

**When recorded, return to:**

**Ekmark & Ekmark, LLC  
6720 North Scottsdale Road  
Suite 261  
Scottsdale, AZ 85253**

**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR PAYSON PINES**

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THIS SECOND AMENDED AND RESATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PAYSON PINES (“Declaration”), is made as of the day hereinafter set forth by the PAYSON PINES HOMEOWNERS ASSOCIATION, INC., an Arizona non-profit corporation (“Association”).

**RECITALS**

WHEREAS, Payson Pines, LLC (“Declarant”) recorded a Revised, Restated and Consolidated Declaration of Easements, Covenants, Conditions and Restrictions for Payson Pines on March 24, 2000 at Fee # 2000-4475, official records of Gila County, Arizona Recorder (“First Amended and Restated Declaration”);

WHEREAS, the First Amended and Restated Declaration governs the real property located in Gila County, Arizona, legally described on Exhibit “A”, attached hereto and made apart hereof (the “Property”);

WHEREAS, the Association desires to maintain the beauty of the Property to assure high quality standards for the enjoyment of the Property, to promote the interest of each Property owner, to provide for the preservation and enhancement of the Property and for the maintenance of the property and the improvements thereon, to provide for the efficient management of the Property.

WHEREAS, the Association, by and through its Members, wishes to amend and restate the First Amended and Restated Declaration in its entirety as set forth herein;

NOW THEREFORE, the Association hereby declares that all of the Property shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, all of which run with the land and shall be binding upon all persons owning, leasing, or occupying any Parcel or Parcels and all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property, and all of which are hereby declared to be for the benefit of all of the property described herein and the Owners thereof, their heirs, successors, grantees, and assigns.

**ARTICLE I**

**DEFINITIONS**

The following definitions shall apply wherever these capitalized terms appear in this Declaration:

**Section 1.1** “ARB” shall mean the Payson Pines Homeowners Association “Architectural Review Board,” as established by the Board of Directors of the Association.

**Section 1.2** “Articles” shall mean the Articles of Incorporation for the Association, as amended from time to time, which are filed with the State of Arizona.

**Section 1.3** “Assessment(s)” shall mean and include all types of charges to which a Parcel is subject, including, and without limitation; (a) Annual Assessments, (b) Special Assessments, (c) Working Capital Fee Assessments and (d) Individual Assessments (as more fully defined in Article VI).

**Section 1.4** “Association” shall mean Payson Pines Homeowners Association, Inc., an Arizona Corporation, its successors and assigns.

**Section 1.5** “Board of Directors” shall mean the Board of Directors of the Payson Pines Homeowners Association, Inc.

**Section 1.6** “Bylaws” shall mean the Bylaws of the Association as amended from time to time.

**Section 1.7** “Common Area” shall mean all of the Property, except the Parcels and publicly dedicated roads and easements, together with any improvements thereon and all personal property intended for the common use and enjoyment of the Owners and any areas within the Property, which the Association is obligated to maintain, notwithstanding that it may not own such area. The Common Area is not dedicated for general public use. The Common Area may consist of directional and identification signage, landscaping, pedestrian pathways, mailboxes, buildings and open areas.

**Section 1.8** “Declaration” shall mean this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded in the office of the Gila County, Arizona recorder, as it may hereafter be amended and supplemented from time to time.

**Section 1.9** “Member” shall mean a person entitled to membership in the Association, as provided in Article III of this Declaration.

**Section 1.10** “Owner” shall mean the record holder of fee title to any Parcel, any purchaser under an agreement of sale or contract of purchase and, in the case of a Parcel owned in trust, the Owner shall be the trustor if the trust is revocable and the Owner shall be the trustee if the trust is irrevocable. Owners shall not include those having such interest merely as security for the payment or repayment of a debt obligation.

**Section 1.11** “Parcel” shall mean any parcel of land or dwelling unit intended as a site for a Residence. A Parcel may include a single Parcel as shown on the recorded plat or may include a dwelling unit as shown on a tract declaration or tract of un-platted land.

**Section 1.12** “Property” shall mean the real property located in Gila County, Arizona, legally described on Exhibit “A”, attached hereto and made apart hereof.

**Section 1.13** “Residence” shall mean any Single-Family Residential dwelling constructed within any Parcel.

**Section 1.14** “Single-Family” shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residence.

**Section 1.15** “Visible From Neighboring Property” shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall standing on neighboring property, on the level of the base of the object being viewed.

## ARTICLE II

### ADDITIONAL PROPERTY

**Section 2.1** Annexation of Additional Property. Additional property may be annexed to the Property, with the consent of each owner of the additional property and with the written consent of Owners representing seventy-five percent (75%) of the Parcels. Residences constructed on the additional property may be different in appearance from existing Residences, and may be constructed as attached or detached housing.

**Section 2.2** Supplemental Declaration. Any such annexations authorized in Section 2.1 shall be made by the filing of record of one or more supplemental declarations with respect to the additional property. A supplemental declaration may contain any additions to or modifications of the provisions hereof applicable to the additional property as may be necessary to reflect the different character, if any, of the additional property that is the subject of the supplemental declaration, including, without limitation, any differences in the method or level of Assessments to be levied upon such additional property, taking into account the different nature or amount of services to be rendered to its Owners by the Association. A supplemental declaration shall be approved by three-fourths (3/4) of the Directors then in office, signed by the President of the Association and by every owner of the additional property, and shall become effective upon being recorded in the public records of Gila, Arizona. Thereafter, such additional property shall be considered within the definition of the term "Property" for all purposes of this Declaration.

## ARTICLE III

### ASSOCIATION; MEMBERSHIP; VOTING RIGHTS

**Section 3.1** The Association. The Association is an Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. The Association may exercise any right or privilege given to the Association expressly by applicable law and the Articles, Bylaws, and this Declaration and every

other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by applicable law and the Articles, Bylaws, and this Declaration or reasonably necessary to effectuate any such right or privilege.

**Section 3.2 Board of Directors.** The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws, as same may be amended from time to time. Unless the Articles, Bylaws, or this Declaration specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors.

**Section 3.3 Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Association Rules" or "Rules". The Association Rules may restrict and govern the use of any area by any Owner, or by any invitee, licensee, or lessee of such Owner; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with 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 Owner and may be recorded. The Rules shall have the same force and effect as if they were set forth in and were a part of the Declaration.

**Section 3.4 Membership.** Every Owner of a Parcel shall be a Member of the Association. Although all persons who are Owners of a Parcel shall be Members of the Association, only one (1) membership shall exist for a single Parcel. Membership shall be appurtenant to and may not be separated from ownership of any Parcel. The rights and obligations of an Owner and a membership in the Association shall not be assigned, transferred, pledged or alienated in any way, except upon the transfer of the Parcel, whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Parcel. Any attempt to make a prohibited transfer shall be void. Each Member shall have such other rights, duties, and obligations as set forth in the Articles, Bylaws and applicable law, as same may be amended from time to time.

**Section 3.5 Voting Rights and Procedures.** All Members shall be entitled to one (1) vote for each Parcel owned. When more than one person owns a Parcel, the vote for the Parcel shall be exercised as they themselves determine, but in no event shall more than one (1) vote be cast with respect to any Parcel and fractional votes shall not be permitted. If the Owners are unable to agree among themselves as to how their vote(s) shall be cast, they shall lose their right to cast their vote(s) on the matter in question. If any Member casts a vote representing a certain Parcel, it will thereupon conclusively be presumed for all purposes that he or she was acting with the authority and consent of all other Owners of the same Parcel unless objection thereto is made prior to the deadline for casting the vote. In the event that more than one vote is cast for a particular Parcel, and one or more conflicting votes are cast, then none of the votes shall be counted and all of the votes for the Parcel shall be deemed void.

**Section 3.6 Suspension of Voting Rights.** A Member's voting rights may be suspended by the Board for any period during which any assessment levied by the Association

against his or her Parcel remains unpaid. In addition, the Board shall have the power, after giving a Member notice and an opportunity to be heard, to suspend a Member's voting rights for a reasonable time period for each infraction or violation of the Declaration and/or the Rules; provided, however, that if the violation is of a continuing nature, the Member's rights shall remain suspended until such violation has been cured.

**Section 3.7 Contracts.** The Association may contract for the management and operation of the Association and designate to such contractors all or a portion of the powers and duties of the Association, as permitted by law. In the case of any construction that is required to be performed by a licensed contractor with the State of Arizona, the Association shall only contract with a licensed contractor. The costs for management and operation of the Association shall be paid by the Association as part of the Assessments.

## **ARTICLE IV**

### **EASEMENTS**

**Section 4.1 Owners' Easements of Enjoyment.** Subject to the limitations provided elsewhere in this Declaration, every Owner is hereby granted a nonexclusive right and perpetual easement of enjoyment in and to the Common Area, together with a nonexclusive perpetual right and easement to utilize all publicly dedicated roads within the Property, which easements are appurtenant and shall pass with the title to every Parcel, subject to the following provisions:

(a) The right of the Association to limit the number of guests of Members and to impose other requirements on use by guests of Members;

(b) The right of the Association to restrict the uses and activities on the Common Area through the Rules;

(c) The right of the Association to restrict or prohibit access or use of certain portions of the Common Area, such as landscaped areas, as may be necessary for maintenance or preservation of the Common Area; and

(d) The right of the Association to grant easements upon, over, and/or under all or any part of the Common Areas to any public agency, authority or utility and the right of the Association to enter into temporary leases, rentals or licenses of the Common Area for such purposes, and subject to such conditions, as may be agreed to by the Board of Directors.

**Section 4.2 Delegation of Use.** Each Owner may delegate, subject to the Articles, Bylaws, Rules and Declaration, his or her right of enjoyment of the Common Area and facilities to the members of his family, tenants, or his guests who occupy the Parcel.

**Section 4.3 Utility Easements.** The Association hereby reserves for itself, its successors and assigns, a nonexclusive, perpetual, alienable blanket easement and right for the benefit of the Property, across, over, through, and under the Property for ingress, egress, installation, replacement, repair, use and maintenance of all utility and service lines and service

systems, public and private, including, but not limited to; water, sewer, drainage, irrigation systems, telephones, electricity, television cable or communication lines and systems, and police powers and services supplied by the local, state and federal governments. By virtue of this easement, it shall be expressly permissible for the Association to install and maintain facilities and equipment on the Property, and to excavate for such purposes. The easement shall in no way affect any other recorded easements on the Property.

## **ARTICLE V**

### **MAINTENANCE**

**Section 5.1 Common Area.** The Association, or its duly delegated representative, agent, or contractor, shall manage, maintain, repair and replace the Common Area and all improvements thereon, except the Association shall not maintain areas which any governmental entity is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance of the Common Area. The Association may, at any time, as to any Common Area, conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required, perform all such acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

**Section 5.2 Parcels.** Each Owner shall keep all parts of his or her Parcel in good order and clean and free of weeds and debris. No improvements or structures upon any Owner's Parcel shall be permitted to fall into disrepair. Each improvement and structure on a Parcel shall at all times be kept in good working condition and repair. Notwithstanding the generality of the foregoing, each Owner is responsible for the maintenance, repair and replacement of roofs, windows and doors (including repair or replacement of glass or screens), and all portions of the interior and exterior of the Residence. Further, each Owner shall be responsible for the periodic restoration, repainting and re-staining of the exterior of the Residence. Each Owner shall further maintain the Parcel and all landscaping and improvements thereon in accordance with the Association Rules.

**Section 5.3 Improper Maintenance and Use of Parcels.** In the event (i) an Owner of any Parcel fails to maintain their Parcel and the improvements thereon in accordance with the standards set forth in this Declaration or the Association Rules, (ii) a Parcel is maintained as to present a public or private nuisance or an unreasonable condition, or as to substantially detract from the appearance or quality of the surrounding Parcels or other areas of the Property, or (iii) any portion of a Parcel is being used in a manner which violates this Declaration or the Association Rules, the Association shall have the right and option to take action as may be necessary, in the discretion of the Board, to correct such violation, breach or default. Except in emergency circumstances that pose a danger or hazard to any of the Parcels or the residents thereon, before taking such action, the Association shall give the Owner written notice of the corrective action required and a time frame to complete the corrective action. All costs and expenses, including reasonable attorneys' fees, incurred by the Association shall be paid by the Owner to the Association on demand. Any sum not paid by an Owner may be levied and collected as an Individual Assessment.

**Section 5.4 Damage or Destruction of Common Area By Owners.** In the event that the need for any maintenance or repairs to the Common Areas (or other area for which the Association is responsible) is caused through the willful or negligent act of the Owner, his agents, tenants, family, guests or invitees, the Association's cost of maintenance and/or repairs shall be paid by the Owner to the Association on demand. Any sum not paid by an Owner may be levied and collected as an Individual Assessment.

**Section 5.5 Utilities.** Each Parcel shall be supplied with connections for water, sewer, and electricity, and may be supplied with connections for telephone and cable television and/or satellite device systems. Each Owner shall pay all costs for the services supplied to his or her Parcel. The Association is not responsible for the quality or availability of utility services.

**Section 5.6 Trash Collection.** The Town of Payson or its designee will supply trash collection and each Owner shall be required to pay the costs thereof to the entity providing the services.

## ARTICLE VI

### ASSESSMENTS

**Section 6.1 Creation of the Lien and Personal Obligation of Assessments.** The Owner of each Parcel, by acceptance of a deed or other instrument therefor, whether or not it should be so expressed in any such deed or other conveyance is deemed to covenant and agrees to pay to the Association: (a) Annual Assessments, (b) Special Assessments, (c) Working Capital Fee Assessments and (d) Individual Assessments, all as provided for under this Article VI (collectively or individually referred to herein as "Assessments"). The Assessments, together with late fees, interest, collection costs, court costs, and reasonable attorneys' fees shall be a charge on the land and shall be a continuing lien (hereinafter sometimes called an "Assessment lien") upon the Parcel against which each such Assessment is made. Such amounts shall immediately become a lien upon said Owner's Parcel from the date the Assessment is made and/or levied and from the date such interest, collection costs, court costs, and reasonable attorneys' fees are incurred, and shall continue to be a lien until fully paid. Each such Assessment, together with late fees, interest, collection costs, court costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who is the Owner of such Parcel at the time when the Assessment became due. No Owner may exempt himself from liability for the Assessments which become due while he is the Owner by failure or waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Parcel, or otherwise.

**Section 6.2 Purpose of Assessments.** The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners of the Property and for the preservation, improvement and maintenance of the Common Area.

**Section 6.3 Reserves.** The Association may, in its discretion, maintain reserves for; (i) capital improvements, (ii) replacements (iii) major repairs, and (iv) contingency for



emergencies related to the condition of the Property. The reserves included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to non-profit corporations or homeowners associations. The responsibility of the Board shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither the Board nor any member thereof shall have any liability to any Owner or Member or to the Association if such reserves prove to be inadequate. Extraordinary unexpected or emergency expenditures not originally included in the annual budget, which may become necessary during the year, shall be charged first, against such reserves. If the reserves are inadequate for any reason, including nonpayment of any Owner's Assessment, the Board of Directors may, at any time, levy an Emergency General Assessment in accordance with the provisions of Section 6.5 of this Article, which may be payable in a lump sum or in installments as the Board of Directors may determine.

**Section 6.4 Annual Assessments.**

(a) Commencing on or before November 15<sup>th</sup> of each year the Board of Directors shall adopt a budget for the coming year containing an estimate of the total amount which it considers necessary to pay the costs of all expenses to be incurred by the Association to carry out the responsibilities and obligations of the Association, including, without limitation; the cost of wages, materials, taxes, insurance premiums, services, supplies and other expenses for the rendering to the Owners of all services required or permitted hereunder. Such budget shall also include such reasonable amounts, as the Board of Directors considers desirable, to provide working capital for the Association and to provide for a general operating reserve and reserves for contingencies and replacements. Such budget shall constitute the basis for determining each Owner's Annual Assessment. The Annual Assessments shall be determined by dividing the amount of the budget by the number of Parcels subject to the Declaration. The Board of Directors shall send to each Owner a copy of the budget, in a reasonably itemized form, which sets forth the amount of the Annual Assessment payable by each Owner, on or before December 1<sup>st</sup> preceding the fiscal year to which the budget applies. However, the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment equal to the Annual Assessment for the year immediately preceding until the Owner has been given thirty (30) days' notice of the new Annual Assessment amount.

(b) The Board shall not impose an Annual Assessment in any Annual Assessment period that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of the majority of the Members, or as otherwise provided by Arizona law.

(c) Subject to the restrictions contained in Subsection (b) herein, the Board may increase or decrease the Annual Assessments as deemed necessary or desirable by the Board and the Annual Assessments may be changed or modified during any fiscal or calendar year.

**Section 6.5 Special Assessments.**

(a) **General Special Assessments.** In addition to the Annual Assessments, the Association may levy in any fiscal year a General Special Assessment applicable to that year and not more than the next four (4) succeeding years for any proper Association purpose, provided any such Special General Assessment shall have the consent of Owners holding two thirds (2/3) of the votes that are cast, in person or by absentee ballot, at a regular meeting or special meeting called for that purpose at which a quorum of membership is present. Written notice of any such special meeting shall be sent to all Members not less than fifteen (15) days or more than thirty (30) days in advance of the meeting. At the first meeting called, the presence at the meeting of Members, in person or by absentee ballot, entitled to cast fifty-one percent (51%) of all the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the same notice requirement, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

(b) **Emergency Special Assessments.** The Association may also levy an Emergency Special Assessment at any time by a majority vote of the Board of Directors, for the purpose of defraying, in whole or in part, the cost of any extraordinary, unexpected or emergency matters that affect the Common Area or all Members of the Association (including, after depletion of any applicable reserves as provided in Section 6.3 of this Article, any unexpected expenditures not provided for in the budget or unanticipated increases in the amounts budgeted) (“Emergency Special Assessment”). Any such Emergency Special Assessment shall be due and payable at the time and in the manner specified by the Board of Directors.

**Section 6.6 Uniform Rate of Assessments.** Both Annual Assessments and Special Assessments shall be fixed at a uniform rate for all Parcels.

**Section 6.7 Due Dates for Assessments.** Both Annual Assessments and Special Assessments shall have due dates as established by the Board and may be collected on a monthly or other periodic basis as determined by the Board of Directors.

**Section 6.8 Individual Assessment.** Individual Assessments shall be levied by the Association against a Parcel and its Owner to reimburse the Association for costs incurred in bringing an Owner and such Owner's Parcel into compliance with the provisions of the Declaration or Rules, any costs incurred by the Association due to the Owner's willful or negligent conduct, any other charge designated as an individual assessment in this Declaration, and all attorneys' fees, interest, and other charges relating thereto.

**Section 6.9 Working Capital Fee Assessment.** In addition to all other assessments, each Owner, upon acquiring a Parcel, shall pay to the Association a Working Capital Fee Assessment. The Working Capital Fee Assessment shall be equal to one-sixth (1/6) of the then Annual Assessments. Such payment shall become due at the close of escrow or immediately upon the transfer of title to the Parcel, whichever occurs first. Such payment shall be required upon each transfer of title to each Parcel except with respect to (1) transfer of a Parcel among

family members, as defined in A.R.S. § 42-12053 (as amended, repealed, or recodified) or (2) transfer of a Parcel into a revocable living trust for the benefit of the trustor, where the Owner(s) of the Parcel becomes the trustor of the trust. Any Working Capital Fee Assessment not paid as required under this Section shall become a part of the Assessment Lien on the Parcel and collectible in the same manner as Assessments. Funds paid to the Association pursuant to this Section may be used by the Association for payment of maintenance, repairs, replacements and additions to the Common Area and for operating expenses of the Common Area. Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Association pursuant to this Declaration.

**Section 6.10 Effect of Nonpayment of Assessment; Remedies of the Association.**

Any Assessments which are not paid when due shall be delinquent. In the event any Assessment is not paid within thirty (30) days from the due date, the Assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and may be subject to a late fee established by the Board and as permitted by applicable law. In the event the Owner of any Parcel fails to pay an Assessment due, the Association, by and through its Board of Directors, may enforce the payment of the Assessment in any manner provided by law or in equity or, without any limitation of the foregoing, by either or both of the following actions concurrently or separately (and by exercising any of the remedies hereinafter set forth the Association does not prejudice or waive its right to exercise any other remedies):

(a) Enforcement by Suit. Commence a suit at law in the name of the Association against the Owner (or former Owner) personally obligated to pay the Assessment, to enforce each such Assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, late fees, collection costs, lien fees, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner (or former Owner).

(b) Enforcement by Foreclosure. Foreclose the Assessment lien against the Parcel in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), subject to the right of redemption of the Parcel after foreclosure sale as provided by law. The Association, acting on behalf of the Owners, shall have the power to bid on an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the Parcel.

**Section 6.11 Certificate of Payment of Assessments.** The Association shall, upon written request, furnish to a person acquiring an interest in any Parcel and to a lienholder, escrow agent, Owner or person designated by an Owner, a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Parcel have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate will be provided within the time period required by law. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

## ARTICLE VII

### ARCHITECTURAL CONTROL

**Section 7.1 Construction Subject to Architectural Control.** No landscaping, construction, modification, alteration or improvement of any nature whatsoever, that is or will be Visible From Neighboring Property shall be commenced, undertaken or maintained on any Parcel unless and until a project request form for such construction, modification, alteration or improvement has been submitted and approved in writing by the ARB. Construction, modifications and improvements subject to ARB approval specifically include, but are not limited to, painting of doors and trim, staining exterior or other alteration of the exterior appearance of a Residence (including doors, windows and roof), solar panels or other devices, fountains, swimming pools, whirlpools, or other pools, construction of walls or other fences, signs, whether located on the Parcel or in windows of the Residence, gates, flower boxes, shelves, statues, or other outdoor ornamentation patterned or brightly colored window coverings including awnings, alteration of the landscaping or topography of the Property, including, without limitation, any adding or removal of trees, and all other modifications, alterations or improvements Visible From Neighboring Property, all of the foregoing being jointly referred to herein as “Proposed Improvements”.

**Section 7.2 ARB Membership.** The ARB shall consist of three (3) members. At least one member of the ARB must be a member of the Board of Directors, who shall serve as chairperson of the ARB. The right to appoint and remove all regular members of the ARB at any time is vested solely in the Board of Directors. Any member of the ARB may at any time resign from the ARB by giving written notice thereof to the Board. Vacancies on the ARB, however caused, shall be filled by the Board. The members of the ARB shall not be entitled to any compensation for services performed pursuant to this Declaration, but shall be entitled to reimbursement for reasonable costs expended, as approved by the Board.

#### **Section 7.3 Procedures.**

(a) **Application.** The documents, materials and items to be submitted to the ARB for approval shall include: (1) the construction plans and specifications, if any, (2) samples of materials, and (3) such other items as the ARB may deem appropriate. No construction on any Parcel or the Property shall be commenced and no Parcel shall be modified, except in accordance with such plan or modification thereof that has also been approved in accordance with the applicable application. If construction permits are necessary from the authority having jurisdiction, they must be obtained before construction is started.

(b) **Basis for Decision.** Approval shall be granted or denied by the ARB, in its sole and absolute discretion, based upon compliance with the provisions of this Declaration, the quality of workmanship and materials, the harmony of external design with its surrounds, the effect of the construction on the appearance from surrounding Parcels, and all other factors guidelines and standards promulgated from time to time including purely aesthetic

considerations, which, in the sole opinion of the ARB, will affect the desirability or suitability of the construction.

In connection with its approval or disapproval of an application, the ARB shall evaluate each application for total effect. The evaluation relates to matters of judgment and taste, which cannot be reduced to a simple list of measurable criteria. It is possible; therefore, that an application may meet individual criteria and still not receive approval, if in the sole judgment of the ARB its overall aesthetic impact is unacceptable. The approval of an application shall not be construed as creating any obligation on the part of the ARB to approve applications involving similar designs for different Parcels.

(c) **Uniform Procedures.** The ARB may establish uniform procedures for the review of applications. The ARB shall consider no application unless and until such application is submitted in compliance with the provisions of this Article or procedures established by the ARB. In the event that there shall be a disagreement with respect to approval, the Proposed Improvement shall be deemed disapproved.

(d) **Notification.** Approval or disapproval of applications to the ARB shall be given to the applicant in writing within sixty (60) after the ARB has received the application and all other required specifications and materials in accordance with the procedures adopted by the ARB. In the event approval or disapproval is not forthcoming within sixty (60) days, unless an extension is agreed to by the applicant, the application shall be deemed approved and the construction of the proposed improvements applied for may be commenced provided that all such construction is in accordance with the submitted plans and provided further that such plans conform in all respects to the other terms and provisions of state and local codes and ordinances and of this Declaration.

**Section 7.4 Liability.** Approval by the ARB of an application by an Owner shall not constitute a basis for any liability of the members of the ARB, the Board of Directors, or the Association for any reason, including, without limitation, (1) failure of the plans to conform to any applicable building codes, or (2) inadequacy or deficiency in the plans resulting in defects in the Proposed Improvements.

**Section 7.5 Appeal.** Any Owner whose plans or specifications have been denied may appeal the decision to the Board in accordance with procedures to be established by the Board. The Board shall have absolute discretion as to whether to approve or deny any plans or specifications. In the event the decision of the ARB is overruled by the Board on any issue or question, the decision of the Board shall govern. The decision of the Board shall be final.

## ARTICLE VIII

### USE OF PARCELS

**Section 8.1 Parcel Re-subdivision.** No Parcel shall be further subdivided or separated into smaller Parcels by any Owner, unless such Owner obtains the prior written approval of the

Board, and the resulting subdivided Parcels meet all governmental restrictions and requirements for Parcels within the Plat. Any subdivided Parcel shall have proportionate fraction of a vote from the original Parcel and a proportionate fractional Assessment obligation from the original Parcel, as determined by the Board.

**Section 8.2 Residential Use.** All Parcels shall be for residential use by a Single Family. No occupation, profession, trade, business, or other non-residential use shall be conducted upon or from any Parcel provided that an Owner or any resident may conduct limited business activities in the residence on a Parcel so long as (a) the existence or operation of the business activity is not apparent or detectible by sight, sound or smell from outside the Parcel, (b) the business activity conforms to all applicable zoning requirements, (c) the business activity does not involve door-to-door solicitation of other Owners or residents, (d) the business activity does not generate drive-up traffic or customer or client parking, and (e) the business activity is consistent with the residential character of the Property, does not constitute a nuisance or a hazardous or offensive use, and does not threaten the security or safety of other Owners or residents, as may be determined in the sole discretion of the Board. No time-share or fractional interest ownership of Parcels is permitted. Nothing herein shall be deemed to prevent the Owner from leasing a Parcel and the Residence thereon, subject to all of the provisions of the Declaration, Articles, Bylaws and Rules.

**Section 8.3 Nuisances; Other Improper Use.** No nuisance shall be permitted to exist on any Parcel or Common Area so as to be detrimental to any other Parcel in the vicinity thereof or to its occupants, or to the Common Area. No activity or materials may be carried on or permitted on any of the Parcels which will or might disturb the peace, quiet, comfort or serenity of the occupants of the Property or may be or become an annoyance, embarrassment or nuisance to the Association, the Property or the occupants therein, including without limitation annoying, offensive, foul or obnoxious odors or sounds. No hazardous activities shall be conducted upon any of the Parcels or Common Area. No improvements which are unsafe or hazardous to any person or property shall be permitted. No unlawful use shall be made of the Property or any part thereof. No waste will be committed upon the Common Area. Owners hereby acknowledge that construction activity on or about the Property during daylight hours shall no be deemed to be a nuisance. The Board of Directors in its sole discretion shall have the right to determine the existence of any such nuisance.

**Section 8.4 Insurance.** Nothing shall be done or kept on any Parcel or in the Common Area that will increase the rate of insurance for any other Parcel, or the contents thereof, without the prior written consent of the Association. No Owner shall permit anything to be done or kept on his Parcel or in the Common Area, which will result in the cancellation of insurance on the Property or any other Parcel, or the contents thereof.

**Section 8.5 Animals and Pets.** No reptiles, birds, fish, livestock or other animals, other than a reasonable number of commonly accepted and usual household pets, shall be permitted on any Parcel so long as such pets are at all times kept within the boundaries of the Parcel of their owner or under the control of their owner, such pets do not make an unreasonable amount of noise and do not offend or annoy other Parcel Owners and such pets are not kept, bred or maintained for any commercial purpose. All owners of pets shall be held strictly responsible to immediately collect and properly dispose of the wastes and litter of their pets. Any structure

for the care, housing or confinement of any animal may only be constructed so as to be Visible from Neighboring Property if the Owner first receives the prior written approval of the Board. Upon written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion, whether any animal as described herein is a commonly accepted household pet, whether the number of pets on the Parcel is reasonable, and whether one or more pets constitutes a nuisance. The Board may require the removal of any animal that does not meet the qualifications of this Section. Any decision rendered by the Board shall be enforceable as are other restrictions contained herein. Owners shall be liable for any and all damage to property and injuries to persons and other animals caused by their household pets.

**Section 8.6** **Signs.** No signs whatsoever which are Visible From Neighboring Property shall be erected or maintained on any Parcel except:

(a) Signs required by legal proceedings and signs required by law to be allowed on the Parcel;

(b) Commercially-produced “For Sale”, “For Lease” and temporary “Open House” signs, each no larger than eighteen by twenty-four inches (18" x 24") and sign riders no larger than six by twenty-four inches (6" x 24") erected in connection with the marketing of any Parcel;

(c) Political signs as permitted by Gila County may be placed on the Parcel up to seventy-one (71) days before an election and up to three (3) days after an election;

(d) Signs permitted by the Rules or approved in writing by Board of Directors.

**Section 8.7** **Parking and Vehicles.** The Board shall have the authority to adopt Rules restricting or prohibiting the parking or storage of Commercial Vehicles, Inoperative Vehicles, motor homes, boats, recreational vehicles, ATVs, dune buggies, go karts, trailers of any kind, permanent tents, vehicles exceeding factory settings of three-quarter (3/4) ton in carry load or cargo capacity, or similar vehicles, equipment or structures. For purposes of this Declaration, “Commercial Vehicle” shall be defined as any vehicle that meets any one or more of the following criteria: displays any type of exterior signage, design or lettering for advertising, commercial utility racks located on the vehicle, or work equipment stored on the vehicle that is visible from outside of the vehicle. For purposes of this Declaration, an Inoperative Vehicle is one that is not running, has one or more flat tire(s) for ten (10) or more days, is up on blocks, is not properly licensed, is not currently registered, or does not carry insurance required by law. Vehicles that are not otherwise prohibited may be parked in driveways or other uncovered parking areas so as to be Visible From Neighboring Property so long as they are parked in accordance with any Rules adopted by the Board. All vehicles operated within the Property shall be operated at or below the posted speed limits. Vehicles may be operated only on the areas designated and maintained as roads or on the Owner’s Parcel.

**Section 8.8** **Visibility at Street Intersections.** Nothing shall be erected, constructed, planted, or otherwise placed on a Parcel in such a position so as to create a hazard or block the

vision of motorists upon any of the roads, which are part of, adjacent to, or near the Property. The ARB shall have the right to adopt additional restrictions implementing and clarifying the provisions hereof.

**Section 8.9 Drainage.** Under no circumstances shall an Owner alter or obstruct existing drainage channels on the Property. Paving, piping or canalization shall not increase the runoff in such a manner as to cause flooding or flood related damage to adjacent Parcels or the Common Area.

**Section 8.10 Screening Unsightly Items.** Any and all clotheslines, equipment, garbage containers, service areas, wood piles, storage tanks, and storage areas shall be kept screened by adequate planting, fencing, or by existing trees and shrubs so as to conceal them from being Visible From Neighboring Property. Notwithstanding the foregoing, small piles of firewood may be kept neatly stacked on a Parcel without being screened, so long as they are not unsightly and do not present a fire hazard. The Board shall have the discretion to determine what is considered a small pile of firewood that does not require screening. All additions, alterations or changes to screening or fencing must be approved by the ARB.

**Section 8.11 Garbage and Refuse Disposal.** No Parcel shall be used or maintained as a dumping ground for rubbish or hazardous or toxic waste or materials. Trash, garbage, or other waste shall be kept in closed containers and removed at least weekly. No outdoor burning of trash is permitted on any Parcel.

**Section 8.12 Antennas and Satellite Dishes.** No radio, television or other antennas or devices of any kind or nature, or device for the reception or transmission of television, radio, microwave or other similar signals, shall be placed or maintained upon any Parcel except in compliance with the Association Rules and the Architectural Committee Rules and except those devices covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, will be permitted. Any such device shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property. The devices governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule) as of the date of the recording of this Declaration are as follows: (i) Direct Broadcast Satellite (“DBS”) antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite; (ii) Multi-point Distribution Service (“MDS”) antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (iii) Antennas designed to receive local television broadcast signals (“TVBS”); and (iv) Antennas designed to receive and/or transmit data services, including Internet access. If the FCC expands the types of antennas that fall under the FCC Rule, this Section 8.12 shall encompass those antennas as well.

**Section 8.13 Flags and Flagpoles.** An Owner may install one (1) flagpole on the Parcel with the prior written approval of the ARB in accordance with Article VII herein and in accordance with the Association Rules. Flags that are required by law to be permitted may be flown on the Parcel Visible From Neighboring Property in accordance with the Federal Flag



Code (P.L. 94-344); however, the Rules may limit the number of flags displayed to two (2) at a time. Other flags may be flown only with the prior written approval of the Board or as specifically permitted by the Rules.

**Section 8.14 Temporary Structures.** No structure of a temporary character, including, without limitation, any trailer, tent, shack, barn, shed, or other outbuilding shall be permitted on any Parcel at any time, except temporary structures maintained in connection with construction of improvements, additions or alterations approved by the ARB, and only for so long as permitted by the ARB.

**Section 8.15 Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any parcel, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any parcel. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Parcel or on the Property.

**Section 8.16 Water Supply and Sewer.** No individual well or septic tank will be permitted on any Parcel, without prior written consent of the ARB, and the utility company and/or governmental authority having regulatory jurisdiction.

**Section 8.17 Fuel Storage Tanks.** No fuel or gas storage tanks shall be permitted on any parcel, except for tanks for use in connection with the Residence on a Parcel, but only as permitted in accordance with the Association Rules.

**Section 8.18 Soliciting.** No soliciting will be allowed at any time within the Property.

**Section 8.19 Trees.** No trees shall be cut or removed from the Parcel without approval of the ARB, which may be conditioned upon such factors as the Owner's mitigation of the loss of the tree and the overall landscaping on the Parcel.

**Section 8.20 No Obstruction of Drainage and Utility Easements.** No structure of any kind shall be erected, permitted or maintained which interferes with utility easements or drainage easements, whether now existing or hereafter established, whether shown on the recorded Plat or reserved or dedicated by a separate recorded instrument. Utilities may be relocated from time to time with the approval of the Board, so long as doing so does not interfere with any drainage easements or any improvements on a Parcel or the Common Area.

**Section 8.21 Ancillary Structures.** Any ancillary structures, such as detached car ports, guest quarters or storage building shall only be constructed after the Residence is complete, shall have the prior written approval of the ARB shall be constructed of the same materials and in the same architectural style as the Residence, and shall be subject to the same set back lines and other restrictions applicable to the Residence itself. Due to the type of construction within the Property, not all Owners will be permitted to construct ancillary structures on their Parcels. The fact that the ARB approves an ancillary structure in one instance shall not be construed to obligate the ARB to approve such an ancillary structure for another Parcel. Such approval or denial shall be in the sole and absolute discretion of the ARB.

**Section 8.22 Hazardous Materials.** No hazardous or toxic materials or pollutants shall be discharged, maintained, stored, released or disposed of on the Property, except for ordinary household use and in strict compliance with the Rules. Flammable, combustible or explosive materials for ordinary household use may be stored or used within the Parcel, provided such materials are utilized in strict compliance with manufacturers' directions and applicable safety cones and are stored in containers specifically designed for such purposes.

**Section 8.23 Leasing.** No Parcel or the improvements thereon shall be used for timeshare, fractional interest ownership, hotel or other similar lodging or transient service or purpose. An entire Parcel, together with the improvements thereon, may, from time to time, be rented by the Owner to a Single Family in accordance with the restrictions of this Declaration. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and Association Rules, and any failure by the lessee to comply with the terms of this Declaration and Association Rules shall be a default under the lease and grounds for eviction. A completed rental registration form(s) adopted by the Board, along with an administrative fee as set by the Board in accordance with Arizona law, must be delivered to the Association within ten (10) days of the commencement of the lease term or renewal term. An Owner who leases his Parcel shall be responsible for assuring compliance by the lessee(s) with all of the provisions of this Declaration and Association Rules and shall be jointly and severally responsible for any violations by such lessee(s).

**Section 8.24 Waiver.** The Board shall have the right to waive the application of one or more of the restrictions of this Article VIII or to permit a deviation from the restrictions of this Article VIII as to any portion of the Property where, in the sole and absolute discretion of the Board, circumstances exist that justify such waiver or deviation. In the event of any such waiver or permitted deviation, or in the event that any party fails to enforce any violation of these restrictions, such action or inaction shall not be deemed to prohibit or restrict the right of the Board to enforce these restrictions or from insisting upon strict compliance with respect to all other portions of the Property, nor shall such actions be deemed a waiver of the restrictions contained herein as they may be applied in the future.

## **ARTICLE IX**

### **INSURANCE**

#### **Section 9.1 Types of Coverage.**

(a) **Insurance of Common Area.** The Board of Directors shall obtain casualty and liability insurance on the Common Area, as a common expense payable from Assessments as further described below:

(1) Fire and other casualty insurance on the Common Area and any improvements constructed thereon, with extended coverage, vandalism, malicious mischief and windstorm endorsements in an amount not less than that necessary to comply with the insurable value (based upon replacement costs) of the improvements constructed on the Common Area, as

determined from time to time by the Board, with the assistance of the Association's insurance carrier; and

(2) General liability insurance in such limits as the Board of Directors may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Common Area. Such insurance shall be issued on a comprehensive liability basis and shall contain a "severability of interest" endorsement, which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board of Directors or other Owners.

(b) Insurance of the Parcels. It shall be the responsibility of each Owner to obtain, at their own expense and as they deem proper, liability and casualty insurance with respect to the ownership and use of their Parcel, including their Residence, and the Association shall not be responsible for obtaining such insurance or have any liability whatsoever in connection therewith.

(c) Other Coverage. The Association may also carry such other insurance as the Board deems necessary or appropriate, including, but not limited to, fidelity coverage, directors' and officers' insurance, and workers' compensation insurance. Such insurance shall be of the type and amount determined by the Board of Directors, in its sole and absolute discretion.

## **Section 9.2 Repair and Reconstruction after Fire or Other Casualty.**

(a) Common Area. In the event of damage to or destruction of all or any of the improvements on the Common Area as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration of such improvements substantially in accordance with the plans and specifications under which the improvements were originally constructed, or any modification thereof approved by the Board. The Board of Directors shall proceed towards reconstruction of such improvements as quickly as practicable under the circumstances and shall obtain funds for such reconstruction from the insurance proceeds and any Special Assessments that may be necessary after exhaustion of reserves for the repair and replacement of such improvements.

(b) Residences. Any Owner whose Residence is destroyed or damaged by fire or other casualty shall immediately proceed to rebuild and restore their Residence to the conditions existing immediately prior to such damage or destruction, unless other plans are approved in accordance with the provisions of Article VII within.

## **ARTICLE X**

### **GENERAL PROVISIONS**

**Section 10.1 Duration.** This Declaration, as amended and supplemented from time to time, shall run with and bind the Property and shall insure to the benefit of and be binding upon the Association, the Owners, their respective legal representatives, heirs, successors or assigns, until March 24, 2030, after which time all of said provisions shall be extended automatically for successive periods of ten (10) years unless an instrument or instruments signed by the then

Owners holding seventy-five (75%) of the total votes in the Association shall have been recorded, agreeing to terminate all of said provisions as of a specified date.

**Section 10.2 Amendment.** This Declaration may be amended at any time by an instrument signed by the President or Vice President of the Association, certifying that such amendment has been adopted with the affirmative vote, written consent, or any combination thereof, of Owners representing seventy-five percent (75%) of the Parcels, which amendments shall become effective upon its filing in the public records of Gila County, Arizona.

**Section 10.3 Enforcement.** This Declaration and the Rules may be enforced by the Association, through its Board of Directors, and any Owner of any Parcel. This right of enforcement shall be in any manner provided for in this Declaration, the Rules, by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any improvements constructed in violation of this Declaration or to otherwise compel compliance with this Declaration or the Rules. Nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. In the event the Association acts to enforce this Declaration or the Rules, regardless of whether suit is filed, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Association's administrative costs and fees. Such attorneys' fees, costs and expenses shall be an Individual Assessment. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorneys' fees, court costs, costs of investigation and other related expenses incurred therewith. If any lawsuit is filed by any Owner to enforce the provisions of this Declaration or the Rules or in any other manner arising out of this Declaration or the Rules or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action.

**Section 10.4 Notice of Violation.** Notwithstanding the generality of the foregoing, the Association shall have the right to record a written notice of a violation by any Owner or resident of any restriction or other provision of this Declaration or the Rules. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or resident violating, or responsible for the violation of, this Declaration or the Rules; (ii) the legal description of the Parcel against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and resident(s), and any subsequent purchaser of the Parcel, that there is such a violation. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Parcel against which the notice of violation was recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist.

**Section 10.5 Non-Waiver.** No delay or failure to enforce any breach of the conditions, restrictions, covenants or reservations herein contained and no delay or failure to exercise any

rights, power or remedy herein provided shall be construed as a waiver thereof or acquiescence to any further or succeeding breach or violation thereof.

**Section 10.6 Guests and Tenants.** Each Owner shall be responsible for compliance by his or her tenants, guests, invitees, licensees, agents and their respective servants, agents and employees with the provisions of this Declaration and the Rules. An Owner's failure to insure compliance by such persons shall be grounds for the same action available to the Association or any other Owner by reason of such Owner's own noncompliance.

**Section 10.7 Joint and Several Liability.** In the case of joint ownership of a Parcel, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, the Articles, Bylaws, Declaration and Rules shall be joint and several.

**Section 10.8 Statutes, Ordinances and Regulations.** All use restrictions contained in this Declaration are in addition to applicable statutes, ordinances and regulations and, in the case of conflict, the more restrictive must be followed. The requirement for approval of plans and specifications by the Architectural Control Committee is in addition to any requirement for approval by governmental authorities. No Parcel shall be occupied, maintained or used in such a manner as to violate any statute, ordinance or regulation applicable to the occupancy, maintenance or use of the Parcels. Any such violation is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

**Section 10.9 Condemnation.** The term "Taking" shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas. The Owners hereby appoint the Association, through such persons as the Board may delegate, to represent all of the Owners in connection with any Taking. The Board shall act in its sole discretion with respect to any proceeds received in connection with the Taking. The Board may, in its sole discretion, retain any award in the general funds of the Association or issue credits for all or any portion thereof to the Owners' Assessment accounts in the ratio they would pay Special Assessments, or as their interests otherwise may appear, subject to any requirements of applicable law.

**Section 10.10 Notices.** Any written notice or other documents relating to or required by this Declaration may be delivered personally, by mail, or any other electronic means allowed by law. Such written notices or documents shall be addressed to the address of the Parcel Owner designated by such Owner for purposes of notice; however, if no such designation has been made, to the last known address of the Parcel Owner in the files of the Association or to the address of the Parcel owned by the Owner.

**Section 10.11 Severability.** Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect as written.

**Section 10.12 Conflicts.** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws or Association Rules, the provisions of this Declaration shall prevail.

**Section 10.13 Construction.** Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and the neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular. The 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.

**Section 10.14 Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration and the Rules. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and Properties benefited or bound by this Declaration and the Rules.

**Section 10.15 Attorneys' Fees in Administrative Proceedings.** In the event the Association incurs legal expenses and costs, including, but not limited to, attorney's fees, in bringing claims against Owners or defending claims brought by Owners in an administrative action or proceeding, including but not limited to, proceedings before an Administrative Law Judge, and any appeal thereof, the Association shall be entitled to recover its attorney's fees and costs from the Owner involved in the administrative proceeding if the Association is the prevailing party in such action, and the amount of such attorneys' fees and costs shall be an Individual Assessment with respect to the Parcel(s) involved in the action.

**Section 10.16 Committees.** In addition to other committees specifically provided for in this Declaration, committees comprised of such persons, formed to perform such tasks, and to serve for such periods as may be designated by the Board of Directors are hereby authorized. All committees shall be responsible for carrying out the duties and responsibilities which have been established by Board and no committee may take action which exceeds its responsibilities. Each committee shall operate in accordance with any terms, limitations, or rules adopted by the Board of Directors. Each committee will elect a chairperson who will be responsible for reporting all committee activities to the Board prior to each regular meeting of the Board.

CERTIFICATION

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Second Amended and Restated Declaration have been approved by the required percentage of Owners.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

PAYSON PINES HOMEOWNERS ASSOCIATION, INC.

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

STATE OF ARIZONA        )  
  ) ss.  
County of Gila            )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me personally appeared \_\_\_\_\_, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

\_\_\_\_\_  
Notary Public

Notary Seal:

**EXHIBIT "A"**

Legal Description of Property

PAYSON PINES

All of PAYSON PINES, according to the plat of records in the office of the County Recorder of Gila County, Arizona, recorded in Map No. 703, except Tract "D".

Being a subdivision of a portion of Government Lot 4, located in SE 'A, NE 'A, Section 28, Township 11 North, Range 10 East, Gila and Slat River Meridian, Gila County, Arizona