

March 28, 2008

The attached CCR's are the proposed revisions which are being submitted to property owners in Cheney Ranch for their approval. Copies will also be mailed to all property owners on April 1, 2008.

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CHENEY RANCH

This declaration is made this eighth day of June, 1987, by Frost and Porter.

Revision 2 dated 2/19/2008 made by Cheney Ranch HOA Board Members ~~is a~~
~~partnership hereinafter called "Declarant", as present owner and~~ desiring to establish
the nature of use and enjoyment of that certain real property located in Navajo County,
Arizona, described in Exhibit "A-D" attached hereto and incorporated herein by
reference (the "Property").

NOW, THEREFORE, Declarant does hereby execute this declaration and does
hereby declare that the Property and all parts thereof 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 the real
property and be binding on all parties having any right, title or interest in the Property or
any part thereof, their heirs, successors and assigns and shall ~~insure~~ **insure** to the
benefit of each owner thereof.

ARTICLE I

DEFINITIONS

- Section 1 "Architectural Control Committee" shall mean the committee created pursuant to Article III hereof.
- Section 2 "Association" shall mean and refer to the homeowners' association which may be created pursuant to Article V hereof.
- Section 3 "Common Amenities" shall mean and refer to the perimeter walls; perimeter landscaping, lighting and signs, if any of the preceding exists, and such other amenities as may be defined hereinafter.
- Section 4 "Declarant" shall mean **Cheney Ranch HOA White Mountain Development Company, an Arizona Corporation**, its successors and assigns.
- Section 5 "Declaration" shall mean this entire document as the same from time to time may be amended.
- Section 6 "Improvement" shall mean the buildings, fences, walls, ~~hedges, plantings, planted trees and shrubs of any kind~~ and all structures ~~or landscaping of any type and kind~~.
- Section 7 "Lot" shall mean and refer to any numbered plot of land shown upon any

- recorded subdivision plat of the Property.
- Section 8 “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 same has merged) of any Lot, but excluding those having such interest merely for the performance of an obligation.
- Section 9 “Property” or “Covered Property” shall mean and refer to all of that certain real property hereinbefore described.
- Section 10 “Visible From Neighboring Property” shall mean, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of such neighboring Property at an elevation no greater than the elevation of the base of the object being viewed.
- ~~Section 11 “Developer” shall mean and refer to White Mountain Development Company, an Arizona corporation, its successors and assigns.~~

ARTICLE II

PROPERTY RIGHTS

Section 1 RIGHT-OF-WAY AREA. The term “Right-of-Way Area” as used herein shall mean that portion of the public street and right-of-way along any and all streets and roads dedicated by Declarant to Navajo County, Arizona, for street purposes between the property line of a Lot and the paved portion of the public street and right-of-way. To the extent an Owner is permitted to use any portion of the Right-of-Way Area, the provisions of this Declaration shall apply. Each Owner of a Lot lying adjacent to the Right-of-Way Area shall use said Right-of-Way Area only in accordance with this Declaration and with the criteria therefore established by the Architectural Control Committee and any laws applicable thereto. Each Owner of a Lot lying adjacent to the Right-of-Way Area and all landscaping installed in or upon it, in good condition and repair at his expense in accordance with the criteria established by the Architectural Control Committee. If any Owner fails to comply with his obligation to provide maintenance hereunder, the Association shall have the right (but not the obligation) to make such repairs and provide such maintenance as the Association’s Board of Directors may deem necessary in the exercise of its sole discretion and shall charge the Owner the reasonable cost thereof, which charge together with interest at the then common prevailing prime rate prevalent in Show Low, Arizona, shall be paid by the Owner to the Association within thirty (30) days after demand therefore and shall create a claim enforceable in the same manner as assessments provided for in this Declaration.

Section 2 CONSTRUCTION EASEMENTS. There is hereby created an easement upon every Lot in favor of the Declarant, its agents and employees, for the purpose of constructing dwellings, roads, utility line, and other improvements within and upon the Property. Declarant will use reasonable effort to complete all such work with a

minimum of inconvenience and disruption to other Property Owners.

Section 3 COMMON WALLS. Any Lots which have a common boundary fence, to the extent not inconsistent with this Declaration, are subject to the general rules of law regarding party walls. To the extent practical, maintenance of each longitudinal half of the common fence shall be the responsibility of the Owner of that Lot. The rights and duties of Owners with respect to common garden fences shall be as follows:

(1) The Owners of Lots who have a common fence shall both equally have the right to use such fence provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(2) In the event that any common fence is damaged or destroyed through the act of an Owner or tenant, or any of their agents or guests or members of their family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the common fence without cost to the other adjoining Owner.

(3) In the event any such common fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his tenant, agent, guest, or family, it shall be the joint obligation of the Owners to rebuild and repair such fence.

(4) Notwithstanding anything to the contrary herein contained, no additional fence shall be erected without the prior written consent of the Architectural Control Committee.

Section 4 SCENIC EASEMENT. There are hereby created reciprocal easements between and among all Lots, as needed, for views of the surrounding scenery, as originally projected by the Declarant. Each Owner shall maintain the original silhouette of the dwelling except as permitted otherwise by the Architectural Control Committee and shall maintain vegetation so as not to restrict unreasonably the view from any other dwelling.

Section 5 RECIPROCAL WORKING EASEMENTS. There shall be reciprocal appurtenant easements, as between adjacent Lots, for the repair and rebuilding of the walls, fences, roofs, and landscape maintenance with five (5) feet of the common boundary. Unless there is an emergency, said easement will be utilized only after giving reasonable notice to the resident of the adjacent Lot. The user of the easement provision shall be responsible for all damage to the Property and improvements of the adjacent Lot during the use of the easement provision.

Section 6 EASEMENTS OF ENCROACHMENT. There shall be reciprocal appurtenant easements, resulting from the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements placed thereon in accordance with the terms of this Declaration, to a distance of not more than one (1) foot as measured from any point on the common boundary between said adjacent Properties; however, in no event shall an easement for encroachment exist if the construction thereof was not specifically authorized pursuant to the Article entitled "Architectural Control".

Section 7 UTILITY EASEMENTS.

(1) Public utility easements are as shown on the plat of dedication. Construction within public utility easements shall be limited to utility lines and wood, wire or removable section-type fencing.

(2) Declarant reserves easements over or under the surface, or both, required for the installation and maintenance of electric lines, telephone lines, water (domestic and irrigation), sewer (storm and sanitation), gas lines, and other public or private utilities, with the right to assign the easements.

Section 8 DRAINAGE EASEMENTS. Natural drainage washes are to remain undisturbed and nothing which will impede the flow of any storm waters shall be constructed, planted or allowed to grow in such washes. Lot areas outside building envelopes are drainage easements. Fencing outside the building envelopes shall be of a type that will not obstruct drainage.

Section 9 COMMON AMENITY EASEMENT. The Declarant, by this covenant, hereby establishes, for the benefit of all Owners, a common amenity easement, more particularly described as an easement on which there is constructed a perimeter wall, entry way and/or perimeter landscaping all of which encroaches on individual privately owned Lots. This easement as hereby established is for the benefit of all Owners and is further for the purpose of providing ingress to and from the perimeter wall, entry way or perimeter landscaping that exist on the individual Lot Owners' properties and further for the purpose of the maintenance of such common amenities. The purpose and intention of the easement hereby granted is that henceforth the parties hereto, their respective heirs, executors, administrators and assigns shall allow the Association or its authorized representatives to have ingress and egress for the purposes set forth above, over and upon all of that portion of each Lot Owner's properties. This easement is superior to the rights of any of the Owners over which said easement runs and it is a covenant running with the land intended to be perpetual. The maintenance of the exterior portion of the walls and the perimeter landscaping will be provided for by the Association as part of its duties as heretofore set out, if an Association is formed.

Section 10. MAINTENANCE OF COMMON AMENITIES BY OWNER. Owners of Lots upon which Common Amenities are constructed by Declarant shall at all times be responsible for the care, maintenance and repair of that portion of the Common Amenities upon their respective Lots; provided, however, that upon the establishment of an Association pursuant to Article V below, the Association shall thereafter maintain the outside face of the perimeter walls and entrance gates and shall repair all structural damage to the Common Amenities, except such damage as may be caused by the willful or negligent acts of an Owner or his lessees, licensees, invitees, family members or guests. Damage so caused shall be repaired immediately by and at the sole expense of the Owner. If any Owner fails to repair immediately such damage or fails to properly care for, maintain and repair his portion of the Common Amenities, in accordance with his obligation to do so as set forth herein, at his sole expense, the Association shall have the right (but not the obligation) to do so and shall charge Owner the reasonable cost thereof, which charges together with interest at 18% shall be paid by the Owner to the Association within thirty (30) days after demand therefore and shall create a claim enforceable in the same manner as assessments provided for in this Declaration. If the Association fails for any reason to comply with its obligation to provide maintenance to the common Amenities, as set forth above, each Owner of a Lot upon which a Common Amenity is constructed by Declarant shall be responsible to provide all necessary care, maintenance and repair to that portion of the Common Amenities upon his Lot and shall at all times keep such portion of the common Amenities in good condition and repair. The Association shall have the right to enter upon the Lots at any reasonable time for the purposes of inspecting and providing care, maintenance and repairs to the common Amenities which the Owners fail to provide as set forth herein.

ARTICLE III

ARCHITECTURAL CONTROL

Section 1. ARCHITECTURAL CONTROL COMMITTEE. There shall be an Architectural Control Committee, ***appointed by and answers to the Declarant***, (sometimes hereafter called the "Committee") which shall be composed of not more than five (5) individuals, and which shall have the authority to perform the functions set forth for it in this Declaration.

~~(a) Developer shall have the power to appoint all of the members of the Committee and all replacements until all of the Lots are conveyed to Owners.~~

~~(2) The initial Committee shall be composed of Jon C. Cheney, or his appointed representative.~~

~~(3) The address of the Committee is Star Route 1, Show Low, Arizona 85904~~

Section 1a. The acts of the Committee shall be by majority vote. A majority of

the committee may designate a representative to act for it.

Section 2. REPLACEMENT OF COMMITTEE MEMBERS.

(1) At any time and with or without cause, the Declarant may replace any member of the Committee appointed by it. In the event of death or resignation of any member of the Committee, Declarant shall appoint a replacing member within ninety (90) days from such death or resignation. Pending the replacement of such deceased or resigned member, the remaining member or members of the Committee shall have full authority to act.

(2) Any change in membership or change of business address of the Committee shall be evidenced by an instrument which shall specify the name of the replacing member or members or the new address and which instrument shall be signed by Declarant, if it owns any Lots in the Property, and otherwise by the Chairman of the Committee, acknowledged before a notary public and recorded in the same registry as for deed restrictions. Appointment or change of a representative of this Committee need not be recorded.

(3) If any Committee appointed by Declarant becomes inactive for a period of more than sixty (60) days, either through resignation or death of all members of the Committee or by willful failure or refusal to act in proper cases, then and in that event, the Owners of a majority of the improved Lots subject to this Declaration, acting for and on behalf of Declarant, may elect a Committee of not more than three (3) members. The fact of the election of such Committee and the members thereof shall be conclusively established and disclosed by a written instrument setting for the names and addresses of the members so elected and the period for which they are elected. Said instrument shall be signed by the Owners of a majority of the improved Lots, and acknowledged before a notary public by one or more of the said Owners and recorded in the same registry as for deed restrictions. After such an election, Declarant may replace one or more members of said Committee, with or without cause, by an instrument executed by Declarant, notarized and recorded in the same registry as for deed restrictions.

Section 3. COMMITTEE APPROVAL. No building, fence, wall or other structure, outdoor storage, grading, driveway, ~~or plan of landscaping~~ visible from Neighboring Property, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials, and locations of the same shall have been submitted to and approved by the Committee, as to harmony of external design and location in relation to surrounding structures and topography and that quality, materials, amount of floor space, cost of construction, ~~and probable fair market value~~ are in keeping with the majority of residences in the subdivision at the time of the application. The Committee's approval or disapproval as required in this Declaration shall be in writing. The Committee shall grant the approval only in the event that the proposed work will benefit and enhance the entire Property in a manner

generally consistent with the plan of development thereof. In the event that the Committee fails to approve or disapprove within thirty (**30**) days after the appropriate plans and specifications have been submitted to it, and, if no suit to enjoin such work has been commenced before completion thereof, approval by the Committee will be deemed given and compliance with the terms of this paragraph conclusively presumed, except as may be expressly otherwise provided herein in this Article and in the Article titled "Use Restrictions". If the appropriate plans and specifications have not been submitted to the Committee for approval, the Committee may commence whatever action or actions are available to it at law or equity within thirty (**30**) days after the discovery by it of such work.

Section 4. VARIANCES. In the event of hardship cases, the Committee shall have the power, but not the duty, to grant a variance from the requirements of these Restrictions; provided, however, that all necessary permits or variances must first be obtained from Navajo County, State of Arizona, or any other agency or department thereof having jurisdiction. All applications to the Committee for variances shall require the written approval of all Lot Owners having Lots lying within three hundred (300) feet of the Lot boundaries of the Lot owned by the Owner requesting the variance.

Section 5. LANDSCAPING AND LANDSCAPE MAINTENANCE. ~~All landscaping Visible From Neighboring Property shall be installed only in accordance with a landscaping plan which has been submitted to the Committee. Plans submitted to the Committee for the construction of a residence on a Lot must include the landscaping plan for such Lot. All required landscaping designs should have a degree of consistency so as not to disturb the existing landscaping any more than necessary. The landscaping, pursuant to an approved plan, must be completed by the Owner of a Lot within sixty (60) days following the completion of the construction of a residence on such Lot. No substantial change of landscaping after installation pursuant to an approved plan may be made by the Owner of any Lot without the approval of the Committee.~~ Each Owner of a Lot within the Property shall at all times keep all shrubs, trees and plantings of every kind on his Lot neatly trimmed, properly cultivated, and free from trash, weeds, and other unsightly material. In the event any Owner fails to ~~landscape his Lot or~~ maintain the landscaping on his Lot in accordance herewith, the Committee shall have the right (but not the obligation) to do so and shall charge the Owner the reasonable cost thereof, which charges shall be paid by the Owner to the Committee within thirty (30) days and shall create a claim enforceable in the same manner as other assessments provided for in this Declaration.

Section 6. RULES AND REGULATIONS. The Committee shall have the power to establish such rules and regulations governing its activities and governing the procedures for applying for Committee approval as it may deem advisable.

Section 7. NON-WAIVER. The approval by the Committee of any plans, drawings or specifications for any matter requiring prior written approval by virtue of this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for

approval.

Section 8. NON-LIABILITY. Neither the Committee nor any member thereof shall be liable to any Owner 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 or deficient, (b) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications, (c) the development of any portion of the Property, or (d) the execution and filing of any estoppels certificate whether or not the facts therein are correct; provided, however, that with respect to the liability of a member of the Committee, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing provisions of this Article, the Committee or any member thereof may, but is not required to, consult with or hear the views of any Owner with respect to any plans, drawings, specifications or any other proposals submitted to the Committee.

Section 9. RIGHT OF INSPECTION. During reasonable hours, and after notice, except in the event of an emergency, Declarant or any member of the Architectural Control Committee or any authorized representative of Declarant or the Architectural Control Committee shall have the right to enter upon and inspect any portion of the Property and the improvements thereon for the purpose of ascertaining whether 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.

ARTICLE IV

USE RESTRICTIONS

Section 1. SINGLE FAMILY RESIDENTIAL USE. All of the Property shall be used, improved and devoted exclusively to single family residential use. No gainful occupation, profession, trade, church, group home, halfway house, or nonresidential use shall be conducted on any portion of the Property. No structure whatever, other than one private single family residence, together with a private garage for not more than two (2) cars and animal quarters as described in Section 16 hereafter, shall be erected, placed or permitted to remain on any Lot. ~~A private garage shall be used only for purposes of containing vehicles and shall not be used for residential purposes.~~ Furthermore, a private garage shall not be erected until the private residence has been previously erected; provided, however, that such private garage may be constructed simultaneously with the main residence. The work of constructing the residence shall be prosecuted diligently from the commencement thereof until completion but in any event shall be completed within ~~six (6)~~ **twelve (12)** months from the date of commencement of construction. ~~A private garage, while need not be attached to the private residence, shall be sufficiently close to give the appearance of one contiguous unit from the appurtenant street or streets.~~ The entire improvements shall be architecturally and structurally designed ~~with the western motif in mind~~, so as to maintain harmony of external design and location in relation to the surrounding

structures and topography. No dwelling house shall be erected on any Lot which shall have a floor area of less than twelve hundred (1,200) square feet, of which not less than one thousand (1,000) square feet shall comprise ground floor area, exclusive of open porches and garages. No toilet facilities shall be erected outside of a dwelling house.

Section 2. IMPROVEMENTS AND ALTERATIONS.

(1) No improvement, alteration, repair, excavation or other work which in any way alters the exterior appearance of any Improvement or any portion of the Property from its natural or improved state as existing on the date of this Declaration and no building, fence, wall or other structure shall be commenced, erected, maintained, improved, altered, made or done until the plans and specifications for the same in all construction details, including shape, height, materials, floor plans, colors, location and approximate cost shall have been submitted to and approved in writing by the architectural Control Committee. The construction or other work to be accomplished in accordance with the plans and specifications submitted shall be prosecuted diligently and completed within a reasonable period of time from the date of commencement thereof, which reasonable period of time shall, in no event, be more than ~~six (6)~~ **twelve (12)** months from the date of commencement of construction unless such period is extended in writing in the sole discretion of the Architectural Control Committee. The date of commencement of construction or other work shall be deemed to be the date when any construction materials have been moved on to the property in question or the date when there has been any excavation or grading of the property in question, whichever is earlier.

The Architectural Control Committee shall have the right to refuse to approve any plans or specifications or grading plans which are not suitable or desirable in its opinion for aesthetic or other reasons and in so passing upon such plans, specifications and grading plans, and without any limitation on the foregoing, it shall have the right to take into consideration the suitability of the proposed improvements, the materials of which it is to be built, the site upon which it is proposed to be erected, the extent to which natural growth and terrain would have to be altered, the harmony thereof with the surroundings, the proposed period of construction and the effect of the improvement as planned on the outlook from the adjacent or neighboring property.

All subsequent additions to or changes in or alterations in any Improvement, including exterior color scheme, shall be subject to the prior written approval of the Architectural Control Committee. No changes or deviations in or from such plans and specifications once approved, shall be made without the prior written approval of the Architectural Control Committee. All decisions of the Architectural Control Committee shall be final and no Owner or other party shall have recourse against the Architectural Control Committee for its refusal to approve any such plans and specifications.

The approval of the Architectural Control Committee of any item submitted to it shall not be unreasonably withheld. The Architectural Control Committee shall not be liable for damages to anyone submitting plans for approval or making any other request of the

Committee, nor to any Owner, lessee or sub lessee of the Property or any portion thereof by reason of mistake in Judgment, negligence or nonfeasance of itself, its agents or employees, arising out of, directly or indirectly, or in connection with the approval or disapproval, or failure to approve, any plans or other requests and each and every Owner agrees not to bring action or suit to recover any such damages against the Architectural Control Committee or any of the members thereof.

(a) In the event that the construction or other work to be accomplished in accordance with plans and specifications is not completed within said ~~six (6)~~ **twelve (12)** month period of time from the date of commencement of construction and the Architectural Control Committee has not granted an extension of time, then the Owner shall pay an amount equal to One Hundred Fifty (\$150) Dollars per day for each day in excess of such time period counting from the first day following the expiration of such period until the day upon which all construction is fully completed. Notwithstanding the above, in the event that the delay in completion of construction beyond such time period is caused by or results from strikes, wars, insurrections, natural causes and similar causes beyond control of the Owner, then the time period for completion of construction shall be extended for a like period of time to compensate for such delays beyond the control of the Owner.

The foregoing One Hundred Fifty (\$150) Dollars per day sum represents the amount of liquidated damages which the Owner agrees upon as compensation to the other Owners and the Association for delay in completion of construction in excess of the time period provided hereinabove. Such sum represents a fair and equitable amount of compensation to the other Owners and the Association for such delay in view of the impossibility of ascertaining actual damages. The foregoing liquidated damages shall, however, be an addition to and not in substitution for any other rights or remedies which may exist against the Owner pursuant to Article VII, "General Provisions" hereinafter provided.

In the event that payment of amounts due hereunder are not made with thirty **(30)** days of the accrual date, then the amount owing, which shall constitute a lien against the Lot in favor of the Declarant or the Association, shall be enforceable through judicial foreclosure proceedings, at the election of the enforcing party.

Section 3. TEMPORARY OCCUPANCY. No trailer, tent, shack, garage or barn, and no temporary buildings or structures of any kind shall be used at any time for a residence on any portion of the Property either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such Property shall be removed immediately after the completion of construction. A use permit must first be obtained through Navajo County Board of Adjustment before any temporary building or structure may be erected.

Section 4. TRAILERS AND MOTOR VEHICLES.

~~(1) No motor home, travel trailer, boat, recreational vehicle, trailer of any kind, truck camper, except a truck used as a primary transportation vehicle, dune buggy, two or three wheeled vehicle, or permanent tent or similar structure shall be constructed, reconstructed or repaired, upon any portion of the Property or on any street (public or private) within the Property, in such a manner as will be Visible From Neighboring Property; provided however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Control Committee.~~

~~Garages shall be used for parking vehicles and storage purposes only and shall not be converted for living or recreational activities. Garage doors shall be kept closed except as necessary for entering and exiting. Except as provided above, Only motor vehicles in operating condition shall be parked in uncovered parking areas, and no motor vehicle of any kind which is not in operating condition and currently being operated shall be permitted to be parked upon any portion of the Property or on any street (public or private) within the Property, in such manner as will be Visible From Neighboring Property, but must be kept in an enclosed garage. Furthermore, no motor vehicle may be stored upon any portion of the Property or on any street (public or private) within the Property. For purposes of this section, the determination of what constitutes "stored" shall be in the sole discretion of the Architectural Control Committee.~~

Section 5. RESTRICTIONS ON FURTHER SUBDIVISION. No portion less than all of a Lot nor any easement, time share, or other interest therein shall be conveyed, transferred, or leased by the Owner, except for customary utility easement. An entire Lot, together with the improvements thereon, may be rented by the Owner to a single family, for not less than one month, but not otherwise.

~~Section 6. ANTENNAS.~~

~~(2) No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Property whether attached to a building or structure or otherwise, unless approved by the Architectural Control Committee.~~

~~(1) A radar dish may be erected, used or maintained provided that it is satisfactorily landscaped in a manner approved by the Architectural Control Committee.~~

Section 7. MINERAL EXPLORATION. No portion of the Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, sand, gravel, earth or any earth substance of any kind. In furtherance of interpretation of the preceding sentence pertaining to water, no water wells or extraction devices of any kind shall be permitted.

~~Section 8. STORAGE TANKS. No elevated tanks of any kind shall be erected, placed or permitted upon any Lot. Any tanks for use in connection with any residence on the Lots including tanks for storage of gas, fuel oil, gasoline or oil, must be buried in compliance with the provisions of the Article hereof titled "Architectural Control."~~

Section 9. FENCES. No fence in excess of ~~three~~ **five** feet in elevation shall be erected on the ~~front~~ street line of any Lot. Such fence shall be of the same or similar construction materials and style as utilized with fences maintained on the side and rear Lot lines. The construction of any fences shall be subject to the prior approval of the Architectural Control Committee, in its sole discretion, to maintain the integrity of the Property.

Section 10. SET BACKS. Unless made more restrictive by appropriate regulations of Navajo County, Arizona, or other governmental entity then having jurisdiction over the property, no building or other structure shall be constructed in violation of the following set back requirements:

<u>Lot Line</u>	<u>No. of Feet</u>
Front	20
Rear	20
Sides	20

Section 11. TRASH. Trash, garbage or other waste shall be kept in sanitary containers. ~~In no event shall such containers be maintained so as to be Visible From Neighboring Property, except to make the same available for collection and then, only the shortest time reasonably necessary to effect such collection.~~ The Architectural Control Committee, in its sole discretion, shall have the right to require all Owners of improved Lots to subscribe to a trash collection service. No rubbish, trash, garbage or debris shall be burned by open fire ~~or otherwise on any portion of the Property,~~ **except as permitted by Show Low Fire Department.** The Architectural Control Committee, in its sole discretion, shall have the right to require the Owner of an unimproved Lot to have debris of any and every kind removed from the Lot.

Section 12. UTILITY SERVICE. No lines, wires or other devices for the communication or transmission of electric current or power, or lines, wires, or cables for use in connection with telephone, television or radio, shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in or on buildings or other structures approved by the Architectural Control Committee. No provisions hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Control Committee.

Section 13. SIGNS. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on the Property except:

- (1) Such signs as may be required by legal proceedings.
- (2) A residential identification sign of a face area of thirty-six (36) square inches or less.
- (3) Except as otherwise provided herein, during the time of construction of any building or other improvement, one job identification sign not larger than eighteen (18) by twenty-four (24) inches and having a face area not larger than three (3) square feet, or as required by law.
- (4) Such signs, the nature, number and location of which have been approved in advance by the Architectural Control Committee.
- ~~(5) Until every Lot has been sold, such signs as Developer, in its discretion, deems appropriate.~~
- (6) Such signs as are originally placed by the Developer or are required by the Navajo County, Arizona, or any other governing governmental entity.

Section 14. CONSTRUCTION MATERIALS. The walls of any permanent structure shall consist of masonry, stucco or wood construction materials. No rolled asbestos roofing material or exposed tar paper shall be utilized in connection with roof construction on any permanent structure. Every structure shall be set on a permanent foundation.

Section 15. NUISANCES. No nuisance shall be permitted to exist or operate upon any Property so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of the foregoing, the following shall be presumed to be a nuisance:

- (1) Rubbish or debris of any kind which is placed or permitted to accumulate upon or adjacent to any Property or any odors which arise there from, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants.
- (2) Any exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes.
- (3) Improperly muffled motor vehicles; off-road vehicles, construction equipment, chain saws, law mowers and other motorized equipment which are operated at other than reasonable working hours or so as to create offensive noise, dust or

fumes.

(4) Any use of the Property which is in violation of any statute or ordinance.

(5) Erecting, placing or maintaining any outside facilities for airing or drying clothes, so as to be Visible From Neighboring Property or any street.

(6) Shrubs, trees and plantings of every kind which are not properly cultivated, neatly trimmed and free from trash, weeds and other unsightly material.

(7) Failure to maintain Property in keeping with the standards of the subdivision.

(8) Failure to complete any construction or other work within a reasonable period of time from the date of commencement thereof, which in any event shall not exceed a period of time in excess of ~~six (6)~~ **twelve (12)** months from the date of commencement of construction.

(9) Erecting and/or maintaining animals and/or animal quarters in violation of Section 16 hereinafter.

Section 16. ANIMALS. The raising, keeping or breeding of any animals, livestock or poultry, except as specifically contained hereinafter, is not permitted, except that a reasonable number of dogs, cats or other commonly recognized household pets may be kept, as a privilege, provided they are not kept, bred or maintained for any commercial purpose. An owner may keep up to four horses, only on those Lots set forth on Exhibit "B" attached hereto and made a part hereof by reference, and only if the following restrictions are observed:

(1) Animal quarters, including structures and corrals, shall be of a type of construction to be approved by the Architectural Control Committee in accordance with standards applied by the Committee;

(2) Corrals shall be well maintained, and animal quarters shall be cleaned regularly;

(3) Animal quarters shall be located on the rear half of any residential Lot with forty (40) feet side set back requirements from the property line of each Lot;

(4) No nuisance, as determined by the Architectural Control Committee, shall exist.

Section 17. ABATEMENT OF NUISANCES. The Architectural Control Committee, in its sole discretion, shall determine the existence of any nuisance, including any otherwise permissible pet.

(1) The maintenance of any nuisance, in addition to other remedies provided herein or by law, may be treated as a violation of these covenants.

(2) All remedies are cumulative and the use of one shall not preclude the use of another.

ARTICLE V

ASSOCIATION

The ***Cheney Ranch Home Owner's Association***

Is a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, the Bylaws for the Association and this Declaration. The Association, named "Cheney Ranch Homeowners' Association"

Section 1. ESTABLISHMENT OF THE ASSOCIATION. The Association has been established with the Navajo County Recorder. It has been filed with the appropriate agency of the State of Arizona the Articles of Incorporation of the Association in conformance with all applicable laws and regulations.

Section 2. MEMBERSHIP AND VOTING RIGHTS. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

(1) Members shall be all Owners and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

~~(b) Proxy Votes: The owner of any lot who is unable to attend a HOA meeting may vote by proxy with the exception of Board elections. A proxy voter must be designated in a notarized letter from said owner. The letter must be received by the management company 15 days in advance.~~

The vote cast for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If the Owner or Owners cast a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void. In the event of a tie vote, the Cheney Ranch Board of Directors will cast the deciding vote which shall be binding on all persons.

(2) Each member shall have such other rights, duties and obligations as shall be set forth in the Articles of Incorporation, the Bylaws and the rules of the Association, as they may be amended from time to time.

Section 3. CREATION OF A LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Owner of any Lot by acceptance of a deed therefore, 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, such assessments to be established and collected as hereinafter provided.

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 Property 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 Property at the time the assessment fell due. Whatever liens have been placed on the property must be satisfied at the time the property is sold. The lien may be paid by either the seller or the buyer. The title to the property may not be transferred until all liens, fines, interest and attorney fees have been paid.

Section 4. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Properties, for the improvement, maintenance, preservation, repair, replacement or removal of the Common Amenities and such other obligations as the Association may undertake, and for reasonable reserves as determined by the Board for all of the foregoing purposes.

Section 5. MAXIMUM ANNUAL ASSESSMENT

(1) The maximum annual assessment may be increased each year above the assessment for the previous year without a vote of the membership by fifteen percent (15%) of the assessment for the previous year.

(2) The annual assessment may be increased above such amount by a vote of two-thirds (2/3) of its Members who are voting in person or proxy at a meeting duly called for this purpose.

Section 6. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost not covered by the annual assessment or the reserve fund of any construction, reconstruction, repair, replacement or removal of a Common Amenity, provided that any such assessment shall have the assent of two-thirds of the votes of members who are voting in person or by proxy at a meeting duly called for that purpose, or at any annual meeting.

Section 7. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 5 AND 6. Written notice of any meeting called for the purposes of taking any action authorized under Section 5 or 6 shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast ten percent (10%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots

Section 9. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to all Lots on the latter of the date of incorporation or the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto by May 15th of said year. The due date shall be June 15th. The Association shall, upon, furnish a receipt of payment.

Section 10. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) interest. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Amenities or abandonment of his Lot.

Section 11. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, exercise of a power of sale pursuant to a deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which shall relieve such Lot or Lot Owner from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

ANNEXATION

Section 1. ANNEXATION WITHOUT APPROVAL AND PURSUANT TO GENERAL PLAN. Additional real property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Architectural Control Committee and the Association, if any, without the approval, assent or vote of the Owners, provided that a supplementary declaration covering the Property to be annexed, shall be executed and recorded by Declarant. The recordation of said supplementary declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Architectural Control Committee, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners in said annexed real property shall be members automatically of the Association, if any.

Section 2. SUPPLEMENTARY DECLARATIONS. A supplementary declaration or declaration of annexation shall be a writing in recordable form which annexes real property to the plan of this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration, and shall publish and declare that such land and any improvements thereon and the Owners and others having interest therein are brought within this Declaration. Upon the recordation of such supplement to this Declaration in the Official Records of the County Recorder of Navajo County, Arizona, any such subjection of Property therein to the provisions of this Declaration shall be effective automatically, as though originally included herein.

Section 3. VARIATION IN SUPPLEMENTARY DECLARATION. Such supplementary declarations contemplated in Section 2 above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed Property and as are not inconsistent with the plan of this Declaration. In an event, however shall any such supplementary declaration, or any merger or consolidation revoke, modify or add to the covenants established by this Declaration with respect to previously Covered Property.

ARTICLE VII

GENERAL PROVISIONS

Section 1. ENFORCEMENT.

(1) In the event of any violation or threatened violation of any of the covenants herein, any Owner of any Lot in the subdivision may bring an action at Law or in equity, either for injunction; action for damages or such other remedy as may be available. In the event an Owner recovers judgment against any person for a violation or threatened violation of any of the covenants herein, the Owner shall recover from such person reasonable attorney's fees. If an Association is established, the Association shall have all the rights and privileges of an Owner set for in Section 1.

(2) The failure by an Owner to enforce any restrictions, conditions, covenants or agreements herein contained shall not be deemed a waiver or abandonment of this Declaration or any provision hereof.

(3) The exclusion of any pet pursuant to the Article titled "Use Restrictions" shall not be deemed discriminatory enforcement.

(4) Each Owner who acquires any interest in all or part of the Property described herein further agrees, that upon such acquisition of an interest in all or part of this real property, said acquiring party does not have, nor shall exert, any right or claim against Declarant for any breach or failure of Declarant to enforce all or part of the covenants, conditions and restrictions set forth herein, but shall look to the other Property Owners acquiring an interest in said Property, their successors and assigns, for any performance or relief deemed equitable, or necessary for enforcement of the covenants, conditions, and restrictions contained herein.

Section 2. LEASING. Every lease, by its terms, shall require the lessee to abide by all requirements of the Declaration and Articles, bylaws and Rules, if any, as all may be amended from time to time, and shall provide that noncompliance by the lessee shall terminate the lease. This provision shall be deemed to be a material part of every agreement for the leasing or rental of a Lot whether written or oral and of any agreement written or oral for the use of a Lot by one other than the Owner whether payment of rental is a provision or not.

Section 3. OWNER'S RESPONSIBILITY. Each Owner shall be responsible for compliance by said Owner's agent, tenant, guest, invitee, lessee, licensees, and their respective servants and employees with the provisions of this Declaration, as it may be amended from time to time. The Owner's failure to so ensure compliance by such persons shall be grounds for the same action available by reason of said Owner's own noncompliance.

Section 4. INTERPRETATION.

(1) DESCRIPTIVE HEADINGS. The descriptive headings of the several sections of this instrument are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

(2) GOVERNING LAW. This instrument and the rights and obligations of the parties hereunder shall be construed in accordance with and shall be governed by the laws of the State of Arizona.

(3) CAPITALIZED WORDS. Common nouns which are capitalized herein shall be presumed to be used as defined in Article I, unless the context clearly requires otherwise.

Section 5. NOTICES. All notices, requests, demands or other communications to or upon the persons referred to herein shall be deemed to have been given or made when deposited in the United States Mail, postage prepaid, or in the case of telegraphic notice, when delivered to the telegraph company addressed (1) to Developer in care of its designated statutory agent, and (2) to the Owners at their respective Lots. No other method of giving notice is hereby precluded.

Section 6. SEVERABILITY. Invalidation of any one or portion of these covenants or restrictions by judgment, court order or statutory enactment shall in no way affect any other provisions which shall remain in full force and effect.

Section 7. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be extended automatically for successive periods of ten (10) years. This Declaration may be amended at any time by an instrument signed by more than fifty percent (50%) of the Lots, except that as long as Declarant owns any Lot, signature of Declarant is required.

Section 8. DECLARATION. 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 any amendments thereof. 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 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.

After the date hereof, each party who acquires any interest in all or part of the property described herein, further agrees that upon such acquisition of any interest in all or part of the real property, said acquiring party shall look only to the other subsequent property owner or owners acquiring an interest in said property for any performance or relief deemed equitable or necessary for the enforcement of the covenants, conditions and restrictions contained herein.

~~'IN WITNESS WHEREOF, FROST AND PORTER, a partnership, has caused its signature to be hereunto affixed by its general partner hereunto duly authorized this 12th day of June, 1987.~~

~~FROST AND PORTER
a partnership
duly authorized~~

~~BY: _____
S. Gibbons Frost, a partner~~

~~BY: _____
G. Terris Porter, a partner~~

~~This instrument was acknowledged before me this 15th day of JUNE, 1987 by: S. Gibbons Frost and G. Terris Porter, partners.~~

Notary Public

EXHIBIT "A"

Lots 1 through 58, inclusive, CHENEY RANCH UNIT ONE, according to Book 15 of Plats, Page(s) 43-44, records of Navajo County, Arizona.

AMENDED EXHIBIT "B"

ARTICLE IV, USE RESTRICTIONS, Section 16, Animals

For purposes of the above referenced section, the following are the lots, inclusive, upon which horses may be kept:

Phase I - Lots 6-28; 50-53

Phase II - Lots 59-88; 98-101

Phase V - Lots 1-14

EXHIBIT "C"

Lots 59 through 113, inclusive, CHENEY RANCH UNIT TWO, according to Book 16 of Plats, pages(s) 35, records of Navajo County, Arizona.