



When Recorded, Return to:
Headwaters Ranch POA
P.O. Box 12409
Prescott, AZ 86304

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEADWATERS RANCH

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEADWATERS RANCH (the "Declaration") is effective as of the date of its recording in the official records of Yavapai County, Arizona.

WITNESSETH:

WHEREAS, on December 8, 2003, a Declaration of Covenants, Conditions and Restriction for Headwaters Ranch was recorded in Book 4100 at Page 251, in the official records of the Yavapai County Recorder's Office (the "Original Declaration") against the following property ("Property") situated in Yavapai County, Arizona described as:

Lots 8 through 17 (Phase 1) and Lots 1 through 7 (Phase 2) inclusive, HEADWATERS RANCH, according to the Record of Survey recorded in the Office of the Yavapai County Recorder in Book 89 of Land Surveys, Page 16.

WHEREAS, the Original Declaration was superseded and/or amended by the following documents recorded at Book 4123, Page 707, Book 4129, Page 936, Book 4150, Page 985, Book 4207, Page 472, Book 4853, Page 918 and Book 4912, Page 901, in the official records of the Yavapai County Recorder's Office (the "Amendments"), and

WHEREAS, the Original Declaration and Amendments do not provide for an amendment voting threshold after the Period of Declarant Control, and

WHEREAS, the Period of Declarant Control has expired, and

WHEREAS, pursuant to The Restatement (Third) of Property: Servitudes Section 6.10, the Original Declaration and Amendments may be amended by a vote of two-thirds (2/3rds) of the voting power, and

WHEREAS, the Owners of Parcels subject to the Original Declaration and Amendments representing not less than two-thirds (2/3rds) of voting power of the Association intend to amend and restate in its entirety the Original Declaration and Amendments as hereinafter set forth.

NOW, THEREFORE, the Original Declaration and Amendments are hereby amended and restated in their entirety to provide as follows:

NOW, THEREFORE, the Association and the Owners, declare that the Property, and each and every part thereof, shall hereafter be held, owned, transferred, sold, purchase, conveyed, mortgaged, encumbered, leased, occupied, and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property, and each and every part thereof, and all parties having or acquiring any right, title, or interest in or to the Property, or any part thereof, and shall inure to the benefit of each Owner thereof, the Association, and each Member of the Association.

1. PURPOSE OF THESE COVENANTS, CONDITIONS AND RESTRICTIONS

The purpose of these covenants, conditions and restrictions is to assure the use of the Property for attractive residential and non-commercial farm and ranch purposes (as set forth herein) only and securing to each Parcel Owner the full benefit and enjoyment of their Parcel in furtherance of a common plan.

2. DEFINITIONS

As used herein, the following terms have the following meanings:

- A. **"ARCHITECTURAL REVIEW AND CONTROL COMMITTEE" or "ARC COMMITTEE"** means the committee provided for in Section 5 of this Declaration.
- B. **"ARCHITECTURAL GUIDELINES"** means architectural guidelines adopted pursuant to Section 5(B), as amended from time to time.
- C. **"ASSOCIATION"** means the Headwaters Ranch Property Owners Association, Inc. as referred to in Section 3 of this Declaration.
- D. **"ASSOCIATION RULES"** means the rules and regulations adopted pursuant to Section 3(P), as amended from time to time.
- E. **"BOARD"** means the Board of Directors of the Association.

F. **"BONA FIDE FIRST MORTGAGE"** means any realty mortgage or deed of trust made in good faith and for value and properly executed and recorded so as to create a lien on any Parcel or Parcels that is prior to the lien of any other realty mortgage or deed of trust.

G. **"DECLARATION"** means the covenants, conditions and restrictions herein set forth in this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Headwaters Ranch as the same may be from time to time amended.

H. **"DECLARANT"** means Headwaters Associates, Inc. and its successors or assigns.

I. **"FACTORY-BUILT BUILDING"** means a residential or nonresidential building including a dwelling unit or habitable room thereof which is either wholly or in substantial part manufactured at an off-site location to be assembled on-site, except that it does not include a Manufactured Home, recreational vehicle or Mobile Home.

J. **"GOVERNING DOCUMENTS"** means this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, the Association Rules and the Architectural Guidelines.

K. **"MAINTAINED ROADS"** has the meaning given to that term in Section 4(C).

L. **"MANUFACTURED HOME"** means a structure defined as built in accordance with 42 U.S. Code § 5402, as amended from time to time.

M. **"MEMBER"** means a member of the Association.

N. **"ELIGIBLE MEMBER/OWNER"** means a person or legal entity owning property within the boundaries of Headwaters Ranch who has become a member of the Association by virtue of such ownership and who is current in the payment of their assessments and are therefore eligible to vote in any election or Association vote.

O. **"MOBILE HOME"** means a movable or portable unit for residential purposes constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence.

P. **"OWNER"** shall mean and refer to the recorded owner, whether one or more Persons or entities, of fee or equitable or beneficial title to any Parcel. Owner shall include the purchaser of a Parcel under an executory contract for purchase. The foregoing definition does not include Persons or entities who hold an interest in any Parcel as security for the performance of an obligation.

Q. **"PARCEL" or "PARCELS"** mean the Parcels as shown on the Record of Survey either individually or collectively, as the case may be, and any divisions thereof as provided for herein.

R. **"PERSON"** means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental agency or subdivision, or other legal or commercial entity.

S. **"PROPERTY"** means the real property described on the Record of Survey and replats, amendments, supplements or corrections thereto.

T. **"RECORD OF SURVEY"** means the Record of Survey recorded in the Office of the Yavapai County Recorder in Book 89 of Land Surveys, Page 16, as amended and supplemented from time to time.

U. **"ROAD MANAGEMENT COMMITTEE" or "ROAD COMMITTEE"** means the committee provided for in Section 4 of this Declaration.

V. **"UNMAINTAINED ROADS"** has the meaning given to that term in Section 4(C).

3. PROPERTY OWNERS ASSOCIATION

The Headwaters Ranch Property Owners Association, Inc. was incorporated November 28, 2003.

A. **PURPOSES:** The purposes of the Association are (1) to maintain, repair and replace roadway easements, culverts, associated bar ditches and right-of-ways of Maintained Roads in accordance with the provisions of Section 4 of this Declaration; (2) to maintain, repair and replace any Association property and any improvements thereon; (3) to provide or promote activities and services the Board deems appropriate, necessary or desirable, such as contracting for services (including, without limitation, trash collection, propane delivery or cable and internet services) to be provided to Owners either at the cost of the Association or the Owners as determined from time to time by the Board; (4) to foster or promote the common good and general welfare of the Association community; (5) to enforce the provisions of this Declaration and (6) to act through the Architectural Review and Control Committee in accordance with the provisions of Section 5 of this Declaration.

B. **MEMBERSHIP:** Each and every Parcel Owner, in accepting a deed or contract for any Parcel, whether or not it shall be so expressed in such deed or contract, automatically becomes a Member of the Association, and agrees to be bound by this Declaration and such Association Rules as may, from time to time, be established by the Association. Membership shall be appurtenant and may not be separated from ownership of a Parcel. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of such Parcel, whether by deed, intestate

succession, testamentary disposition, foreclosure of a mortgage, or such other legal processes as now in effect or as may be hereafter established pursuant to the laws of the State of Arizona. Each Parcel Owner as a Member shall have such voting rights as set forth in this Declaration and the other Governing Documents.

C. ACTION: In furtherance of its purposes, which are generally as set forth above, the Association shall provide necessary and appropriate action for the maintenance, repair, replacement and management of the roadway easements, culverts, associated bar ditches and right-of-ways of Maintained Roads and shall have the right to enter upon a Parcel if deemed reasonably necessary by the Board in order to accomplish any such purpose.

D. POWERS: The Association shall have the power to borrow and encumber its assets and, in all respects, shall have the powers necessary to carry out its purposes, whether or not such powers are specifically set forth herein, including without limitation the power to enter into contracts with third parties to perform all or part of its functions and to hire its own employees to do so.

E. CREATION OF ASSOCIATION LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES: Each Parcel Owner is obligated to pay: (1) regular assessments for normal maintenance, repair, and reserves, along with Association insurance and other operating costs; and (2) special assessments for capital improvements or for any other proper Association purpose with such assessments to be established as set forth herein. Each Parcel Owner, by becoming the Owner of a Parcel, is deemed to covenant and agree to pay assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration. The assessments, together with interest, late charges and all costs, including but not limited to all attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent assessments, whether or not suit is filed, shall be a charge on the Parcel and shall be a continuing lien upon the Parcel against which each such assessment is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to all attorneys' fees, incurred by the Association in enforcing the Governing Documents and collecting or attempting to collect delinquent assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Parcel at the time when the assessment, fee, charge, fine or penalty became due. The personal obligation for delinquent assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

F. ASSESSMENTS: The Board shall, on an annual basis, make a determination as to the estimated costs of carrying out the Association's purposes as defined in this Declaration, including, without limitation, the repair, maintenance and replacement of the Maintained Roads and needs otherwise so designated by the Board, including any reserves necessary for maintenance, repair and replacement and future capital expenditures. The assessments may be collected on a monthly, quarterly, semi-annual or annual basis, or any combination of same as determined from time to time by the Board. The Board shall fix the amount of the regular assessment at least thirty (30) days prior to the end of the calendar year, provided that its failure to do so shall not affect the obligations of the Owners to pay any such assessments. Notwithstanding the foregoing, the Board shall not levy a regular assessment for any calendar year that is more than twenty percent (20%) greater than the immediately preceding calendar year's regular assessment.

G. NOTICE OF ASSESSMENT: Notice of the assessments shall be sent to every Owner by first class mail (or by electronic notification if requested in writing by the Parcel Owner).

H. ALLOCATION: Each Parcel Owner shall be responsible to pay the regular assessment commencing on the first day of the month following the date of recordation of the deed or purchase contract wherein the Parcel Owner acquired legal, beneficial, or equitable title to the Parcel. The Declarant shall not be responsible for comparable assessments on each Parcel owned by it.

I. SPECIAL ASSESSMENTS: In addition to the regular assessment as set forth above, the Board may assess special assessments if the Eligible Members entitled to cast at least fifty percent (50%) of the total votes that may be cast by the Members vote to approve such special assessment. Special assessments shall be assessed and allocated in the same manner as the regular assessments.

J. ENFORCEMENT OF ASSESSMENT OBLIGATION: The Association lien may be foreclosed by the Association in a like manner as a foreclosure of a real property deed of trust or mortgage. The Association shall have the power to bid on the delinquent Parcel at the foreclosure sale, and acquire, hold, lease, encumber and convey same. A suit to recover a money judgment for unpaid assessments and charges shall be maintainable by the Association without foreclosing or waiving the lien securing same. Any assessment, installment of an assessment, or other amount owed by an Owner to the Association which is not paid within fifteen days after it is due is delinquent, shall bear interest from the date due at the rate of one percent (1%) per month, (unless a different interest rate is established by the Association Board) and is subject to a late fee in an amount set by the Association Board. Any costs incurred by the Association in

enforcing this Declaration or the other Governing Documents shall be the obligation of the Owner of the Parcel against which enforcement is sought. Such costs shall include, but not be limited to, all attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association lien established pursuant to Section 3(E).

K. VOTES: Only Members who are current in the payment of their assessments shall be deemed an eligible Member/voter and entitled to vote in any election or Association vote. The total number of votes in the Association shall be on the basis of one (1) vote per acre owned by Owners other than Declarant, plus three (3) votes for each acre Declarant owns rounded to the nearest whole acre. Unless otherwise specifically provided in the Governing Documents, all Association matters shall be determined by a majority of votes cast. In the event that a Parcel is owned by two (2) or more Persons, the joint or common Owners shall designate to the Association in writing one of their number who shall have the right to cast votes with respect to such Parcel. If any Member casts a vote representing a certain Parcel, it will thereafter be conclusively presumed that he was acting with the authority and consent of all other Owners of the same Parcel unless objection thereto is made prior to or at the time the vote is cast.

L. GOVERNANCE: The Board shall have all powers of a nonprofit corporation under the Arizona Nonprofit Corporations Act, A.R.S. § 10-3101 through 10-11702, as amended from time to time, and the powers granted to the Association under the Governing Documents.

M. FORECLOSURE: Where the holder of a bona fide first mortgage of record obtains title to the Parcel as a result of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the share of the expenses or assessments by the Association chargeable to such Parcel which became due prior to the acquisition of title to such Parcel by such acquirer. As used in this Declaration, the term "mortgage" shall also include a deed of trust and agreement for sale, and "mortgagee" shall include the beneficiary under a deed of trust and vendor under an agreement for sale. Such acquirer shall be responsible, as any Owner, for assessments allocable to the periods following the date of the acquisition of title by the acquirer. Any assessments, monetary penalties, and other fees and charges against the Parcel which accrue prior to such sale or transfer remain the obligation of the defaulting Owner. Delinquent assessments, monetary penalties, and other fees and charges which are deemed uncollectible may be reallocated and assessed to all Parcels.

N. NON-COMPLIANCE: In the event the Association determines that any Parcel Owner has not complied with the provisions of the Governing Documents (other than non-payment of assessments or of any other monies owed to the Association), then the

Board may, at its option, give written notice to the Owner of such non-compliance. The Owner shall correct such non-compliance within the number of days specified by the Board ("Compliance Days"), or if the non-compliance is not readily correctable within the Compliance Days, the Owner shall submit to the Board corrective plans proposing its remedy to the non-compliant condition within the Compliance Days. In such case, the Board shall approve or disapprove any plans submitted by the Owner and set forth a reasonable time for correction of the non-compliant condition. In the event such condition is not corrected within the Compliance Days or the other allotted time set by the Board, the Board shall, at its discretion, have the right to (1) fine the non-compliant Owner and/or (2) at the option of the Board undertake to remedy such condition or violation. The Association may charge such Owner for costs incurred by the Association in enforcing the Governing Documents, including, but not limited to, all attorneys' fees and costs, together with interest thereon from the date the costs are expended. The costs incurred by the Association in enforcing the Governing Documents shall be deemed to be an assessment against such Owner and a lien against the Owner's Parcel which shall be enforceable by the Board in the same manner as the lien for any other assessment. The Board is hereby granted the right of entry on the affected Parcel to so correct the non-compliant condition or violation.

O. TRANSFER OF MEMBERSHIP: The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Parcel, and then only to the transferee of ownership to the Parcel. A transfer of ownership to a Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Parcel shall operate to transfer the Membership appurtenant to said Parcel to the new Owner thereof. Each Purchaser of a Parcel shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Parcel. The Association shall be entitled to charge a reasonable transfer fee as permitted by applicable statutes.

P. ASSOCIATION RULES: The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by the Owner, by the family of such Owner, or by the guest, licensee or lessee of such Owner; provided, however, that the Association Rules shall not be inconsistent with the Governing Documents. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

4. ROAD MAINTENANCE

A. **PURPOSES:** The Road Management Committee (the "Road Committee") shall (1) organize and implement the maintenance of roadway easements, culverts and associated bar ditches of Maintained Roads, (2) encourage and oversee the care and maintenance, by the Owners of properties contiguous to any Unmaintained Roads, of those Unmaintained Roads, culverts and associated bar ditches and (3) assess the ingress, egress, flow, safety and security of all communal routes onto and within the Property.

B. **ROAD MANAGEMENT COMMITTEE:** The Board shall have the sole right to determine from time to time the number of members of the Road Committee. The Road Committee shall be chaired by a Board member who is appointed by the Board. The remaining Road Committee members shall be appointed by the President. Such Road Committee members shall serve at the will of the President. The members of the Road Committee shall be entitled to reimbursement for reasonable costs incurred in performing their duties, as approved by the Board.

C. **MAINTAINED AND UNMAINTAINED ROADS:** The ingress, egress and public utility easements as shown on the Record of Survey shall be known as Maintained Roads. All other roadways within the Property that are not Maintained Roads shall be known as Unmaintained Roads.

D. **ACCESS:** The Road Committee shall evaluate ingress and egress activity of the Property, and recommend to the Board any corrective measures that are needed for controlling activities that the Road Committee deems disadvantageous to the Property and its residents - such as, vehicular speed and flow; recreational vehicle activities; open range control, and trespass and other boundary issues.

E. **SIGNAGE:** The Road Committee shall evaluate signage requirements for the Association and recommend to the Board any necessary and/or desired signage for roads.

F. **ASSOCIATION'S EASEMENT FOR PERFORMING MAINTENANCE RESPONSIBILITIES:** The Association shall have an easement upon, across, over and under the roadways and the Parcels for the purpose of repairing, maintaining, managing and replacing the Maintained Roads and any other areas which the Association is obligated to maintain pursuant to this Declaration.

5. ARCHITECTURAL CONTROL

A. APPLICATION APPROVAL REQUIRED: No Parcel-leveling, landscaping, residence, barn, outbuilding, fence, driveway, roadway, wall, or other improvement or installation, shall be commenced, erected, placed, or altered on any Parcel, until an application (the "Application"), including, without limitation, the plans and specifications (the "Plans") therefore, showing the nature, kind, shape, materials, floor plans, and locations, and such other information as requested by Architectural Review and Control Committee (the "ARC Committee") shall have been submitted to, and approved by the ARC Committee and a copy of the Application is finally approved in writing by the ARC Committee and shall be maintained in the management office. The ARC Committee shall have the right to refuse any such Application and Plans which are not suitable or desirable in its opinion for aesthetic reasons, or for any other reason. In reviewing such Application and Plans the ARC Committee shall have the right to take into consideration the suitability of the proposed improvement, alteration, building or other structure, the material which is to be used, the site upon which it is proposed to be erected or done, the harmony thereof with the surroundings, and the effect of the proposed structure or improvement on the outlook from adjacent or neighboring property. In constructing and completing the proposed structure or other improvement, the natural vegetation on the Parcel must be preserved as much as reasonably possible as determined by the ARC Committee. All grading, excavation and construction shall reflect the goal of protecting natural vegetation and wildlife habitat.

B. GUIDELINES: The ARC Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions (the "Architectural Guidelines"). The Architectural Guidelines may include, without limitation, provisions regarding: (1) dimension limitations for residences and other improvements; (2) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (3) placement of residences and other buildings; (4) landscaping design, content and conformance with the character of the Property and permitted and prohibited vegetation; (5) requirements concerning color schemes, exterior finishes and materials; (6) signage; (7) perimeter and screen wall design and appearance; (8) time periods for commencement and completion of any approved construction or modification; and (9) rules and regulations governing construction activities. Any adoption, amendment or repeal of the Architectural Guidelines by the ARC Committee must be approved by the Board. The approval required of the ARC Committee pursuant to this Declaration shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. The approval by the ARC Committee shall not be deemed a warranty or representation by the ARC Committee or Association as to the quality or suitability for the intended use of the improvements set forth in the Application and/or the Plans.

C. ARC COMMITTEE: The Board shall have the sole right to determine from time to time the number of members of the ARC Committee. The ARC Committee shall be chaired by a Board member who is appointed by the Board. The remaining ARC Committee members shall be appointed by the President of the Association. Such ARC Committee members shall serve at the will of the President. The members of the ARC Committee shall be entitled to reimbursement for reasonable costs incurred in performing their duties, as approved by the Board.

D. PROCEDURE: The ARC Committee's approval, requests for additional information or disapproval as required in this Declaration shall be in writing or other approved electronic means of communication. Actions of the ARC Committee shall be by the majority vote of the members of the ARC Committee. Decisions of the ARC Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain improvements. Each Owner agrees that the decision of the ARC Committee shall be final on all matters submitted to it pursuant to this Declaration; provided, however, that any decision of the ARC Committee may be appealed to the Board by any Owner aggrieved by the decision. Any appeal to the Board must be filed with the Board within thirty (30) days after the date of the related decision by the ARC Committee. No Parcel Owner or other party shall have recourse against the Board, the ARC Committee or its designated representatives, or its members, for its disapproval or refusal to approve an Application or Plans. Any Application not approved by the ARC Committee within thirty (30) days after the Application and the Plans and specifications have been submitted to the ARC Committee shall be deemed to have been disapproved by the ARC Committee. The approval by the ARC Committee of any construction or modification shall not be deemed a waiver of the ARC Committee's right to withhold approval of any similar construction or modification subsequently submitted for approval. Plans shall not be considered to be delivered to the ARC Committee until they are complete in every respect and have been submitted together with every item of additional information, material samples or more specific plan details as requested in writing by the Committee. For new construction of the main structure on a Parcel or for major rebuild of the main structure on a Parcel, the Parcel Owner shall include with its application a road impact fee and document review fee. The amount of any such road impact fee and document review fee shall be determined from time to time by the Board. At the time of the recording of this Declaration, the sums are set at \$1,250.00 for the road impact fee and \$250.00 for the document review. For improvements on a Parcel that do not constitute new construction of the main structure on a Parcel or a major rebuild of the main structure on a Parcel, the Parcel Owner shall include with its application a road impact fee of \$625.00 and document review fee of \$125.00, payable to the Association.

E. INDEMNITY; RELEASE: None of the Association, the Board members, any member of the ARC Committee, Road Committee, or any agent, employee or other party providing architectural consulting services to the ARC Committee shall be liable in damages to anyone submitting plans to it for approval or to any Parcel Owner or other Person by reasons of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans submitted to the ARC Committee, and each Parcel Owner or other Person submitting an Application and/or Plans agrees, by submission of such Application and/or Plans and specifications, that he will not bring any action or suit against the Association, the Board members, or the members of the ARC Committee, or their agents or employees, or parties providing architectural consulting services to the ARC Committee, to recover damages arising out of or in connection with their duties hereunder. Approval by the ARC Committee shall not be deemed to be a representation or warranty that the Parcel Owner's Plans and specifications (design, construction or otherwise) are free from hazards, such as flooding, natural disasters or adverse soil conditions or complies with applicable governmental ordinances or regulations, including, but not limited to, rezoning ordinances and local building codes. It shall be the sole responsibility of the Parcel Owner, or other Person submitting an Application and/or Plans to the ARC Committee or performing any construction, to comply with all such ordinances, regulations and codes. Each Parcel Owner understands that due to the location and conditions of the Parcel Owner's Parcel there may be certain inherent risks including, but not limited to, those related to flooding, soil conditions or natural disaster and agrees for himself, his family, guests and invitees (the "Releasing Parties") to release the Association, the Board members and the members of the ARC Committee and their respective agents, employees and parties providing architectural consulting services to the ARC Committee from any and all liability arising from any damage or injury to the Person or property of the Releasing Parties arising out of or in connection with such hazards.

6. GENERAL RESTRICTIONS

A. LAND USE: No buildings, other than one single-family dwelling residence and a private garage, a guest house or servants' quarters, and other outbuildings as approved by the ARC Committee, which are in compliance with applicable zoning, may be erected, maintained, placed, or permitted on any Parcel. No improvements may be commenced without the appropriate building permits having been first obtained by the Parcel Owner and approval by the ARC Committee. The Property is forever restricted to site built homes exceeding 1600 square feet of interior space only and no Manufactured Homes or Mobile Homes may be installed ever.

B. RENTAL PROPERTY: Upon leasing of a Parcel, the Owner of such Parcel or his agent shall disclose to the Association:

- (1) The name(s) and contact information of any adult(s) occupying the property.
- (2) The time period of the lease, including the beginning and ending dates of tenancy, and
- (3) A description and the license plate numbers of the tenant's vehicles.

Any guest house on a Parcel shall be solely for the use of bona fide guests or servants of the Parcel Owner, or use by the occupants of the main residence on the Parcel, or use by members of such occupant's family.

C. COMMERCE: No manufacturing or commercial enterprise shall be maintained or conducted upon, in front of, or in connection with any Parcel. However, home offices, and other appropriate, casual, and non-intrusive business uses may be permitted by the Board in its sole discretion.

D. SUBDIVISION; SURFACE REMOVAL: Except as set forth in the following sentence of this Section 6(D), no Parcel shall be subdivided into Parcels smaller than the size allowed by applicable governmental regulations and ordinances; but, notwithstanding such governmental regulations and ordinances, in no event shall a Parcel be created which is smaller than two (2) acres.

E. COMPLETION TIME: Construction of a residence shall be finished and completed no later than one (1) year after the date of the issuance of a building permit for the construction of such residence by the appropriate regulatory body and any approved barn or shed shall be completed within six (6) months after the date of the issuance of the permit. The ARC Committee may in its sole discretion extend the completion time upon written request by the Owner of the related Parcel.

F. MATERIALS AND ROOFS: Any single family residential structure or approved barn, shed or other improvements placed upon any Parcel shall be constructed from new material or its equivalent, as approved by the ARC Committee. No reflective roofs shall be allowed.

G. MINIMUM SIZE: Subject to the following sentence, any residential structure constructed on a Parcel shall contain a minimum of 1,600 square feet of interior living area exclusive of any carport, garage, open porches and patio.

H. LOCATION: No residence or other building improvement shall be erected or placed

on any Parcel nearer than sixty (60) feet to any boundary line of such Parcel, unless approved in writing by the ARC Committee. It is understood that the above set-back lines and all other use restrictions contained in this Declaration are in addition to zoning and other land use regulations adopted by governmental authorities. The Parcel Owner must comply with the most restrictive setback provision.

I. MOBILE HOMES AND MANUFACTURED HOMES: Neither Mobile Homes nor Manufactured Homes shall be permitted to be placed on any parcel.

J. TEMPORARY RESIDENCES: A motor home, recreational vehicle, or travel trailer may be used on a Parcel only on a temporary basis while the permanent residence on such Parcel is under construction, and then for a period not to exceed twelve (12) months or such shorter period as allowed by applicable zoning.

K. ROADS: Maintenance, repair and replacement of the Maintained Roads shall be the sole responsibility of the Association. The Association shall have the right to convey any such easements and/or roadways and the maintenance thereof to Yavapai County. No Parcel Owner may maintain or alter any Maintained Road without the prior written consent of the Board. From time to time the Road Committee may decide as to the minimum surface of such Unmaintained Roads in order to control the spread of excessive dust over areas of the Property.

L. SIGNS: No emblem, poster, advertisement, logo, sign or billboard of any kind, including, but not limited to, "For Sale" or "For Rent" signs, shall be displayed on any Lot without the prior written approval of the ARC Committee; except for the following signs: (i) one "for sale" sign and one "for lease" sign may be posted on the Parcel, which conforms with industry standards: not to exceed 24" x 24" plus a "rider" not to exceed 6" x 24". All "for sale" signs and "for lease" signs must be commercially produced; (ii) temporary open house signs may be displayed on a Lot as permitted by A.R.S. §33-1808, as amended, and by any successor statute thereto, provided, however, open houses shall not be held before 8:00 a.m. or after 6:00 p.m.; (iii) any signs as may be required by legal proceedings; (iv) such signs as are approved by the ARC Committee; and (v) political signs may be displayed on a Parcel subject to the following: Political signs may be displayed not more than seventy-one (71) days prior to any election. Political signs must be removed within three (3) days after an election day. The total political sign area cannot exceed the maximum size limit established from time to time by applicable Yavapai County ordinances. All political signs must be commercially produced. No signs may be displayed on Maintained or Unmaintained Roads.

M. PUBLIC EVENTS: No public events whether one-time or periodic, free or ticketed,

cultural, charitable or cause-related, and conducted for the purpose of attracting revenue, support, awareness, and/or for entertainment purposes, and created by and/or for the general public shall be held on any of the Parcels without the approval of the Board.

N. LIVESTOCK AND POULTRY: Horses, cattle, and domestic animals are allowed to be kept on the Property in reasonable numbers (a maximum of two (2) hooved animals per acre and a maximum of six (6) hooved animals on each ten (10) acre and larger Parcel unless a larger number is approved in writing by the Board) and fenced in such a manner as to restrict access to native shrubs and trees on the Parcel and to restrict the animals from leaving the Owner's Parcel. The casual breeding of animals for profit is permitted. The commercial raising of livestock is not permitted. The Board, in its sole discretion, shall decide which uses are casual and which are commercial and, may in its exclusive discretion, make exceptions to this restriction. A written opinion as to the use of a Parcel can be obtained from the Board as to any proposed use of a Parcel for casual breeding upon written request. All livestock, poultry and domestic animals shall be maintained so as to avoid creation of a hazard or nuisance to Owners of other Parcels. Dogs shall be kept within fenced areas or held on leashes. Dogs which have been documented two times by Yavapai County Animal Control or any other governmental authority for aggressive behavior as defined by A.R.S. § 11-1014.01 shall be immediately removed from the Property. All livestock and poultry shall be confined within a fenced area, and all fences for any livestock or animals shall be constructed of new material or the equivalent and be of such height and strength as to adequately contain all permitted livestock or animals. All areas maintained for livestock and poultry shall at all times be kept clean and odor free. Practices which are an endangerment to ground water will not be permitted. The Board, in its sole discretion, shall decide such matters and the Board's decision shall be final.

O. AGRICULTURE, LANDSCAPING AND MINERAL EXPLORATION: Personal garden use of a Parcel is allowed. All commercial agricultural use of a Parcel is prohibited. The Board, in its sole discretion, shall decide whether a use of a Parcel is commercial agricultural use. Landscaping cannot include restricted vegetation which is determined by the Board to be invasive, allergy producing or detrimental to natural/native vegetation. All agricultural gardening use shall be performed in accordance with good farmer-like practices. No portion of the Property may be used to explore for or to remove any oil or other hydrocarbons, gold, silver, minerals of any kind, gravel, earth, or other earth substance of any kind.

P. GARBAGE AND REFUSE DISPOSAL: No Parcel shall be used or maintained as a dumping ground for rubbish or hazardous or toxic waste or materials. Trash, garbage, or other waste shall not be kept except in sanitary containers. All containers for the

storage of such material shall be kept in a clean and sanitary condition. No outdoor burning of brush other vegetation rubbish or any other thing shall be permitted on any Parcel without appropriate burn permits first being obtained by the Parcel Owner. The regular removal of garbage and refuse is the Parcel Owner's responsibility.

Q. WATER SUPPLY AND INDIVIDUAL SEPTIC SYSTEMS: Individual sewage disposal systems to serve the Parcel shall be permitted on the Parcel. All sewage systems shall be constructed and maintained to Yavapai County Health Department standards. No individual sewage disposal system shall be installed within 50 feet of any property line. No sewage disposal system shall be installed without first obtaining the Yavapai County Health Department Sewage Disposal Permit. All sewage systems shall be kept so as not to disturb surrounding neighbors and property with offensive odors and sights, and located so as to minimize grading and disturbance to existing vegetation. Percolation and other test holes must be refilled or capped and any disturbance to the land causing a hazard must be returned to its natural condition within seven (7) days of such disturbance. Individual domestic wells must be installed in compliance with the rules and regulations of the Arizona Department of Water Resources and local regulatory agencies.

R. PROTECTIVE SCREENING: All clotheslines, equipment, propane tanks, service yards, wood piles, water storage tanks and storage areas shall be kept screened by adequate planting or fencing as approved by the ARC Committee to conceal them from view of neighboring Parcels or streets. Clothes lines are permitted if properly screened but no laundering will be permitted except inside an approved structure with approved plumbing.

S. PARKING: Unless otherwise approved by the Board, all vehicles and equipment including, but not limited to, cars, trucks, boats, all-terrain vehicles and recreational vehicles shall be parked within a fully enclosed building on a Parcel. All repairs to such vehicles or equipment must be performed within such buildings.

T. EXTENSION OF UTILITIES: All extensions of electric, telephone, cable T.V., etc. must be placed underground, within the designated easements as shown on the Record of Survey.

U. ANTENNAS AND MECHANICAL EQUIPMENT: Antennas used for AM/FM radio, amateur ("ham") radio, Citizen's Band ("CB") radio or Digital Audio Radio Services ("DARS") and any other antennas not covered by the FCC Over-the-Air Reception Devices ("OTARD") Rule (47 CFR Section 1.4000) or other applicable laws must be approved in writing by the Architectural Control Committee. No machinery or equipment

of any kind shall be placed, operated or maintained upon any Parcel except such machinery or equipment as is usual or customary in connection with (i) the use or maintenance of a residence, (ii) for non-commercial agricultural or ranch purposes and (iii) structures or other improvements used in connection with such activities. Any such permitted machinery or equipment shall be acoustically screened so as not to create an unreasonable or unnecessary noise or vibration audible to neighboring Parcels and screened so as not to be visible from neighboring Parcels or the roads.

V. NUISANCES: No rubbish or debris of any kind shall be placed or permitted to accumulate for any unreasonable length of time, and no odors shall be permitted to arise therefrom, so as to render the Parcel or any portion thereof unsanitary, unsightly or offensive or detrimental to any other Parcel in the vicinity thereof or to its Owners and/or occupants. No noxious destructive or offensive activity, or any activity constituting an unreasonable source of annoyance, shall be conducted on any Parcel including but not limited to the operation of vehicles or motors of any type without mufflers and no all terrain type vehicles or off road motorcycles shall be operated except within the Owner's individual Parcel. No firearms may be discharged in any area of the property. The Board in its discretion shall have the right to determine the existence of any such activity or item. The Association shall have the standing and authority to institute legal proceedings to abate such activity or to secure the removal of such item(s). Furthermore, the Board shall have the right to remove any such activity or item at the expense of the Parcel Owner (or at the expense of the Owner whose tenant, occupant or guest is responsible for such nuisance activity or item(s)). Each Owner and/or occupant shall refrain from any act on or use of Parcel which could reasonably cause embarrassment, discomfort or annoyance to other Owners or occupants, and the Board shall have the power to make and enforce reasonable Association Rules in furtherance of this provision.

W. OPEN RANGE: Each Owner will be responsible for gating and fencing their respective Parcel to fence out grazing livestock. The Board at its discretion may install fencing along all or any portion of the perimeter boundaries of the Property on a Parcel by Parcel basis. Any fencing installed on a Parcel by the Association shall be maintained by the Association. Each Parcel Owner hereby grants to the Association an easement over the Owner's Parcel to from time to time enter on to the Owner's Parcel to install and maintain on or about the boundary line of the Property running along the boundary line of the Owner's Parcel any fence the Board determines will be installed thereon by the Association. The Association shall have no liability for any damage done to any Parcel or to any Owner's property or to any Person resulting from grazing livestock either before or after any such boundary fence is installed by the Association.

X. PARCEL MAINTENANCE: Each Parcel Owner shall be solely responsible for the maintenance of all portions of his Parcel and the improvements thereon (excepting only any portion thereof that consists of a Maintained Road). The Owner of each Parcel shall at all times perform his obligations under this Section 6(X) so that the land and improvements comprising his Parcel shall be in good condition and repair.

Y. NO EASEMENT INTERFERENCE: No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction (a) which would interrupt the normal drainage of the land or (b) within any area designated on the Record of Survey as an ingress, egress easement.

Z. ASSOCIATION EXEMPTION: No provision in this Declaration shall be construed to limit or restrict the Association's right to improve, construct, operate and maintain the Property; to maintain, repair and replace the Maintained Roads; or to construct, develop or place improvements on any and all Property or Parcels in the Property, in any manner deemed appropriate by the Association.

7. ACCESS EASEMENTS

A. The Association have the right to grant access easements to property owners outside of the Property.

B. Any grantee of an access easement shall provide for the maintenance and upkeep of the easement by paying an agreed upon proportionate amount of the annual assessment to the Association. The amount due shall be agreed to between the grantee and the Association by separate recorded agreement.

C. Any grantee of an access easement shall have no voting rights in the Association and shall in no way be considered a Member of the Association.

8. GENERAL PROVISIONS

A. **ENFORCEMENT:** The covenants, conditions, and restrictions contained in this Declaration shall run with the land and shall be binding upon all Persons owning, leasing, subleasing or occupying any Parcel. This Declaration may be enforced by the Association through the Board of Directors and their agents, by any Owner of any Parcel, or by any one or more of said Persons acting jointly. Any breach of the covenants, conditions, and restrictions contained in this Declaration shall not defeat or adversely affect the lien of a bona fide first mortgage upon any Parcel, but each and all said covenants, conditions and restrictions shall be binding upon and effective against

any Owner, lessee, or occupant of said Parcel whose title thereto is acquired by foreclosure, or otherwise, and provided also that the breach of any said covenants, conditions, and restrictions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such bona fide first mortgage. All instruments of conveyance or assignment of any interest in all or any part of the Property may refer to this instrument and shall be subject to the covenants, conditions, and restrictions, herein contained as fully as though this instrument were therein set forth in full; provided, however, that the terms and conditions of this instrument shall be binding upon all Persons affected by its terms, whether express reference is made to this instrument or not, and shall be governed by the laws of the State of Arizona. The Association shall not be obligated to take any enforcement action if the Board determines in its sole discretion, that because of the strength of possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association. All rights and remedies of the Association under the covenants, conditions, and restrictions or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the covenants, conditions, and restrictions shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the covenants, conditions, and restrictions in the future.

B. ATTORNEYS' FEES: If any lawsuit is filed by the Association or any Owner to enforce the provisions of the covenants, conditions, and restrictions or in any other manner arising out of this Declaration or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorneys' fees incurred by the prevailing party in the action.

C. AMENDMENT: This Declaration may be amended at any time and from time to time only by the affirmative vote or written consent, or any combination thereof, of the eligible Members entitled to vote in the amount of at sixty-seven percent (67%) of the total votes of the Membership eligible to vote. An amendment or modification to this Declaration shall be executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as herein above provided. Said amendment shall become effective upon recording in the office of the Yavapai County Recorder.

D. INDEMNIFICATION AND LIMITATION OF LIABILITY: The Association shall indemnify all of its directors, committee members and officers, and its former directors, committee members and officers, to the maximum extent authorized by law, against

expenses incurred by them, including without limitation legal fees, and judgments and penalties or other proceeding rendered or levied against them or any of them in any legal action brought against any such Person for actions or omissions alleged to have been committed by any such Person while acting within the scope of his or her authority as a director, committee member or officer of the Association (including settlement of any suit or proceeding if approved by the liability Insurance provider and the Board serving at the time of such settlement), provided that the Association shall have the right to refuse indemnification in any instance in which the Person to whom indemnification would otherwise have been applicable shall have unreasonably refused to permit the Association, at its own expense and through counsel of its own choosing, to defend him or her in any such legal action. Except as prohibited by law, directors, committee members and other Persons serving on the Board or a committee in an advisory capacity shall have no personal liability to the Association or its Members for monetary damages for a breach of fiduciary duty.

E. INVALIDITY: Invalidation of any of these covenants, conditions and restrictions by judgment, Court order, or otherwise shall in no way affect the validity if any of the other provisions of this Declaration, all of which shall remain in full force and effect.

F. BINDING EFFECT: By acceptance of a deed or by acquiring any ownership interest in any of the Property subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferee and assigns, binds himself, his heirs, personal representatives, successors, transferee 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 Project and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. The Owners, their successors, assigns and grantees, covenant and agree that the interest of each Owner by virtue of his purchase of a Parcel within the Property and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Parcel even though the description in the instrument of conveyance or encumbrance may refer only to the Parcel.

G. TERM: The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded.

Thereafter they shall be automatically extended for successive periods of ten (10) years each.

H. TERMINATION: This Declaration may be terminated only by the affirmative vote or written consent, or any combination thereof, of the eligible Members entitled to vote in the amount of at least ninety percent (90%) of the total votes of the Membership eligible to vote. Any such termination of this Declaration shall be executed by the President and Secretary of the Association and recorded in the official records of Yavapai County, Arizona. No such termination of these provisions shall be a bar for any subsequent commitment of the Property to certain covenants, conditions and restrictions acceptable to the then Owners.

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

J. CONFLICTS: In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Guidelines, the provisions of this Declaration shall prevail.

IN WITNESS WHEREOF, the undersigned executes this Amended and Restated Declaration of Covenants, Conditions and Restrictions for the purpose of certifying that Owners of Parcels representing at least two-thirds (2/3rds) of the voting power of the Association approved the Amended and Restated Declaration of Covenants, Conditions and Restrictions.

Headwaters Ranch Property Owners Association, Inc.,
an Arizona nonprofit corporation

By: _____

Name: _____

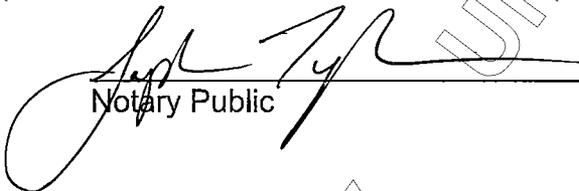
Its: President

Date: _____

STATE OF ARIZONA

County of Yavapai

The foregoing instrument was acknowledged before me this 4th day of October, 2019, by William Lacey, President of Headwaters Ranch Property Owners Association, Inc., an Arizona Nonprofit Corporation.



Notary Public

