

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
(THOMPSON DRAW II)**

THIS DECLARATION, is made on the date hereinafter set forth by FIRST AMERICAN TITLE INSURANCE COMPANY, an Arizona corporation, as Trustee, hereinafter referred to as “Declarant.”

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in the County of Gila, State of Arizona, which is legally described as:

THIS LEGAL DESCRIPTION INCLUDES ALL OF THOMPSON DRAW II—
LOTS AND COMMON AREA COMBINED

NOW THEREFORE, Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run *with*, said real property and be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof

**ARTICLE 1
DEFINITIONS**

Section 1. “Architectural Committee” shall mean the committee, if any, created at the election of the Board pursuant to ARTICLE VI hereof

Section 2. “Architectural Committee Rules” shall mean the rules adopted by the Architectural Committee, if any

Section 3. “Articles” shall mean the Articles of Incorporation of the Association which have been filed in the office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 4. “Association” shall mean and refer to Thompson Draw II Homeowners Association, an Arizona non-profit corporation, its successors and assigns.

Section 5. “Association Documents” shall mean, collectively, the Articles, Bylaws, Declaration and Rules (if any).

Section 6. “Board” shall mean the Board of Directors of the Association.

Section 7. “Bylaws” shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 8. “Common Area” shall mean all real property from time to time owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association as of the date hereof shall be that certain real property legally described on page 1 of this Declaration with the exception of the Lots (as “Lots” are here in below described).

Section 9. “Declarant” shall mean First American Title Insurance Company, an Arizona corporation, as Trustee.

Section 10. “Declaration” shall mean the covenants, conditions and restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 11. “Improvement” shall mean the buildings, garages, carports, roads, driveways, parking areas, fences, walls, plantings, planted trees, and all other structures or landscaping improvements of every type and kind.

Section 12. “Lot” shall mean any parcel of real property designated as a Lot within THOMPSON DRAW II on any recorded Subdivision Map or Subdivision Plat, with the exception of the Common Area, which Lots, as of the date hereof, are designated as Lots 39 through 85, inclusive.

Section 13. “Member” shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association, and such term shall, for purposes of this Declaration, also have the same meaning as the term “Owner” here in below described.

Section 14. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title **if** the same has merged) of any Lot. “Owner” shall include the purchaser of a Lot under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. For the purposes of ARTICLE IV only, unless the context otherwise requires, “Owner” shall also include the family, invitees and licensees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner of any Lot.

Section 15. “Property” shall mean and refer to that certain real property legally described on page 1 of this Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 16. “Rules” shall mean the rules adopted by the Board, as they may be amended from time to time.

Section 17. “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 two (2) persons not all so related, who maintain a common household in a dwelling.

Section 18. “Single Family Residential Use” shall mean the occupation or use of a Single Family detached residence as a private dwelling unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 19. “Subdivision Map” or “Subdivision Plat” shall mean a recorded map or plat covering any or all of the Property referred to in this Declaration, or annexed hereto, said Property also sometimes referred to herein as “THOMPSON DRAW II”.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners’ Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and the easements located on said real property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights and the right to use the Common Area and easements thereon by an Owner for (i) any period during which any assessment or fine against such Owner’s Lot remains unpaid and (ii) a period not to exceed sixty (60) days for any other infraction of this Declaration;
- (b) the right of the Association to dedicate all or any part of the Common Area to any political subdivision. No such dedication or transfer shall be effective unless an instrument signed by seventy-five percent (75%) of the Owners agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and the easements thereon to the members of his or her family or his or her guests or invitees,

ARTICLE III PROPERTY SUBJECT TO RESTRICTIONS

THOMPSON DRAW II was heretofore created as a summer home area by, under and through the United States Department of Agriculture, Forest Service (hereinafter the “U.S. Forest Service”), to be developed by the permittees of the U.S. Forest Service in accordance with the provisions of their respective use permits. Through the process of a land exchange with the U.S. Forest Service, THOMPSON DRAW II, immediately prior to the recording of this Declaration, was conveyed by the U.S. Forest Service to the aforesaid Declarant, as trustee, for the benefit of the then existing permittees and, immediately subsequent to the recording of this Declaration, Declarant shall convey the Lots to said permittees, as owners in fee, and also convey the Common Areas to the Association, as owner in fee, at which point said permittees shall become Owners as hereinabove defined. Upon the recording of this Declaration, Declarant, as trustee, hereby declares that all of the Property within THOMPSON DRAW II is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This

Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of said Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said Property and every part thereof. All of this Declaration shall run with all of said Property for all purposes and shall be binding upon and inure to the benefit of the Association, all Owners and their successors in interest.

ARTICLE IV

PERMITTED USES, MAINTENANCE EASEMENTS AND RESTRICTIONS

Section 1. Lots.

The permitted uses, maintenance requirements easements and use restrictions for all Lots within THOMPSON DRAW II covered by this Declaration, exclusive of the Common Area, shall be as follows:

A. SINGLE FAMILY RESIDENTIAL USE. All Lots are hereby restricted to Single Family dwellings for Single Family Residential Use only. Use of the dwellings shall be further restricted to the Owner(s), their family and guests. Timeshare occupancy and the renting, leasing, or the like, of any Lot within THOMPSON DRAW II is strictly prohibited.

B. BUILDINGS AND STRUCTURES. Except for buildings and structures existing on the date hereof: (a) all buildings and structures hereafter erected on any Lot shall be of new construction and no relocated buildings or structures shall be permitted; (b) not more than one (1) Single Family residential structure may be constructed on each individual Lot which structure shall not exceed, without the prior written approval of the Board, thirty (30) feet in height or three thousand (3000) square feet of living space having not more than one (1) kitchen and two (2) bathrooms; (c) a private garage and/or carport may be constructed, either as an attachment to the main structure or as an outbuilding. Detached carports and garages shall not be converted to living quarters, and attached carports and garages may be converted to living quarters only upon the prior written approval of the Board. All structures shall be designed and constructed to be consistent with and to blend with the rustic forest environment of the surrounding area. Exterior roofing, stains, paints, etc., shall be selected to conform to this perspective, and the use of fire proof or fire retardant materials is highly recommended. All new construction and improvements must comply with all Gila County building codes applicable to the assigned zoning of THOMPSON DRAW II, and the Board's approval of such construction and/or improvements (or of the plans and/or specifications therefor) shall not create any responsibility or liability on the part of the Board (or the Architectural Committee, if any) for the completeness, design sufficiency, safety or compliance thereof with any governmental bodies or agencies or any laws, ordinances, rules, regulations, guidelines, orders, or the like, relating thereto now or hereafter in effect from time to time.

C. TRAILERS, MOTOR VEHICLES AND TEMPORARY OCCUPANCY. No house trailer, mobile home, motorized mobile home, camper, tent, or tent trailer shall at anytime be placed upon, stored, or lived in on any Lot for longer than fourteen (14) days in any thirty (30) day period (and utility hook-ups to the aforesaid vehicles during such times shall be permissible); provided, however, the Board may grant permission for a longer period not to exceed four (4) months while an Owner is actually constructing a permanent dwelling. This restriction does not apply to vehicles which are operable and a primary source of transportation. Use of power

generators is prohibited except for emergency use in case of commercial power failure. Under no circumstances shall any vehicle, mobile home, or other structure be placed upon, lived in, or stored on any portion of the Common Area. The Board or its designated officer or agent, upon at least twenty-four (24) hours' prior notice to the Lot Owner relating thereto, shall have the power, without the same constituting any form of trespass or conversion of property, to enter upon any Lot (or any portion of the Common Area) for the purpose of removing any house trailer, mobile home, or other vehicle, equipment or structure existing in violation of these provisions, and all costs incurred shall be charged against the Owner of the Lot upon which such violation occurred or who is otherwise responsible therefor, by invoice to said Owner, which charge shall be and remain a lien on said Owner's Lot until paid and may be foreclosed in the same manner as liens are foreclosed as provided more particularly elsewhere in this Declaration.

D. FENCES. No fences of any kind shall be erected without the prior written approval of the Board. Reasonable measures for erosion control shall be permitted with respect to each Lot; provided, however, such measures by an Owner shall not in any way interfere with or obstruct the drainage pattern over such Owner's Lot such that drainage is diverted to flow over any other Lot.

E. NO SUBDIVISION OF LOTS. No Lot shall be subdivided nor shall two adjoining Lots be combined into a single, larger Lot. Except for buildings and structures existing on the date hereof, no structure shall be erected on any Lot in violation of the minimum offset requirements of Gila County, Arizona, without variance approval from Gila County and the written prior approval of the Board.

F. IMPROVEMENTS AND ALTERATIONS. No building, fence, wall, antenna, broadcasting tower or other structure shall be commenced, erected, altered, or maintained, until plans and specifications showing the nature, kind, shape, color, height, materials, floor plans and location of such structure or alteration shall be submitted to and approved in writing by the Board, and a copy thereof, as finally approved, lodged permanently with said Board. Failure of the Board to approve or disapprove in writing said plans and specifications within ninety (90) days from the date the same are submitted to the Board (or Architectural Committee, if applicable) shall be deemed the equivalent of written approval of said plans and specifications by the Board. The Board's approval as to any such plans or specifications shall not be unreasonably withheld, conditioned or delayed, and rejection of any plans or specification shall be based on reasonable judgment as to the effect that said changes and alterations may have on THOMPSON DRAW II as a whole. The Board shall have the right to refuse to approve any such plans or specifications (including also grading and/or drainage plans) which are not suitable or desirable, in its reasonable opinion, for aesthetic or any other reasons. In so passing upon such plans, specifications or other plans, the Board shall have the right to take into consideration the suitability of the buildings or other structures and of the material of which they are to be constructed, the site upon which they are proposed to be located, the harmony thereof with the surroundings, and the effect of the buildings or other structures as planned on the outlook from the adjacent or neighboring Lots or Common Area. All subsequent additions, changes or alterations thereto, including but not limited to painting of exterior surfaces of any building, fence, wall or other structures shall be subject to the prior approval of the Board, which shall not be unreasonably withheld, conditioned or delayed. Although the Board of Directors shall have final approval authority over all such plans and specifications, the Board, at its option, may refer said plans and specifications to the Architectural Committee (if applicable) for evaluation and shall be guided by the recommendations of the

Architectural Committee (if applicable). If plans and specifications are disapproved, the specific reason or reasons for disapproval shall be communicated in writing to the Owner who submitted them. Said Owner may then revise the plans and specifications to remedy the stated reasons for disapproval and resubmit them to the Board for further review(s). Alternately, if said Owner disagrees with any of the stated reasons for disapproval, the Owner may request and shall be granted a hearing with the Board (and the Architectural Committee, if applicable) in an effort to clarify and resolve any areas of disagreement. The Board and the Architectural Committee (if applicable) shall give full and reasonable consideration to the information presented by the Owner in support of such Owner's position. However, so long as the Board acts reasonably, final authority to approve or disapprove rests with the Board. Any approval of the plans and specifications shall be evidenced by a certificate signed by at least a majority of the Board. Said approval shall then be irrevocable and shall not be subject to withdrawal or change by the Board. Such certificate may be conclusively relied on by all parties including, but not limited to, the applicable Owner, said Owner's title insurance company and the lender taking such Lot and/or the Improvements thereon as security. The receipt of a deed to any Lot denotes acceptance by the Owner thereof of these provisions and procedures, and, so long as said provisions and procedures are complied with by the Board, constitutes a written waiver of all rights to appeal the decision of the Board to any court of competent jurisdiction. Any such decision by the Board shall be enforceable as other restrictions contained herein.

G. ANIMALS Horses, cattle, sheep, pigs, goats, poultry or other animals or livestock shall not be kept, boarded or maintained on any of said Lots or on the Common Area; provided however, this restriction shall not be construed as prohibiting the keeping of ordinary domestic pet fowl, animals or birds on such property. Household pets shall not present a known health or safety hazard to residents of Thompson Draw II or their guests. Pets which do present such hazards shall be contained on leashes or other appropriate constraints. All dogs shall be leashed when outside the boundary lines of the Lot where such pet is being kept. The Board shall have the authority to levy reasonable fines against Owner(s) who themselves, or by their guests or other invitees, are repeat offenders. These fines may become lien assessments in the same manner as other sums that become due to the Association.

H. SPEED LIMITS. The maximum allowable speed for motorized vehicles within THOMPSON DRAW II shall be fifteen (15) miles per hour or as otherwise established from time to time by the Board. Recreational vehicles or vehicles of a class generally considered to be for recreational purposes, including but not limited to motorcycles, motorbikes, tote goats, dune buggies, trail bikes, all-terrain vehicles and go carts, may be used for reasonable recreational or transportation purposes only on established roadways within the Common Area. All such vehicles shall be properly baffled and muffled. The riding of such vehicles shall, for the most part, be limited to and intended for ingress and egress to and from THOMPSON DRAW II through the main entrance only. Riding within THOMPSON DRAW II shall be permitted, however, riding shall not be frequent or repetitive so as to cause excessive dust, noise or other similar nuisance. Such vehicles shall be held to the same speed restrictions (15 miles per hour) as other motorized vehicles within THOMPSON DRAW II. The Board shall have the authority to levy reasonable fines against Owner(s) who themselves, or by their guests or other invitees, are repeat offenders. These fines may become lien assessments in the same manners as other sums that become due to the Association.

I. STORAGE. No motor vehicle or trailer which is not in operating condition (and no unused building materials or the like during any period which is not related to continuous and on-going construction in progress) shall be placed or permitted to remain on any roadway or any other portion of the Common Area or within any Lot, unless it is within an enclosed garage or other structure. Vehicles and trailers in good functioning condition and appearance are not subject to this restriction except as provided in Paragraph C of this Section 1.

J. FIREARMS AND FIREWORKS. The discharge of any firearm, air gun or any other weapon shall be prohibited on any Lot or Common Area. The shooting, trapping or snaring of any form of animal or bird wildlife is prohibited on any Lot or Common Area except where it is necessary to protect life or property or written permission has been obtained from the Board. The use of any and all types of fireworks, rockets, sparklers or similar items is prohibited on any Lot or Common Area.

K NOISE AND POWER EQUIPMENT. Power tools, chain saws and other equipment may be used for hobbies and other personal use where the noise is properly subdued and not continuous. Normal working tools for construction or repair work to be performed in accordance with this Declaration or in connection with the maintenance of or structural addition to a Lot maybe used after 6:00 AM but no later than sundown daily. Other loud noise or noises from radios, stereos, parties, etc. are discouraged and the Board shall have the right to promulgate reasonable and uniformly applied rules and regulations relating to such noises including, but not limited to, the limitation of such noise generating activities to no later than 10:00 PM daily. The Board shall have the authority to levy reasonable fines against Owner(s) who themselves, or by their guests or other invitees, are repeat offenders of such rules and regulations. These fines may become lien assessments in the same manner as other sums that become due to the Association.

L. SIGNS. No advertising signs (except one For Sale sign per Lot, not to exceed five [5] square feet), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot or Common Area, nor shall any Lot or Common Area be used in any way or for any purpose which may endanger the health or unreasonably disturb the residents of THOMPSON DRAW II. The foregoing notwithstanding, there shall at all times be displayed on each Lot a Lot identification sign of a size and in a location which is easily visible from the Common Area roadway. Such Lot identification signs shall be of simple rustic design and clearly state the name of the Owner and such Owner's Lot number.

M. FIRE PROTECTION. For the purpose of fire protection, each Lot shall at all times be maintained in its entirety clear of hazardous vegetative growth (as "hazardous vegetative growth" is defined below in this paragraph) and there shall be installed and maintained on each Lot a garden hose outlet on the exterior of the main structure so as to permit water hose stream protection for all sides of such structure and its roof. Spark arrestors shall be installed and maintained at all times on each chimney. Roofs, rain gutters, chimneys, and stove pipes shall be kept reasonably free of all flammable debris, and tree branches which overhang chimneys (and stove pipes and the like in close proximity thereto) shall be removed. Branches which may chafe against power lines shall also be removed. Annually, each Lot shall be cleared of all readily burnable vegetation such as dried grass, pine needles, dead brush, dead small trees from an area within thirty (30) feet in distance from each structure, or to the Lot boundary line if the distance to said boundary line is less than thirty (30) feet (the foregoing vegetation being sometimes referred

to herein as “hazardous vegetative growth”). Coals and ashes from fireplaces and the like shall be stored in fire safe metal containers and disposed of in an approved sanitary landfill. Each Owner shall be bound by additional fire protection rules or regulations promulgated from time to time by the Board. Charcoal fires for cooking shall be contained in approved BBQ grills or equivalent containers. Campfires are permitted only when forest conditions are acceptable and when contained in an approved fire ring or device specifically built for that purpose. Any and all temporary campfire and cooking fire restrictions imposed by the U.S. Forest Service for the forest area surrounding THOMPSON DRAW II shall also apply to and within THOMPSON DRAW II. Household garbage shall be stored in appropriate “animal proof” containers and removed at a minimum of every two (2) weeks. Other trash, construction materials, and the like, shall be removed at least quarterly and disposed of in an approved sanitary landfill.

N. FOREST SETTING. Except for access road clearance and fire protection, and except as necessary in connection with the completion of Board-approved construction, no trees or other vegetation larger than six (6) inches in diameter at the base shall be removed from any Lot without the prior approval by the Board except such trees which are dead, diseased or otherwise infected or dying. Trees and other vegetation located within the Common Area (regardless of size or condition) shall only be removed by direction of, and in the manner prescribed by, the Board. Soil, stone, sand, or gravel shall not be removed from any Lot or Common Area without the prior approval by the Board.

O. FINES AND ASSESSMENTS. All Lots shall be subject to fines and assessments levied and assessed by the Board for the purposes and in a manner as herein provided. Fines and assessments shall be levied and assessed from time to time in the manner and in an amount provided for in the Bylaws provided that such fines and assessments are uniformly applied to all Owners and are not inconsistent with the provisions of this Declaration, The fines specifically referred to in this Declaration shall not be construed as a limitation upon the Board to levy and/or assess and/or enforce the collection of fines for any other violations of the provisions of this Declaration or as otherwise provided in or permitted by the Bylaws.

P. NO RETROACTIVITY, The conditions and restrictions contained herein with respect to new construction shall not be applied retroactively to any dwelling, structure or facility that was constructed or installed prior to the date hereof. However, any subsequent additions, modifications or alterations to said existing dwelling, structures and facilities shall be subject to the conditions and restrictions documented herein.

Q. NUISANCES. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot within THOMPSON DRAW II, and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Property (including also the Common Area) in the vicinity thereof or to its occupants. Likewise, no other nuisance of any kind shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Property (including also the Common Area) in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

R. REPAIR OF BUILDINGS. No building or structure upon any Lot within THOMPSON DRAW II shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with the colors and materials approved by the Board.

S. RIGHT OF WAY. During reasonable hours, any member of the Board, or any authorized representative of the Board, shall have the right to enter upon and inspect any Lot within THOMPSON DRAW II and the Improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

I. MINERAL EXPLORATION. No Property (including all Lots and the Common Area) within THOMPSON DRAW II shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except water from wells in the Common Area for domestic use as may be required from time to time by the Association.

U. MACHINERY AND EQUIPMENT No machinery or equipment of any kind shall be placed, operated or maintained upon any Property (including all Lots and the Common Area) within THOMPSON DRAW II except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence and Lot within THOMPSON DRAW II, appurtenant structures, or other Improvements, and except that which the Association may require for the operation and maintenance of THOMPSON DRAW II.

V. DISEASES AND INSECTS. No Owner shall permit anything or condition to exist upon such Owner's Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. Each Owner shall take reasonable measures to ensure the elimination and prevention of such conditions (which shall include, but not be limited to, the elimination and prevention of infestations of mistletoe and the ips bark beetle) on each such Owner's Lot. If such measures are not taken by the Owner, the Board or its designated officer or agent, following reasonable prior notice to the Owner and a reasonable opportunity for such Owner to cure such violation (except that no notice shall be required in cases of emergency), shall have the power to enter upon any Lot for the purpose of removing any plants or trees or other things or conditions existing in violation of these provisions, and all costs incurred shall be charged against the Owner of the Lot upon which such violation occurred or who is otherwise responsible therefor, by invoice to said Owner, which charge shall be and remain a lien on said Owner's Lot until paid and may be foreclosed in the same manner as liens are foreclosed as provided more particularly elsewhere in this Declaration.

W. UTILITY EASEMENTS. There is hereby created a blanket easement upon, across, over and under the above described Property (including all Lots and the Common Area) described on page 1 of this Declaration for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable and other necessary communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said Property and to affix and

maintain wire, circuits and conduits on, in and under the roofs and exterior walls of said residences. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot or Common Area, except as the same exists on the date hereof, without the prior written approval of the Board. This easement shall in no way affect any other recorded easements on said Property.

Section 2. Common Area. The Common Area shall be used only for recreational purposes and for roadways and facilities such as water storage tanks for the benefit of all Owners of THOMPSON DRAW II and the Association. No part of the Common Area shall be divided, subdivided or split into smaller parcels, or used for any purposes that will detract from or interfere with the use and enjoyment of any and all Lots. No buildings or structures shall be erected (and no vehicles or construction materials shall be stored) or maintained on the Common Area except for purposes of providing necessary or recreational services or facilities; provided, however, no such buildings or structures, whether permanent or temporary, shall be constructed without the express written approval by at least seventy-five percent (75%) of all of the then Owners of THOMPSON DRAW II, except however such buildings or structures as may be approved by a majority of the Board as necessary in cases of emergency but only to the extent required to eliminate the emergency nature of such circumstance. No such approval by the Owners or the Board shall be required, however, for general repairs or maintenance of, or for the full and complete reconstruction of, such buildings, structures and facilities existing as of the date hereof. No debt or mortgage or encumbrance of any kind or description whatsoever upon any of the Common Area shall be valid unless there shall be endorsed upon the instrument of transfer or encumbrance a written approval by at least ninety percent (90%) of all of the then Owners of THOMPSON DRAW II. The Board, without the approval of the Owners being required therefor, shall have the right, power and obligation (a) to establish and impose uniform and reasonable rules and regulations consistent with the provisions of this Declaration for the governing and use of the Common Area and all private roadways existing thereon, and any person using said Common Areas shall abide by such rules and regulations, and (b) to keep and maintain the Common Area and all facilities thereon and thereof in good condition and repair, including but not limited to the following:

- (1) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area), including all fences, walls or other enclosures which are constructed upon and around the perimeter of said THOMPSON DRAW II subdivision;
- (2) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway, or parking area;
- (3) Remove and/or replace, if applicable, injured and diseased trees (including also the removal of trees infected with mistletoe and the ips beetle) or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

- (4) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (5) Do all such other and further acts which the Board deems necessary to maintain, preserve and protect the Common Area, and the beauty thereof, in accordance with the provisions and general purposes of this Declaration and the Articles and Bylaws of the Association.

The Association, by and through its Board, shall have a right and permanent easement over and upon any and all Lots and the Common Area for the purposes of such maintenance and repair hereinabove mentioned, and the Board's judgment in implementing and carrying out the foregoing provisions of this Section 2 relative to the Common Area, so long as the Board acts reasonably in the performance thereof, shall be final and determinative of such action taken.

Section 3. Damage or Destruction of Common Area by Owners. In the event any Common Area or any of said facilities, structures or fences hereinabove mentioned are damaged or destroyed by an Owner or any guest, licensee, agent or member of such Owner's family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments and/or fines. By way of example but not limitation as to the repair costs imposed upon an individual Owner, assume that a rule or regulation of the Association exists requiring all Owners and other occupants to turn off the water service to their cabins or Lots during the "freeze season" from October ~ through the immediately succeeding April ^{30th} of each year, and due to the failure of an Owner or other occupant to turn off the water service to such cabin during said freeze season the well pump burns out, then the actual costs and expenses incurred by the Association as a result thereof may be charged against such Owner (or such Owner may be fined in accordance with the provisions of the Bylaws, if applicable, in an amount established in such rule or regulation [or by the Board, if permissible], for example, in an amount not to exceed the greater of [a] One Thousand Dollars [\$1,00000] or [b] one-half[1/2] the repair and/or replacement costs and expenses of the burned out well pump).

ARTICLE V COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within THOMPSON DRAW II, hereby covenants, and each Member of the Association and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements. All such assessments shall be established and collected as hereinafter provided, or as may otherwise be provided by applicable law or in the Bylaws, provided that all such assessments and charges (whether pursuant to this Declaration or the Bylaws) must be uniformly applied to all Members and Owners. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien

upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in THOMPSON DRAW II, and for the improvement and maintenance of the Common Area, and of the Lots situated at THOMPSON DRAW II.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including also fixtures and personal property related thereto, provided that any such assessment shall be in accordance with the voting provisions (if applicable) established by and set forth in the Bylaws.

Section 4. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots in accordance with the Bylaws and may be collected on a monthly, quarterly, or annual basis, or as provided more particularly in the Bylaws. The due dates shall be established by the Bylaws unless otherwise designated by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 5. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner of any Lot on becoming an Owner of any Lot or by becoming a Member of the Association in any manner, is and shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments (and fines, if applicable) in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment (or fine, if applicable) when due, in which case the assessment (or fine, if applicable) shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided bylaw or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. ENFORCEMENT BY SUIT. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member 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 maximum legal rate per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the court of competent jurisdiction may adjudge against the delinquent Owner or Member.

B. ENFORCEMENT BY LIEN, There is hereby created a claim of lien, with power of sale, on each and every Lot within THOMPSON DRAW II, to secure payment to the Association of any and all assessments (and fines, if applicable) levied against any and all Owners of such Lots

within THOMPSON DRAW II in accordance herewith, together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within ninety (90) days after the occurrence of any default in the payment of any such assessment (or fine, if applicable), the Association, or any authorized representative may, but shall not be required to (unless required by applicable law), make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made (unless required by applicable law), the Association may elect to file such a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

1. The name of delinquent Owner;
2. The legal description and address of the Lot against which claim of lien is made;
3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys' fees (with any proper offset allowed);
4. That the claim of lien is made by the Association pursuant to this Declaration; and
5. That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment (and/or fine, if applicable) was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 6 hereinafter of this Article. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may from time to time be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners and Members. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot in THOMPSON DRAW H, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner and also hereby expressly waives the defense of the statute of limitation applicable to the bringing of any suit or action thereon.

Section 6. Subordination of the Lien to Mortgages. The lien of the assessments (and/or fines, if applicable) provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the lien relating to such assessments (and/or fines, if applicable). However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments (and/or fines, if

applicable) as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments (and/or fines, if applicable) thereafter becoming due or from the lien thereof

ARTICLE VI ARCHITECTURAL COMMITTEE

Section 1. Organization, Power of Appointment and Removal of Members. At the election of the Board from time to time, the Board may establish an Architectural Committee to assist the Board in making architectural decisions consistent with this Declaration. If established, the Board shall have the right to determine the composition, term of office, appointment and removal of the members thereof from time to time.

Section 2. Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms of this Declaration, to adopt Architectural Committee Rules, and to perform such other duties delegated to it by the Board.

Section 3. Meetings and Compensation. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Said Architectural Committee shall keep and maintain a written record of all actions taken or recommended by it to the Board. Members of the Architectural Committee shall serve without compensation; provided, however, all members thereof shall be entitled to reimbursement from the Association for all reasonable expenses incurred by them in the performance of any Architectural Committee functions.

Section 4. Architectural Committee Rules. The Architectural Committee may, from time to time and with the approval of the Board, adopt, amend and repeal rules and regulations, to be known as "Architectural Committee Rules." Said Architectural Committee Rules shall be promulgated to each of the Owners and Members of the Association (as well as any changes thereto from time to time) and shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in THOMPSON DRAW II.

Section 5. Waiver. The approval by the Architectural Committee or the Board of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee or the Board pursuant to this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specifications or matter subsequently submitted for approval to the Architectural Committee or the Board.

Section 6. Liability. Neither the Architectural Committee nor any member thereof or of the Board shall be liable to the Association, an Owner, Member, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any Lot within THOMPSON DRAW II, or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with

respect to the liability of such member, such member has acted in good faith on the basis of such information as may be possessed by him.

Section 7. Time for Approval. In the event the Board fails to approve or disapprove the proposed Improvement(s) and the plans and specifications therefor in writing within ninety (90) days after said plans and specifications have been submitted to said Board or to the Architectural Committee, such failure shall be deemed the equivalent of written approval thereof by the Board as set forth more particularly in Paragraph F of Section 1 of Article IV of this Declaration. The provisions of this Article VI are not intended to supercede any of the provisions of said Paragraph F, and any inconsistencies between the provisions of this Article VI and said Paragraph F shall be governed and controlled by the provisions of said Paragraph F.

ARTICLE VII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner or Member of the Association, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner or Member to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of any inconsistencies between or among the provisions of this Declaration and any other Association Documents, this Declaration shall govern and control, and, in the event of any inconsistencies between the Articles, Bylaws and/or Rules (if any), the provisions of the Bylaws shall govern and control. The imposition of any monetary penalties on any Owner or Member of the Association shall, notwithstanding anything to the contrary contained in any of the Association Documents, be subject to the provisions of A.R.S. §33-1803, if applicable.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect. Captions and headings are for convenience only and are not intended as any limitation on the whole of provisions to which they apply or relate.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforced by the Association or the Owner of any Lot, their respective legal representative, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods often (10) years. This Declaration may be amended at any time after the date hereof by an instrument signed by not less than seventy-five percent (75%) of the Owners agreeing to such amendment. Any amendment must be recorded to be of legal force and effect.

Section 4. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or by any Member thereof for Owner of any Lot within THOMPSON DRAW II. However, any other provision to the contrary notwithstanding, only the Association, acting through the Board, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of THOMPSON DRAW II allowing for non-judicial remedies (for example, but not limited to, the

right of the Board to enter upon a Lot to cure violations of this Declaration such as those described in Paragraph C of Section 1 of Article IV [TRAILERS, MOTOR VEHICLES AND TEMPORARY OCCUPANCY] or Paragraph V of said Section and Article [DISEASES AND INSECTS]). A violation of these restrictions and covenants, or any one of them, shall not affect the lien of any mortgage now of record, or which hereafter may be placed on record, upon said Lots or any part thereof

Section 5. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any Property within THOMPSON DRAW II is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in said Declaration.

Section 6. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 7. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered upon the fourth ^(4th) day after a copy of the same has been deposited in the United States mail, postage repaid, addressed as follows: If to the Association or the Board, at the following address: c/o Don Smith, 3843 E. Dartmouth, Mesa, AZ 85205 (or such other address as the Association or the Board, as the case may be, may from time to time promulgate to the Owners and/or Members); if to an Owner or Member, at the address last furnished by such Owner or Member to the Association or the Board. Each Member and Owner of a Lot shall file the correct mailing address of such Member and Owner with the Association, by and through the Board, and shall promptly notify the Association in writing of any subsequent change of address.

Section 8. The Declaration. Deeds of conveyance of said Property, or any part thereof, may contain the restrictions and covenants contained herein by reference to this document, but whether or not such reference is made in any or all of said deeds, by acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration (and the Articles and Bylaws, as applicable) and any amendments thereof or thereto. In the event that, and at such time as any additional real property shall become subject to this Declaration, then and in that event this Declaration shall be enforceable against all such additional real property and parties becoming subject hereto as if said additional property had been platted and made subject to this Declaration at one and the same time, including without limitation the provisions herein with respect to the term of enforcement and amendments hereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets 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, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

