Karpel Solutions including:
 - a. Unlimited secure access to all PbK production servers, 24 hours a day, 7 days a week for overnight and weekend data conversions
 - b. PbK application access using Karpel Solutions laptops and clients network for training and application testing
 - c. Installation of the Karpel Solutions remote support tool on all desktops executing the PbK application.
3. Access to client data along existing servers and systems containing data if such data is to be converted and populated by Karpel Solutions into PbK.
4. Completion of the PROSECUTORbyKarpel Pre-Load Spreadsheet as directed in the above Scope of Work Timeline.
5. Data validation of converted cases from the legacy system as directed in the above Scope of Work Timeline.
6. Document Template validation of all converted templates as directed in the above Scope of Work Timeline.
7. Definition, client development and client testing of all external interfaces as directed in the above Scope of Work Timeline.
8. An authorized contact person to assist in the definition of any project unknowns and authorized to approve the completion of each task.

Karpel solutions will notify Client's Project Manager and, if needed, the Prosecuting Attorney of its failure to complete the required tasks set forth in the scope of work via email. Client will have 3 business days to resolve the designated failure(s). Client's inability to resolve the stated issues will not delay the agreed upon go live date. Client failures will affect the quality and accuracy of PROSECUTORbyKarpel. Support will be limited to only areas where failures have not occurred. Failure of Client to provide the above secure access and assistance will render the Karpel Solutions support agreement null and void.



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5. INVESTMENT SUMMARY

Karpel Solutions will perform according to all descriptions, scopes, and specifications herein described, in consideration for payment as set forth below,



Software Products/Licensing	Qty.	Price	Total
PROSECUTORbyKARPEL	12	\$2,250	\$27,000
Total Software			\$27,000

Installation Services	Qty.	Price	Total
SQL Database configuration	1	\$1,000	\$1,000
Client Support Tool/Scanning tool and system compatibility check	12	\$50	\$600
Total Installation Services			\$1,600

Professional Services	Qty.	Price	Discount	Total
Project Management (no cost)				
On-line Pre-Implementation Meetings (hrs.)	12	\$150		\$1,800
Data Conversion (Judicial Dialog)	1	\$7,500	(\$2,500)	\$5,000
*Document Template Conversion	1	\$1,000		\$1,000
Total Professional Services				\$7,800

*optional/negotiated rate for modifications to existing AZ templates

Onsite Training Services	Qty.	Price		Total
Onsite training days	4	\$1,200	1 trainer	\$4,800
Total Onsite Training Services				\$4,800

Annual Support Services	Qty.	Price	Total
PROSECUTORbyKARPEL	12	\$450	\$5,400
Total Annual Support Services			\$5,400

Estimated Expenses *(not to exceed)*

Travel expenses include airfare, lodging and ground transportation	\$1,500
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Total Project Cost

\$48,100

Optional Services/Cost	Qty.	Price		
*Adobe Acrobat Professional	1	\$380	Current government rate	
eDiscovery		\$1	per submission	
Document Template Conversion (per document)	1	\$25		
Hosted Services (\$5/user/month)	15	\$60		\$900
Data Exchange Interfaces:				
Law Enforcement/Jail RMS	1	\$5,000	per agency	\$5,000
Courts (eFiling, Court Event Import)	1	\$5,000	per agency	\$5,000
Interface Annual Support	1	\$1,000	per interface	\$1,000
eSubpoena for Law Enforcement	1	\$10,000		\$10,000
Annual eSubpoena Support	1	\$2,000		\$2,000
Post Implementation training- on site (min 1 day)		\$1,200	per trainer, plus travel expenses	
Post Implementation training- on-line (min 2 hrs)		\$300		
Hourly rate for personnel	1	\$150		

*Adobe Acrobat Professional is required for our integrated document redaction/bates numbering and is not provided by Karpel Solutions.
It is recommended that users who work with and provide discovery have this software.

This fee does not include additional hardware, Microsoft licenses, or networking services that may be necessary to properly and legally operate PbK. Said expenses are the Client's sole responsibility.

Server installation includes application SQL database and configuration of SQL Server for PbK® and shall be performed by Karpel Solutions due to the complexity of the configuration.

Travel expenses include airfare, lodging and ground transportation.

As with any project, all prices are subject to change as new information arises or as workload increases. Karpel Solutions will seek approval from Client if more work will be necessary to make the changes along the way, as described above.

Payment Terms

At Contract Signing	50% Software Licenses	\$13,500
Invoiced at implementation	Pre-Implementation Services	\$9,400
	Training	\$4,800
	Travel expenses	\$1,500
Invoiced after July 1	50% Software Licenses	\$13,500
	Annual Support	\$5,400



6. ANNUAL SUPPORT

6.1.1 TECHNICAL SUPPORT FEES

Client understands that technical support fees will be required annually, in order to receive software updates and technical support. The initial support period shall begin from the date of software installation as part of the initial licensing purchase. The Client may elect to purchase subsequent annual support, on a yearly basis at a fixed cost, and billed annually as referenced in Section 5 above. The option to purchase annual support is solely at the Client's discretion. The Client's license to use PbK is not dependent upon the Client purchasing annual support; however, if the Client discontinues annual support it will not be provided with updated versions of the software, unless it is purchased. Provided Client's computers, network and systems meet recommended specifications set for by Karpel Solutions and the Client is current with annual support payments then Karpel Solutions shall provide updated versions of their system and/or software as they become available during the terms of the contract.

6.1.2 SUPPORT PROVIDED

Karpel Solutions will provide support (e.g. software updates, general program enhancements and technical support) for all software provided, including ongoing unlimited telephone technical support problem determination, and resolution.

6.1.3 HOURS OF OPERATION

Karpel Solutions will provide technical support Monday through Friday, at a minimum of fifteen (15) hours a day. Technical support services shall be available between the hours of 7:00 a.m. through 10:00 p.m. Central time, via a toll free telephone number provided.

6.1.4 INCLUDED SUPPORT

Support services include the detection and correction of software errors and the implementation of all PbK program changes, updates and upgrades. Karpel Solutions shall respond to the inquiries regarding the use and functionality of the solution as issues are encountered by Authorized Users.

6.1.5 RESPONSE TIMES

Karpel Solutions shall be responsive and timely to technical support calls/inquires made by the Client. The Client will first make support inquires through their qualified system administrators to assure the policies and business practices of the Client are enforced prior to contacting Karpel Solutions. The timeliness of the response is dependent upon the severity of the issue/support problem, as defined below:

The severity of the issue/support problem shall determine the average problem resolution response time in any calendar month of the contract as follows:

Severity Level 1 shall be defined as urgent situations, when the Client's production system is down and the Client is unable to use PbK, Karpel Solutions' technical support staff shall accept the Client's call for assistance at the time the Client places the initial call; however if such staff is not immediately available, Karpel Solutions shall return the customer's call within one (1) business hour. Karpel Solutions shall resolve Severity Level 1 problems as quickly as possible, which on average should not exceed two (2) business days, unless otherwise authorized in writing by the Client.

Severity Level 2 shall be defined as critical software system component(s) that has significant outages and/or failure precluding its successful operation, and possibly endangering the customer's environment. PbK may operate but is severely restricted. Karpel Solutions' technical support staff shall accept the customer's call for assistance at the time the customer places the initial call; however if such staff is not immediately available, Karpel Solutions shall return the Client's call within four (4) business hours. Karpel Solutions shall resolve Severity Level 2 problems as quickly as possible, which on average should not exceed three (3) business days, unless otherwise authorized in writing by the customer.

Severity Level 3 shall be defined as a minor problem that exists with PbK but the majority of the functions are still usable and some circumvention may be required to provide service. Karpel Solutions' technical support staff shall accept the Client's call for assistance at the time the customer places the initial call; however if such staff is not immediately available, Karpel Solutions shall return the Client's call on average no later than the next business day. Karpel Solutions shall resolve Severity Level 3 problems as quickly as possible, which should not exceed the next available release of software, unless otherwise authorized in writing by the Client.

General Assistance: For general software support/helpdesk calls not covered by the above severity level descriptions, Karpel Solutions' technical support staff shall accept the Client's call for assistance at the time the Client places the initial call; however if such staff is not immediately available, Karpel Solutions shall return the Client's call on average no later than the next business day.



7. LICENSE TERMS AND USE

This software, PbK is a proprietary product of Karpel Solutions. It is licensed (not sold) and is licensed to Client for its use only by the terms set forth below.

1. In consideration of payment of a sublicense fee, Karpel Solutions hereby grants Client a non-exclusive and non-transferable sublicense to use any associated manuals and/or documentation furnished.
2. Client cannot distribute, rent, sublicense or lease the software. A separate license of PbK is required for each user or employee. Each license of PbK may not be shared by more than one full time employee or user (40 hours per week), nor more than two (2) part-time employees or users, working no more than 40 hours per week together. The Client agrees that Karpel Solutions will suffer damages from the Client's breach of this term and further agrees that as such Karpel Solutions shall be entitled to the cost of the license, installation and training costs associated for each violation, including Karpel Solutions' reasonable attorneys' fees and costs.
3. License does not transfer any rights to software source codes, unless Karpel Solutions ceases to do business without transferring its duties under this agreement to another qualified software business. Karpel Solutions will, at client's expense, enter into escrow agreement for the storage of the source codes.
3. PbK and its documentation are protected by copyright and trade secret laws. Client may not use, copy, modify, or transfer the software or its documentation, in whole or in part, except as expressly provided for herein. Karpel Solutions retains all rights in any copy, derivative or modification to the software or its documentation no matter by whom made. PbK is licensed for a single installation of one full time employee. A separate license is required for each installation of PbK. Client shall not provide or disclose or otherwise make available PbK or any portion thereof in any form to any third party. Client agrees that unauthorized copying and distribution will cause great damage to Karpel Solutions and this damage is far greater than the value of the copies involved.
5. PbK was developed exclusively at private expense and is Karpel Solutions' trade secret. For all purposes of the Freedom of Information Act or any other similar statutory right of "open" or public records the Software shall be considered exempt from disclosure. PbK is "commercial computer software" subject to limited utilization "Restricted Rights." PbK, including all copies, is and shall remain proprietary to Karpel Solutions or its licensors.



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IN WITNESS WHEREOF, the parties have caused this Agreement subject to the Master Terms and Conditions set forth below to be executed on the date first above written. This proposal is offered as an all-inclusive turnkey solution and, unless noted otherwise, pricing is based on acceptance of both services and licenses. Any changes to this solution may result in additional costs. If not accepted within thirty (30) days, Karpel Solutions reserves the right to withdraw this proposal. Should any adjustments to this proposal become necessary; Karpel Solutions will draft and present a "Change Order" to Client for its review and approval. This offer is entire agreement between the parties, and no oral agreements or other written documents, exclusive of the attached exhibits are part of the agreement. Any modifications of this agreement must be in writing, and prior to acceptance of this offer, Karpel Solutions reserves the right to make modifications to this offer. The signatories warrant they have the authority to bind their respective party.

Apache County

Karpel Solutions

Name

Name

Title

Title

Date

Date



8. MASTER TERMS AND CONDITIONS

KARPEL COMPUTER SYSTEMS, INC. (dba "Karpel Solutions"), MASTER TERMS AND CONDITIONS

GENERAL TERMS

1. **ACCEPTANCE TERM.** The proposal attached to these Master Terms and Conditions is tendered for acceptance in its entirety within thirty (30) days from the date of the proposal, after which it is to be considered null and void.
2. **PAYMENT TERMS.** A statement for services rendered will be submitted by Karpel Solutions at the completion of the service. The invoice is payable upon receipt. Terms are Net 30 (30) days. Interest shall be applied at the rate of one and one half percent (1.5%) per month on any amounts not received by Karpel Solutions within the due date. Karpel Solutions reserves the right to discontinue performing services for client in the event of nonpayment of services by client, and client agrees to reimburse Karpel Solutions for reasonable collection expenses on delinquent accounts, including attorney's fees and costs.
3. **ASSIGNMENT.** This Agreement will inure to the benefit of and be binding upon Karpel Solutions and Client and Karpel Solutions' respective successors and assigns. Notwithstanding the foregoing, Client may not assign or otherwise transfer this Agreement or Client's rights and obligations under this Agreement without the prior written consent of Karpel Solutions, and any purported assignment or other transfer without such consent will be void and of no force or effect. Karpel Solutions may assign and /or transfer this Agreement or Karpel Solutions' rights and obligations under this Agreement at any time.
4. **MODIFICATION AND WAIVER.** Any modifications of this Agreement must be in writing and signed by both parties. Neither party will be deemed to have waived any of its rights under the Agreement by any statement or representation other than (i) by an Authorized Representative and (ii) in an explicit written waiver. No waiver of a breach of this agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
5. **FORCE MAJEURE.** Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach thereof are delayed or prevented by reason of any act of God, government, fire, natural disaster, accident, terrorism, network or telecommunication system failure, sabotage or any other cause beyond the control of such party ("Force Majeure"), provided that such party promptly gives the other party written notice of such Force Majeure.
6. **INDEPENDENT CONTRACTORS.** The parties will be deemed to have the status of independent contractors, and nothing in this Agreement will be deemed to place the parties in the relationship of employer-employee, principal-agent, or partners or joint ventures. Neither party has the authority to bind, commit or make any representations, claims or warranties on behalf of the other party without obtaining the other party's prior written approval.

7. **SOFTWARE ANOMALIES.** New commercial software releases or upgrades, or any hardware and/or software owned by or licensed to Client, used in connection with Karpel Solutions services may have anomalies, performance or integration issues unknown to Karpel Solutions which can impact the timely, successful implementation of information systems. Karpel Solutions will inform the client promptly if this occurs and will attempt to analyze, correct and/or work around the anomalies or performance issues on a "best effort" basis. Karpel Solutions is not responsible for any delay or inability to complete its services if such anomalies or performance issues occur. Client is responsible for payment for all of Karpel Solutions' services at the rate stated in the proposal whether or not a successful solution is achieved.
8. **SOFTWARE AUDIT.** Client agrees to allow Karpel Solutions the right to audit Client's use of PbK and licenses of PbK at any time. Client will cooperate with the audit, including providing access to any books, computers, records or other information that relate to the use of PbK. Such audit will not unreasonably interfere with Client's activities. In the event that an audit reveals unauthorized use, reproduction, distribution, or other exploitation of PbK, Client will reimburse Karpel Solutions for the reasonable cost of the audit, in addition to such other rights and remedies that Karpel Solutions may have. Karpel Solutions will not conduct an audit more than once per year.
9. **CLIENT ENVIRONMENT.** Client is responsible for the application, operation and management of its information technology environment, including but not limited to: (a) purchasing, licensing and maintaining hardware and software; (b) following appropriate operating procedures; (c) following appropriate protective measures to safeguard the software and data from unauthorized duplication, modification, destruction or disclosure; (d) following adequate backup contingency plans; and (e) employing qualified personnel to obtain the desired results. Karpel is not responsible for the loss of data in PbK or security breaches that result in the unauthorized dissemination of data contained in PbK that is the result of Client not following appropriate operating procedures, security and protective measures and/or following adequate backup contingency plans.
10. **MATERIALS.** Client will pay Karpel Solutions for materials purchased for the client's use. Materials may include computer hardware, software, hosting, facility leases, other services, telecommunications charges, freight, shipping, mailing, document reproduction and any other such costs incurred in performance of services for client. Upon mutual agreement, client will reimburse Karpel Solutions for all out-of-town travel expenses, such as automobile/airline travel, hotel, meals, and cab fare. Billing for services rendered on-site on an as needed basis will include portal-to-portal time.
11. **TERMINATION.** Either party to this Agreement may terminate the Annual Support portion of this Agreement on thirty (30) days written notice
12. **COPYRIGHT.** Karpel Solutions reserves the right to seek damages if Client is responsible for a subsequent violation of Karpel Solutions' copyright, and Client assumes responsibility for the acts and omissions of its agents acting in the course of their duties or otherwise with respect to the protection of Karpel Solutions' copyright.



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LIMITED WARRANTIES, LIMITATION OF LIABILITY, INDEMNIFICATION

1. **LIMITED WARRANTY.** Karpel Solutions warrants it will perform all services in a professional manner by qualified personnel. Karpel Solutions warrants it has the requisite power and authority to enter into and perform its obligations under this Agreement. Karpel Solutions warrants that the performance by Karpel Solutions of any services described in the Agreement shall be in compliance with all applicable laws, rules and regulations. No representations or warranties as to the use, functionality or operation of PbK are made by Karpel Solutions other than as expressly stated in this Agreement.
2. **INTERNET AND NETWORK.** Karpel Solutions makes PbK available to Client through the Internet and/or Client's own network and systems, to the extent commercially reasonable, and subject to outages, communication and data flow failures, interruptions and delays inherent in the Internet and network communications on the Client's own network and systems. Client recognizes that problems with the Internet, including equipment, software and network failures, impairments or congestion, or the configuration of Client's own computer systems and network, may prevent, interrupt or delay Client's access to PbK. Karpel Solutions is not liable for any delays, interruptions, suspensions or unavailability of PbK attributable to problems with the Internet or the configuration of Client's computer systems or network.
3. **PASSWORD PROTECTION.** Access to PbK is password-protected. Karpel Solutions provides multiple authentication alternatives for access to PbK. **KARPEL SOLUTIONS STRONGLY ENCOURAGES THE USE OF STRONG PASSWORD AUTHENTICATION.** Karpel Solutions is not responsible for Client's use of the PbK. Only the number of users set forth above may access the Service and Website. Client must inform their users that they are subject to, and must comply with, all of the terms of this Agreement. Client is fully responsible for the activities of Client's employees and authorized agents who access to PbK. Karpel Solutions is not liable for any unauthorized access to PbK and data or information contained therein, including without limitation access caused by failure to protect the login and password information of users.
4. **SYSTEM REQUIREMENTS.** Karpel Solutions provides PbK based upon the system requirements as specified by Karpel Solutions for Client. Karpel Solutions has no liability for any failure of PbK based upon Client's failure to comply with the system requirements of Karpel Solutions.
5. **THIRD PARTY SOFTWARE.** Karpel Solutions makes no express or implied warranties as to the quality of third party software or as to Karpel Solutions' ability to support such software on an on-going basis.
6. **LIMITED ENGAGEMENT.** Due to the limited nature of Karpel Solutions' engagement by client, Karpel Solutions makes no express or implied warranties as to the quality of, or the ability of software developed by Karpel Solutions to operate with, any hardware, network, software, systems and/or external data flows already in place at client's facilities or as may be added by the client.
7. **DISCLAIMER.** THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESS AND IMPLIED, WHICH ARE HEREBY DISCLAIMED, INCLUDING



WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING OUT OF A USE IN TRADE OR COURSE OF DEALING OR PERFORMANCE. KARPEL SOLUTIONS DOES NOT WARRANT (i) THAT ACCESS TO OR USE OF ALL OR ANY PART OF PBK WILL BE CONTINUOUS, ERROR-FREE OR UNINTERRUPTED, (ii) THAT THE RESULTS ARISING OUT OF CLIENT'S USE OF PBK WILL BE ACCURATE, COMPLETE OR ERROR-FREE, OR (iii) THAT THE SERVICE, SOFTWARE, DOCUMENTATION OR WEBSITE WILL MEET CLIENT'S NEEDS.

KARPEL SOLUTIONS EMPLOYEES

Karpel Solutions has spent substantial sums of money and invested large amounts of time in recruiting, supervising and training Karpel Solutions employees. Client further agrees that it has a unique opportunity to evaluate Karpel Solutions employees' performance, and has the potential to hire Karpel Solutions employees, and further agrees that such hiring away would substantially disrupt the essence of Karpel Solutions' business and ability to provide its services for others, and as such Karpel Solutions cannot agree to such a hiring. The Client acknowledges that Karpel Solutions employees work for Karpel Solutions under a non-competition agreement; therefore, Client agrees it shall not solicit for employment or contract as an independent contractor, or otherwise hire or engage a Karpel Solutions employee during the term of this Agreement or for a period of 2 years after the completion/termination of the project, whichever is longer.

CONFIDENTIALITY

1. **CONFIDENTIALITY.** Neither party shall disclose or use any confidential or proprietary information of the other party. The foregoing obligations shall not apply to information which: (i) is or becomes known publicly through no fault of the receiving party; (ii) is learned by the receiving party from a third party entitled to disclose it; or (iii) is already known to the receiving party.
2. **PERSONALLY IDENTIFIABLE INFORMATION.** The parties recognize that certain data Client or Karpel Solutions may use in conjunction with the PbK may be confidential personally identifiable information of third parties. Karpel Solutions shall use all best efforts to protect the confidentiality of personally identifiable information of third parties. Karpel Solutions agrees that should such information be released through Karpel Solutions negligence or misconduct, that Karpel Solutions shall indemnify, defend, and hold harmless Client, its employees and agents (collectively "Indemnitee"), against all liability, demands, claims, costs, damages, injury, settlements, and expenses incurred by Indemnitee ("Losses"), arising out of this Agreement or the release of personal identifying information described herein, but only in proportion to and to the extent such Losses are caused by or result from (i) the negligent acts or omissions of the indemnifying Party, its officers, agents, employees, subcontractors, or any person or entity for whom the indemnifying Party is responsible (collectively, "Indemnitor"), (ii) the breach by Indemnitor of any of the provisions of this Agreement, or (iii) willful misconduct by Indemnitor. As a condition to such defense and indemnification, Indemnitee will provide Indemnitor with prompt written notice of the claim and permit Indemnitor to control the defense, settlement, adjustment or compromise of any such claim, provided that any such settlement shall not result in financial liability on Indemnitee or require its



admission of fault without its prior written consent. Indemnitee may employ counsel at its own expense to assist it with respect to any such claim.

3. **DISCLOSURE REQUIRED BY LAW.** In the event that any confidential or proprietary information is required to be disclosed pursuant to any law, code, regulation or court order from a court of competent jurisdiction, the receiving party shall give the disclosing party immediate written notice of such requirement and shall use its best efforts to seek or to cooperate with the disclosing party in seeking a protective order with respect to the confidential information requested.
4. **SIMILAR PROGRAMS AND MATERIALS.** Provided Karpel Solutions does not violate the provisions of this section regarding confidentiality, the Agreement shall not preclude Karpel Solutions from developing for itself, or for others, programs or materials which are similar to those produced as a result of services provided to Client.
5. **INJUNCTIVE RELIEF.** Any breach of the confidentiality provisions of this Section will cause irreparable harm to the other party. The parties agree that the non-breaching party may enforce the provisions of this Section by seeking an injunction, specific performance, criminal prosecution or other equitable relief without prejudice to any other rights and remedies the non-breaching party may have.

MARKETING

1. Client agrees that Karpel Solutions may identify Client as a customer of Karpel Solutions in Karpel Solutions' written promotional and marketing materials, as well as in any oral or visual presentations regarding the business of Karpel Solutions.
2. Provided Karpel Solutions does not violate the provisions of the foregoing section regarding confidentiality, Karpel Solutions shall have the right to demonstrate for other prospective clients any application developed by Karpel Solutions under this Agreement and shall have the right to include information about any such application in marketing materials and presentations.

MISCELLANEOUS

1. **ELECTRONIC DOCUMENTS.** To the extent possible, and under the terms required by Client, Client and Karpel Solutions may communicate by electronic means, including but not limited to facsimile documents. Both parties agree that: a signature or an identification code ("USERID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity; an electronic document that contains a signature or USERID is a signed writing; and that an electronic document, or any computer printout of it, is an original when maintained in the normal course of business.
2. **SEVERABILITY.** If any portion of this Agreement is held to be void, invalid or otherwise unenforceable, in whole or in part, then the remaining portions of the Agreement shall remain in effect. This is the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, relating to the subject matter of this Agreement.



5714 S. Lindbergh Blvd. • Suite 200 • St. Louis, MO 63123 • 314-892-6300 • www.karpel.com

3. **ENTIRE AGREEMENT.** This Agreement constitutes the sole agreement between client and Karpel Solutions with respect to the subject matter hereof. It may not be modified or assigned except by written agreement of Client and Karpel Solutions.

4. **NOTICES.** Any notices provided under this Agreement will be in writing in the English language and will be deemed to have been properly given if delivered personally or if sent by (i) a recognized overnight courier, (ii) certified or registered mail, postage prepaid, return receipt requested, or (iii) facsimile, if confirmed by mail. Karpel Solutions' address for such notices is set forth below. Client's address for such notices will be the address on file with Karpel Solutions as provided by Client. Such address or contact information may be revised from time to time by provision of notice as described in this Section. All notices sent by mail will be deemed received on the tenth (10th) business day after deposit in the mail. All notices sent by overnight courier will be deemed given on the next business day after deposit with the overnight courier. All notices sent by facsimile will be deemed given on the next business day after successful transmission.

Karpel Solutions
5714 S. Lindbergh Blvd, Suite 200
St. Louis, MO 62123
(314) 892-6300
karpel@karpel.com

5. **GOVERNING LAW.** The parties agree that Arizona law applies to all matters of interpretation of this agreement. The parties further agree that the prevailing party shall be entitled to a judgment for its reasonable attorneys' fees and costs.

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: (Individual, Organization, or County Department)

Engineering

Date/Signature: 12/8/14 Jamie Herrick for J. Teresa Crosby

Describe in detail what you want to say to the Board and what action you want the Board to take:

Discussion and possible approval to enter into MOU (Memorandum of Understanding between the NDOT (Navajo Nation Department of Transportation) and Apache County, Arizona

BOS Meeting Date Requested 12/14/14

PRE-AGENDA ITEM REVIEW

Review Routing Legal / Finance / Purchasing / Human Resource / Other:

Legal Review: Pursuant to submission of names of the working group.

Signature: [Handwritten Signature]

Finance Review:

Signature:

Human Resources Review:

Signature:

Other Review:

Signature:

Reviews completed, item approved for Agenda. Supervisor/Board Clerk's Initials



NAVAJO DIVISION OF TRANSPORTATION

POST OFFICE BOX 4620, WINDOW ROCK, AZ 86515

TEL: 505-371-8300/8301 FAX: 505-371-8399

December 2, 2014

J. Ferrin Crosby, Engineer
Apache County Engineer
P.O. Box 238
St. Johns, AZ 85936

Dear Mr. Crosby,

Subject: Memorandum of Understanding

The Memorandum of Understanding (MOU) between the Navajo Nation and Apache County has been reviewed by the Navajo Department of Justice (NDOJ) and it has been deemed legally sufficient. Enclosed are the original MOU and four original signature sheets requiring signatures from Mr. Tom White, Chairman/Board of Supervisors.

Once signatures are obtained, please send the packet back to Marlinda Littleman, Senior Programs & Projects Specialist. Upon receipt, the packet will be submitted for the 164 Review Process. If you have any questions, please contact Marlinda Littleman or Ardaniel Begay at (505) 371-8372/8351. Thank you.

Sincerely,

Marlinda Littleman, Senior Programs & Projects Specialist
Navajo Division of Transportation – Department of Roads

xc: File
Ardaniel Begay, Principal Contract Analyst
Ray Russell, Department Manager – Navajo DOT/Roads

SECTION 164 REVIEW FORM

Title of Document: Apache Co AZ Memorandum of Understanding Contact Name: BEGAY, ARDANIEL JOE

Program/Division: DIVISION OF TRANSPORTATION

Email: abegay@navajodot.org Phone Number: 505-371-8351

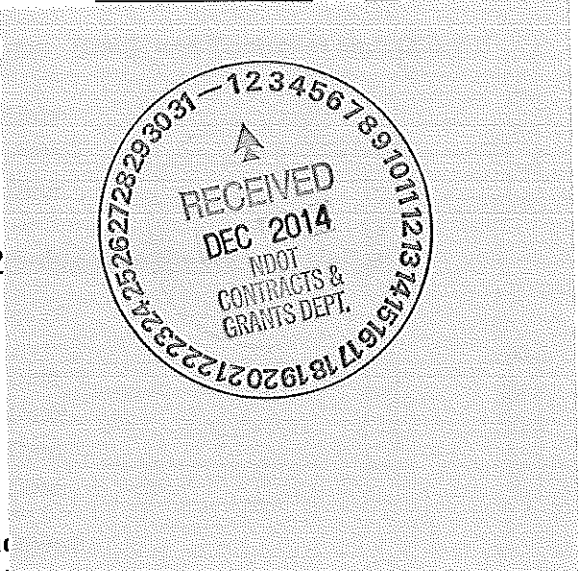
Division Director Approval for 164A: _____

Check document category: only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.

Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council

Statement of Policy or Positive Law: _____ Sufficient Insufficient
1. OAG: _____ Date: _____

IGA, Budget Resolutions, Budget Reallocations or amendment document expends or receives funds)
1. OMB: _____
2. OOC: _____
3. OAG: _____



Section 164(B) Final approval rests with the P

Grant/Funding Agreement or amendment:
1. Division: _____
2. OMB: _____
3. OOC: _____
4. OAG: _____

Subcontract/Contract expending or receiving funds or amendment:
1. Division: _____ Date: _____
2. BRD: _____ Date: _____
3. OMB: _____ Date: _____
4. OOC: _____ Date: _____
5. OAG: _____ Date: _____

Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:
1. Division: [Signature] Date: 11/7/14
2. OAG: [Signature] Date: 11/8/14

M.O.A. or Letter of Assurance expending or receiving funds or amendment:
1. Division: _____ Date: _____
2. OMB: _____ Date: _____
3. OOC: _____ Date: _____
4. OAG: _____ Date: _____



NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

RECEIVED
NOV - 7 2014
DEPARTMENT OF JUSTICE
RECEPTIONIST DESK

DOJ	
DATE / TIME	11/13/14 10:30 AM
<input type="checkbox"/> 7 Day Deadline	
DOC #:	003050
SAS #:	
UNIT:	11/13

RESUBMITTAL
11/13/14
10:30 AM

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE			
DATE OF REQUEST:	11/6/2014	DIVISION:	Transportation
CONTACT NAME:	Ardaniel Begay	DEPARTMENT:	Executive
PHONE NUMBER:	505-371-8351/8373	E-MAIL:	abegay@navajodot.org
TITLE OF DOCUMENT: 164(B) REVIEW - Approval of a Memorandum of Understanding between the Navajo Nation and Apache County, Arizona to establish a framework of cooperation to address transportation issues for the mutual benefit of the residents of the County and Nation.			
DOJ SECRETARY TO COMPLETE			
DATE/TIME IN UNIT:	11/7 @ 11:25	REVIEWING ATTORNEY/ADVOCATE:	Veronica
DATE TIME OUT OF UNIT:	11/13 @ 1000		LS
DOJ ATTORNEY / ADVOCATE COMMENTS			
legally sufficient			
REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Veronica Blackhat	11/12/14 10:16 AM	Paul Spurgeon	11/13/14 8:07 AM
DOJ Secretary Called:	Let VM	for Document Pick Up on	11/13 at 1000 By Smuto
PICKED UP BY: (Print)	DATE / TIME:		



DIVISION OF TRANSPORTATION

POST OFFICE BOX 4620
WINDOW ROCK, ARIZONA 86515

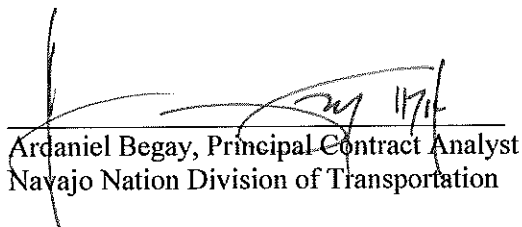
TEL: 505.371.8300/8301
FAX: 505.371.8399

November 07, 2014

MEMORANDUM:

TO: Section 164 Reviewers

FROM:


Ardaniel Begay, Principal Contract Analyst
Navajo Nation Division of Transportation

SUBJECT:

164 Review #3052 – Memorandum of Understanding between the Navajo Nation and Apache County, Arizona

The Navajo Division of Transportation (DOT) respectfully request your prompt review and approval of the attached Memorandum of Understanding (MOU) between the Navajo Nation and Apache County, Arizona. This MOU will establish a framework of cooperation to address transportation related issues for the mutual benefit of the residents of the County and the Nation.

All questions and comments received during Navajo DOJ's preliminary review of August 15, 2014, have been addressed. Once the MOU is signed off by the Navajo Nation, the County will put the document on the agenda of the Apache County Board of Supervisors meeting for approval.

Thank you for your assistance. If you have any questions or need additional information, please feel free to contact me at (505) 371-8351 or 8373.

xc: 164 Review # 3052

MEMORANDUM OF UNDERSTANDING
BETWEEN THE NAVAJO NATION
DIVISION OF TRANSPORTATION
and
APACHE COUNTY, ARIZONA

I. PREAMBLE AND BUILDING PRINCIPLES

This Memorandum of Understanding (MOU) is entered into this ____ day of _____ 2014, between the Navajo Nation, through its Division of Transportation, hereinafter referred to as "Nation", and Apache County, Arizona, a political subdivision of the State of Arizona, hereinafter referred to as "Apache County".

WHEREAS, the Nation has established its Division of Transportation to plan and develop an integrated transportation network of highways, roads, waterways, airports, railroads, and pipelines for the delivery of people, commerce, and goods within the Navajo Nation that is safe and in harmony with nature.

WHEREAS, one of the responsibilities of Apache County is to plan, repair, and maintain existing county school bus routes, and on the Navajo Nation the county participates in an Intergovernmental Agreement with the Navajo Nation and Bureau of Indian Affairs (BIA).

WHEREAS, it is the mutual desire of the Nation and Apache County to achieve their goals and work in harmony for the common purpose of protecting the public health, safety, and welfare of the people of the Navajo Nation and Apache County through an improved relationship between the parties.

WHEREAS, each party of this MOU respects the sovereign status of the other and wishes to establish procedures to fully implement the government-to-government relationship with respect to transportation projects of mutual interest and benefit. In recognition of the sovereign status of the Nation, Apache County respects the continued existence of the Nation's government, values, cultures, codes, and laws.

WHEREAS, Apache County has authority to enter into this MOU and participate in transportation projects of mutual interest and benefit with the Nation pursuant to the laws of the State of Arizona, specifically A.R.S. 11-952.

WHEREAS, the Nation has authority, as a sovereign nation, to enter into this MOU and participate in transportation projects of mutual interest and benefit with Apache County.

NOW, THEREFORE, the parties hereto agree to the following:

II. PURPOSES AND OBJECTIVES

- A. This MOU is intended to build confidence and trust between the parties in order to improve communications.
- B. The MOU lays the foundation and framework for developing specific Intergovernmental Agreements (IGAs) and other agreements between the parties to address transportation projects of mutual interest and benefit.
- C. The parties mutually agree that this MOU is intended to formalize the government-to-government relationship in accordance with applicable law.
- D. The parties mutually agree that this MOU is intended to recognize the responsibility of each party to protect the public health, safety, and welfare of all persons within their territorial jurisdiction.
- E. The parties mutually agree this MOU is intended to encourage consultation and cooperation with one another on transportation projects of mutual interest and benefit.
- F. The parties mutually agree that an objective of this MOU is to identify and seek to remove any impediments and barriers impairing the ability to work directly and effectively with one another.
- G. The parties mutually agree that an objective of this MOU is to incorporate the principles of the MOU into each entity's short and long-term transportation planning.

III. AGREEMENT AND RESPONSIBILITIES

The Nation and Apache County mutually agree to the following:

- A. The parties will establish a working group composed of representatives of each to carry out the purposes and objectives of this MOU.
- B. The parties agree that the working group will meet, at a minimum, annually to establish goals, objectives, and definition of tasks relating to implementation of projects of mutual concern and to identify and seek to remove obstacles impairing the achievement of these goals, objectives, and tasks.

-
- C. When a specific project has been identified, the working group will meet quarterly until the project is completed to discuss the progress and set priorities for the next meeting.
 - D. Once a specific project has been identified, the parties will by resolution or otherwise pursuant to the laws applicable to the governing bodies of the participating agencies enter into a "project specific" IGA, or other agreement for the particular project.
 - E. After the project is established, the working group will develop an action plan, which describes the project and the tasks to be performed by each party, separately or jointly, and the means to be used to fund and complete the project.
 - F. The parties agree to work efficiently together in order to enhance each party's participation in the actions of the other party that may affect the interests of both of the parties, including but not limited to on-going activities, short-range and long-range transportation planning and decisions and their implementation.
 - G. The parties, while acknowledging that funding limitations may exist for either party at any given time, agree to jointly or individually pursue funding for transportation projects of mutual interest and benefit, especially in circumstances where imminent danger is identified that affects the health, safety, and welfare of the Nation and County communities. Nothing in this MOU shall be construed as obligating either party in the expenditure of funds or for the future payment of money in excess of appropriations authorized by IGA and law.
 - H. The parties recognize implementation of this MOU will require education of members, officials, agents, employees, contractors, and subcontractors of both parties. Therefore, the parties agree to develop strategies for carrying out this educational effort.
 - I. The parties recognize that a key principle of the working relationship is to address transportation-related issues of mutual concern and to maintain accountability consistent with this MOU. In furtherance of this principle, the Nation's primary contact shall be the Director of the Navajo Division of Transportation who is accountable to the President of the Nation and the Resources and Development Committee of the Navajo Nation Council. Apache County's primary contact shall be the County Manager who is accountable to the Board of Supervisors.
 - J. As a component of the system of accountability, the parties agree that on an annual basis, the working group will review and evaluate its ability to implement the terms of this MOU and will prepare an annual report summarizing this evaluation for the Apache County

Board of Supervisors and the Nation's President and the Resources and Development Committee of the Navajo Nation Council.

IV. AGREEMENT TO WORK IN GOOD FAITH

- A. In good faith, the County Manager and other County Employees of Apache County, in their official capacity, or through their designee(s), shall endeavor to implement the terms of this MOU.
- B. In good faith, the President of the Navajo Nation or through his designee(s), including the Director of the Division of Transportation, and the Navajo Division of Transportation Department Managers shall endeavor to implement the terms of this MOU.

V. RESERVATION OF RIGHTS

In executing this MOU, neither the Nation, nor Apache County waives any rights, including, but not limited to: treaty rights, immunities, sovereign immunities, jurisdictional defenses, or defenses based on their protecting laws. Specifically, nothing in this MOU shall be construed as a waiver of sovereign immunity by the Navajo Nation, consent to be sued, or consent to jurisdiction of any federal or state court. Nothing in this MOU creates, implies, nor should be construed to create any right of action by either party against each other, or in any third party.

VI. DISPUTE RESOLUTION

All disputes and controversies regarding this MOU shall be resolved by the Director of the Nation's Division of Transportation and County Manager of Apache County's Department of Public Works. If these officials are unable to resolve the dispute or controversy, the working group identified in Section III, Article "A" may participate in the resolution.

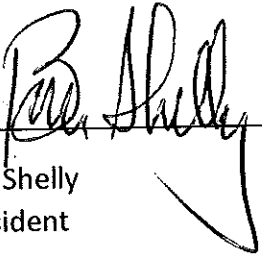
VII. EFFECTIVE DATE, TERMINATION AND AMENDMENT

This MOU shall become effective when signed by both parties and shall continue in force for five (5) years. Termination may be initiated by either party after thirty (30) days' notice to the other of its intention to terminate. Amendments, including extension of this MOU, must be approved by both parties in writing.

WHEREFORE, the duly authorized officials of the parties have executed this Memorandum of Understanding on the dates affixed by their signatures with the effective date as herein stated.

NAVAJO NATION:

APACHE COUNTY:



Ben Shelly
President

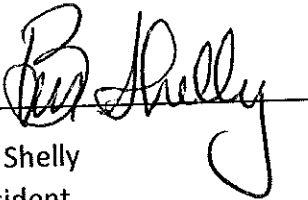
Tom White, Jr.
Chairman/Board of Supervisors

DEC 01 2014
Date

Date

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NAVAJO NATION:



Ben Shelly
President

DEC 01 2014

Date

APACHE COUNTY:

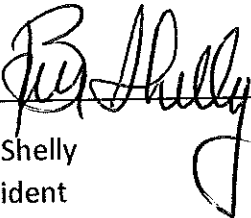
Tom White, Jr.
Chairman/Board of Supervisors

Date

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Ben Shelly
President

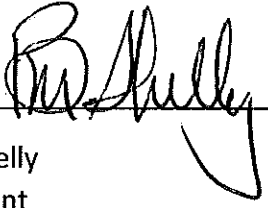
Tom White, Jr.
Chairman/Board of Supervisors

DEC 01 2014
Date

Date

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NAVAJO NATION:



Ben Shelly
President

DEC 01 2014
Date

APACHE COUNTY:

Tom White, Jr.
Chairman/Board of Supervisors

Date

NAVAJO NATION DEPARTMENT OF JUSTICE



**REQUEST
FOR
SERVICES**



DOJ 08/12/14 @ 2:41 pm DATE / TIME
RFS #: 14-1434
UNIT: Hsqw

RESUBMITTAL

*** FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE			
DATE OF REQUEST:	8/12/2014	ENTITY/DIVISION:	Division of Transportation
CONTACT NAME:	Ardaniel Begay	DEPARTMENT:	Executive
PHONE NUMBER:	505-371-8357	E-MAIL:	abegay@navajodot.org
COMPLETE DESCRIPTION OF LEGAL NEED AND SERVICES REQUESTED (Attach Documents): <i>FOR VERONICA BLACKHAT - Review proposed draft MOU between Navajo DOT and Apache County, Arizona for "Legal Sufficiency". The MOU establishes a framework of cooperation to address transportation projects for the mutual benefit of the residents of the county and nation.</i>			
DEADLINE:	8/15/2014	REASON:	Establish Agreement
DOJ SECRETARY TO COMPLETE			
DATE/TIME IN UNIT:	8/12 @ 3:18	REVIEWING ATTORNEY/ADVOCATE:	V B
DATE TIME OUT OF UNIT:	8/15 @ 1003	PREPARED BY (initial):	LS
DOJ ATTORNEY / ADVOCATE COMMENTS			
See comments			
REVIEWED BY: (PRINT) Veronica Blackhat		DATE / TIME: 8-15-14 9:10 am	
DOJ Secretary Called: Chavirity	for Document Pick Up on 8/15	at 1003	By: Smith
PICKED UP BY: (PRINT)		DATE / TIME:	

MEMORANDUM OF UNDERSTANDING
BETWEEN THE NAVAJO NATION
DIVISION OF TRANSPORTATION
and
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WHEREAS, it is the mutual desire of the Nation and Apache County to achieve their goals and work in harmony for the common purpose of protecting the public health, safety, and welfare of the people of the Navajo Nation and Apache County through an improved relationship between the parties.

WHEREAS, each party of this MOU respects the sovereign status of the other and wishes to establish procedures to fully implement the government-to-government relationship with respect to transportation projects of mutual interest and benefit. In recognition of the sovereign status of the Nation, Apache County respects the continued existence of the Nation's government, values, cultures, codes, and laws.

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- F. The parties agree to work efficiently together in order to enhance each party's participation in the actions of the other party that may affect the interests of both of the parties, including but not limited to on-going activities, short-range and long-range transportation planning and decisions and their implementation.
- G. The parties, while acknowledging that funding limitations may exist for either party at any given time, agree to jointly or individually pursue funding for transportation projects of mutual interest and benefit, especially in circumstances where imminent danger is identified that affects the health, safety, and welfare of the Nation and County communities. Nothing in this MOU shall be construed as obligating either party in the expenditure of funds or for the future payment of money in excess of appropriations authorized by IGA and law.
- H. The parties recognize implementation of this MOU will require education of members, officials, agents, employees, contractors, and subcontractors of both parties. Therefore, the parties agree to develop strategies for carrying out this educational effort.

I. The parties recognize that a key principle of the working relationship is to address transportation-related issues of mutual concern and to maintain accountability consistent with this MOU. In furtherance of this principle, the Nation's primary contact shall be accountable to the President of the Nation and the Resources and Development Committee of the Navajo Nation Council. Apache County's primary contact shall be accountable to the County Manager and the Board of Supervisors.

J. As a component of the system of accountability, the parties agree that on an annual basis, the working group will review and evaluate its ability to implement the terms of this MOU and will prepare an annual report summarizing this evaluation for the Apache County Board of Supervisors and the Nation's President and the Resources and Development Committee of the Navajo Nation Council.

Who will be primary contact for each side?

Primary contacts have not been identified.

Section pertaining to primary contacts was removed.

IV. AGREEMENT TO WORK IN GOOD FAITH

- A. In good faith, the County Administrator and other County Employees of Apache County, in their official capacity, or through their designee(s), shall endeavor to implement the terms of this MOU.
- B. In good faith, the President of the Navajo Nation or through his designee(s), including the Director of the Division of Transportation, and the Navajo Division of Transportation Department Managers shall endeavor to implement the terms of this MOU.

V. RESERVATION OF RIGHTS

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VI. DISPUTE RESOLUTION

All disputes and controversies regarding this MOU shall be resolved by the Director of the Nation's Division of Transportation and Director of Apache County's Department of Public Works (?). If these officials are unable to resolve the dispute or controversy, the officials identified in Article IV above may participate in the resolution.

County Administrator?

→ would this be the working grp since no one is identified?

VII. EFFECTIVE DATE, TERMINATION AND AMENDMENT

This MOU shall become effective when signed by both parties and shall continue in force for five (5) years. Termination may be initiated by either party after thirty (30) days' notice to the other of its intention to terminate. Amendments, including extension of this MOU, must be approved by both parties in writing.

WHEREFORE, the duly authorized officials of the parties have executed this Memorandum of Understanding on the dates affixed by their signatures with the effective date as herein stated.

NAVAJO NATION

Ben Shelly
President

Date

APACHE COUNTY

NAME
Chairman/Board of Supervisors

Date

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: Community Development



Date/Signature: December 8, 2014

Describe in detail what you want to say to the Board and what action you want the Board to take:

Consideration and possible approval to accept the resignation of Tom Tilford from the Planning & Zoning Commission and appoint ~~Mike Baker~~ as Planning and Zoning Commission member for a 4 year term; appoint ~~Dean Wade~~ as alternate commissioner.

Mike Baker

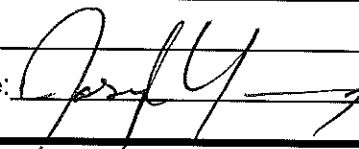
Dean Wade

BOS Meeting Date Requested December 16, 2014

PRE-AGENDA ITEM REVIEW

Review Routing Legal / Finance / Purchasing / Human Resource / Other: _____

Legal Review: _____

Signature: 

Finance Review: _____

Signature: _____

Human Resources Review: _____

Signature: _____

Other Review: _____

Signature: _____

Reviews completed, item approved for Agenda.

Supervisor/Board Clerk's Initials _____

Connie Shreeve

From: Milton Ollerton
Sent: Monday, December 8, 2014 7:03 AM
To: Connie Shreeve
Subject: FW: Planning and Zoning

Milton,

It has been my pleasure to serve with you and the other commissioners. I consider it a privilege as well as a learning experience. I look at all the things we tackled and accomplished. We ventured into the unknown, but ultimately accomplished much. The Community development office has come a long way, the commission has grown as well. The participation of all members has been appreciated as well as encouraged. It is not without regret that I need to tender my resignation. My schedule which is ever changing has become increasingly difficult to manage. Many thanks for the opportunity to serve!

Best regards!

Tom Tilford
928.751.0041

Connie Shreeve

From: Milton Ollerton
Sent: Monday, December 8, 2014 7:02 AM
To: Connie Shreeve
Subject: FW: P & Z Commission

Milton

I am interested in becoming a member of the Apache County Planning and Zoning Commission. I graduated from ASU in 1972 with a BA in Philosophy. Right after college, I worked for Amerco, the owner of U-Haul, with headquarters in Phoenix. I started as a management trainee and ended up as a district manager in charge of 125 independent U-Haul dealers and 8 employees. I then worked in a similar position with Southland Corporation, who owned all the 7-Eleven stores. I was responsible for up to 30 franchised and corporation-owned 7-Eleven stores, with between 6 and 12 employees directly under my supervision in corp stores.

I decided to leave corporate life and do something more creative. I became a contemporary furniture salesman at Copenhagen Imports and then a kitchen designer which I have done for the last 15 years. I have worked for several kitchen contractors including Davis Kitchens and Arizona Designs in Tucson, Home Depot, and, for the last 4 years, as a part-time designer for ProBuild in Show Low. I also work part-time as a Realtor with Tom Tilford at Greer Realty.

As far as why I want to be on the P & Z Commission, my wife and I have lived full-time in Greer for 9 years. We love Apache County and want it to be a vibrant and beautiful place for people to live or visit. I want to preserve what is special about Apache County and, in particular, Greer, but I also understand the necessity of allowing growth and appropriate development to occur. I believe that the zoning rules that are in place must be followed. They are fair and allow for the growth of Greer and all of Apache County. I think they will keep Greer healthy without turning our little village into an ugly, over-developed eyesore. I feel my real job will be to decide whether a proposed use of a piece of land is allowed under the zoning laws or not. If it is, great. If not, well, that is the law.

I feel that my experience as a manager and designer, knowing how to listen to what people are really saying, being able to explain concepts and ideas so that all parties understand a problem or idea, being able to make a decision about some issue and then being able to communicate the reasons for that decision will help the Commission accomplish it's mission.

Mike Barker
michaelbarker4@gmail.com
928-751-0045
928-735-7231

Connie Shreeve

From: Milton Ollerton
Sent: Monday, December 8, 2014 7:04 AM
To: Connie Shreeve
Subject: FW: Greer Commissioner Candidate

As one of the three names turned in for this position, I was asked to write a short resume letter. My name is Dean Wade and I reside at #5 ACR 1035 in Greer, AZ. I moved to Greer in 1991 as the manager of the Greer Lodge. In 1992, my wife and I started a new business in Greer named Greer Cabin Keepers, which was a property management business. In 1994, we purchased the name of Greer Realty and began a real estate business. We operated these two businesses until 2004. During this time, I served on the Board of Directors and as an officer for the Greer Civic Association. I helped organize and served on the Board of Directors and as an officer for the Greer Business Association. I also have served as an officer and board member on the Greer Fire District Board of Directors. I attended lots of meetings during the time of the planning and zoning reorganization in Greer.

We presently own the Little Colorado Cabins complex plus two other residences in Greer besides our personal home and one unimproved lot. We have been retired since selling our property management business and real estate business in 2004. Although I have not been as involved in activities in the community since retiring, I am still very interested in the wellbeing of Greer. Since I have been involved in both sides between business and private residences, I feel I could help maintain that balance which is necessary for the future of Greer.

Sincerely,
Dean Wade

Greer Land & Investments

Residential & Commercial Real Estate



12/8/2014

Milton Ollerton,

My name is Michael Bragiel and I am writing this letter to express my interest in volunteering for the Planning and Zoning Board. I have been a resident and owner in Greer since 1983. I have been Chairman of the Little Colorado Sanitary District Board and a member for 20 + years. I also was in education as a teacher and administrator for 34 1/2 years. I worked for Overacker Construction for two years in Greer after retiring from education and am currently a real estate agent for Greer Land and Investments in Greer. If you need any additional information you can contact me at 928-735-7151 or email me at navydad07@gmail.com.

Thank you for your consideration.

Michael Bragiel

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: Community Development



Date/Signature: December 8, 2014

Describe in detail what you want to say to the Board and what action you want the Board to take:

AFTER A PUBLIC HEARING – Consideration and possible approval of a Vicinity Plan and Preliminary Plat for Cattle Kates Condominium Subdivision. Property located at 80 Main Street, Greer, AZ 102-11-001L

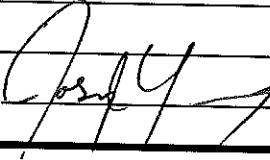
BOS Meeting Date Requested December 16, 2014

PRE-AGENDA ITEM REVIEW

Review Routing /Legal / /Finance / /Purchasing / /Human Resource / /Other:

Legal Review:

Signature:



Finance Review:

Signature:

Human Resources Review:

Signature:

Other Review:

Signature:

Reviews completed, item approved for Agenda.

Supervisor/Board Clerk's Initials



SUBDIVISION APPLICATION

STAGE OF DEVELOPMENT

Preliminary Plat Final Plat Amendment Reversion
 Vicinity Map

APPLICANT / DEVELOPER

Name Cattle Kates Lodge LLC
 Mailing Address PO Box 80316
Pkx, Az 85000
 Contact Person Doug Sandahl
 Phone 602.550.5433 Fax _____
 Email dsandahl@cox.net

PROPERTY OWNER (if different than applicant)

Name _____
 Mailing Address _____
 _____ SAME _____
 Contact Person _____
 Phone _____ Fax _____
 Email _____

PROJECT ENGINEER

Name Geostone LLC
 Mailing Address PO Box 2400
St Johns, AZ 85936
 Contact Person Ken Flygare
 Phone 928-337-3621 Fax _____
 Email Ken.geostone@gmail.com

PROPERTY INFORMATION

Assessor's Parcel #(s) 102-11-001L
 Township 7N Range 27E Section 11+14
 Subdivision Name Cattle Kates Condominium
 Unit # _____
 Address/Location 80 Main Street (ACR 1120)
Greer, AZ 85927
 Number of Lots Proposed 8
 Total Site Acreage 1.13 ac
 Proposed Access Cross Main Street
ACR 1120

CERTIFICATION & SIGNATURE

Submittal of this application constitutes consent of the applicant in granting the Planning and Zoning Department access to the subject property during the course of project review. No further consent or notice shall be required.

I hereby certify that the information in this application is correct and agree to abide by the regulations of this jurisdiction.

Signature of Applicant

Doug Sandahl Date 7/25/14

Signature of Property Owner (if not the applicant)

_____ Date _____

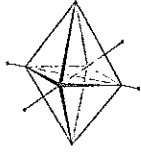
OFFICE USE ONLY

Received By C. Shrover Date 7/31/14
 Receipt # 544386 Fee \$910.00
 Subdivision# 2014-0000013
 Related Subdivisions 2014-

COMMISSION ACTION

Approved with Conditions (see attachments) Denied
 Chairman [Signature] Date 7/6/14
BOARD ACTION
 Approved with Conditions (see attachments) Denied
 Chairman _____ Date _____

RECEIVED
 JUL 31 2014
 B. [Signature]



GeoStone LLC
LAND SURVEYING & DEVELOPMENT
CIVIL ENGINEERING

P.O. Box 2400
St. Johns, AZ 85936
Phone: 928-337-3621
Cell: 928-245-5442
Ken.geostone@gmail.com

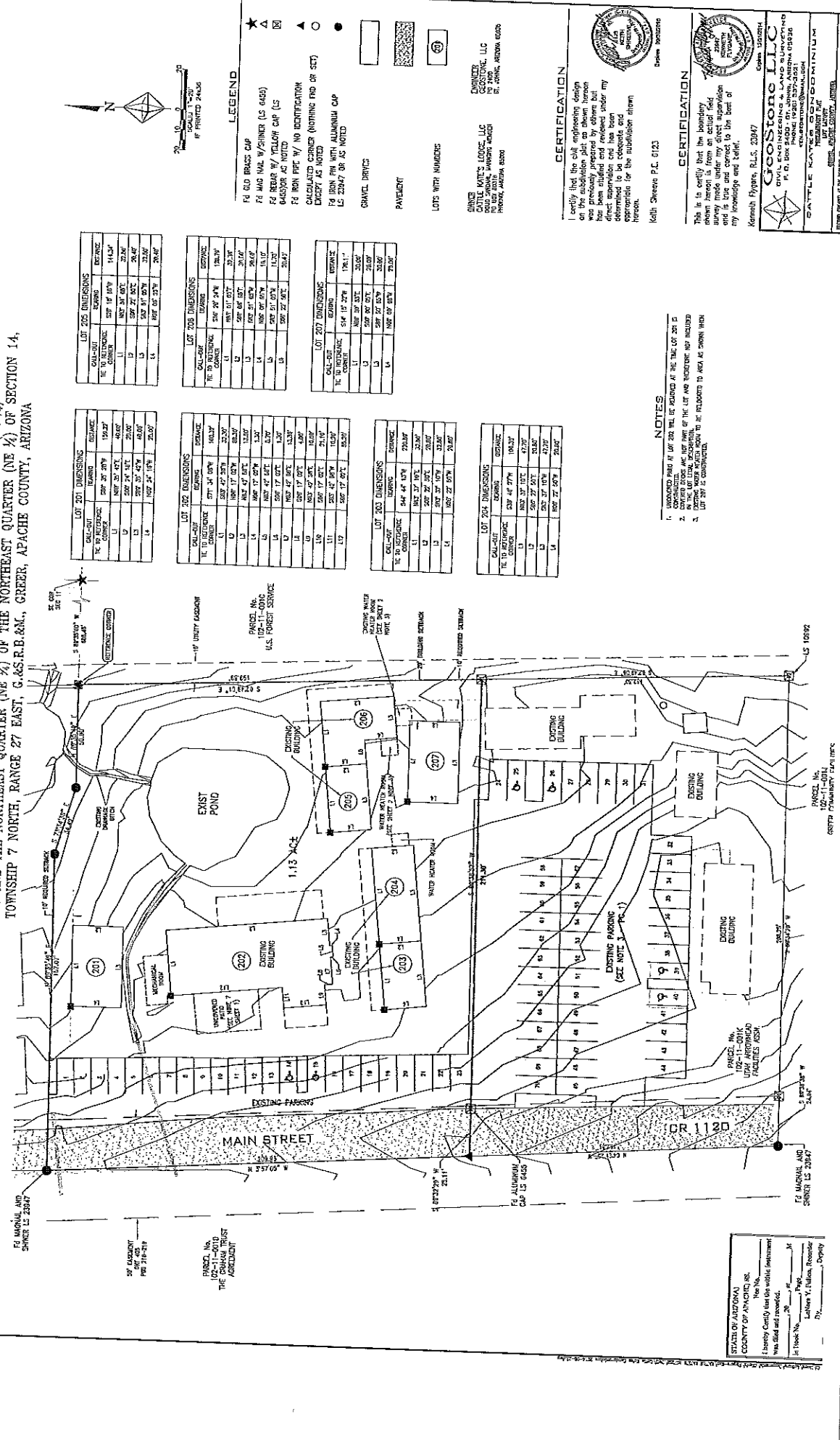
DRAINAGE REPORT FOR CATTLE KATES CONDOMINIUM

The lot footprints as shown on the Condominium Plat for the CATTLE KATES CONDOMINIUM are existing and the drainage patterns on the site remain unaltered by this project. All drainage ways and channels remain as they have been and have proven to be adequate and therefore do not require any alteration. Any on-site sheet or surface flows are also unaltered by this project. The present existing culverts on or adjacent to the site have proven to be adequate to control the existing runoff demand and are therefore without need of change.

This CATTLE KATES CONDOMINIUM is a change in surface rights ownership only while the actual project site remains physically unchanged. No additional drainage ways, channels or new drainage easements are proposed for this Condominium site with this submittal.



PRELIMINARY PLAT
GATTLE KATES CONDOMINIUM
 A COMMERCIAL CONDOMINIUM DEVELOPMENT
 A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 14,
 TOWNSHIP 7 NORTH, RANGE 27 EAST, G.A.S.R.B.&N., GREER, APACHE COUNTY, ARIZONA



LOT 201 DIMENSIONS

CALL-OUT	BEARING	DISTANCE	REMARKS
1	S 89° 11' 30" W	19.82'	14.63'
2	N 0° 00' 00" E	20.00'	20.00'
3	S 89° 11' 30" W	20.00'	20.00'
4	N 0° 00' 00" E	20.00'	20.00'

LOT 202 DIMENSIONS

CALL-OUT	BEARING	DISTANCE	REMARKS
1	S 89° 11' 30" W	19.82'	14.63'
2	N 0° 00' 00" E	20.00'	20.00'
3	S 89° 11' 30" W	20.00'	20.00'
4	N 0° 00' 00" E	20.00'	20.00'

LOT 203 DIMENSIONS

CALL-OUT	BEARING	DISTANCE	REMARKS
1	S 89° 11' 30" W	19.82'	14.63'
2	N 0° 00' 00" E	20.00'	20.00'
3	S 89° 11' 30" W	20.00'	20.00'
4	N 0° 00' 00" E	20.00'	20.00'

LOT 204 DIMENSIONS

CALL-OUT	BEARING	DISTANCE	REMARKS
1	S 89° 11' 30" W	19.82'	14.63'
2	N 0° 00' 00" E	20.00'	20.00'
3	S 89° 11' 30" W	20.00'	20.00'
4	N 0° 00' 00" E	20.00'	20.00'



LEGEND

- ★ F4 OLD BRASS CAP
- ▲ F4 HAO MAIL W/SHIMMER (LS 6455)
- △ F4 BEER W/ YELLOW CAP (LS 6455)
- F4 BEER W/ RED CAP (LS 6455)
- CALCULATED CORNER (NOTHING FND OR SET) (SET AS NOTED)
- F4 IRON PIPE W/ NO IDENTIFICATION
- CALCULATED CORNER (NOTHING FND OR SET) (SET AS NOTED)
- F4 IRON PIPE W/ ALUMINUM CAP (LS 6547 OR AS NOTED)
- GRAVEL DRIVE
- ▨ PAVEMENT
- LOTS WITH NUMBERS

OWNER
 GATTLE KATES, LLC
 6010 S. MARSH, AVENUE SUITE 200
 PHOENIX, ARIZONA 85020

ENGINEER
 KATH SWENNE P.L.L.C.
 1120 N. CENTRAL AVENUE, SUITE 100
 PHOENIX, ARIZONA 85004

CERTIFICATION
 I certify that the plat reflecting design on this subdivision plat was prepared by me or under my direct supervision and has been determined to be correct to the best of my knowledge and belief.

Kath Swenne P.L.L.C. 0123

CERTIFICATION
 This is to certify that the boundary survey made under my direct supervision and has been determined to be correct to the best of my knowledge and belief.

Kenneth P. Myers, R.L.S. 23947

NOTES

1. DIMENSIONS OF LOT 202 WILL BE SHOWN AT THE TIME LOT 202 IS COMPLETED.
2. EXISTING BUILDING AND PART OF THE LOT AND RECORDING NOT REQUIRED FOR THIS PLAT.
3. LOT 201 IS CONVEYED.

STATE OF ARIZONA
 COUNTY OF MARICOPA
 I, County Clerk, do hereby certify that this plat was filed and recorded.

Filed _____
 Recorded _____

Lillian Y. Talbot, Recorder
 Deputy

GEOSTAR, LLC
 CIVIL ENGINEERING & SURVEYING
 P. O. BOX 3400, PHOENIX, ARIZONA 85030
 TEL: 602.955.1100
 WWW.GEOSTARAZ.COM

STATE OF ARIZONA
 COUNTY OF MARICOPA
 I, County Clerk, do hereby certify that this plat was filed and recorded.

Filed _____
 Recorded _____

Lillian Y. Talbot, Recorder
 Deputy

PRELIMINARY PLAT
CATTLE KATES CONDOMINIUM
 A COMMERCIAL CONDOMINIUM DEVELOPMENT
 A PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 14,
 TOWNSHIP 7 NORTH, RANGE 27 EAST, G.&S.R.B.&M., GREER, APACHE COUNTY, ARIZONA

- LEGEND**
- ★ 6" OLD BRASS CAP
 - ▲ 4" MAG. NILE W/SINKER (LS 6443)
 - ◻ 4" IRON PIPE W/ YELLOW CAP (LS 6443)
 - ◻ 4" IRON PIPE W/ NO IDENTIFICATION
 - CALCULATED CORNER (NOTHING FND OR SET) EXCEPT AS NOTED
 - 4" IRON PIN WITH ALUMINUM CAP
 - 1.5" 22x27 OR AS NOTED
 - ▭ CABIN - POINT OF BEGINNING
 - ▭ GRAVEL DRIVE
 - ▭ PAVEMENT
 - ▭ LOTS WITH NUMBER
 - ▭ EXISTING SOLIDS SEPARATION TANK
 - ▭ EXISTING SANITARY SEWER CLEAN-OUT
 - ▭ EXISTING SANITARY SEWER LINE
 - ▭ W/DIRECTION OF FLOW ARROW
 - ▭ EXISTING POTABLE WATER LINE
 - ▭ PROPANE LINE (PROPOSED)
- OWNER:** JAMES L. LORNE, LLC
 2011 W. WILSON ROAD
 PHOENIX, ARIZONA 85024
- ENGINEER:** GEORGE S. LORNE, LLC
 2011 W. WILSON ROAD
 PHOENIX, ARIZONA 85024

CERTIFICATION

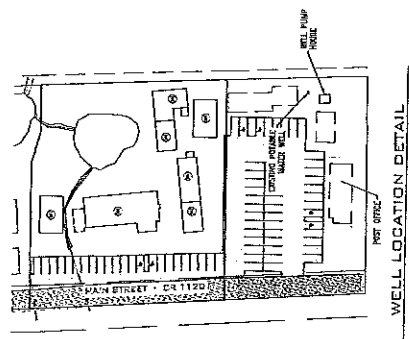
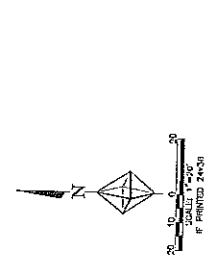
I certify that the chief engineer, design on the subdivision, plat as shown herein has been prepared by others but has not been reviewed or approved under my supervision and control, to the best of my knowledge and belief.

CERTIFICATION

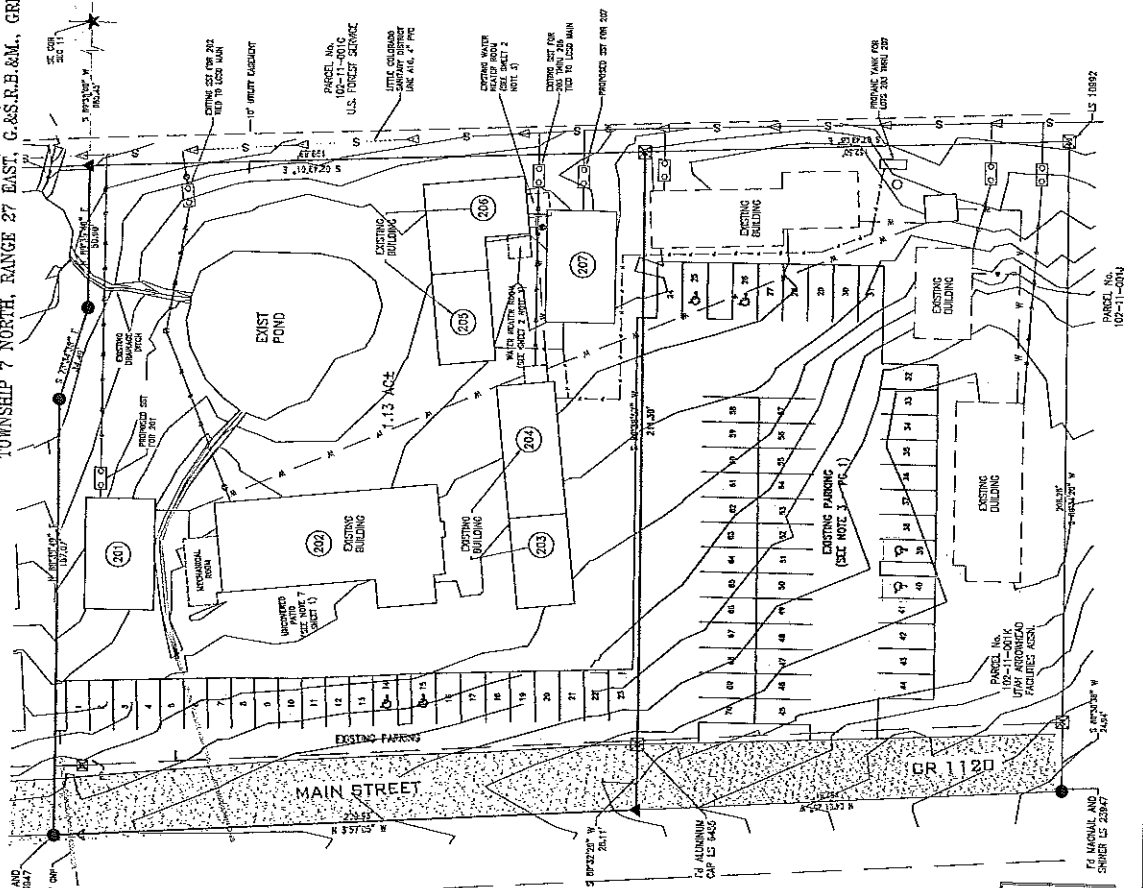
This is to certify that the boundary shown herein is from an actual field survey made under my direct supervision and control, to the best of my knowledge and belief.

Keith Stronach, P.E. 6123

Geostone LLC
 CIVIL ENGINEERING & LAND SURVEYING
 P. O. Box 3600, 10000 W. Greenway
 Phoenix, Arizona 85029



- FLOODPLAIN NOTES**
- BASED UPON CURRENT FEMA FLOOD INSURANCE RATE MAP NUMBER 48020CA015E, THIS PROPERTY RESIDES IN ZONE D. AREAS IN WHICH FLOOD HAZARDS ARE UNDETERMINED, BUT WHICH ARE APPROXIMATELY 700-FEET WEST OF THE CHANGE OF THE CHANNEL OF THE RIVER, ARE APPROXIMATELY 600-FEET FROM THE LIMITS OF THE ZONE A FLOOD ZONE.
- UTILITY NOTES**
1. ALL SEWER LINES FACE SOUTHWATER LINES. VERTICAL SEPARATION SHALL BE MAINTAINED.
 2. ALL MATERIALS USED IN DRAINAGE WATER DRAINAGE CONSTRUCTION SHALL BE AS NOTED IN A.A.C.
 3. ALL PIPING IS SOLIDITY WELDED PIPING SCHEDULE 40.
 4. ALL CONSTRUCTION AND INSTALLATION SHALL BE ACCORDANCE WITH ACCEPTED STANDARDS OF GOOD PRACTICE AND MEETS OR EXCEEDS THE UNIFORM PLUMBING CODE.
 5. ALL DOWN WATER LINES, SEWER LINES, DRAINAGE WAYS AND OTHER UTILITIES ARE EXISTING ON-SITE AND HAVE NOT BEEN CHANGED OR ALTERED PER THIS SUBMITTAL.



STATE OF ARIZONA
 COUNTY OF MARICOPA
 I hereby certify that the within instrument was filed and recorded.

in Book No. _____ Page _____
 at _____, Arizona, this _____ day of _____, 20____.

 Notary Public

**DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR
CATTLE KATES CONDOMINIUM**

DATED

_____, 20__

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**DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
CATTLE KATES CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CATTLE KATES CONDOMINIUM ("**Declaration**") is made this ___ day of _____, 20___, by CATTLE KATES LODGE LLC, an Arizona limited liability company ("**Declarant**").

RECITALS

A. Declarant is the owner of land located in Apache County, Arizona, described as follows:

Units 201 through 207 and Common Elements of Cattle Kates Condominium, a commercial condominium of Apache County, Arizona, recorded in Book ___ of Maps and Plats at Page ___ thereof, Apache County Records.

which real property shall hereinafter be referred to as the "Property".

B. Declarant desires and intends that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) are for the purpose of creating a condominium under the Arizona Condominium Act, A.R.S. §§ 33-1201 et seq. (as may be amended from time to time, the "Condominium Act"); (ii) are for the purpose of protecting the value, desirability, attractiveness and character of the Property (iii) shall run with all of the real property comprising the Property; (iv) shall be binding on all parties having any right, title, or interest in the Property, or any part thereof; and (v) shall inure to the benefit of the aforementioned parties and their heirs, successors and assigns.

C. Declarant has formed an Arizona nonprofit corporation to be known as "Cattle Kates Commercial Condominium Association", for the purposes of, among other things, (i) the efficient preservation of the values and amenities of the Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Elements and enforcing this Declaration and Rules adopted pursuant hereto; and (ii) establishing, collecting, disbursing and enforcing the Assessments created herein.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE I

DEFINITIONS

Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Condominium Act. As used in this Declaration, the following terms shall have the following meanings:

1.1 "**Articles**" means the Articles of Incorporation of the Association, as they may be amended from time to time.

1.2 "**Assessments**" means the Common Expense Assessment and Special Assessments levied and assessed against each Unit pursuant to ARTICLE X of this Declaration.

1.3 "**Assessment Lien**" means the charge and continuing servitude and lien against a Unit for payment of Assessments, monetary penalties and other charges pursuant to this Declaration as more particularly described in Section 10.1 of this Declaration.

1.4 "**Association**" means "Cattle Kates Commercial Condominium Association" organized by Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

1.5 "**Board of Directors**" means the Board of Directors of the Association.

1.6 "**Bylaws**" means the Bylaws of the Association, as they may be amended from time to time.

1.7 "**Common Elements**" means all portions of the Condominium other than the Units, including, without limitation, Limited Common Elements and any amenities, water and wastewater distribution systems, walkway areas, private drives, drainage areas and landscaping.

1.8 "**Common Expenses**" means expenditures made by, or financial liabilities incurred or to be incurred by the Association, together with required allocations to reserves, including but not limited to expenditures incurred in the enforcement of provisions of the Condominium Documents.

1.9 "**Common Expense Assessment**" means any assessment levied against the Units pursuant to Section 10.4 of this Declaration.

1.10 "**Common Expense Liability**" means the liability for Common Expenses allocated to each Unit by this Declaration.

1.11 "**Condominium**" means the real property located in Apache County, Arizona, submitted to the Declaration together with all buildings and other Improvements located hereon and all easements, rights, and appurtenances belonging thereto. The name of the Condominium created by this Declaration is "CK Cabins Condominium."

1.12 "**Condominium Documents**" means this Declaration, including the Plat, and the Articles, Bylaws, and Rules.

1.13 "**Declarant**" means Cattle Kates Lodge LLC, an Arizona limited liability company, and their successors or assigns who have in writing been designated as a successor to the rights of Declarant hereunder.

1.14 "**Declaration**" means this Declaration of Condominium and of Covenants, Conditions, Restrictions and Easements for Cattle Kates Condominium, as it may be amended from time to time, together with the exhibits, and where appropriate by context, the Plat.

1.15 "**Development Rights**" means any right or combination of rights reserved by or granted to Declarant in this Declaration as permitted by the Condominium Act.

1.16 "**Eligible Mortgage Holder**" means a First Mortgagee who has in writing requested that the Association furnish it with specific written notice of amendments or other material actions in relation to this Declaration.

1.17 "**First Mortgage**" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust.

1.18 "**First Mortgagee**" means the holder of any First Mortgage.

1.19 "**Improvements**" means all physical structures including, but not limited to, cabins, decks, patios, balconies, parking areas, driveways, fences and walls, mailboxes, propane tanks, planters, trash receptacles, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

1.20 "**Limited Common Elements**" means a portion of the Common Elements specifically designated in this Declaration or on the Plat as a Limited Common Element and allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more, but fewer than all, of the Units. The deck, patio, balcony and propane tank(s) of each Unit which lies outside the Unit/Lot shall be a Limited Common Element of the Unit.

1.21 "**Member**" means a Unit Owner who, by reason of ownership of a Unit, is entitled to automatic membership in the Association as set forth in the Bylaws.

1.22 "**Period of Declarant Control**" means the time period commencing on the date this Declaration is recorded in the Apache County Recorder's Office, and ending on the earlier of:

(A) Ninety (90) days after the conveyance of one-hundred percent (100%) of the Units which may be created in the Condominium to Unit Owners other than Declarant; or

(B) Four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

1.23 "**Person**" means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, government subdivision or agency, or other legal or commercial entity, and in the case of a subdivision trust, means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

1.24 "**Plat**" means the condominium plat for Cattle Kates Condominium, recorded in the Official Records of the Apache County Recorder's Office, and any amendments, supplements, or corrections thereto.

1.25 "**Purchaser**" means any Person, other than Declarant, who by means of a voluntary transfer becomes a Unit Owner except for: (i) a Person who purchases a Unit and then leases it to Declarant for use as a model, sales or leasing office, fitness facility or business support center in connection with the sale of other Units, or (ii) a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.

1.26 "**Rules**" means the rules and regulations adopted by the Association, as they may be amended from time to time.

1.27 "**Special Assessment**" means any assessment levied against the Units pursuant to Section 10.5 of this Declaration.

1.28 "**Special Declarant Rights**" means any right or combination of rights reserved by or granted to Declarant in this Declaration or by the Condominium Act.

1.29 "**Unit**" means a portion of the Condominium designated for separate ownership and occupancy, as shown on the Plat and more particularly described in Article III of this Declaration.

1.30 "**Unit Owner**" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include (i) Persons having an interest in a Unit merely as security for the performance of an obligation or (ii) a lessee or tenant of a Unit. Unit Owner shall 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 through which a seller has conveyed to a Purchaser equitable title to a Unit under which the seller is obligated to convey to the Purchaser the remainder of seller's title in the Unit, whether legal or equitable, upon payment in full of all monies due under the contract. The term "Unit Owner" shall not include a Purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S., §§ 33-501 et seq., the Trustor shall be deemed to be the Unit Owner.

ARTICLE II

CREATION AND DECLARATION OF CONDOMINIUM

2.1 **Creation.** This condominium is created by Declarant pursuant to the Arizona Condominium Act, A.R.S. §§ 33-1201 et seq., as the same may be amended from time to time. This instrument is executed by all of the Unit Owners.

2.2 Applicable Law. All the provision of the Condominium Act shall apply to this Condominium, its organization, rights of Declarant, management, etc., unless a contrary provision is specified in the Declaration.

2.3 Name and Description of Condominium; Association. The name of the Condominium is Cattle Kates Condominium, a commercial condominium. The legal description of the Condominium is Units 201 through 207 and Common Elements of Cattle Kates Condominium, a condominium of Apache County, Arizona, recorded in Book ___ of Maps and Plats at Page ___ thereof, Apache County Records. The Identifying Numbers of the Units submitted to the Condominium are those Units consecutively numbered 201 through 207 inclusive, as shown on the Plat.

The name of the Unit Owners Association shall be Cattle Kates Commercial Condominium Association.

ARTICLE III

DESCRIPTION OF UNITS AND UNIT BOUNDARIES

The Units initially created by and subject to this Declaration are shown and depicted on the Plat as Lots, and the location and identifying numbers of Units/Lots are shown and described on the Plat.

(A) The horizontal boundaries of each Unit/Lot are shown on the Plat. The vertical boundaries begin fifteen (15) feet below the finished floor elevation as shown on the Plat, and extend thirty (30) feet above the finished floor elevation as shown on the Plat.

(B) In the event of an inconsistency or conflict between the provisions of this section and the Plat, this section shall control.

(C) The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the building structure and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.

ARTICLE IV

ALLOCATION OF INTERESTS AND VOTING RIGHTS

4.1 Allocation of Common Element Interest. The undivided interests in the Common Elements shall be allocated among the Units based upon a ratio, the numerator of which is one (1) and the denominator of which is the total number of all Units in the Condominium. In no event shall the cumulative interests of all Units exceed or be less than a total of 100%. Initially, each Unit shall have a Common Element Interests of 1/7th, or 14.2%.

4.2 Allocation of Common Expense Liabilities. The Common Expense Liability shall be allocated among the Units in the same ratio as the Common Element Interest assigned to each Unit set forth in Section 4.1.

4.3 Allocation of Limited Common Elements. The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one Unit as follows: Any gas tank or meter, electric or water meter which serves only one Unit is allocated to the Unit it serves.

4.4 Reallocation of Limited Common Elements.

(A) A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of the Condominium Act. During the Period of Declarant Control, all such proposed reallocations must be submitted to and approved in writing by Declarant.

(B) During the Period of Declarant Control, Declarant shall have the right, without a vote of the Members or any other approval, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element.

(C) The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

4.5 Assignment of Parking Spaces. The vehicle parking areas not allocated as Limited Common Elements are Common Elements and shall be maintained by the Association. The Association shall have the ability but not the obligation to assign such parking spaces to designated Unit Owners, the use of which shall be a personal right of such Unit Owner. The Association may reassign the use of such parking spaces and may impose and receive payments, fees or charges for the use of parking spaces. Parking spaces not assigned to a specific Unit shall be used and shared by all Unit Owners in a fair and equitable manner. The Association may adopt regulations governing such parking spaces and, in the event of conflicts, the Board may convert some or all of the parking spaces to Limited Common Elements. Declarant shall have the authority during the Period of Declarant Control to assign and reassign parking spaces and to convert some or all of the parking spaces to Limited Common Elements.

4.6 Membership and Voting Rights. Each Unit Owner within the Condominium shall automatically be a Member of the Association and shall be entitled to one (1) vote for each Unit owned in all matters concerning the administration of the Association and management of the Condominium. In the event that a Unit is owned of record by more than one person, the vote attributed to that Unit shall be cast as a single vote as the Unit Owners of that Unit shall among themselves determine, and said vote shall not be apportioned.

ARTICLE V

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

5.1 Development Rights of Declarant. Notwithstanding anything to the contrary in this Declaration, Declarant reserves to itself, its successors and assigns, the following Development rights, which shall be referred to in this Declaration as "**Development Rights**":

(A) To create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(B) To subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(C) To amend the Declaration during the Period of Declarant Control to comply with applicable law, or; to correct any error or inconsistency in the Declaration, or; to reflect the change in the number of Units, Common Elements or Limited Common Elements.

5.2 Special Declarant Rights. The right or rights or combination thereof known as "**Special Declarant Rights**" reserved to Declarant are the following:

(A) To construct Improvements provided for in this Declaration or shown on the Plat;

(B) To exercise any Development Right;

(C) To maintain sales offices, management offices, model Units and signs advertising the Condominium;

(D) To use easements through the Common Elements for the purpose of making Improvements within the Condominium;

(E) To appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

5.3 Transfer of Special Declarant Rights. A Special Declarant Right created or reserved by this Declaration may be transferred pursuant to the provisions set forth in A.R.S. § 33-1244 of the Arizona Condominium Act, or the successor statute thereto.

5.4 Legal Description. The legal description of the real estate subject to each of the Development Rights and other Special Declarant Rights reserved in this Declaration to Declarant is shown and depicted on the Plat and consists of all Units and Common Elements subject to the Declaration.

5.5 Time Limits. Exercise of Development Rights and Special Declarant Rights by Declarant are not limited in any manner as to time and extend beyond the Period of Declarant Control unless otherwise limited by provisions of the Condominium Act.

ARTICLE VI

EASEMENTS

6.1 Existing Easements. If any Unit or Common Element is encumbered by an access or utility easement as shown on the Plat, then by accepting a deed to such Unit and Common Element, the Unit Owner acknowledges and consents to such easement.

6.2 Utility Easements. In addition to those special easements shown on the Plat, there is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the utility company providing such service to erect and maintain the necessary infrastructure and equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed and/or as thereafter approved and constructed by the Board of Directors. This easement shall in no way affect any other recorded easements on the Common Elements. In no event shall any portion of the above mentioned easements for utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Property.

6.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic, including, without limitation, emergency access and utility repair vehicles, over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes except that such easements shall not extend to any Limited Common Elements or assigned parking spaces, if any. Such easements shall run in favor of and be for the benefit of the Unit Owners and occupants of the Units and their guests, families, tenants and invitees.

6.4 Easements for Emergency and Service Vehicles; Refuse Collection. There are hereby created easements for ingress to and egress from the Condominium over, through and across such streets, driveways, parking areas and open space as from time to time may be paved and intended for such purposes for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles, including utility repair vehicles, as may be required from time to time to service the Condominium and the Unit Owners and occupants including, without limitation, for U.S. Mail distribution and collection and for private or municipal refuse collection.

6.5 Unit Owners' Easements of Enjoyment.

(A) Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements, except for the Limited Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable Rules governing the use of the Common Elements;

(ii) The right of the Association to suspend the voting rights of a Unit Owner for any period during which any Assessment against his Unit remains unpaid more than thirty (30) days after its due date and for a period not to exceed sixty (60) days for any other infraction or violation of the Condominium Documents, unless such infraction is continuing in which case such suspension may continue until the infraction is cured;

(iii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, subject to the vote or written assent of those Unit Owners representing at eighty percent (80%) of the votes in the Association, and with the consent of Declarant during the Period of Declarant Control; and, in all events, subject to a Unit Owner's easement for ingress and egress if access to such Owner's Unit is through the Common Elements to be conveyed or mortgaged

(iv) All rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to Declarant by Sections 6.6 and 6.7 of this Declaration.

(B) The tenants, guests and invitees of any Member or other person entitled to use the Common Elements pursuant to subsection (A) above may use the Common Elements. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to specific times.

(C) A Unit Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

(D) The provisions of this section shall not apply to any of the Limited Common Elements that are allocated to one or more, but less than all, of the Units.

6.6 Declarant's Use for Sales and Leasing Purposes.

(A) Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and model Units throughout the Condominium and to maintain one or more advertising, model and directional signs on the Common Elements while Declarant is selling or preparing to sell Units in the Condominium. Declarant reserves the right to place models, management offices and sales and leasing offices in any Units owned by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

(B) Declarant may from time to time relocate model Units, management offices and sales and leasing offices to different locations within the Condominium, including on the Common Elements or within any Unit owned by Declarant. Upon the relocation of a model Unit, management, business, sales or leasing office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

(C) So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to reserve parking spaces in the Condominium not allocated as Limited Common Elements or otherwise assigned to particular Units for use by prospective Unit Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(D) Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Condominium that has not been represented as property of the Association. Declarant reserves the right to remove from the Condominium any and all goods and Improvements used in development, marketing and construction, whether or not they have become fixtures.

6.7 Declarant's Easements.

(A) Declarant shall have the right, and an easement on and over the Common Elements, to alter or improve the Common Elements and the Units shown on the Plat and all other Improvements as Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction or renovation-related purposes, including for the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures and for the performance of work respecting the Condominium.

(B) Declarant shall have the right and an easement on, over and under the Common Elements for the purpose of maintaining and collecting drainage of surface, roof or storm water. The easement created by this subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

(C) Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.

6.8 Easement for Support. To the extent necessary, each Unit shall have an easement for structural support over every other Unit, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit, the Common Elements and the Limited Common Elements.

6.9 Common Elements Easement in Favor of the Association. The Common Elements shall be subject to an easement in favor of the Association, its Board and officers and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements.

6.10 Common Elements Easement in Favor of Unit Owners. The Common Elements shall be subject to the following easements in favor of the Units benefited:

(A) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

(B) For the performance of the Unit Owner's right to construct Improvements and; Unit Owner's obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 8.2 of this Declaration.

6.11 Units and Limited Common Elements Easement in Favor of Association. The Units and the Limited Common Elements 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 exterior of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible.

(B) For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from the exterior of Units or Limited Common Elements.

(C) For correction of emergency conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units.

(D) For the purpose of enabling the Association, the Board of Directors or any committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents.

(E) For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, their guests, tenants, invitees and the other occupants of the Unit.

6.12 Easement for Unintended Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, alteration or restoration authorized by this Declaration, settling or shifting, or any reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

ARTICLE VII

USE AND OCCUPANCY RESTRICTIONS

7.1 Plat Notes. In addition to the use restrictions contained herein, the Property is subject to any restrictions and limitations set forth in the Plat.

7.2 Improvements and Alterations.

(A) Any Unit Owner may construct and/or make additions, alterations and Improvements within such Unit Owner's Unit without the prior written approval of the Board of Directors, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units, the Limited Common Elements and the Common Elements which results from any such alterations, additions or Improvements. Notwithstanding the foregoing, no construction, addition, alteration or Improvement within a Unit or within any Limited Common Element allocated to the exclusive use of a Unit which would be visible from the exterior of the Unit, including a change to the exterior color scheme, shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed construction, addition, alteration or Improvement is aesthetically pleasing and in harmony with the surrounding Improvements.

(B) No excavation or grading work shall be performed on any Unit without the prior written approval of the Board of Directors.

(C) Any Unit Owner who is required to obtain approval of the Board of Directors for the construction, installation, addition, alteration, repair, change or replacement of any Improvement shall submit to the Board of Directors (i) a written request for approval specifying in detail the nature and extent of the construction, addition, alteration, repair, change or other work which the Unit Owner desires to perform, including the distance of such work from neighboring properties, if applicable; (ii) plans and specifications, if applicable; (iii) any other information which the Board of Directors may request; and (iv) any fee payable pursuant to Subsection 7.2(F) of this Declaration. If the Board of Directors fails to approve or disapprove an application for approval within sixty (60) days after the submittal of the completed application and all supporting information, plans and specifications requested by the Board of Directors have been submitted to the Board of Directors, approval will not be required and this section will be deemed to have been complied with by the Unit Owner who had requested approval of such plans. The approval by the Board of Directors of any construction, installation, addition, alteration, repair, change or other work pursuant to this section shall not be deemed a waiver of the Board of Director's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

(D) Upon receipt of approval from the Board of Directors for any construction, installation, addition, alteration, repair, change or other work, the Unit Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Board of Directors as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Board of Directors.

(E) Any change, deletion or addition to the plans and specifications approved by the Board of Directors must be approved in writing by the Board of Directors.

(F) The Board of Directors shall have the right to charge a fee not to exceed the sum of one-hundred dollars (\$100.00) for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 7.2, which fee shall be payable at the time the application for approval is submitted to the Board of Directors.

(G) All Improvements constructed within and on Units shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Unit.

(H) The approval by the Board of Directors of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section 7.2 shall not be deemed a warranty or representation by the Board of Directors as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

(I) The provisions of this section do not apply to, and approval of the Board of Directors shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

(J) The approval required of the Board of Directors pursuant to this Section 7.2 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

7.3 No Partition and Subdivision. No Unit shall be partitioned or subdivided, except by the Declarant.

7.4 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size and style which are approved by the Board of Directors. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Board of Directors shall have the right to require all Unit Owners to place trash and garbage in containers located in areas designated by the Board of Directors. No incinerators shall be kept or maintained in any Unit.

7.5 Machinery and Equipment. No Unit Owner may place, operate or maintain machinery or equipment of any kind upon the Condominium other than usual and customary machinery and equipment used in connection with the Unit Owner's permitted uses of his Unit and Limited Common Elements. This section shall not apply to any such machinery or equipment which Declarant or the Association may require for the construction, improvement, operation and maintenance of the Common Elements.

7.6 Diseases and Insects. No Unit Owner shall permit anything or condition to exist upon the Condominium which could induce, breed or harbor infectious diseases (plant or

otherwise) or noxious insects. Each Unit Owner shall perform such pest control activities as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

7.7 Environmental Restrictions. All Unit Owners shall be responsible for complying with all federal and state environmental and health laws. Without limiting the foregoing, no Unit Owner or occupant may dispose of, transport, or store "hazardous materials" in his Unit or elsewhere in the Condominium other than small amounts of ordinary household non-combustible cleaning agents maintained in the Unit or Limited Common Element storage areas and in no event may any Unit Owner or occupant dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons, or other petroleum products, in or down a dry well on or adjacent to the Condominium, or in trash receptacles located within the Condominium.

7.8 Parking Spaces and Vehicles. No RVs, travel trailers, boat trailers, or trailers of any kind are allowed in the Condominium. No parking is allowed in the Condominium except in parking spaces shown on the Plat or designated by the Board of Directors. No parking spaces in the Condominium may be used for storage or for any purpose other than the parking of standard size or smaller cars, trucks and sport utility vehicles ("Vehicles"). Unit Owners or other lawful occupants of a Unit must park their Vehicles in an available assigned parking space before parking any excess or extra Vehicles in any unassigned parking space and in no event may any Unit Owner or other lawful occupant or their guests and invitees park in an assigned parking space other than the one specifically assigned to their Unit.

7.9 Motor Vehicle Repair and Towing of Vehicles. Other than temporary emergency repairs, no Vehicle shall be constructed, reconstructed, serviced or repaired, and no inoperable Vehicle may be stored on any portion of the Condominium. The Board of Directors shall have the right to have any Vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessments.

7.10 Signs. Other than a Unit Owner name and address identification sign not exceeding 6 x 12 inches in size on or adjacent to the door of a Unit, no emblem, logo, sign or billboard of any kind shall be displayed so that it is visible from the exterior of any Unit or any other portion of the Condominium without the prior written approval of the Board; except for: (i) signs used by Declarant to advertise the Units for sale or lease; (ii) signs on the Common Elements as may be placed or approved by Declarant during the Period of Declarant Control, or by the Board, thereafter; (iii) any signs as may be required by legal proceedings; (iv) one for sale or for lease sign whose face does not to exceed 18" x 24" in size for any one Unit; and (v) any signs as are approved by the Board.

The foregoing restrictions shall be subject to such limitations and privileges as are established at law, including for the placement of political signs and signs pertaining to candidates for political office or to other such protected matters.

7.11 Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of any part of the Condominium. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

7.12 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium.

7.13 Noise Reduction. Any improvement, equipment, or activity which may create noise impacts discernable from within any Unit (other than those related to Declarant's activities within the Condominium) may be subject to certain noise reduction requirements and guidelines set forth in any Rules adopted by the Association from time to time. All Owners, Lessees, and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the Rules of the Association and any applicable noise reduction ordinance.

7.14 Window Coverings. No reflective materials, including, without limitation, aluminum foil, reflective screens or glass, films, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or any Limited Common Elements allocated to a Unit shall be constructed or installed in any Unit or Limited Common Element without the prior written approval of the Board, unless the items so installed are substantially identical in color, texture and size as previously approved and installed window coverings being so replaced.

7.15 Savings Clause. The provisions of this Declaration shall be construed to be consistent with law, and should any provision violate law and be unenforceable as a result thereof, then applicable law shall govern. Without limitation, no provision hereof shall prohibit the placement of the American Flag or the parking of public service vehicles as permitted by law, subject to rules and regulations of the Association not in conflict with such laws.

7.16 Variances. The Board may, at its sole discretion, grant variances from the restrictions set forth in this Article VII if the Board determines:

(A) Either that (i) a particular restriction would create a substantial hardship or burden on an Owner or occupant and that such hardship is not attributable to the Unit Owner's or occupant's acts; (ii) a change of circumstances has rendered the particular restriction obsolete; or (iii) other circumstances warrant a variance in the Board's sole and absolute discretion; and

(B) The activity permitted under the requested variance will not have a substantially adverse effect on other Owners and occupants.

ARTICLE VIII

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

8.1 Duties of the Association. The Association shall maintain, repair and make necessary improvements to all Common Elements, except for the specific portions of the Limited Common Elements which the Unit Owners are obligated to maintain pursuant to Section 8.2 of this Declaration. Without limitation, the Association shall be responsible for maintaining all portions of the parking areas, mailboxes, fountains, planters, the private streets and drives, sidewalks, landscaping, irrigation systems, private drainage areas, those portions of water distribution and wastewater service lines that serve each Unit and located outside the Unit boundary (including each solid separation tank), lighting and light fixtures in the Common Elements, and recreational areas. The Board shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements and the Condominium. The Association shall not transfer or assign its duty to maintain wastewater service lines and/or a solid separation tank without the expressed approval of the Little Colorado Sanitary District.

8.2 Duties of Unit Owners.

(A) Each Unit Owner shall maintain, repair, replace and restore, at his own expense, all portions of his Unit and all Improvements thereon (including, without limitation, all portions of the structure and appurtenances thereto), subject to the Condominium Documents.

(B) Each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to this Declaration, including, without limitation: periodic painting and maintenance of the concrete slabs or finished flooring of, the deck, patio and balcony; and maintenance, repair and replacement of all doors and windows of the Unit, the air conditioning unit (including compressors and condensers), and heater and hot water heater servicing the Unit. No Unit Owner may paint or change the exterior color scheme or surfacing materials of his Unit, garage, carport, patio or balcony or any portion of the Limited Common Elements allocated to his Unit visible from the Common Elements or any other Unit without the prior written consent of the Board.

(C) Each Unit Owner shall take all necessary action to keep the Limited Common Elements which he is obligated to maintain under this Section 8.2 clean and free from unsightly accumulations of trash, furniture in weathered or poor condition, and litter. No Unit Owner shall allow a parking space to be used for storage or for the accumulation of trash or junk.

8.3 Repair or Restoration Necessitated by Unit Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements, or equipment thereon, which results from the negligence or willful misconduct, by act or omission, of the Unit Owner or that Owner's family members, tenants, guests, invitees and pets. The cost to the Association of any such repair, maintenance or replacement required by such act or omission of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

8.4 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within thirty (30) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Section 10.4(D) of this Declaration.

ARTICLE IX

THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

9.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Association has the specific duty to make available to Declarant, Eligible Mortgage Holders, and Unit Owners during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of the information requested.

9.2 Directors and Officers.

(A) During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, and such appointed members and officers need not be Unit Owners.

(B) Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three (3) members, all of whom must be Unit Owners, or an individual designated by a corporation, partnership or other non-individual Unit Owner. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

(C) Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors,

as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

9.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use by any Unit Owner, or by any invitee, tenant, occupant, licensee or lessee of such Unit Owner, of any area within the Condominium subject to the Association's jurisdiction and control; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, the applicable federal and state Fair Housing Acts, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be recorded.

9.4 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association is mandatory and such Membership and the Common Element Interests thereof are appurtenant thereto, and may not be separated from, ownership of the Unit; provided, however, the Common Element Interests of Units from time to time may be modified or changed as expressly permitted in this Declaration and authorized under the Condominium Act. No Owner during his ownership of a Unit shall have the right to relinquish or terminate his membership in the Association.

9.5 Non-Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, the Board, nor any committees of the Association nor any member thereof, nor any officers, directors or employees of Declarant or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board or such committees or officers reasonably believed to be within the scope of their respective duties or rights.

To the fullest extent permitted by law, Declarant and every director, officer or committee member of the Association and/or of Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal or control over members of the Board or its control over the Association or any committee thereof) shall be indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, and at the request of, the Association, may, in the discretion of the Board, be indemnified by the Association.

Any such indemnification shall be limited to all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person 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 in the case of Declarant by reason of having appointed, removed, controlled or failed to control members of the Board, or controlled or failed to control the Association), or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

ARTICLE X

ASSESSMENTS

10.1 Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Unit, whether or not it shall be so expressed in such deed, agrees and is deemed to covenant and agree to pay to the Association: (i) Common Expense Assessments or other charges, (ii) Special Assessments for capital improvements and other valid purposes, and (iii) individual repair and maintenance assessments, such assessments to be established and collected as herein provided. The Common Expense Assessment and Special Assessments and individual Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each Assessment is made pursuant to A.R.S. § 33-1256.

Delinquent assessments, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Unit Owner of such Unit at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The sale or transfer of a Unit shall not relieve the prior Owner thereof from personal liability to pay delinquent assessments, plus interest, costs and attorney's fees. Such obligation shall remain the personal obligation of the defaulting Owner. The new Owner, except a First Mortgagee as set forth herein, shall take title to such Unit subject to the lien of the full amount of the delinquent assessment.

10.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Common Elements and for all purposes set forth in the Articles, Bylaws and this Declaration. The Board of Directors may provide that assessments include a reserve fund for maintenance, repairs and replacement of those elements of the Common Elements and of property and equipment owned by the Association for the common use and enjoyment of the Members.

10.3 Preparation of Budget.

(A) At least sixty (60) days (or soon thereafter as feasible) before the beginning of the first full fiscal year of the Association after the first Unit is conveyed to a Purchaser and each fiscal year thereafter, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Limited Common Elements and the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as are necessary to provide general operating reserves and reserves for contingencies

and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to subsections (D) and (E) of Section 10.4 and must include an adequate allocation to reserves as part of the Common Expense Assessment.

(B) Within thirty (30) days after the adoption of a budget, the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 10.4 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 10.4 of this Declaration and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

(C) The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

10.4 Common Expense Assessment.

(A) For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to subsections (D) and (E) of this section) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability, except that (i) any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element for which the Association has not undertaken maintenance responsibility shall be equally assessed against the Unit(s) to which the Limited Common Element is assigned; and (ii) any Common Expense or portions of a Common Expense benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

(B) The Common Expense Assessments shall commence as to all Units sold to Purchasers in the Condominium on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments. Unless otherwise directed by the Board, Common Expense Assessments shall be paid in monthly installments and shall be due and payable on the first day of each month.

(C) Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the

maintenance, repair and replacement of a Limited Common Element, and reserves for Common Expenses shall be assessed against all of the Units in accordance with subsection (A) of this section.

(D) If any Common Expense is caused by the negligence or willful conduct, whether by act or omission, of any Unit Owner, the Association shall assess that Common Expense exclusively against that Unit.

(E) Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liability.

10.5 Special Assessments. In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by Unit Owners representing two-thirds (2/3) of the votes in the Association and who are voting in person or by absentee ballot at a meeting duly called for such purpose, and approved by Declarant during the Period of Declarant Control. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

10.6 Notice and Quorum for Any Action Authorized Under Section 10.5. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Section 10.5 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. The presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

10.7 Fines and Penalties.

(A) If any Unit Owner, his or her family, or any licensee, invitee, tenant or lessee violates the provisions hereof or other rules of the Association, the Board after providing the Unit Owner with notice of the violation and an opportunity for a hearing as required by law, may levy a fine upon the Unit Owner, may suspend the violator's right to use the Common Elements and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorney's fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Unit Owner and its family members, guests and invitees.

(B) The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Unit Owner which are not paid within fifteen

(15) days of notice of the due date, may be charged to the Unit Owner of the Unit in question, and may be collected as permitted by law.

(C) In no event shall any fine be imposed for a default or violation, other than a failure to pay Assessments, without first affording the Unit Owner notice and an opportunity for hearing.

10.8 Billing and Collection Procedures.

(A) The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments. The failure of the Association to send a bill to a Unit Owner shall not relieve such Unit Owner of the Unit Owner's liability for an Assessment. It shall be the responsibility of the Unit Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Unit changes during an Assessment Period. Any successor Unit Owner shall be given credit for any non-refunded prepayments made by a prior Unit Owner.

10.9 Collection Costs and Interest on Delinquent Amounts.

Any delinquent amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the delinquent amount if such delinquent amount is not paid within fifteen (15) days after the due date. Any delinquent amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, the then prevailing interest rate on loans insured by Bank of America, or such rate as is determined from time to time by the Board. The Unit Owner shall be liable for all costs, including but not limited to demand fees, lien fees, attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any delinquent amount, and such amounts, to the extent permitted by law, shall be deemed a part of the Assessment Lien.

10.10 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other charges and fees against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this section may be reallocated and assessed to all Units as a Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the personal obligation of the defaulting Unit Owner.

10.11 Exemption of Unit Owner. No Unit Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and/or nonuse of any of the Common Elements or by the abandonment of his Unit.

10.12 Certificate of Payment. The Association, or its managing agent, on written request, shall furnish to a lienholder, Unit Owner or Person designated by a Unit Owner, a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement. In addition, the Association shall furnish such statements as may be required under A.R.S. § 33-1260 within the time frames set forth therein for compliance.

10.13 No Offsets. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

10.14 Surplus Funds. The Association shall not be obligated to spend in any year all monies received by it in such year, and the Board 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. The Association shall be under no obligation to refund any surplus balance, and may transfer surpluses to the reserve account or other account at the Board's discretion.

10.15 Reserves Fund. Upon the closing of the sale of each Unit, each Purchaser shall pay to the Association an amount established by the Board from time to time not to exceed an amount equal to one-fourth (1/4) of the Common Expense Assessment for the Unit for the twelve months following such closing (the "Reserves Fund Contribution") to establish a reserves fund to meet unforeseen expenditures, to purchase any additional equipment or services by or for the Association, or, on a temporary basis, to pay Association expenses such as insurance as they come due in the ordinary course in the event there are not sufficient funds in the Association's general accounts at the time of the due date to pay such expenses; provided, however, that the Board in its discretion shall reimburse the reserves fund for such expenses incurred from Annual Assessments as they are paid by Members. A Reserves Fund Contribution shall continue to be payable upon each subsequent sale of a Unit. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this the Condominium documents. The amounts paid to the Association pursuant to this Section shall be nonrefundable and shall not be considered an advance payment of any Assessments levied by the Association pursuant to this Declaration.

10.16 Administrative Fee. Upon each transfer of title to a Unit, a Purchaser shall pay to the Association, immediately upon becoming the Unit Owner, an Administrative Fee to cover administrative costs of membership transfer in such amount as is established from time to time by the Board, not to exceed the amount permitted under applicable law

ARTICLE XI

INSURANCE

11.1 Scope of Coverage.

(A) Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against, in an amount determined by the Board of Directors; provided, however, that the total amount of insurance 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 master or blanket hazard and multi-peril property insurance policy;

(ii) Comprehensive General Liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence and \$2,000,000.00 general aggregate. Such insurance shall cover all occurrences commonly insured against for personal injury, death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements;

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona,

(iv) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time;

(v) Blanket fidelity bonds for all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association; and

(vi) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, and/or the Unit Owners.

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

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.

(ii) There shall be no subrogation with respect to the Association, its agents, servants, its Board of Directors or officers thereof, and/or employees against Unit Owners and members of their household.

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

(iv) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.

(vi) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).

(vii) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(viii) Any insurance trust agreement will be recognized by the insurer.

(ix) Such coverage shall not be contingent upon action by the insurance carrier's board of directors, policyholders or members or permit claims for contribution or assessments to be made against Unit Owners or their Mortgagees, including Eligible Mortgage Holders.

(x) "Agreed Amount," and "Building Ordinance or Law" endorsements, except where expressly not applicable or not available.

11.2 Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this Article and all deductibles thereunder shall be Common Expenses and shall be paid for by the Association.

11.3 Insurance Required to be Obtained by Unit Owners. Each Unit Owner shall maintain property insurance such Unit Owner's Unit insuring against all risks of direct physical loss commonly insured against; provided, however, that the total amount of insurance 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 master or blanket hazard and multi-peril property insurance policy. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining additional or other insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage.

11.4 Non-Liability of Association. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither Declarant nor the Association, or their respective officers, directors, employees and agents, shall be liable to any Unit Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the

Association or if the amount of the insurance is not adequate, and it shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Unit Owner may desire.

11.5 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article 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. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in § 33-1253 of the Condominium Act.

11.6 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article of the Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel nor refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known address.

ARTICLE XII

EMINENT DOMAIN

In the event that a Unit, Units, the Common Elements, or any portion thereof is acquired by eminent domain, the provisions of the Condominium Act shall govern and control. To the extent not inconsistent therewith, in the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Elements, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Elements and improvements thereof), as reasonably determined by the Association in excess of Ten Thousand Dollars (\$10,000), the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Elements or improvement thereon sought to be so condemned, to all First Mortgagees of Units, all Members, and to Declarant. The Association shall have full power and authority to defend in said proceedings, and to represent the Unit Owners in any negotiations, settlements, and agreements with a condemning authority for acquisition of the Common Elements or part thereof, but the Association shall not enter into any such proceedings, settlement, or agreements, pursuant to which the Common Elements or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein is relinquished, without giving all First Mortgagees of Units, all Members, and Declarant at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Elements, the award made for such taking, shall be applied by the Association to such repair and restoration. If the full amount of such award is not expended to repair and restore the Common Elements, the Association shall disburse the net proceeds of such award to the Unit Owners, each Unit Owner to receive one (1) equal share,

except that any portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Unit Owners to which the Limited Common Element was allocated at the time of the acquisition, and provided that the Association shall first pay out of the share of each Unit Owner the amount of any unpaid liens or encumbrances on his Unit in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Properties shall be deemed to give a Unit Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an owner of insurance proceeds or condemnation award for losses to or taking of Units or Common Elements or any combination thereof.

ARTICLE XIII

DISPUTE RESOLUTION

12.1 Agreement To Avoid Litigation. Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject hereto who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes within CK Cabins Condominium to which Declarant or the Association is a party, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents ("Dispute") other than those described in Section 13.2(A) below shall be submitted to the dispute resolution procedures set forth in this Article XIII.

12.2 Alternative Dispute Resolution.

(A) Except as set forth in this Article XIII, All Disputes shall be subject to arbitration in accordance with this Section 13.2. This Section will apply to any Disputes regardless of whether it involves theories based upon contract, tort, statute or other legal theory, but shall exclude the following Disputes, which shall not be subject to the resolution pursuant to the provisions of Article XIII:

(i) any proceedings initiated by the Association to collect unpaid assessments, fees or other amounts;

(ii) any proceedings initiated by the Association or the Declarant to enforce the use and occupancy restrictions in the Condominium Documents, the architectural, design and landscape controls and the obligations regarding maintenance of Units set forth in this Declaration;

(iii) any proceedings initiated by the Association or the Declarant to enforce the Condominium Documents or the Rules;

(iv) any proceedings initiated by the Association to enforce a contract entered into by the Association with vendors providing services or materials to the Association;

(v) any suit by Declarant or the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve Declarant's or the Association's ability to act under and enforce rules under any applicable covenants; or

(vi) any suit which otherwise would be barred by any applicable statute of limitations.

(B) Any person wishing to pursue resolution of, or a remedy for, a Dispute (the "Claimant"), must give written notice of the Dispute to the Person or Persons believed to be responsible for the circumstances causing the Dispute, or believed to be responsible for remedying those circumstances (in either case, the "Respondent"). The notice must set forth in reasonable detail the circumstances alleged to give rise to the Dispute and the remedy or other action sought by the Claimant.

(C) Following delivery of such a notice, the Respondent shall be afforded a reasonable opportunity to meet with or otherwise communicate with the Claimant for a discussion of the circumstances giving rise to the Dispute and possible resolution of the Dispute and an examination of any physical conditions or written instruments giving rise to the Dispute.

(D) If the Dispute is not resolved to the satisfaction of the Claimant and the Respondent by negotiation within 30 days following delivery of the original notice by the Claimant and the Claimant wishes to pursue the Dispute further, the Claimant shall have 180 days following delivery of the original notice by the Claimant to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 13.2. If the Claimant does not submit the Dispute to arbitration within 180 days delivery of the original notice by the Claimant, the Claimant shall be deemed to have waived any claims related to the Dispute, and all other parties to the Dispute shall be released and discharged from any and all liability to the Claimant on account of the Dispute; provided, nothing herein shall release or discharge any party from any liability to persons who are not a party to the proceedings. An arbitration pursuant to this Section 13.2 shall not be combined with any other arbitration without the consent of all parties to this arbitration.

(E) The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No person shall be required to participate in the arbitration proceeding if (i) all parties against whom the person would have necessary or permissive cross-claims or counterclaims (a "Necessary Party") are not or cannot be joined in the arbitration proceedings, or (ii) the enforcement of this Section 13.2 would materially impair insurance coverage for the person that would have otherwise provided the person protection with respect to the Dispute. If any party to an arbitration determines in good faith that it cannot join a Necessary Party in the arbitration or that its insurance coverage applicable to the Dispute would be materially impaired, the party may elect not to participate in the arbitration and allow any claims against it to be determined by other legal proceedings. If a party makes such an election, it must give written notice of its election to all other parties in the arbitration. Within 10 days following receipt of such a notice, any other party to the arbitration

that would (or reasonably might) be adversely affected by the absence of the party that elected not to participate may likewise elect not to participate in the arbitration by giving written notice to all other remaining parties. If any party wishes to contest whether a party electing not to participate in the arbitration is entitled to make that election, it shall commence a legal action seeking a judicial determination of the validity of the election and arbitration proceedings will be stayed until that issue is finally determined judicially. Any such judicial proceeding to determine the validity of an election not to participate in arbitration shall deal only with that issue and shall not be used for a determination of the issues being decided in the arbitration.

(F) Any arbitration proceedings shall be held in the Phoenix, Arizona metropolitan area, unless otherwise agreed by the parties and the arbitrator.

(G) A single arbitrator shall be selected. The arbitrator shall have served as a judge of the Arizona Superior Court, the Arizona Court of Appeals, or the Arizona Supreme Court, by appointment of the Governor or by county election. The arbitrator shall be neutral and impartial and shall not have any relationship to the parties or interest in the Properties. The parties to the Dispute shall meet to select the arbitrator within 10 days after the Dispute is submitted to final and binding arbitration pursuant to this Section 13.2. If an arbitrator resigns or becomes unwilling or unable to continue to serve as an arbitrator for the subject Dispute, a replacement shall be selected in accordance with this Section 13.2.

(H) The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay. The arbitrator may require one or more pre-hearing conferences.

(I) The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of any property subject to the Dispute; and (vi) trial briefs. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(J) The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(K) THE DECISION AND AWARD WILL BE MADE BY THE ARBITRATOR WITHOUT A COURT TRIAL AND WITHOUT A JURY. Each party to the arbitration WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A JURY OR BY A COURT and agrees to accept the award of the arbitrator as final. The arbitrator shall decide all issues in the Dispute by strictly applying Arizona law, and this Section 13.2. Subject to the limitations imposed in this Section 13.2, the arbitrator shall have the authority to try all issues, whether of fact or law. The arbitrator shall render a final decision in writing no later than 60 days following the conclusion of the arbitration proceedings, or such longer period as the parties

to the Dispute mutually agree in writing. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held if not Arizona.

(L) Notwithstanding contrary provisions of the commercial arbitration rules or any other provision of this Section 13.2, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages if applicable.

(M) Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by the party. Each party to the Dispute shall share equally all charges of the arbitrator unless otherwise agreed to by the parties.

(N) If the parties to a Dispute resolve the Dispute through negotiation, and any party thereafter fails to abide by the terms of the agreed resolution, or if an arbitration award is made in accordance with this Section 13.2 and any party to the Dispute thereafter fails to comply with award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the agreed or awarded terms without the need to again comply with the procedures set forth in this Section 13.2. In that event, the party taking action to enforce the terms of the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all expenses reasonably incurred to enforce the agreed or awarded terms including attorneys' fees, witness fees, costs and all litigation-related expenses.

(O) All papers, documents, briefs, written communication, testimony transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the arbitrator, the parties to the Dispute, the attorneys of the parties to the Dispute and expert witness (where applicable to their testimony), except to the extent any disclosure is required by applicable laws or order of any court, or except with the prior written consent of all parties to the Dispute, confidential information may be disclosed to third parties. Prior to disclosure, all third parties must agree in writing to keep such information confidential.

(P) Nothing in this Section shall be considered to toll, stay, reduce, or extend any applicable statute of limitations. All statutes of limitation applicable to claims that are subject to arbitration pursuant to the alternative dispute resolution provisions of this Section shall apply to the commencement of proceedings pursuant to this Section and nothing herein shall be construed to mean that any arbitrator shall have authority to consider Disputes that would otherwise be barred by applicable statutes of limitation.

12.3 Disputes between Owners. In the event of a Dispute between two or more Owners not covered by the dispute resolution provisions of Section 13.2, the Owners are hereby strongly encouraged (but not required) to employ the dispute resolution procedures set forth above for resolution of the Dispute. The Association Board may offer such mediation, conciliation and other services as may be desired by the affected Owners to assist with resolution of the Dispute, but shall have no power or authority to make binding decisions regarding the

matter in issue between the Owners. The preceding sentence shall in no way be construed as limiting power or authority the Association Board might otherwise have to enforce and construe the provisions of this Declaration for the Association's own purposes.

12.4 Amendments. Prior to the expiration of the Period of Declarant Control, the provisions of this Article may not be amended without the written approval of Declarant.

ARTICLE IV

GENERAL PROVISIONS

12.5 Enforcement. The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter. To the extent this Declaration grants Declarant, the Association or any Unit Owner the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, judicial proceedings must be instituted before any items of construction can be altered or demolished. Each Unit Owner shall be subject to all rights and duties assigned to Unit Owners under this Declaration.

12.6 Disclosures and Unit Owner Acknowledgments. By acceptance of a deed for a Unit within the Condominium, each Unit Owner, for itself and its respective tenants, occupants, and guests shall be deemed to have acknowledged, agreed to, and accepted the following:

(A) Declarant was not responsible for the original construction of the Property, and the Property was not originally constructed to be sold as condominium units, but was originally constructed as and has been operated as a commercial resort community. The Condominium and each Unit do not include warranties typical of new construction. Each Unit and the Unit Owner's undivided interest in the Common Elements, is being sold by Declarant "AS IS", without any warranties, expressed or implied, unless specifically agreed to by Declarant in a separate agreement, and any and all implied warranties, are hereby specifically excluded from the sale of the Unit by Declarant and by accepting a deed conveying an interest in a Unit and Common Elements, each Unit Owner expressly waives any such implied warranty.

(B) It is the nature of a condominium that noise may be audible from one unit to the next (and from outside the units) regardless of sound proofing measures that are attempted. Each Unit Owner consents, for itself and its respective tenants, occupants, and guests, to accept the Unit subject to noise and sound impacts from nearby Units, the Common Elements, and other property in the vicinity of the Condominium and to accept responsibility for minimizing noise transmission from the Unit and adhering to any Rules of the Association which are designed to minimize noise transmission. Each Unit Owner acknowledges that there will usually be some audio awareness of one's neighbors, depending upon the situation. Each Unit Owner acknowledges that Declarant has not made any written or oral representation or warranty concerning the sound insulation capabilities of the Units and that in any condominium sound may be audible between Units.

12.7 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

12.8 Termination of Condominium. Subject to the further provisions of this Declaration regarding First Mortgagee notice and consent requirements, the Condominium may be terminated only in the manner provided for in the Condominium Act.

12.9 Amendment.

(A) Except in cases of amendments that may be executed by Declarant in the exercise of a Development Right, or by the Association or certain Unit Owners pursuant to the Condominium Act, the terms hereof may, at any time, be amended by the Association; provided, however, that except as provided elsewhere in this Declaration or in the Condominium Act, any amendments made by the Association shall be approved by at least sixty-seven percent (67%) of the total votes held by Unit Owners and shall be made only by an instrument in writing signed by the President and Secretary of the Association and recorded with the County Recorder of Apache County, Arizona within thirty (30) days after adoption of the amendment. During the Period of Declarant Control, any amendment or attempted revocation hereof shall be approved in writing by Declarant.

(B) An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless Declarant approves the amendment in writing

(C) Notwithstanding the above, during the Period of Declarant Control, Declarant shall have the right, without any vote or consent whatsoever, to amend this Declaration of its own volition and to make such changes as Declarant shall in its sole discretion deem proper, including changes to Common Elements.

(D) Except as expressly provided in the Condominium Act and in this Declaration, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

12.10 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

12.11 Notices. All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address at which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner; or (ii) if to the Association or Declarant, to PO Box 80316, Phoenix, AZ 85060, or such other address as shall be designated by notice in writing to the Unit Owners pursuant to this section. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of

change of address to the Association pursuant to this section. A notice given by mail, whether regular, certified or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association and shall promptly notify the Association in writing of any subsequent change of address.

12.12 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, easements, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, easements, rules, and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

12.13 Notice of Resale. Each Unit Owner must notify the Association, in writing, not less than ten (10) business days prior to the closing of any sale of such Unit Owner's Unit, of the name and address of the purchaser thereof.

12.14 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 to either entities or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

12.15 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 of this Declaration.

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

12.17 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, or the Association Rules, the provisions of this Declaration shall prevail.

12.18 Joint and Several Liability. In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit Owners set forth in, or imposed by, the Condominium Documents shall be joint and several.

12.19 Guests and Tenants. Each Unit Owner shall, to the extent permitted by Arizona law, be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. A Unit Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

12.20 Attorneys' Fees. In the event Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce an Assessment Lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents, the prevailing party in any such action shall be entitled to recover his reasonable attorneys' fees incurred in the action from the other party.

12.21 Number of Days. In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

12.22 Declarant's Disclaimer of Representations. While Declarant has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any provisions of this Declaration. Any Unit Owner acquiring a Unit in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Unit agrees to hold Declarant harmless therefrom.

12.23 No Absolute Liability. No provision of the Condominium Documents shall be interpreted or construed as imposing on Unit Owners absolute liability for damage to the Common Elements or the Units. Unit Owners shall only be responsible for damage to the Common Elements or Units caused by the Unit Owners' negligence or intentional acts, whether by act or omission.

12.24 Original Construction; Ownership. Pursuant to this Declaration, the Property is being converted from single family rental units to the Condominium. According to Apache County records, Tom Donato and/or his related entities and associates, was the original developer, builder and contractor for the Property. The original construction for the buildings on Units 202 - 206, were completed between 1995 and 2006. Structures to be constructed on Units 201 and 207 are not yet under construction.

A search of the records of the Apache County Recorder indicates that since 1995, the following entities have had ownership interests in the Property: Tom Donato, Brandon Bell and their related entities or associates 1995-2007; Doug Sandahl with Greer Lodge Resorts, LLC and Cattle Kates Lodge LLC 2007-current.

12.25 Additional Information. Upon written request to Declarant in the manner provided in the Declaration, Declarant will provide the name and address of any builder, developer, general contractor, subcontractors, architects and engineers who designed or made improvements to the property immediately before the first Unit was sold, and a specific description of all improvements made.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first above written.

DECLARANT:

CATTLE KATES LODGE LLC, an Arizona limited liability company

By: _____
Douglas C. Sandahl, Member

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Douglas C. Sandahl, member of Cattle Kates Lodge LLC, an Arizona limited liability company, on behalf of the limited liability company.

Notary Public

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: Community Development



Date/Signature: December 8, 2014

Describe in detail what you want to say to the Board and what action you want the Board to take:

AFTER A PUBLIC HEARING – Consideration and possible approval of a Vicinity Plan and Preliminary Plat for Four Seasons Condominium Subdivision. Property located at 28 Main Street, Greer, AZ 102-14-006

BOS Meeting Date Requested December 16, 2014

PRE-AGENDA ITEM REVIEW

Review Routing / Legal / Finance / Purchasing / Human Resource / Other:

Legal Review:

Signature:

Finance Review:

Signature:

Human Resources Review:

Signature:

Other Review:

Signature:

Reviews completed, item approved for Agenda.

Supervisor/Board Clerk's Initials



SUBDIVISION APPLICATION

STAGE OF DEVELOPMENT

X Vicinity Plan
 X Preliminary Plat Final Plat Amendment Reversion

PROPERTY INFORMATION

Assessor's Parcel #(s) 102-14-006

APPLICANT / DEVELOPER

Name Four Seasons Cabins LLC
 Mailing Address PO Box 80316
Phx, AZ 85060
 Contact Person Doug Sandahl
 Phone 602.550.3433 Fax N/A
 Email dsandahl@cox.net

Township 7N Range 27E Section 14
 Subdivision Name Four Seasons Condominium
 Unit # _____
 Address/Location 28 Main Street
Green, AZ
 Number of Lots Proposed 143
 Total Site Acreage 24 acres 1.33
 Proposed Access From County Road 1120
and County Road 1008

PROPERTY OWNER (if different than applicant)

Name _____
 Mailing Address _____
 Contact Person _____
 Phone _____ Fax _____
 Email _____

SAME AS APPLICANT

CERTIFICATION & SIGNATURE

Submission of this application constitutes consent of the applicant in granting the Planning and Zoning Department access to the subject property during the course of project review. No further consent or notice shall be required.

I hereby certify that the information in this application is correct and agree to abide by the regulations of this jurisdiction.

PROJECT ENGINEER

Name Geo Stone LLC
 Mailing Address PO Box 2400
St Johns, AZ 85936
 Contact Person Ken Flygare
 Phone 928-337-3621 Fax _____
 Email Ken.flygare@gmail.com

Signature of Applicant

Doug Sandahl Date 3/1/14

Signature of Property Owner (if not the applicant)

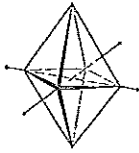
_____ Date _____

OFFICE USE ONLY

Received By [Signature] Date 3/8/14
 Receipt # 544326 Fee \$1030.00
 Subdivision # 2014-00000002
 Related Subdivisions _____

COMMISSION ACTION

Approved with Conditions (see attachments) Denied
 Chairman [Signature] Date 12-4-14
BOARD ACTION
 Approved with Conditions (see attachments) Denied
 Chairman _____ Date _____
 11-21-2013



GeoStone LLC
LAND SURVEYING & DEVELOPMENT
CIVIL ENGINEERING

P.O. Box 2400
St. Johns, AZ 85936
Phone: 928-337-3621
Cell: 928-245-5442
Ken.geostone@gmail.com

AMENDED
DRAINAGE REPORT
FOR
FOUR SEASONS CONDOMINIUM
GREER, ARIZONA

The cabin footprint for Units 1, 2, and 3 as shown on the Preliminary Plat for the FOUR SEASONS CONDOMINIUM, are existing and the drainage patterns on the site of each of these Units remain unaltered by this project. All other adjacent drainage ways and channels remain as they have been and have proven to be adequate and therefore do not require any alteration. All off-site surface runoff, along Rohrer Drive or other adjacent up-stream areas, is collected by gutter ditches located along the side of Rohrer Drive and carried directly to the river. These off site runoff ditches have proven to be adequate control for this existing runoff demand and are, therefore, without need of change.

This total FOUR SEASONS CONDOMINIUM area will basically remain physically unchanged. The present boundary of the 100 year flood down the West Fork of the Little Colorado River is shown on the attached Flood Plain & Floodway Map. As can be seen, the present existing floor elevation of each unit is above the shown 100 year high water level by at least 13 vertical feet. No additional drainage ways, channels or new drainage easements are proposed for this Condominium site.



**DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR
FOUR SEASONS CONDOMINIUM**

DATED

_____, 20__

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**DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
FOUR SEASONS CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR FOUR SEASONS CONDOMINIUM ("**Declaration**") is made this ___ day of _____, 20___, by FOUR SEASONS CABINS LLC, an Arizona limited liability company ("**Declarant**").

RECITALS

A. Declarant is the owner of land located in Apache County, Arizona, described as follows:

Units 1 through 3 and Common Elements of Four Seasons Condominium, a commercial condominium of Apache County, Arizona, recorded in Book ___ of Maps and Plats at Page ___ thereof, Apache County Records.

which real property shall hereinafter be referred to as the "Property".

B. Declarant desires and intends that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) are for the purpose of creating a condominium under the Arizona Condominium Act, A.R.S. §§ 33-1201 et seq. (as may be amended from time to time, the "Condominium Act"); (ii) are for the purpose of protecting the value, desirability, attractiveness and character of the Property (iii) shall run with all of the real property comprising the Property; (iv) shall be binding on all parties having any right, title, or interest in the Property, or any part thereof; and (v) shall inure to the benefit of the aforementioned parties and their heirs, successors and assigns.

C. Declarant has formed an Arizona nonprofit corporation to be known as "Four Seasons Commercial Condominium Association", for the purposes of, among other things, (i) the efficient preservation of the values and amenities of the Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Elements and enforcing this Declaration and Rules adopted pursuant hereto; and (ii) establishing, collecting, disbursing and enforcing the Assessments created herein.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE I

DEFINITIONS

Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Condominium Act. As used in this Declaration, the following terms shall have the following meanings:

1.1 "**Articles**" means the Articles of Incorporation of the Association, as they may be amended from time to time.

1.2 "**Assessments**" means the Common Expense Assessment and Special Assessments levied and assessed against each Unit pursuant to ARTICLE X of this Declaration.

1.3 "**Assessment Lien**" means the charge and continuing servitude and lien against a Unit for payment of Assessments, monetary penalties and other charges pursuant to this Declaration as more particularly described in Section 10.1 of this Declaration.

1.4 "**Association**" means "Four Seasons Commercial Condominium Association" organized by Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

1.5 "**Board of Directors**" means the Board of Directors of the Association.

1.6 "**Bylaws**" means the Bylaws of the Association, as they may be amended from time to time.

1.7 "**Common Elements**" means all portions of the Condominium other than the Units, including, without limitation, Limited Common Elements and any amenities, water and wastewater distribution systems, walkway areas, private drives, drainage areas and landscaping.

1.8 "**Common Expenses**" means expenditures made by, or financial liabilities incurred or to be incurred by the Association, together with required allocations to reserves, including but not limited to expenditures incurred in the enforcement of provisions of the Condominium Documents.

1.9 "**Common Expense Assessment**" means any assessment levied against the Units pursuant to Section 10.4 of this Declaration.

1.10 "**Common Expense Liability**" means the liability for Common Expenses allocated to each Unit by this Declaration.

1.11 "**Condominium**" means the real property located in Apache County, Arizona, submitted to the Declaration together with all buildings and other Improvements located hereon and all easements, rights, and appurtenances belonging thereto. The name of the Condominium created by this Declaration is "CK Cabins Condominium."

1.12 "**Condominium Documents**" means this Declaration, including the Plat, and the Articles, Bylaws, and Rules.

1.13 "**Declarant**" means Four Seasons Cabins LLC, an Arizona limited liability company, and their successors or assigns who have in writing been designated as a successor to the rights of Declarant hereunder.

1.14 "**Declaration**" means this Declaration of Condominium and of Covenants, Conditions, Restrictions and Easements for Four Seasons Condominium, as it may be amended from time to time, together with the exhibits, and where appropriate by context, the Plat.

1.15 "**Development Rights**" means any right or combination of rights reserved by or granted to Declarant in this Declaration as permitted by the Condominium Act.

1.16 "**Eligible Mortgage Holder**" means a First Mortgagee who has in writing requested that the Association furnish it with specific written notice of amendments or other material actions in relation to this Declaration.

1.17 "**First Mortgage**" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust.

1.18 "**First Mortgagee**" means the holder of any First Mortgage.

1.19 "**Improvements**" means all physical structures including, but not limited to, cabins, decks, patios, balconies, parking areas, driveways, fences and walls, mailboxes, propane tanks, planters, trash receptacles, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

1.20 "**Limited Common Elements**" means a portion of the Common Elements specifically designated in this Declaration or on the Plat as a Limited Common Element and allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more, but fewer than all, of the Units. The deck, patio, balcony and propane tank(s) of each Unit which lies outside the Unit/Lot shall be a Limited Common Element of the Unit.

1.21 "**Member**" means a Unit Owner who, by reason of ownership of a Unit, is entitled to automatic membership in the Association as set forth in the Bylaws.

1.22 "**Period of Declarant Control**" means the time period commencing on the date this Declaration is recorded in the Apache County Recorder's Office, and ending on the earlier of:

(A) Ninety (90) days after the conveyance of one-hundred percent (100%) of the Units which may be created in the Condominium to Unit Owners other than Declarant; or

(B) Four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

1.23 "**Person**" means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, government subdivision or agency, or other legal or commercial entity, and in the case of a subdivision trust, means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

1.24 "**Plat**" means the condominium plat for Four Seasons Condominium, recorded in the Official Records of the Apache County Recorder's Office, and any amendments, supplements, or corrections thereto.

1.25 "**Purchaser**" means any Person, other than Declarant, who by means of a voluntary transfer becomes a Unit Owner except for: (i) a Person who purchases a Unit and then leases it to Declarant for use as a model, sales or leasing office, fitness facility or business support center in connection with the sale of other Units, or (ii) a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.

1.26 "**Rules**" means the rules and regulations adopted by the Association, as they may be amended from time to time.

1.27 "**Special Assessment**" means any assessment levied against the Units pursuant to Section 10.5 of this Declaration.

1.28 "**Special Declarant Rights**" means any right or combination of rights reserved by or granted to Declarant in this Declaration or by the Condominium Act.

1.29 "**Unit**" means a portion of the Condominium designated for separate ownership and occupancy, as shown on the Plat and more particularly described in Article III of this Declaration.

1.30 "**Unit Owner**" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include (i) Persons having an interest in a Unit merely as security for the performance of an obligation or (ii) a lessee or tenant of a Unit. Unit Owner shall 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 through which a seller has conveyed to a Purchaser equitable title to a Unit under which the seller is obligated to convey to the Purchaser the remainder of seller's title in the Unit, whether legal or equitable, upon payment in full of all monies due under the contract. The term "Unit Owner" shall not include a Purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S., §§ 33-501 et seq., the Trustor shall be deemed to be the Unit Owner.

ARTICLE II

CREATION AND DECLARATION OF CONDOMINIUM

2.1 **Creation.** This condominium is created by Declarant pursuant to the Arizona Condominium Act, A.R.S. §§ 33-1201 et seq., as the same may be amended from time to time. This instrument is executed by all of the Unit Owners.

2.2 Applicable Law. All the provision of the Condominium Act shall apply to this Condominium, its organization, rights of Declarant, management, etc., unless a contrary provision is specified in the Declaration.

2.3 Name and Description of Condominium; Association. The name of the Condominium is Four Seasons Condominium, a commercial condominium. The legal description of the Condominium is Units 1 through 3 and Common Elements of Four Seasons Condominium, a condominium of Apache County, Arizona, recorded in Book ___ of Maps and Plats at Page ___ thereof, Apache County Records. The Identifying Numbers of the Units submitted to the Condominium are those Units consecutively numbered 1 through 3 inclusive, as shown on the Plat.

The name of the Unit Owners Association shall be Four Seasons Commercial Condominium Association.

ARTICLE III

DESCRIPTION OF UNITS AND UNIT BOUNDARIES

The Units initially created by and subject to this Declaration are shown and depicted on the Plat as Lots, and the location and identifying numbers of Units/Lots are shown and described on the Plat.

(A) The horizontal boundaries of each Unit/Lot are shown on the Plat. The vertical boundaries begin fifteen (15) feet below the finished floor elevation as shown on the Plat, and extend thirty (30) feet above the finished floor elevation as shown on the Plat.

(B) In the event of an inconsistency or conflict between the provisions of this section and the Plat, this section shall control.

(C) The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the building structure and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.

ARTICLE IV

ALLOCATION OF INTERESTS AND VOTING RIGHTS

4.1 Allocation of Common Element Interest. The undivided interests in the Common Elements shall be allocated among the Units based upon a ratio, the numerator of which is one (1) and the denominator of which is the total number of all Units in the Condominium. In no event shall the cumulative interests of all Units exceed or be less than a total of 100%. Initially, each Unit shall have a Common Element Interests of 1/3th, or 33.3%.

4.2 Allocation of Common Expense Liabilities. The Common Expense Liability shall be allocated among the Units in the same ratio as the Common Element Interest assigned to each Unit set forth in Section 4.1.

4.3 Allocation of Limited Common Elements. The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one Unit as follows: Any gas tank or meter, electric or water meter which serves only one Unit is allocated to the Unit it serves.

4.4 Reallocation of Limited Common Elements.

(A) A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of the Condominium Act. During the Period of Declarant Control, all such proposed reallocations must be submitted to and approved in writing by Declarant.

(B) During the Period of Declarant Control, Declarant shall have the right, without a vote of the Members or any other approval, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element.

(C) The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

4.5 Assignment of Parking Spaces. The vehicle parking areas not allocated as Limited Common Elements are Common Elements and shall be maintained by the Association. The Association shall have the ability but not the obligation to assign such parking spaces to designated Unit Owners, the use of which shall be a personal right of such Unit Owner. The Association may reassign the use of such parking spaces and may impose and receive payments, fees or charges for the use of parking spaces. Parking spaces not assigned to a specific Unit shall be used and shared by all Unit Owners in a fair and equitable manner. The Association may adopt regulations governing such parking spaces and, in the event of conflicts, the Board may convert some or all of the parking spaces to Limited Common Elements. Declarant shall have the authority during the Period of Declarant Control to assign and reassign parking spaces and to convert some or all of the parking spaces to Limited Common Elements.

4.6 Membership and Voting Rights. Each Unit Owner within the Condominium shall automatically be a Member of the Association and shall be entitled to one (1) vote for each Unit owned in all matters concerning the administration of the Association and management of the Condominium. In the event that a Unit is owned of record by more than one person, the vote attributed to that Unit shall be cast as a single vote as the Unit Owners of that Unit shall among themselves determine, and said vote shall not be apportioned.

ARTICLE V

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

5.1 Development Rights of Declarant. Notwithstanding anything to the contrary in this Declaration, Declarant reserves to itself, its successors and assigns, the following Development rights, which shall be referred to in this Declaration as "Development Rights":

(A) To create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(B) To subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(C) To amend the Declaration during the Period of Declarant Control to comply with applicable law, or; to correct any error or inconsistency in the Declaration, or; to reflect the change in the number of Units, Common Elements or Limited Common Elements.

5.2 Special Declarant Rights. The right or rights or combination thereof known as "Special Declarant Rights" reserved to Declarant are the following:

(A) To construct Improvements provided for in this Declaration or shown on the Plat;

(B) To exercise any Development Right;

(C) To maintain sales offices, management offices, model Units and signs advertising the Condominium;

(D) To use easements through the Common Elements for the purpose of making Improvements within the Condominium;

(E) To appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

5.3 Transfer of Special Declarant Rights. A Special Declarant Right created or reserved by this Declaration may be transferred pursuant to the provisions set forth in A.R.S. § 33-1244 of the Arizona Condominium Act, or the successor statute thereto.

5.4 Legal Description. The legal description of the real estate subject to each of the Development Rights and other Special Declarant Rights reserved in this Declaration to Declarant is shown and depicted on the Plat and consists of all Units and Common Elements subject to the Declaration.

5.5 Time Limits. Exercise of Development Rights and Special Declarant Rights by Declarant are not limited in any manner as to time and extend beyond the Period of Declarant Control unless otherwise limited by provisions of the Condominium Act.

ARTICLE VI

EASEMENTS

6.1 Existing Easements. If any Unit or Common Element is encumbered by an access or utility easement as shown on the Plat, then by accepting a deed to such Unit and Common Element, the Unit Owner acknowledges and consents to such easement.

6.2 Utility Easements. In addition to those special easements shown on the Plat, there is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the utility company providing such service to erect and maintain the necessary infrastructure and equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed and/or as thereafter approved and constructed by the Board of Directors. This easement shall in no way affect any other recorded easements on the Common Elements. In no event shall any portion of the above mentioned easements for utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Property.

6.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic, including, without limitation, emergency access and utility repair vehicles, over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes except that such easements shall not extend to any Limited Common Elements or assigned parking spaces, if any. Such easements shall run in favor of and be for the benefit of the Unit Owners and occupants of the Units and their guests, families, tenants and invitees.

6.4 Easements for Emergency and Service Vehicles; Refuse Collection. There are hereby created easements for ingress to and egress from the Condominium over, through and across such streets, driveways, parking areas and open space as from time to time may be paved and intended for such purposes for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles, including utility repair vehicles, as may be required from time to time to service the Condominium and the Unit Owners and occupants including, without limitation, for U.S. Mail distribution and collection and for private or municipal refuse collection.

6.5 Unit Owners' Easements of Enjoyment.

(A) Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements, except for the Limited Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable Rules governing the use of the Common Elements;

(ii) The right of the Association to suspend the voting rights of a Unit Owner for any period during which any Assessment against his Unit remains unpaid more than thirty (30) days after its due date and for a period not to exceed sixty (60) days for any other infraction or violation of the Condominium Documents, unless such infraction is continuing in which case such suspension may continue until the infraction is cured;

(iii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, subject to the vote or written assent of those Unit Owners representing at eighty percent (80%) of the votes in the Association, and with the consent of Declarant during the Period of Declarant Control; and, in all events, subject to a Unit Owner's easement for ingress and egress if access to such Owner's Unit is through the Common Elements to be conveyed or mortgaged

(iv) All rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to Declarant by Sections 6.6 and 6.7 of this Declaration.

(B) The tenants, guests and invitees of any Member or other person entitled to use the Common Elements pursuant to subsection (A) above may use the Common Elements. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to specific times.

(C) A Unit Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

(D) The provisions of this section shall not apply to any of the Limited Common Elements that are allocated to one or more, but less than all, of the Units.

6.6 Declarant's Use for Sales and Leasing Purposes.

(A) Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and model Units throughout the Condominium and to maintain one or more advertising, model and directional signs on the Common Elements while Declarant is selling or preparing to sell Units in the Condominium. Declarant reserves the right to place models, management offices and sales and leasing offices in any Units owned by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

(B) Declarant may from time to time relocate model Units, management offices and sales and leasing offices to different locations within the Condominium, including on the Common Elements or within any Unit owned by Declarant. Upon the relocation of a model Unit, management, business, sales or leasing office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

(C) So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to reserve parking spaces in the Condominium not allocated as Limited Common Elements or otherwise assigned to particular Units for use by prospective Unit Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(D) Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Condominium that has not been represented as property of the Association. Declarant reserves the right to remove from the Condominium any and all goods and Improvements used in development, marketing and construction, whether or not they have become fixtures.

6.7 Declarant's Easements.

(A) Declarant shall have the right, and an easement on and over the Common Elements, to alter or improve the Common Elements and the Units shown on the Plat and all other Improvements as Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction or renovation-related purposes, including for the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures and for the performance of work respecting the Condominium.

(B) Declarant shall have the right and an easement on, over and under the Common Elements for the purpose of maintaining and collecting drainage of surface, roof or storm water. The easement created by this subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

(C) Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.

6.8 Easement for Support. To the extent necessary, each Unit shall have an easement for structural support over every other Unit, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit, the Common Elements and the Limited Common Elements.

6.9 Common Elements Easement in Favor of the Association. The Common Elements shall be subject to an easement in favor of the Association, its Board and officers and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements.

6.10 Common Elements Easement in Favor of Unit Owners. The Common Elements shall be subject to the following easements in favor of the Units benefited:

(A) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

(B) For the performance of the Unit Owner's right to construct Improvements and; Unit Owner's obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 8.2 of this Declaration.

6.11 Units and Limited Common Elements Easement in Favor of Association. The Units and the Limited Common Elements 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 exterior of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible.

(B) For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from the exterior of Units or Limited Common Elements.

(C) For correction of emergency conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units.

(D) For the purpose of enabling the Association, the Board of Directors or any committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents.

(E) For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, their guests, tenants, invitees and the other occupants of the Unit.

6.12 Easement for Unintended Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, alteration or restoration authorized by this Declaration, settling or shifting, or any reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

ARTICLE VII

USE AND OCCUPANCY RESTRICTIONS

7.1 Plat Notes. In addition to the use restrictions contained herein, the Property is subject to any restrictions and limitations set forth in the Plat.

7.2 Improvements and Alterations.

(A) Any Unit Owner may construct and/or make additions, alterations and Improvements within such Unit Owner's Unit without the prior written approval of the Board of Directors, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units, the Limited Common Elements and the Common Elements which results from any such alterations, additions or Improvements. Notwithstanding the foregoing, no construction, addition, alteration or Improvement within a Unit or within any Limited Common Element allocated to the exclusive use of a Unit which would be visible from the exterior of the Unit, including a change to the exterior color scheme, shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed construction, addition, alteration or Improvement is aesthetically pleasing and in harmony with the surrounding Improvements.

(B) No excavation or grading work shall be performed on any Unit without the prior written approval of the Board of Directors.

(C) Any Unit Owner who is required to obtain approval of the Board of Directors for the construction, installation, addition, alteration, repair, change or replacement of any Improvement shall submit to the Board of Directors (i) a written request for approval specifying in detail the nature and extent of the construction, addition, alteration, repair, change or other work which the Unit Owner desires to perform, including the distance of such work from neighboring properties, if applicable; (ii) plans and specifications, if applicable; (iii) any other information which the Board of Directors may request; and (iv) any fee payable pursuant to Subsection 7.2(F) of this Declaration. If the Board of Directors fails to approve or disapprove an application for approval within sixty (60) days after the submittal of the completed application and all supporting information, plans and specifications requested by the Board of Directors have been submitted to the Board of Directors, approval will not be required and this section will be deemed to have been complied with by the Unit Owner who had requested approval of such plans. The approval by the Board of Directors of any construction, installation, addition, alteration, repair, change or other work pursuant to this section shall not be deemed a waiver of the Board of Director's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

(D) Upon receipt of approval from the Board of Directors for any construction, installation, addition, alteration, repair, change or other work, the Unit Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Board of Directors as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Board of Directors.

(E) Any change, deletion or addition to the plans and specifications approved by the Board of Directors must be approved in writing by the Board of Directors.

(F) The Board of Directors shall have the right to charge a fee not to exceed the sum of one-hundred dollars (\$100.00) for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section 7.2, which fee shall be payable at the time the application for approval is submitted to the Board of Directors.

(G) All Improvements constructed within and on Units shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Unit.

(H) The approval by the Board of Directors of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section 7.2 shall not be deemed a warranty or representation by the Board of Directors as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

(I) The provisions of this section do not apply to, and approval of the Board of Directors shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

(J) The approval required of the Board of Directors pursuant to this Section 7.2 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

7.3 No Partition and Subdivision. No Unit shall be partitioned or subdivided, except by the Declarant.

7.4 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size and style which are approved by the Board of Directors. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Board of Directors shall have the right to require all Unit Owners to place trash and garbage in containers located in areas designated by the Board of Directors. No incinerators shall be kept or maintained in any Unit.

7.5 Machinery and Equipment. No Unit Owner may place, operate or maintain machinery or equipment of any kind upon the Condominium other than usual and customary machinery and equipment used in connection with the Unit Owner's permitted uses of his Unit and Limited Common Elements. This section shall not apply to any such machinery or equipment which Declarant or the Association may require for the construction, improvement, operation and maintenance of the Common Elements.

7.6 Diseases and Insects. No Unit Owner shall permit anything or condition to exist upon the Condominium which could induce, breed or harbor infectious diseases (plant or

otherwise) or noxious insects. Each Unit Owner shall perform such pest control activities as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

7.7 Environmental Restrictions. All Unit Owners shall be responsible for complying with all federal and state environmental and health laws. Without limiting the foregoing, no Unit Owner or occupant may dispose of, transport, or store "hazardous materials" in his Unit or elsewhere in the Condominium other than small amounts of ordinary household non-combustible cleaning agents maintained in the Unit or Limited Common Element storage areas and in no event may any Unit Owner or occupant dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons, or other petroleum products, in or down a dry well on or adjacent to the Condominium, or in trash receptacles located within the Condominium.

7.8 Parking Spaces and Vehicles. No RVs, travel trailers, boat trailers, or trailers of any kind are allowed in the Condominium. No parking is allowed in the Condominium except in parking spaces shown on the Plat or designated by the Board of Directors. No parking spaces in the Condominium may be used for storage or for any purpose other than the parking of standard size or smaller cars, trucks and sport utility vehicles ("Vehicles"). Unit Owners or other lawful occupants of a Unit must park their Vehicles in an available assigned parking space before parking any excess or extra Vehicles in any unassigned parking space and in no event may any Unit Owner or other lawful occupant or their guests and invitees park in an assigned parking space other than the one specifically assigned to their Unit.

7.9 Motor Vehicle Repair and Towing of Vehicles. Other than temporary emergency repairs, no Vehicle shall be constructed, reconstructed, serviced or repaired, and no inoperable Vehicle may be stored on any portion of the Condominium. The Board of Directors shall have the right to have any Vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessments.

7.10 Signs. Other than a Unit Owner name and address identification sign not exceeding 6 x 12 inches in size on or adjacent to the door of a Unit, no emblem, logo, sign or billboard of any kind shall be displayed so that it is visible from the exterior of any Unit or any other portion of the Condominium without the prior written approval of the Board; except for: (i) signs used by Declarant to advertise the Units for sale or lease; (ii) signs on the Common Elements as may be placed or approved by Declarant during the Period of Declarant Control, or by the Board, thereafter; (iii) any signs as may be required by legal proceedings; (iv) one for sale or for lease sign whose face does not to exceed 18" x 24" in size for any one Unit; and (v) any signs as are approved by the Board.

The foregoing restrictions shall be subject to such limitations and privileges as are established at law, including for the placement of political signs and signs pertaining to candidates for political office or to other such protected matters.

7.11 Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of any part of the Condominium. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

7.12 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium.

7.13 Noise Reduction. Any improvement, equipment, or activity which may create noise impacts discernable from within any Unit (other than those related to Declarant's activities within the Condominium) may be subject to certain noise reduction requirements and guidelines set forth in any Rules adopted by the Association from time to time. All Owners, Lessees, and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the Rules of the Association and any applicable noise reduction ordinance.

7.14 Window Coverings. No reflective materials, including, without limitation, aluminum foil, reflective screens or glass, films, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or any Limited Common Elements allocated to a Unit shall be constructed or installed in any Unit or Limited Common Element without the prior written approval of the Board, unless the items so installed are substantially identical in color, texture and size as previously approved and installed window coverings being so replaced.

7.15 Savings Clause. The provisions of this Declaration shall be construed to be consistent with law, and should any provision violate law and be unenforceable as a result thereof, then applicable law shall govern. Without limitation, no provision hereof shall prohibit the placement of the American Flag or the parking of public service vehicles as permitted by law, subject to rules and regulations of the Association not in conflict with such laws.

7.16 Variances. The Board may, at its sole discretion, grant variances from the restrictions set forth in this Article VII if the Board determines:

(A) Either that (i) a particular restriction would create a substantial hardship or burden on an Owner or occupant and that such hardship is not attributable to the Unit Owner's or occupant's acts; (ii) a change of circumstances has rendered the particular restriction obsolete; or (iii) other circumstances warrant a variance in the Board's sole and absolute discretion; and

(B) The activity permitted under the requested variance will not have a substantially adverse effect on other Owners and occupants.

ARTICLE VIII

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

8.1 Duties of the Association. The Association shall maintain, repair and make necessary improvements to all Common Elements, except for the specific portions of the Limited Common Elements which the Unit Owners are obligated to maintain pursuant to Section 8.2 of this Declaration. Without limitation, the Association shall be responsible for maintaining all portions of the parking areas, mailboxes, fountains, planters, the private streets and drives, sidewalks, landscaping, irrigation systems, private drainage areas, those portions of water distribution and wastewater service lines that serve each Unit and located outside the Unit boundary (including each solid separation tank), lighting and light fixtures in the Common Elements, and recreational areas. The Board shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements and the Condominium. The Association shall not transfer or assign its duty to maintain wastewater service lines and/or a solid separation tank without the expressed approval of the Little Colorado Sanitary District.

8.2 Duties of Unit Owners.

(A) Each Unit Owner shall maintain, repair, replace and restore, at his own expense, all portions of his Unit and all Improvements thereon (including, without limitation, all portions of the structure and appurtenances thereto), subject to the Condominium Documents.

(B) Each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to this Declaration, including, without limitation: periodic painting and maintenance of the concrete slabs or finished flooring of, the deck, patio and balcony; and maintenance, repair and replacement of all doors and windows of the Unit, the air conditioning unit (including compressors and condensers), and heater and hot water heater servicing the Unit. No Unit Owner may paint or change the exterior color scheme or surfacing materials of his Unit, garage, carport, patio or balcony or any portion of the Limited Common Elements allocated to his Unit visible from the Common Elements or any other Unit without the prior written consent of the Board.

(C) Each Unit Owner shall take all necessary action to keep the Limited Common Elements which he is obligated to maintain under this Section 8.2 clean and free from unsightly accumulations of trash, furniture in weathered or poor condition, and litter. No Unit Owner shall allow a parking space to be used for storage or for the accumulation of trash or junk.

8.3 Repair or Restoration Necessitated by Unit Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements, or equipment thereon, which results from the negligence or willful misconduct, by act or omission, of the Unit Owner or that Owner's family members, tenants, guests, invitees and pets. The cost to the Association of any such repair, maintenance or replacement required by such act or omission of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

8.4 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within thirty (30) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Section 10.4(D) of this Declaration.

ARTICLE IX

THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

9.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Association has the specific duty to make available to Declarant, Eligible Mortgage Holders, and Unit Owners during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of the information requested.

9.2 Directors and Officers.

(A) During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, and such appointed members and officers need not be Unit Owners.

(B) Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three (3) members, all of whom must be Unit Owners, or an individual designated by a corporation, partnership or other non-individual Unit Owner. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

(C) Declarant may voluntarily surrender his right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors,

as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

9.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use by any Unit Owner, or by any invitee, tenant, occupant, licensee or lessee of such Unit Owner, of any area within the Condominium subject to the Association's jurisdiction and control; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, the applicable federal and state Fair Housing Acts, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be recorded.

9.4 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association is mandatory and such Membership and the Common Element Interests thereof are appurtenant thereto, and may not be separated from, ownership of the Unit; provided, however, the Common Element Interests of Units from time to time may be modified or changed as expressly permitted in this Declaration and authorized under the Condominium Act. No Owner during his ownership of a Unit shall have the right to relinquish or terminate his membership in the Association.

9.5 Non-Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, the Board, nor any committees of the Association nor any member thereof, nor any officers, directors or employees of Declarant or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board or such committees or officers reasonably believed to be within the scope of their respective duties or rights.

To the fullest extent permitted by law, Declarant and every director, officer or committee member of the Association and/or of Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal or control over members of the Board or its control over the Association or any committee thereof) shall be indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, and at the request of, the Association, may, in the discretion of the Board, be indemnified by the Association.

Any such indemnification shall be limited to all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person 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 in the case of Declarant by reason of having appointed, removed, controlled or failed to control members of the Board, or controlled or failed to control the Association), or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

ARTICLE X

ASSESSMENTS

10.1 Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Unit, whether or not it shall be so expressed in such deed, agrees and is deemed to covenant and agree to pay to the Association: (i) Common Expense Assessments or other charges, (ii) Special Assessments for capital improvements and other valid purposes, and (iii) individual repair and maintenance assessments, such assessments to be established and collected as herein provided. The Common Expense Assessment and Special Assessments and individual Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each Assessment is made pursuant to A.R.S. § 33-1256.

Delinquent assessments, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Unit Owner of such Unit at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The sale or transfer of a Unit shall not relieve the prior Owner thereof from personal liability to pay delinquent assessments, plus interest, costs and attorney's fees. Such obligation shall remain the personal obligation of the defaulting Owner. The new Owner, except a First Mortgagee as set forth herein, shall take title to such Unit subject to the lien of the full amount of the delinquent assessment.

10.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Common Elements and for all purposes set forth in the Articles, Bylaws and this Declaration. The Board of Directors may provide that assessments include a reserve fund for maintenance, repairs and replacement of those elements of the Common Elements and of property and equipment owned by the Association for the common use and enjoyment of the Members.

10.3 Preparation of Budget.

(A) At least sixty (60) days (or soon thereafter as feasible) before the beginning of the first full fiscal year of the Association after the first Unit is conveyed to a Purchaser and each fiscal year thereafter, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Limited Common Elements and the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as are necessary to provide general operating reserves and reserves for contingencies

and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to subsections (D) and (E) of Section 10.4 and must include an adequate allocation to reserves as part of the Common Expense Assessment.

(B) Within thirty (30) days after the adoption of a budget, the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 10.4 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 10.4 of this Declaration and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

(C) The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

10.4 Common Expense Assessment.

(A) For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to subsections (D) and (E) of this section) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability, except that (i) any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element for which the Association has not undertaken maintenance responsibility shall be equally assessed against the Unit(s) to which the Limited Common Element is assigned; and (ii) any Common Expense or portions of a Common Expense benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

(B) The Common Expense Assessments shall commence as to all Units sold to Purchasers in the Condominium on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments. Unless otherwise directed by the Board, Common Expense Assessments shall be paid in monthly installments and shall be due and payable on the first day of each month.

(C) Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the

maintenance, repair and replacement of a Limited Common Element, and reserves for Common Expenses shall be assessed against all of the Units in accordance with subsection (A) of this section.

(D) If any Common Expense is caused by the negligence or willful conduct, whether by act or omission, of any Unit Owner, the Association shall assess that Common Expense exclusively against that Unit.

(E) Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liability.

10.5 Special Assessments. In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by Unit Owners representing two-thirds (2/3) of the votes in the Association and who are voting in person or by absentee ballot at a meeting duly called for such purpose, and approved by Declarant during the Period of Declarant Control. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

10.6 Notice and Quorum for Any Action Authorized Under Section 10.5. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Section 10.5 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. The presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

10.7 Fines and Penalties.

(A) If any Unit Owner, his or her family, or any licensee, invitee, tenant or lessee violates the provisions hereof or other rules of the Association, the Board after providing the Unit Owner with notice of the violation and an opportunity for a hearing as required by law, may levy a fine upon the Unit Owner, may suspend the violator's right to use the Common Elements and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorney's fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Unit Owner and its family members, guests and invitees.

(B) The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Unit Owner which are not paid within fifteen

(15) days of notice of the due date, may be charged to the Unit Owner of the Unit in question, and may be collected as permitted by law.

(C) In no event shall any fine be imposed for a default or violation, other than a failure to pay Assessments, without first affording the Unit Owner notice and an opportunity for hearing.

10.8 Billing and Collection Procedures.

(A) The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments. The failure of the Association to send a bill to a Unit Owner shall not relieve such Unit Owner of the Unit Owner's liability for an Assessment. It shall be the responsibility of the Unit Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Unit changes during an Assessment Period. Any successor Unit Owner shall be given credit for any non-refunded prepayments made by a prior Unit Owner.

10.9 Collection Costs and Interest on Delinquent Amounts.

Any delinquent amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the delinquent amount if such delinquent amount is not paid within fifteen (15) days after the due date. Any delinquent amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, the then prevailing interest rate on loans insured by Bank of America, or such rate as is determined from time to time by the Board. The Unit Owner shall be liable for all costs, including but not limited to demand fees, lien fees, attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any delinquent amount, and such amounts, to the extent permitted by law, shall be deemed a part of the Assessment Lien.

10.10 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other charges and fees against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this section may be reallocated and assessed to all Units as a Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the personal obligation of the defaulting Unit Owner.

10.11 Exemption of Unit Owner. No Unit Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and/or nonuse of any of the Common Elements or by the abandonment of his Unit.

10.12 Certificate of Payment. The Association, or its managing agent, on written request, shall furnish to a lienholder, Unit Owner or Person designated by a Unit Owner, a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement. In addition, the Association shall furnish such statements as may be required under A.R.S. § 33-1260 within the time frames set forth therein for compliance.

10.13 No Offsets. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

10.14 Surplus Funds. The Association shall not be obligated to spend in any year all monies received by it in such year, and the Board 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. The Association shall be under no obligation to refund any surplus balance, and may transfer surpluses to the reserve account or other account at the Board's discretion.

10.15 Reserves Fund. Upon the closing of the sale of each Unit, each Purchaser shall pay to the Association an amount established by the Board from time to time not to exceed an amount equal to one-fourth (1/4) of the Common Expense Assessment for the Unit for the twelve months following such closing (the "Reserves Fund Contribution") to establish a reserves fund to meet unforeseen expenditures, to purchase any additional equipment or services by or for the Association, or, on a temporary basis, to pay Association expenses such as insurance as they come due in the ordinary course in the event there are not sufficient funds in the Association's general accounts at the time of the due date to pay such expenses; provided, however, that the Board in its discretion shall reimburse the reserves fund for such expenses incurred from Annual Assessments as they are paid by Members. A Reserves Fund Contribution shall continue to be payable upon each subsequent sale of a Unit. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this the Condominium documents. The amounts paid to the Association pursuant to this Section shall be nonrefundable and shall not be considered an advance payment of any Assessments levied by the Association pursuant to this Declaration.

10.16 Administrative Fee. Upon each transfer of title to a Unit, a Purchaser shall pay to the Association, immediately upon becoming the Unit Owner, an Administrative Fee to cover administrative costs of membership transfer in such amount as is established from time to time by the Board, not to exceed the amount permitted under applicable law

ARTICLE XI

INSURANCE

11.1 Scope of Coverage.

(A) Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against, in an amount determined by the Board of Directors; provided, however, that the total amount of insurance 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 master or blanket hazard and multi-peril property insurance policy;

(ii) Comprehensive General Liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence and \$2,000,000.00 general aggregate. Such insurance shall cover all occurrences commonly insured against for personal injury, death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements;

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona,

(iv) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time;

(v) Blanket fidelity bonds for all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association; and

(vi) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, and/or the Unit Owners.

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

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.

(ii) There shall be no subrogation with respect to the Association, its agents, servants, its Board of Directors or officers thereof, and/or employees against Unit Owners and members of their household.

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

(iv) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.

(vi) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).

(vii) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(viii) Any insurance trust agreement will be recognized by the insurer.

(ix) Such coverage shall not be contingent upon action by the insurance carrier's board of directors, policyholders or members or permit claims for contribution or assessments to be made against Unit Owners or their Mortgagees, including Eligible Mortgage Holders.

(x) "Agreed Amount," and "Building Ordinance or Law" endorsements, except where expressly not applicable or not available.

11.2 Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this Article and all deductibles thereunder shall be Common Expenses and shall be paid for by the Association.

11.3 Insurance Required to be Obtained by Unit Owners. Each Unit Owner shall maintain property insurance such Unit Owner's Unit insuring against all risks of direct physical loss commonly insured against; provided, however, that the total amount of insurance 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 master or blanket hazard and multi-peril property insurance policy. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining additional or other insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage.

11.4 Non-Liability of Association. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither Declarant nor the Association, or their respective officers, directors, employees and agents, shall be liable to any Unit Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the

Association or if the amount of the insurance is not adequate, and it shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Unit Owner may desire.

11.5 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article 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. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in § 33-1253 of the Condominium Act.

11.6 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article of the Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel nor refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known address.

ARTICLE XII

EMINENT DOMAIN

In the event that a Unit, Units, the Common Elements, or any portion thereof is acquired by eminent domain, the provisions of the Condominium Act shall govern and control. To the extent not inconsistent therewith, in the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Elements, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Elements and improvements thereof), as reasonably determined by the Association in excess of Ten Thousand Dollars (\$10,000), the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Elements or improvement thereon sought to be so condemned, to all First Mortgagees of Units, all Members, and to Declarant. The Association shall have full power and authority to defend in said proceedings, and to represent the Unit Owners in any negotiations, settlements, and agreements with a condemning authority for acquisition of the Common Elements or part thereof, but the Association shall not enter into any such proceedings, settlement, or agreements, pursuant to which the Common Elements or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein is relinquished, without giving all First Mortgagees of Units, all Members, and Declarant at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Elements, the award made for such taking, shall be applied by the Association to such repair and restoration. If the full amount of such award is not expended to repair and restore the Common Elements, the Association shall disburse the net proceeds of such award to the Unit Owners, each Unit Owner to receive one (1) equal share,

except that any portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Unit Owners to which the Limited Common Element was allocated at the time of the acquisition, and provided that the Association shall first pay out of the share of each Unit Owner the amount of any unpaid liens or encumbrances on his Unit in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Properties shall be deemed to give a Unit Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an owner of insurance proceeds or condemnation award for losses to or taking of Units or Common Elements or any combination thereof.

ARTICLE XIII

DISPUTE RESOLUTION

12.1 Agreement To Avoid Litigation. Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject hereto who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes within CK Cabins Condominium to which Declarant or the Association is a party, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents ("Dispute") other than those described in Section 13.2(A) below shall be submitted to the dispute resolution procedures set forth in this Article XIII.

12.2 Alternative Dispute Resolution.

(A) Except as set forth in this Article XIII, All Disputes shall be subject to arbitration in accordance with this Section 13.2. This Section will apply to any Disputes regardless of whether it involves theories based upon contract, tort, statute or other legal theory, but shall exclude the following Disputes, which shall not be subject to the resolution pursuant to the provisions of Article XIII:

(i) any proceedings initiated by the Association to collect unpaid assessments, fees or other amounts;

(ii) any proceedings initiated by the Association or the Declarant to enforce the use and occupancy restrictions in the Condominium Documents, the architectural, design and landscape controls and the obligations regarding maintenance of Units set forth in this Declaration;

(iii) any proceedings initiated by the Association or the Declarant to enforce the Condominium Documents or the Rules;

(iv) any proceedings initiated by the Association to enforce a contract entered into by the Association with vendors providing services or materials to the Association;

(v) any suit by Declarant or the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve Declarant's or the Association's ability to act under and enforce rules under any applicable covenants; or

(vi) any suit which otherwise would be barred by any applicable statute of limitations.

(B) Any person wishing to pursue resolution of, or a remedy for, a Dispute (the "Claimant"), must give written notice of the Dispute to the Person or Persons believed to be responsible for the circumstances causing the Dispute, or believed to be responsible for remedying those circumstances (in either case, the "Respondent"). The notice must set forth in reasonable detail the circumstances alleged to give rise to the Dispute and the remedy or other action sought by the Claimant.

(C) Following delivery of such a notice, the Respondent shall be afforded a reasonable opportunity to meet with or otherwise communicate with the Claimant for a discussion of the circumstances giving rise to the Dispute and possible resolution of the Dispute and an examination of any physical conditions or written instruments giving rise to the Dispute.

(D) If the Dispute is not resolved to the satisfaction of the Claimant and the Respondent by negotiation within 30 days following delivery of the original notice by the Claimant and the Claimant wishes to pursue the Dispute further, the Claimant shall have 180 days following delivery of the original notice by the Claimant to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 13.2. If the Claimant does not submit the Dispute to arbitration within 180 days delivery of the original notice by the Claimant, the Claimant shall be deemed to have waived any claims related to the Dispute, and all other parties to the Dispute shall be released and discharged from any and all liability to the Claimant on account of the Dispute; provided, nothing herein shall release or discharge any party from any liability to persons who are not a party to the proceedings. An arbitration pursuant to this Section 13.2 shall not be combined with any other arbitration without the consent of all parties to this arbitration.

(E) The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No person shall be required to participate in the arbitration proceeding if (i) all parties against whom the person would have necessary or permissive cross-claims or counterclaims (a "Necessary Party") are not or cannot be joined in the arbitration proceedings, or (ii) the enforcement of this Section 13.2 would materially impair insurance coverage for the person that would have otherwise provided the person protection with respect to the Dispute. If any party to an arbitration determines in good faith that it cannot join a Necessary Party in the arbitration or that its insurance coverage applicable to the Dispute would be materially impaired, the party may elect not to participate in the arbitration and allow any claims against it to be determined by other legal proceedings. If a party makes such an election, it must give written notice of its election to all other parties in the arbitration. Within 10 days following receipt of such a notice, any other party to the arbitration

that would (or reasonably might) be adversely affected by the absence of the party that elected not to participate may likewise elect not to participate in the arbitration by giving written notice to all other remaining parties. If any party wishes to contest whether a party electing not to participate in the arbitration is entitled to make that election, it shall commence a legal action seeking a judicial determination of the validity of the election and arbitration proceedings will be stayed until that issue is finally determined judicially. Any such judicial proceeding to determine the validity of an election not to participate in arbitration shall deal only with that issue and shall not be used for a determination of the issues being decided in the arbitration.

(F) Any arbitration proceedings shall be held in the Phoenix, Arizona metropolitan area, unless otherwise agreed by the parties and the arbitrator.

(G) A single arbitrator shall be selected. The arbitrator shall have served as a judge of the Arizona Superior Court, the Arizona Court of Appeals, or the Arizona Supreme Court, by appointment of the Governor or by county election. The arbitrator shall be neutral and impartial and shall not have any relationship to the parties or interest in the Properties. The parties to the Dispute shall meet to select the arbitrator within 10 days after the Dispute is submitted to final and binding arbitration pursuant to this Section 13.2. If an arbitrator resigns or becomes unwilling or unable to continue to serve as an arbitrator for the subject Dispute, a replacement shall be selected in accordance with this Section 13.2.

(H) The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay. The arbitrator may require one or more pre-hearing conferences.

(I) The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of any property subject to the Dispute; and (vi) trial briefs. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(J) The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(K) THE DECISION AND AWARD WILL BE MADE BY THE ARBITRATOR WITHOUT A COURT TRIAL AND WITHOUT A JURY. Each party to the arbitration WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A JURY OR BY A COURT and agrees to accept the award of the arbitrator as final. The arbitrator shall decide all issues in the Dispute by strictly applying Arizona law, and this Section 13.2. Subject to the limitations imposed in this Section 13.2, the arbitrator shall have the authority to try all issues, whether of fact or law. The arbitrator shall render a final decision in writing no later than 60 days following the conclusion of the arbitration proceedings, or such longer period as the parties

to the Dispute mutually agree in writing. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. §12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held if not Arizona.

(L) Notwithstanding contrary provisions of the commercial arbitration rules or any other provision of this Section 13.2, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages if applicable.

(M) Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by the party. Each party to the Dispute shall share equally all charges of the arbitrator unless otherwise agreed to by the parties.

(N) If the parties to a Dispute resolve the Dispute through negotiation, and any party thereafter fails to abide by the terms of the agreed resolution, or if an arbitration award is made in accordance with this Section 13.2 and any party to the Dispute thereafter fails to comply with award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the agreed or awarded terms without the need to again comply with the procedures set forth in this Section 13.2. In that event, the party taking action to enforce the terms of the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all expenses reasonably incurred to enforce the agreed or awarded terms including attorneys' fees, witness fees, costs and all litigation-related expenses.

(O) All papers, documents, briefs, written communication, testimony transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the arbitrator, the parties to the Dispute, the attorneys of the parties to the Dispute and expert witness (where applicable to their testimony), except to the extent any disclosure is required by applicable laws or order of any court, or except with the prior written consent of all parties to the Dispute, confidential information may be disclosed to third parties. Prior to disclosure, all third parties must agree in writing to keep such information confidential.

(P) Nothing in this Section shall be considered to toll, stay, reduce, or extend any applicable statute of limitations. All statutes of limitation applicable to claims that are subject to arbitration pursuant to the alternative dispute resolution provisions of this Section shall apply to the commencement of proceedings pursuant to this Section and nothing herein shall be construed to mean that any arbitrator shall have authority to consider Disputes that would otherwise be barred by applicable statutes of limitation.

12.3 Disputes between Owners. In the event of a Dispute between two or more Owners not covered by the dispute resolution provisions of Section 13.2, the Owners are hereby strongly encouraged (but not required) to employ the dispute resolution procedures set forth above for resolution of the Dispute. The Association Board may offer such mediation, conciliation and other services as may be desired by the affected Owners to assist with resolution of the Dispute, but shall have no power or authority to make binding decisions regarding the

matter in issue between the Owners. The preceding sentence shall in no way be construed as limiting power or authority the Association Board might otherwise have to enforce and construe the provisions of this Declaration for the Association's own purposes.

12.4 Amendments. Prior to the expiration of the Period of Declarant Control, the provisions of this Article may not be amended without the written approval of Declarant.

ARTICLE IV

GENERAL PROVISIONS

12.5 Enforcement. The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter. To the extent this Declaration grants Declarant, the Association or any Unit Owner the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, judicial proceedings must be instituted before any items of construction can be altered or demolished. Each Unit Owner shall be subject to all rights and duties assigned to Unit Owners under this Declaration.

12.6 Disclosures and Unit Owner Acknowledgments. By acceptance of a deed for a Unit within the Condominium, each Unit Owner, for itself and its respective tenants, occupants, and guests shall be deemed to have acknowledged, agreed to, and accepted the following:

(A) Declarant was not responsible for the original construction of the Property, and the Property was not originally constructed to be sold as condominium units, but was originally constructed as and has been operated as a commercial resort community. The Condominium and each Unit do not include warranties typical of new construction. Each Unit and the Unit Owner's undivided interest in the Common Elements, is being sold by Declarant "AS IS", without any warranties, expressed or implied, unless specifically agreed to by Declarant in a separate agreement, and any and all implied warranties, are hereby specifically excluded from the sale of the Unit by Declarant and by accepting a deed conveying an interest in a Unit and Common Elements, each Unit Owner expressly waives any such implied warranty.

(B) It is the nature of a condominium that noise may be audible from one unit to the next (and from outside the units) regardless of sound proofing measures that are attempted. Each Unit Owner consents, for itself and its respective tenants, occupants, and guests, to accept the Unit subject to noise and sound impacts from nearby Units, the Common Elements, and other property in the vicinity of the Condominium and to accept responsibility for minimizing noise transmission from the Unit and adhering to any Rules of the Association which are designed to minimize noise transmission. Each Unit Owner acknowledges that there will usually be some audio awareness of one's neighbors, depending upon the situation. Each Unit Owner acknowledges that Declarant has not made any written or oral representation or warranty concerning the sound insulation capabilities of the Units and that in any condominium sound may be audible between Units.

12.7 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

12.8 Termination of Condominium. Subject to the further provisions of this Declaration regarding First Mortgage notice and consent requirements, the Condominium may be terminated only in the manner provided for in the Condominium Act.

12.9 Amendment.

(A) Except in cases of amendments that may be executed by Declarant in the exercise of a Development Right, or by the Association or certain Unit Owners pursuant to the Condominium Act, the terms hereof may, at any time, be amended by the Association; provided, however, that except as provided elsewhere in this Declaration or in the Condominium Act, any amendments made by the Association shall be approved by at least sixty-seven percent (67%) of the total votes held by Unit Owners and shall be made only by an instrument in writing signed by the President and Secretary of the Association and recorded with the County Recorder of Apache County, Arizona within thirty (30) days after adoption of the amendment. During the Period of Declarant Control, any amendment or attempted revocation hereof shall be approved in writing by Declarant.

(B) An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless Declarant approves the amendment in writing

(C) Notwithstanding the above, during the Period of Declarant Control, Declarant shall have the right, without any vote or consent whatsoever, to amend this Declaration of its own volition and to make such changes as Declarant shall in its sole discretion deem proper, including changes to Common Elements.

(D) Except as expressly provided in the Condominium Act and in this Declaration, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

12.10 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

12.11 Notices. All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address at which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner; or (ii) if to the Association or Declarant, to PO Box 80316, Phoenix, AZ 85060, or such other address as shall be designated by notice in writing to the Unit Owners pursuant to this section. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of

change of address to the Association pursuant to this section. A notice given by mail, whether regular, certified or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association and shall promptly notify the Association in writing of any subsequent change of address.

12.12 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, easements, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, easements, rules, and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

12.13 Notice of Resale. Each Unit Owner must notify the Association, in writing, not less than ten (10) business days prior to the closing of any sale of such Unit Owner's Unit, of the name and address of the purchaser thereof.

12.14 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 to either entities or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

12.15 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 of this Declaration.

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

12.17 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, or the Association Rules, the provisions of this Declaration shall prevail.

12.18 Joint and Several Liability. In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit Owners set forth in, or imposed by, the Condominium Documents shall be joint and several.

12.19 Guests and Tenants. Each Unit Owner shall, to the extent permitted by Arizona law, be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. A Unit Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

12.20 Attorneys' Fees. In the event Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce an Assessment Lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents, the prevailing party in any such action shall be entitled to recover his reasonable attorneys' fees incurred in the action from the other party.

12.21 Number of Days. In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

12.22 Declarant's Disclaimer of Representations. While Declarant has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any provisions of this Declaration. Any Unit Owner acquiring a Unit in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Unit agrees to hold Declarant harmless therefrom.

12.23 No Absolute Liability. No provision of the Condominium Documents shall be interpreted or construed as imposing on Unit Owners absolute liability for damage to the Common Elements or the Units. Unit Owners shall only be responsible for damage to the Common Elements or Units caused by the Unit Owners' negligence or intentional acts, whether by act or omission.

12.24 Original Construction; Ownership. Pursuant to this Declaration, the Property is being converted from single family rental units to the Condominium. According to Apache County records, Jo Almour and/or her related entities and associates, was the original developer, builder and contractor for the Property. The original construction for the buildings on Units 1 - 3, were completed prior to 1995.

A search of the records of the Apache County Recorder indicates that since 1995, the following entities have had ownership interests in the Property: Jo Almour and/or their related entities or associates 1995-2007; Doug Sandahl with Greer Lodge Resorts, LLC and Four Seasons Cabins LLC 2007-current.

12.25 Additional Information. Upon written request to Declarant in the manner provided in the Declaration, Declarant will provide the name and address of any builder, developer, general contractor, subcontractors, architects and engineers who designed or made improvements to the property immediately before the first Unit was sold, and a specific description of all improvements made.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first above written.

DECLARANT:

FOUR SEASONS CABINS LLC, an Arizona limited liability company

By: _____
Douglas C. Sandahl, Member

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Douglas C. Sandahl, member of Four Seasons Cabins LLC, an Arizona limited liability company, on behalf of the limited liability company.

Notary Public

Beth Bond

From: Delwin P. Wengert
Sent: Wednesday, November 12, 2014 6:49 AM
To: Baran Jason M
Cc: Beth Bond
Subject: RE: Carbon Presentation

602-236-2467

cell 602-281-0000

Coal (EPA regulations)

Jason,

We can move it to one of our meetings in December, either the 2nd or the 16th, whichever works best for him.

Thanks,

From: Baran Jason M [<mailto:Jason.Baran@srpnet.com>]
Sent: Tuesday, November 11, 2014 11:46 AM
To: Delwin P. Wengert
Subject: Carbon Presentation

Delwin,

I hope all is well. I think Dan Bevier will be out of town for the Dec 2nd meeting. Is there another date that could be available?

Thanks
Jason

Jason Baran
Manager, State & Local Relations
Salt River Project
PO Box 52025
Phoenix, AZ 85072
602.281.0000 (cell)
602.236.2467 (office)
Jason.baran@srpnet.com

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: (Individual, Organization, or County Department)

Clerk of the Board

Date/Signature:

[Signature]

Describe in detail what you want to say to the Board and what action you want the Board to take:

*Selection of Chairman & Vice Chairman
for 2015*

BOS Meeting Date Requested 12/16/14

PRE-AGENDA ITEM REVIEW

Review Routing / /Legal / /Finance / /Purchasing / /Human Resource / /Other: _____

Legal Review: _____

Signature: _____

Finance Review: _____

Signature: _____

Human Resources Review: _____

Signature: _____

Other Review: _____

Signature: _____

Reviews completed, item approved for Agenda.

Supervisor/Board Clerk's Initials _____

Apache County Board of Supervisors
AGENDA ITEM REVIEW FORM

date/time stamp

Submitter's Name: (Individual, Organization, or County Department)

Board of Supervisors

Date/Signature:

Describe in detail what you want to say to the Board and what action you want the Board to take:

Call to the Public: Individuals may address the Board on any relevant issue for an amount of time determined by the Chairman. At the close of the call to the public, Board members may not respond to any comments but may respond to criticism, ask staff to review a matter, or ask that a matter be placed on a future agenda.

BOS Meeting Date Requested ongoing

PRE-AGENDA ITEM REVIEW

Review Routing / /Legal / /Finance / /Purchasing / /Human Resource / /Other:

Legal Review:

Signature:

Finance Review:

Signature:

Human Resources Review:

Signature:

Other Review:

Signature:

Reviews completed, item approved for Agenda.

Supervisor/Board Clerk's Initials