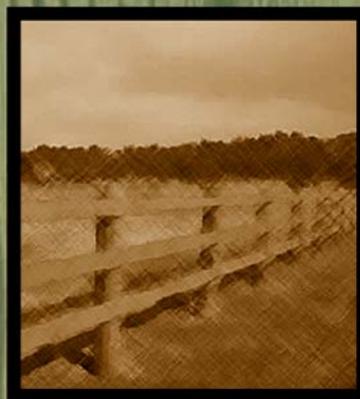




# DEVELOPMENT CAPABILITY REPORT



JUNE 2011

# J-6 Ranch Development Capability Report

*Submitted to:*

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Planning and Zoning Department  
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June 2011

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<b>I. Owner’s Vision</b>	<b>I-iii</b>
A. Owners’ Vision.....	I-1
<b>II. Introduction</b>	<b>II-1</b>
A. Executive Summary .....	II-2
B. Regional Context .....	II-3
C. Site Location .....	II-5
D. Adjacent Land Ownership .....	II-8
E. History .....	II-10
<b>III. Site Analysis</b>	<b>III-1</b>
A. Existing Zoning .....	III-2
B. Comprehensive Plan Designation .....	III-4
C. Existing Land Uses.....	III-6
D. Topography.....	III-8
E. Hydrology.....	III-10
F. Vegetation and Wildlife.....	III-17
G. Existing Infrastructure and Utilities.....	III-18
<b>IV. Land Use and Development Capability</b>	<b>IV-1</b>
A. Project Overview .....	IV-2
B. Land Use Concept Plan .....	IV-4
C. Compatibility to Adjoining Development.....	IV-9
D. Post-Development Hydrology .....	IV-9
E. Screening and Buffering Methods .....	IV-14
F. Open Space.....	IV-14
G. Pedestrian Trails and Equestrian Provisions.....	IV-17
H. Infrastructure and Utility Provisions .....	IV-17
I. Water Supply .....	IV-17
J. Traffic Impact.....	IV-19
K. Water Conservation Methods .....	IV-19
L. Protection of Natural Resources .....	IV-19
<b>V. Sustainability Plan</b>	<b>V-Error! Bookmark not defined.</b>
A. Owner’s Vision.....	V-2
B. Developing the Plan .....	V-3
C. The Plan.....	V-5
D. Implementation of the Plan .....	V-12
E. Amendments/Enforcement .....	V-13
<b>VI. Design Guidelines</b>	<b>VI-1</b>
A. Purpose of the Development Guidelines and Design Guidelines.....	VI-2
B. Relationship to Declaration .....	VI-2
C. Definitions .....	VI-2



D.	Architectural Design Theme.....	VI-4
E.	Landscape Theme.....	VI-4
F.	Custom Lot Grading and Drainage .....	VI-5
G.	Lighting.....	VI-6
H.	Design Review Process .....	VI-7
I.	Landscape and Architectural Standards.....	VI-12
J.	Design Review Committee.....	VI-18

**VII. Citizen Review Report** **VII-1**

A.	Introduction .....	VII-2
B.	Copy of Notice Sent to Property Owners.....	VII-2
C.	Sign-in Sheets from Neighborhood Meeting .....	VII-8
D.	Questions and Answers .....	VII-10

**Appendix A: Addresses** **A-1**

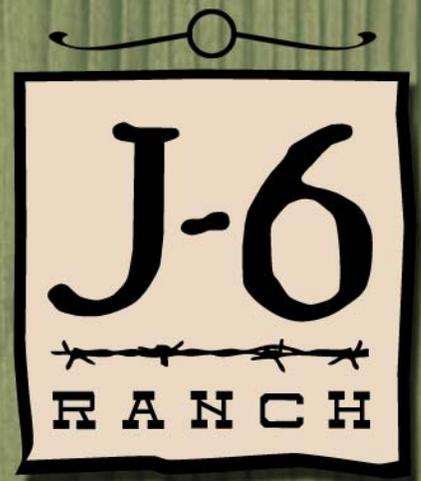
**Appendix B: C,C&R's** **B-1**

**List of Exhibits**

EXHIBIT II.B: REGIONAL CONTEXT .....	4
EXHIBIT II.D.1: SITE LOCATION.....	6
EXHIBIT II.D.2: AERIAL LOCATION .....	7
EXHIBIT II.E: ADJACENT LAND OWNERSHIP .....	9
EXHIBIT III.A: EXISTING ZONING .....	3
EXHIBIT III.B: COMPREHENSIVE PLAN DESIGNATIONS.....	5
EXHIBIT III.C: EXISTING LAND USES.....	7
EXHIBIT III.D: TOPOGRAPHY .....	9
EXHIBIT III.E.1: OFF-SITE HYDROLOGY.....	11
EXHIBIT III.E.4.A: ON-SITE HYDROLOGY .....	15
EXHIBIT III.E.4.C: FEMA FIRM PANEL MAP .....	16
EXHIBIT IV.B.1: NEIGHBORHOOD PLAN .....	6
EXHIBIT IV.B.2: CONCEPTUAL LAND USE PLAN .....	7
EXHIBIT IV.B.3: NEIGHBORHOODS 1, 2 & 3 LOT LAYOUT .....	8
EXHIBIT IV.D.3: POST-DEVELOPMENT HYDROLOGY .....	12
EXHIBIT IV.F: CONCEPTUAL CONSERVATION PLAN.....	16
EXHIBIT A: STANDARD EXTERIOR PLANT COLORS.....	23
EXHIBIT B: APPROVED PLANT LIST .....	24
EXHIBIT C: PROHIBITED PLANT LIST .....	27
EXHIBIT D: PATIO WALL MATERIALS .....	28
EXHIBIT E: DECOMPOSED GRANITE AND CRUSHED ROCK SPECIFICATIONS.....	29



# I. OWNER'S VISION



## A. *Owners' Vision*

**J-6 Ranch**, with its natural beauty and rich history, felt like home the first moment we experienced it. This feeling was accompanied by our desire to preserve this pristine natural setting and its abundant plant and animal life. That preservation has become our commitment.

**J-6 Ranch** is the 556 acres where the historic pink ranch house stands with the Whetstones as its backdrop, on J-Six Ranch Road, south of Interstate 10 and Red Hawk. Our design for its development has progressed at a pace that has allowed us to carefully research and thoughtfully plan for a sustainable community. It's been said, "All good things take time." We wholeheartedly agree.

Meeting with numerous neighbors in group settings, as well as in their homes – so as to listen, learn and share our plans – has been a valuable experience. We understand this beautiful setting has been cherished by many for years.

The majority of the **J-6 Ranch** site will be preserved as natural open space. A biologist has spent six days on the property to assist in the identification and preservation of plant species and wildlife.

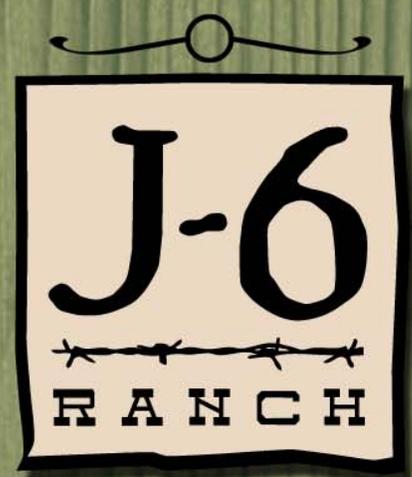
Welcoming those folks who choose to enjoy our pedestrian and equestrian trails will be the tranquil rolling foothills with its majestic mesquites and scrub oaks. After decades of being closed off, we will open pedestrian and equestrian access to the Coronado National Forest for the general public.

The rich history of the ranch house that has served as a landmark all these years will hold a prominent place in our plans. The stories of President John F. Kennedy and his brother Joe working **J-6 Ranch** as teenagers will continue to be enjoyed by many.

We are confident **J-6 Ranch** will be a model for all of Cochise County – increasing home values for all neighbors. Folks will be drawn to this area by its beauty, rural feel and history – and the desire to preserve them. That is the goal we share at **J-6 Ranch**.



## II. INTRODUCTION



---

## A. *Executive Summary*

Since the initial rezoning application submittal in 2007, the owners have worked diligently to create an innovative and sustainable development that ensures the rural nature of the site and surrounding properties are protected. The main goal of the plan is to create an identity that focuses on a “sustainable community”. A formalized sustainability plan, design guidelines section and a declaration of conditions, restrictions, and easements have been incorporated as a regulatory mechanism to ensure that all improvements are completed in an environmentally sensitive manner. Additional regulations have been integrated in the plan that include but are not limited to: preservation of open space, water conservation, water harvesting, recreational amenities, protection of dark skies, green building, solar, culture and history, architecture and the formation of the Design Review Committees.

The Development Capability Report is organized into seven sections. The first section sets forth the owners’ vision for the project. The second section, Introduction, addresses the regional and local context of the site.

The third section, Site Analysis, identifies and describes on-site and off-site conditions that affect the development of the site.

The fourth section, Land Use and Development Capability, presents the proposed development and addresses how the design of the project accounts for those on-site and off-site conditions.

The fifth section, Sustainability Plan, guides the planning, design and construction of the community. These measures support principles of environmental, social and economic sustainability within the development.

The sixth section of this report, Design Guidelines, consists of guidelines developed for J-6 Ranch. The guidelines section of this document encourages and ensures, to the maximum extent possible, the establishment of a community with quality landscape within the development. Balancing the appropriate articulation of space with environment, privacy, and recreation needs is a primary aim of these guidelines. Creating this interaction, and providing for other needs such as aesthetics, privacy, and tranquility, is of primary importance to these guidelines. Adherence to these guidelines will ensure a high quality of appearance for the community as well as development plan compatibility. These guidelines are designed as an informational source for site development, landscape architecture, and architectural and signage features that create the community image of J-6 Ranch. These guidelines provide criteria for builders, planners, architects, landscape architects, and civil engineers. They provide a basis for evaluating and directing the planning and design within the project area in the context of the surrounding area.

The seventh section of this report, Citizen Review Report, compiles required information as outlined in the Cochise County Planning Department Citizen Review Process including:

- Copies of notices sent to property owners;



- Copies of all information provided to the public;
- Sign up sheets from public meetings;
- Responses, concerns, and questions raised by the public during the notification process; and
- Applicant's responses to concerns raised by the public.

Appendix A contains addresses of the surrounding property owners.

Appendix B consists of a Declaration of Covenants, Conditions, Restrictions and Easement (CC&Rs). The CC&R's will guarantee consistency of the design guidelines and sustainability standards throughout the development of J-6 Ranch.

## **B. Regional Context**

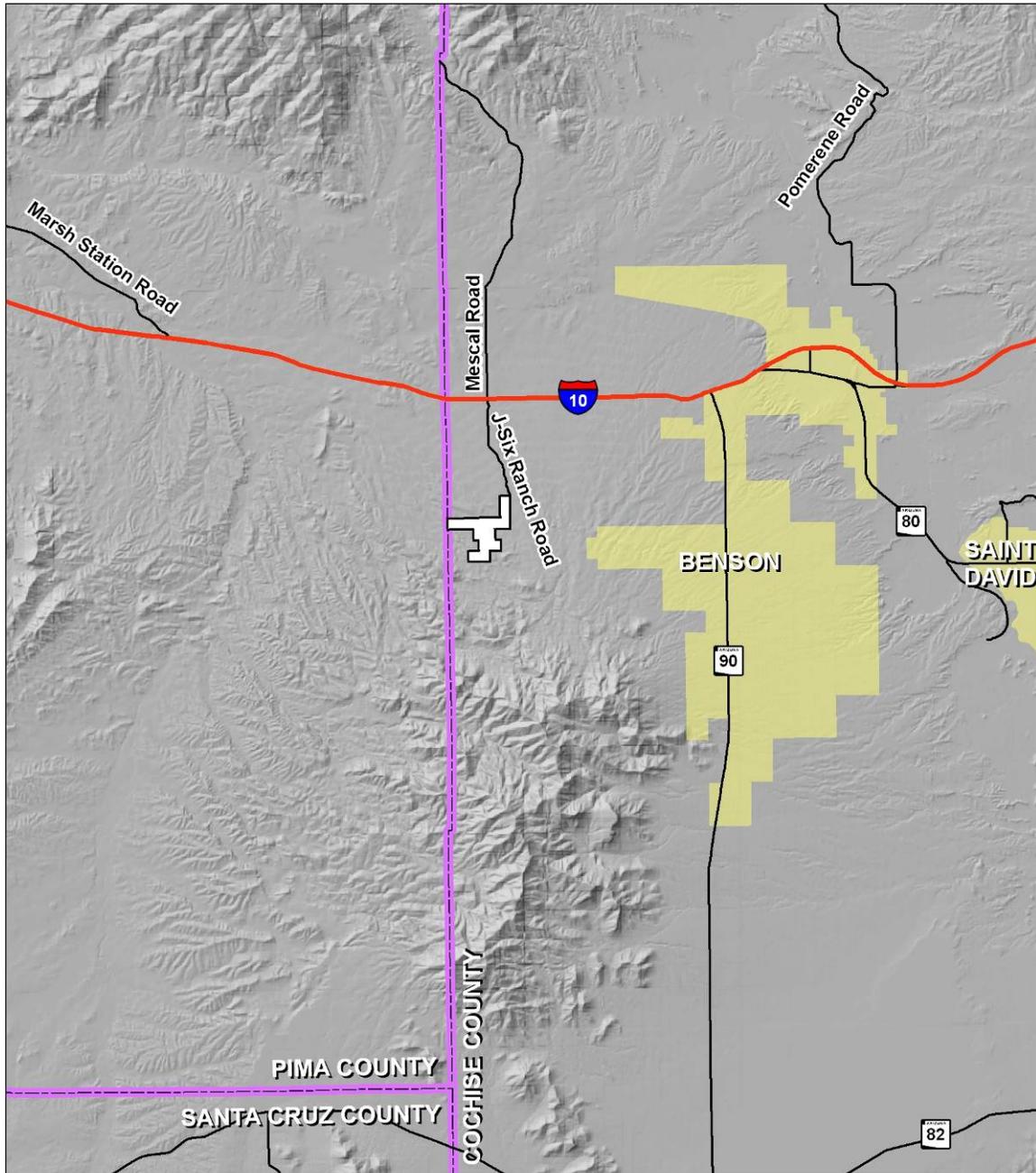
The J-6 Ranch is situated on 556 acres south of Interstate 10 in Cochise County, Arizona within Sections 29, 30, 31 and 32 of Township 17 South, Range 19 East. The subject property is located in the far western region of Cochise County, just east of the Pima County boundary line. Cochise County is primarily a rural community with a mixture of urban and small community lifestyles. The county has a strong history of livestock production, farming and mining throughout most of the county, which continues today. The major urban communities in the county include Benson, Wilcox, Sierra Vista-Huachuca City, Douglas and Bisbee. Fort Huachuca has been a significant part of the county and is the largest single employer in the county. The current population estimate (2005) is 126,106 people.

The primary land ownership in Cochise County is privately held (40%); however, the Arizona State Land Trust holds approximately 35% of all the land in the county. The U.S. Forest Service holds approximately 13%, while the Bureau of Land Management holds approximately 10% of the county land. There is no distinct land ownership pattern in the county; however, the majority of the private land is in central portions of the county, while the State Trust land is primarily in the northwestern, western and southeastern portions of the county. The Coronado National Forest is scattered throughout the county, however, the largest tract is in the eastern portion of the county and includes the Chiricahua Mountains. The project site is adjacent to or near all four land categories mentioned above.

See Exhibit II.B: Regional Context.



Exhibit II.B: Regional Context



**Legend**

-  Interstate 10
-  Major Roadways
-  Site Boundary
-  Incorporated City/Community
-  County Boundary

NORTH 

 THE PLANNING CENTER

0 2.0 4 Miles

Location: EMR-02\exhibits\Regional\_Location



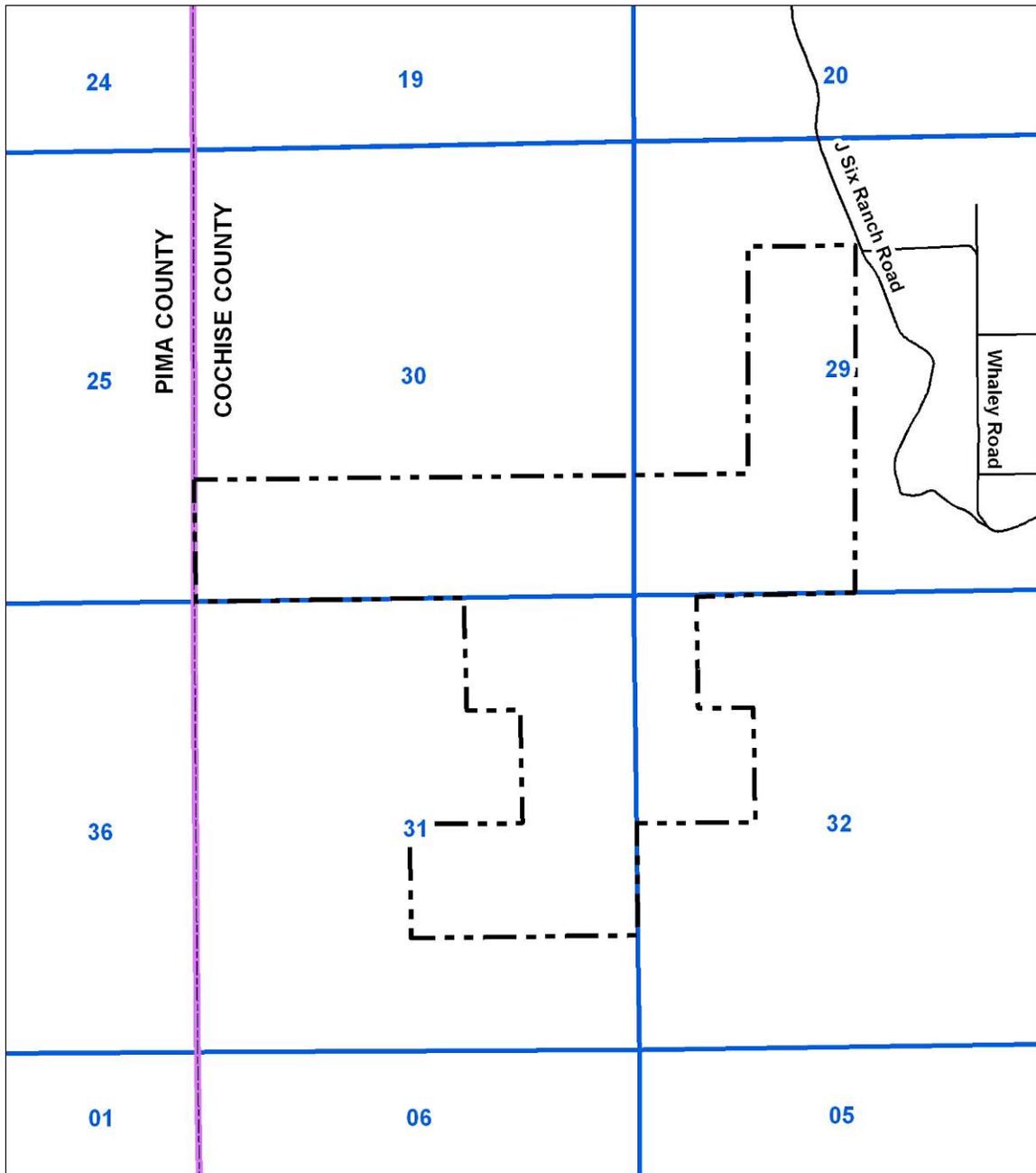
**C. Site Location**

The proposed J-6 Ranch residential development is near the Cochise County/Pima County boundary just south of the existing J-6 community in Township 17 South, Range 19 East, and Sections 29, 30, 31 and 32. The site is approximately 2 miles from the Mescal Road / J-Six Ranch Road exit off Interstate 10 and approximately 7.5 miles from downtown Benson. The project site is approximately 556 acres.

See Exhibit II.D.1: Site Location and Exhibit II.D.2: Aerial Location.



Exhibit II.D.1: Site Location



**Legend**

-  Roads
-  Site Boundary
-  Township, Range, and Section
-  County Boundary

NOTE: Project site located in Township 17S, Range 19E, Sections 29, 30, 31 & 32

Approximate project site acreage: 556 AC

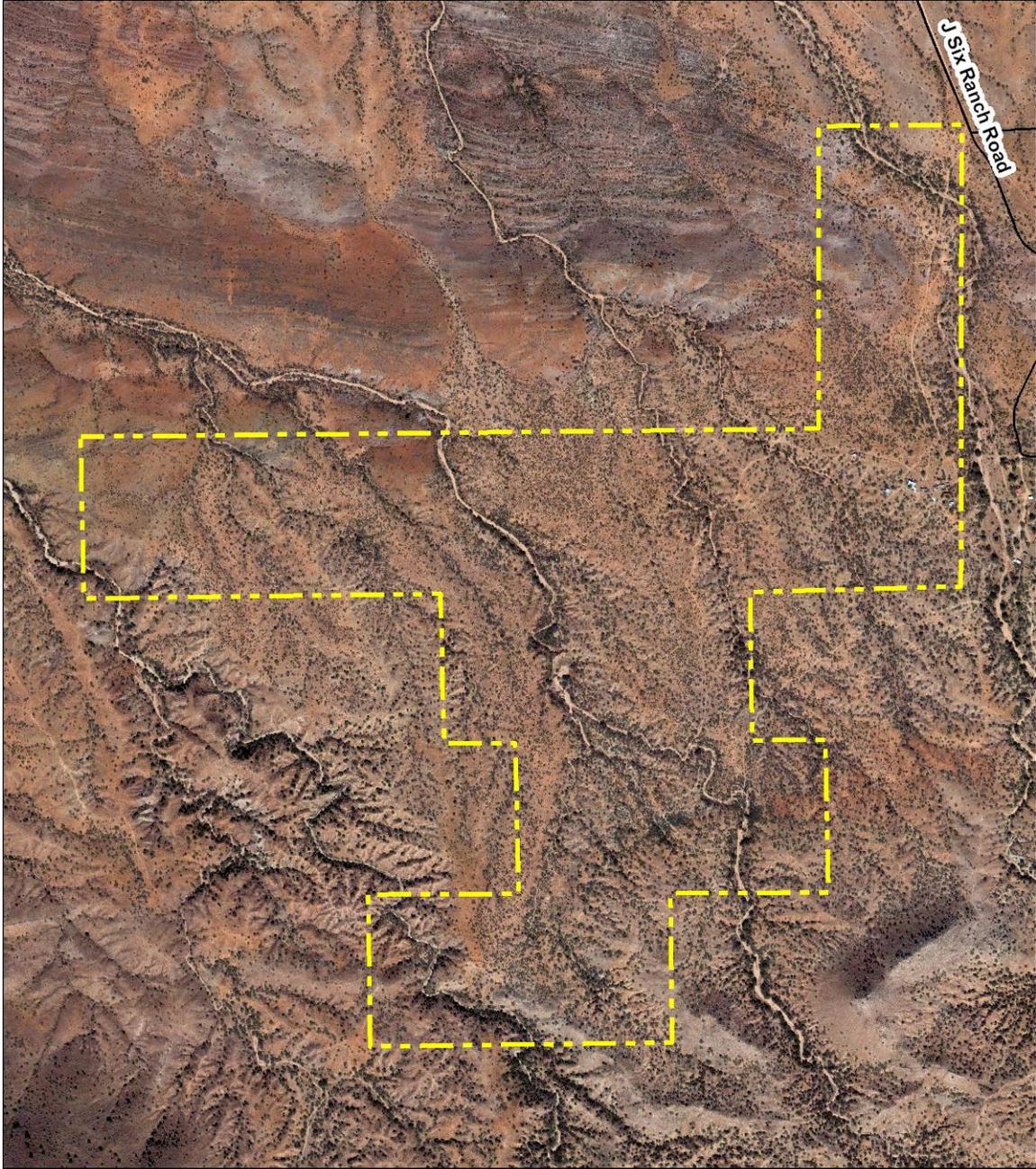
NORTH  THE PLANNING CENTER 

0' 1,000' 2,000'

Location: EMR-02\exhibits\site\_location



Exhibit II.D.2: Aerial Location



**Legend**

- Roads
- - - Site Boundary

NORTH



THE PLANNING CENTER

0' 750' 1,500'

Location: EMR-02\exhibits\airis\_location



## **D. Adjacent Land Ownership**

### **1. Private**

There is private property north, east and west of the project site as shown in Exhibit II.E: Adjacent Land Ownership. The property to the north, excluding State Trust Land, is part of the Redhawk development. The property to the east is private land that consists of single-family residences. The property to the west of the project site is within Pima County and under the ownership of J-6 Ranch LTD. More information of existing land uses adjacent to the site is included in Section III.C.

### **2. Forest Service**

U.S. Forest Service land borders the site to the south. The land is within the Coronado National Forest and is a part of the Sierra Vista Ranger District. This section of Coronado National Forest is within the Whetstone Mountain Range and features Haystack Mountain with an elevation of 5,182 feet and Easter Mountain with an elevation of 6,628 feet.

### **3. State Land**

The State of Arizona owns land directly north of the project site. The goal of the Arizona State Land Department is to provide for Arizona's growth, open space, and State Trust resources through responsible land management strategies. The State Trust Land parcel is currently vacant.

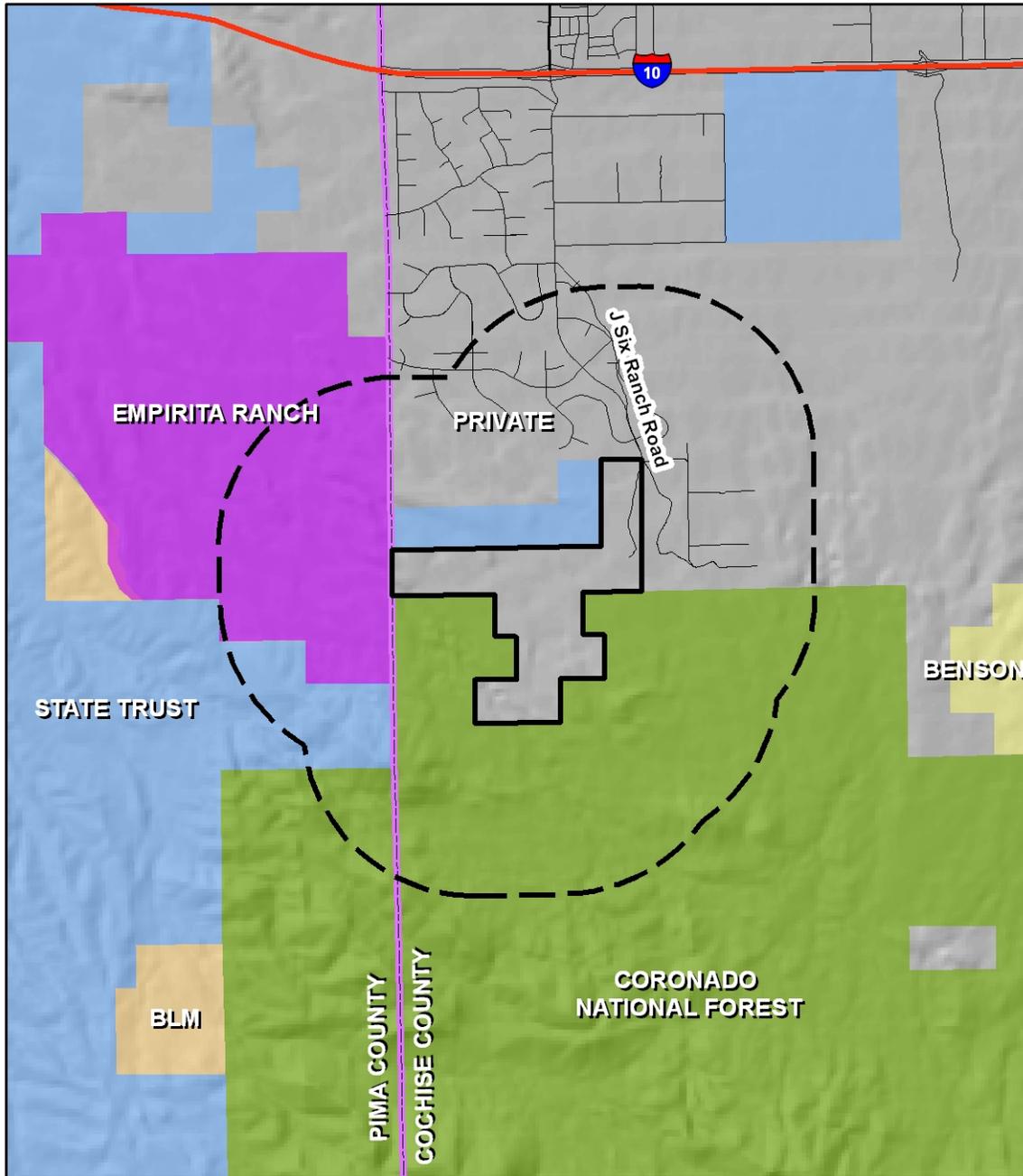
### **4. Pima County**

Pima County owns land west of the project site referred to as Empirita Ranch. Empirita Ranch was founded in 1941 after the breakup of the Empire Ranch. It was family-owned for many years before being sold off and a portion acquired by Pima County. Empirita is a historical cattle ranch that continues today as a working ranch landscape. The 358-acre headquarters property was acquired by Pima County between 1988 and 1990. In 2009, as part of the Sonoran Desert Conservation Plan, the County acquired an additional 2,700 acres of the Old Empirita Ranch near the north end of the Whetstone Mountains. Protecting Empirita Ranch provides an unfragmented, natural habitat for wildlife as well as allowing sustainable cattle ranching.

See Exhibit II.E: Adjacent Land Ownership.



**Exhibit II.E: Adjacent Land Ownership**



**Legend**

- Interstate 10
- Roads
- One Mile Radius
- Site Boundary

- County Boundary
- Incorporated City

**Land Ownership**

- BLM
- National Forest
- State Trust
- Private
- Empirita Ranch

NORTH

THE PLANNING CENTER

0 0.5 1 Mile

Location: EMR-02\exhibits\land\_ownership

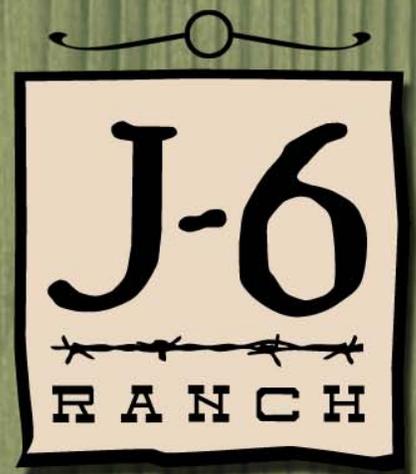


## ***E. History***

The property has been known to be a part of the J-6 Ranch, which operated since the 1940s and is currently grazed. The property contains an abandoned dilapidated ranch house and related abandoned dilapidated structures that were built in the 1940s and thereafter. The property owners were able to compile numerous documents; Arizona Highways Magazine articles; photographs of President John F. Kennedy working at the J-6 Ranch as a teenager; a cowhide honoring Jack Speiden, a former owner of J-6 Ranch, signed by the who's who of Arizona politics, including former Senator and Presidential candidate Barry Goldwater and Governor Jack Williams; and various other pieces of memorabilia. As a result of these findings, they hope to maintain a fine historical collection in the ranch house, which is proposed to be improved and used as a community center for J-6 Ranch.



# III. SITE ANALYSIS



## **A. Existing Zoning**

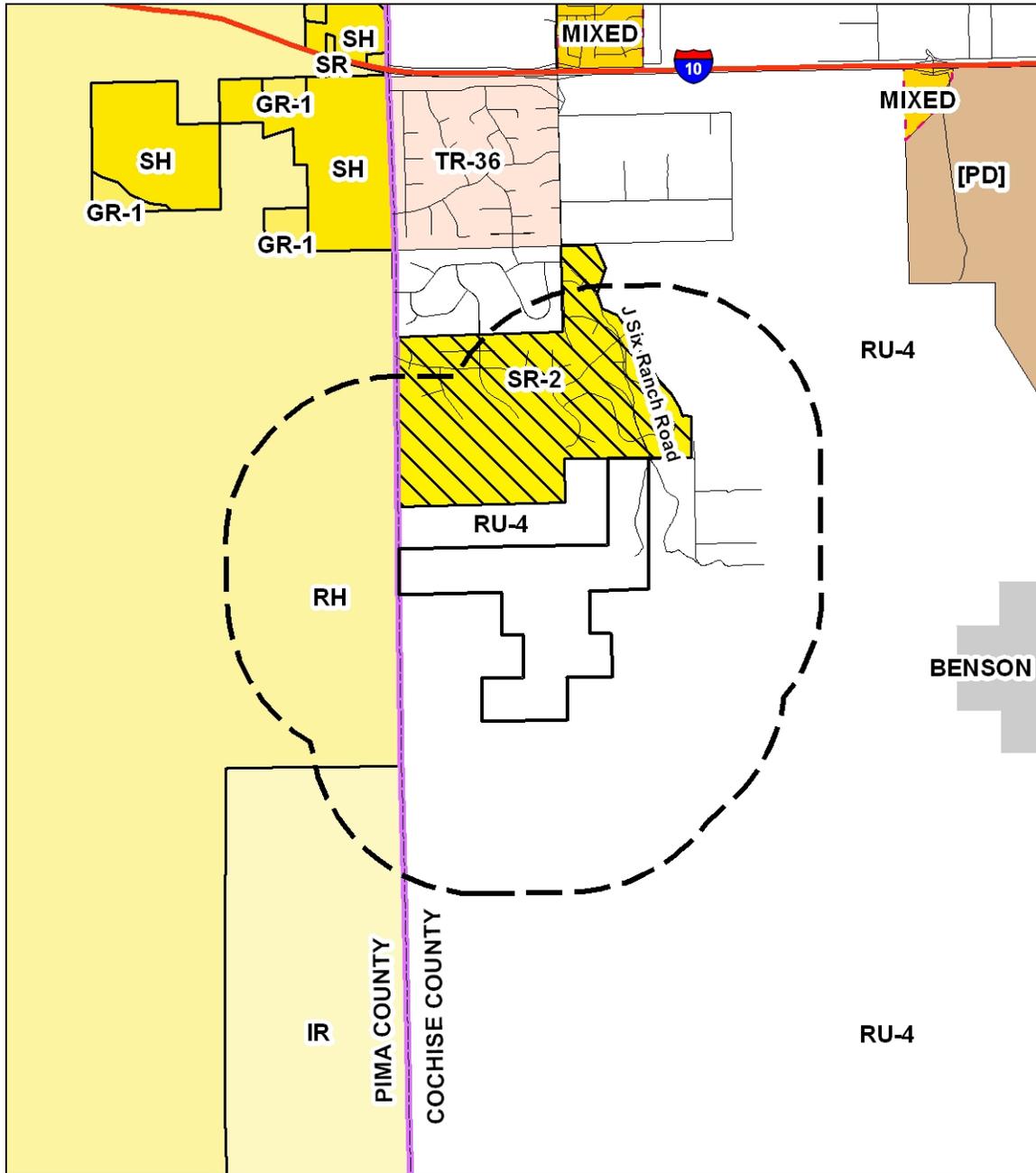
The existing zone on the property is RU-4, which is intended for general rural land uses. Rural zoning districts are primarily used for residential purposes, but do allow non residential and non agricultural activities as well as recreational support services that are compatible with rural living. The density allowed by the RU-4 designation is one dwelling per 4 acres.

The zoning designation adjacent to the project site to the north (the Redhawk II and III developments) is SR-2, which allows one dwelling per 2 acres. Zoning designations in other areas north of the project site include TR-36, which allows one dwelling per 36,000 square feet, and RU-4 zoning. Zoning northeast of the project is RU-4. The Pima County zoning designation immediately west of the project site is RH (Rural Homestead Zone), which allows one dwelling per 180,000 square feet. Zoning designations in other areas west of the project site include IR (Institutional Reserve Zone), SH (Suburban Homestead Zone) and GR-1 (Rural Residential Zone). IR allows one dwelling per 36 acres; SH allows one dwelling per 144,000 square feet; and GR-1 allows one dwelling per 36,000 square feet.

See Exhibit III.A: Existing Zoning.



Exhibit III.A: Existing Zoning



**Legend**

- Interstate 10
- Roads
- One Mile Radius
- Site Boundary
- County Boundary

**Cochise County Zoning**

- RU-4
- SR-2
- TR-36
- Mixed
- PD
- Incorporated City

**Pima County Zoning**

- IR
- RH
- GR-1
- SH



Location: EMR-02\exhibits\zoning



## **B. *Comprehensive Plan Designation***

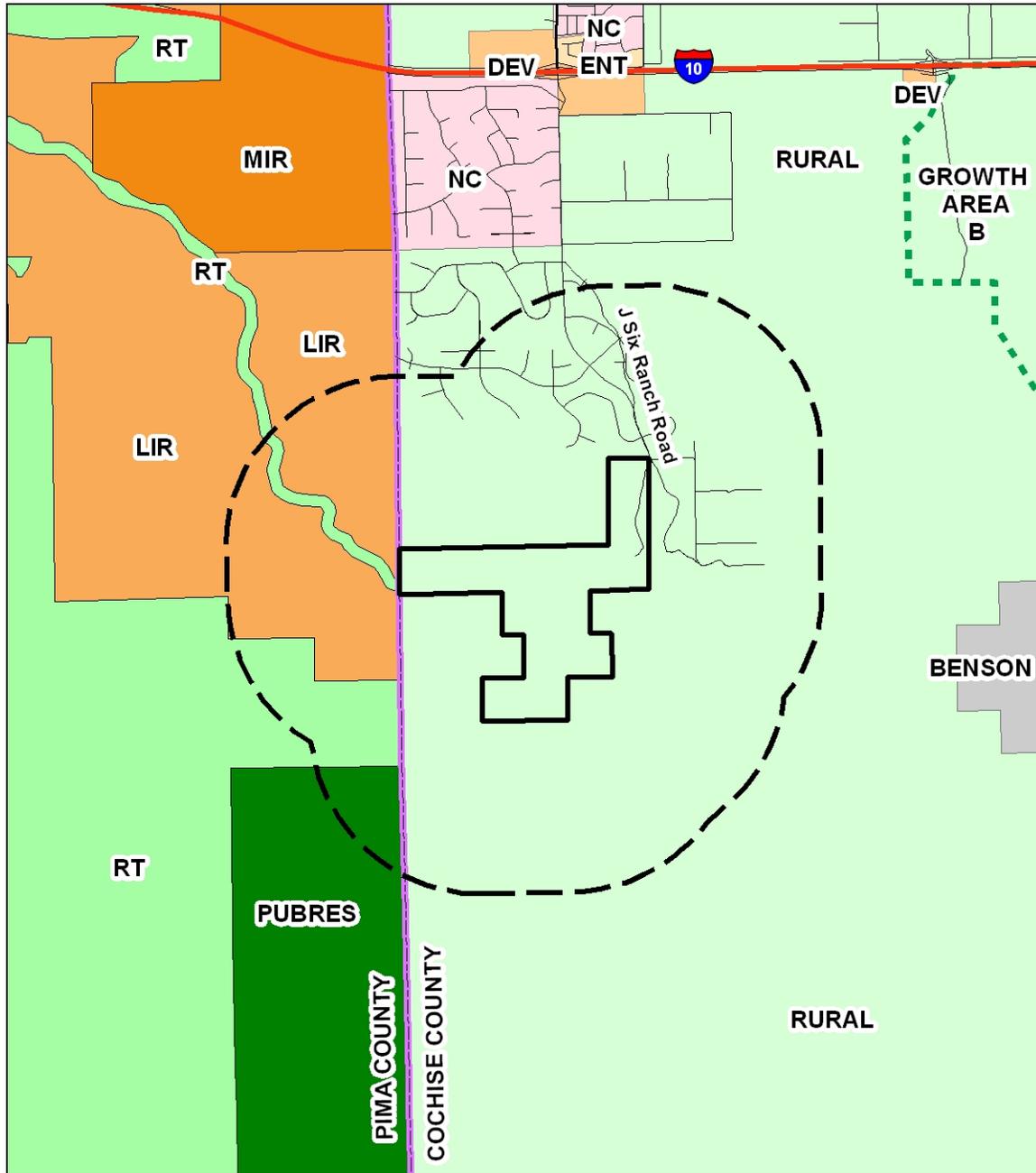
The project site lies in an area designated as “Rural” under the Cochise County Comprehensive Plan. The Rural designation is also considered a Category D (Rural) Growth Area. The Plan identifies this designation as having one or more of the following characteristics: sparsely populated; larger lot sizes; agricultural production or grazing; availability of sites large enough for intensive industrial uses that cannot be accommodated in other growth areas; large expanses of private and public lands; and/or have developed and undeveloped recreational resources.

The majority of the property surrounding the site is also designated as Rural. Areas north of the project site, including the J-6 and Mescal communities, are designated NC (Neighborhood Conservation), DEV (Developing) and ENT (Enterprise). Areas west of the project site within Pima County are designated as RT (Resource Transition), PUBRES (Public Preserves), LIR (Low Intensity Rural) and MIR (Medium Intensity Rural). The maximum residential gross density for LIR and RT is 0.3 Residents per Acre (RAC), while the maximum density for MIR is 1.3 RAC.

See Exhibit III.B: Comprehensive Plan Designations.



Exhibit III.B: Comprehensive Plan Designations



**Legend**

- Interstate 10
- Roads
- One Mile Radius
- Site Boundary
- County Boundary

**Cochise County Comprehensive Plan**

- DEV
- ENT
- NC
- RURAL
- Category B Growth Area
- Incorporated City

**Pima County Comprehensive Plan**

- LIR
- MIR
- RT
- PUBRES

NORTH

THE PLANNING CENTER

0 0.5 1 Mile

Location: EMR-02\exhibits\comp\_plan



### **C. *Existing Land Uses***

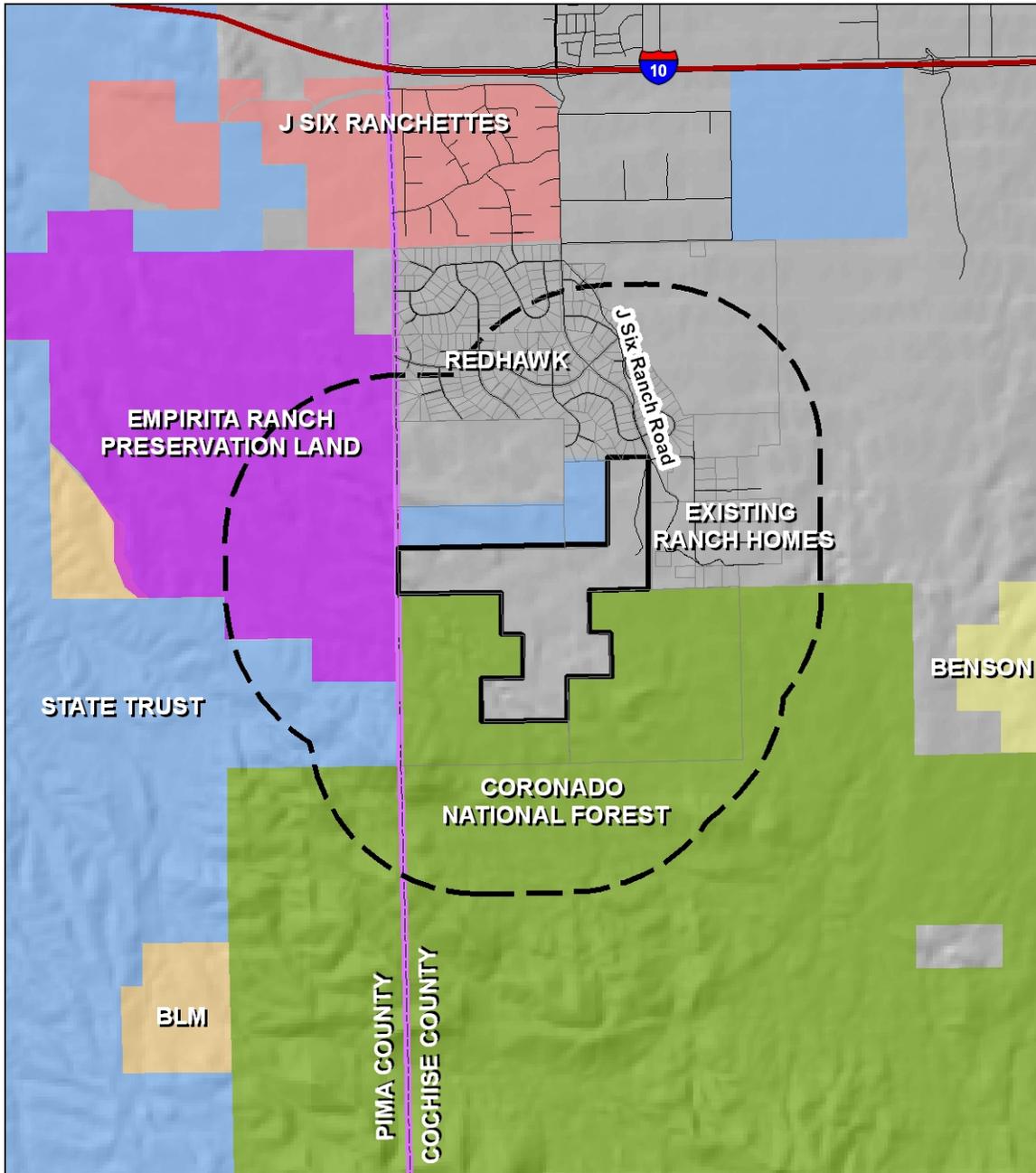
The majority of the property is currently vacant. Historically, the property had been associated with the J-6 Ranch and remnants of its previous use are existent on-site. There is an abandoned dilapidated ranch house and related abandoned dilapidated structures located in the southeastern portion of the property, but the remainder of the site is undeveloped.

The property to the north of the site is Arizona State Trust Land and is currently vacant. Further north of the site, is the Redhawk residential development, which is currently under construction by Thunder Ranch. Redhawk is a 320-acre development consisting of 92 3-acre lots and is anticipated to include an additional 1,000 acres and 398 total residential units for the future development of all three phases. There are also privately owned parcels to the east and west of the site. There are a few scattered homes on large-acre lots to the east of the site; otherwise the land is primarily undeveloped. The private land to the west is completely vacant and a part of the Empirita Ranch, which is approximately 2,400 acres. The remaining land to the south of the site is within the Coronado National Forest.

See Exhibit III.C: Existing Land Uses.



Exhibit III.C: Existing Land Uses

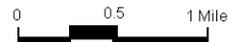


**Legend**

- Interstate 10
- Roads
- One Mile Radius
- Site Boundary
- County Boundary
- Incorporated City
- J-6 Ranchettes

**Land Ownership**

- BLM
- National Forest
- State Trust
- Private
- Pima County



Location: EMR-02\exhibits\land\_ownership



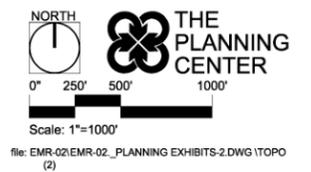
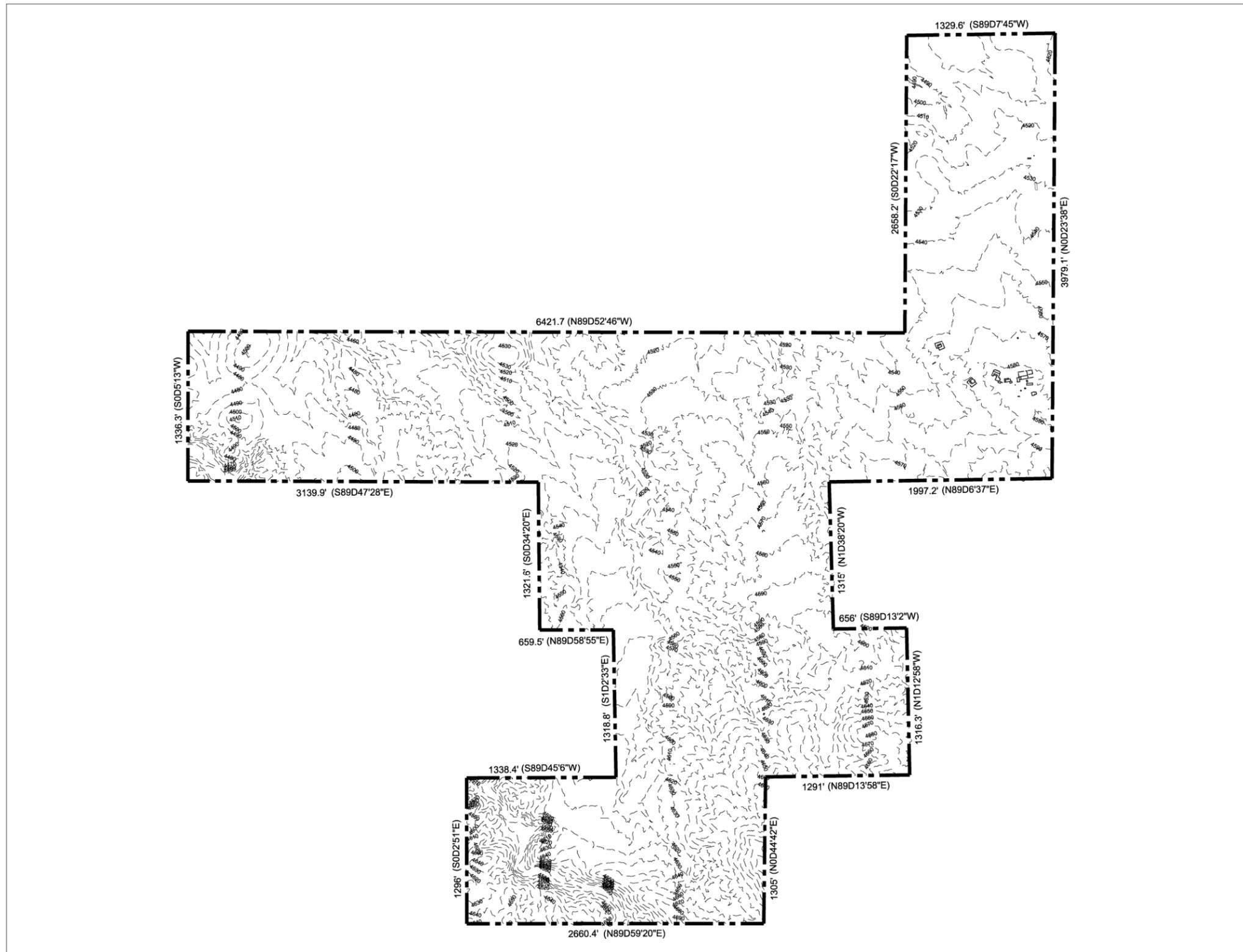
**D. *Topography***

The general topography of the site consists of undulating hills with shallow arroyos separated by well weathered, non-distinct ridges, which are oriented from the southeast of the site toward the northwest of the site. There are not significant elevation changes throughout the site, but the elevation generally increases in southern and southeastern portions of the site, which is on the northwestern flank of Easter Mountain within the Whetstone Mountain range. The lowest site elevation is approximately 4,500 feet in the northernmost point of the property near the ranch entrance, while the highest site elevation is approximately 4,725 feet at the southern end of the site. Exhibit III.D has been provided which shows 10-foot elevation contours on the property.

See Exhibit III.D: Topography.



Exhibit III.D: Topography



## E. Hydrology

The following section is from a preliminary hydrology report prepared by PSOMAS, Inc, which addresses on-site and off-site pre development hydrologic characteristics and water resources.

### 1. Characteristics of Off-site Hydrology

There are twelve off-site watersheds that impact the site, OS1 through OS12. The discharges associated with these watersheds were derived using the methods outlined in the Pima County Hydrology Manual. Rainfall values from National Oceanic Atmospheric Administration (NOAA) Atlas 14 were used in these calculations. Exhibit III.E.1 shows direct impact to the site from the upstream watersheds and the impact on the downstream property. The results of the off-site hydrologic analysis are summarized below in Table 1.

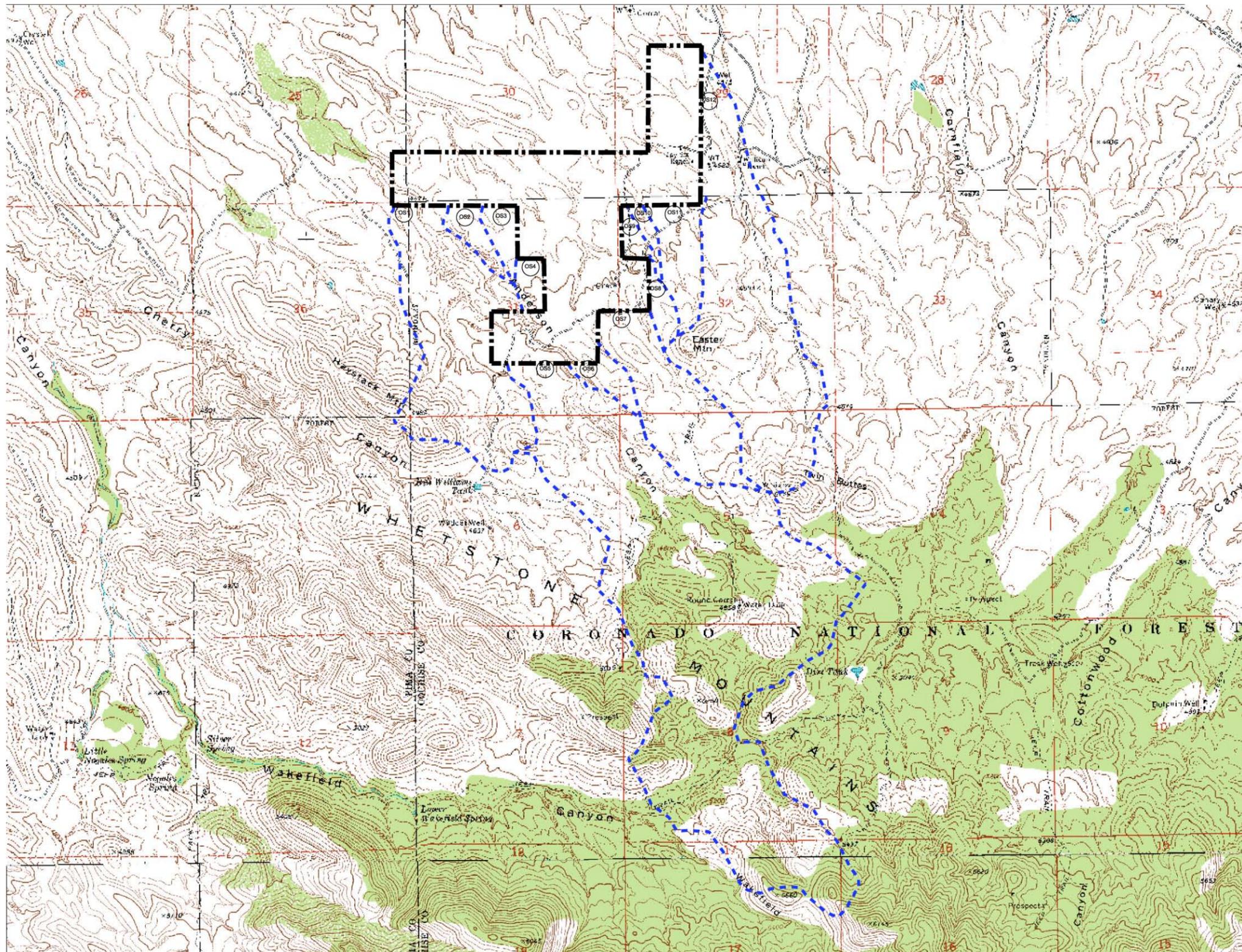
**Table 1**  
**Summary of Hydrologic Analysis (Off-site Existing Conditions)**

Concentration Point	Area (ac)	Length (ft)	Slope (ft/ft)	Basin Factor "N <sub>b</sub> "	T <sub>c</sub> (min)	Q <sub>100</sub> (cfs)
OS1	336.20	7881	0.0462	0.035	16.1	1991
OS2	28.39	2448	0.0408	0.035	7.6	217
OS3	27.25	1480	0.0628	0.035	5.0	248
OS4	20.67	1444	0.0346	0.035	5.0	188
OS5	1137.90	17506	0.0705	0.035	24.1	5360
OS6	28.16	1862	0.0242	0.035	7.7	232
OS7	180.99	6267	0.0820	0.035	10.2	1351
OS8	19.86	1905	0.0315	0.035	5.0	182
OS9	14.42	1370	0.0255	0.035	6.2	120
OS10	14.18	2018	0.0099	0.035	13.0	87
OS11	69.90	3478	0.0618	0.035	8.0	529
OS12	466.25	10587	0.0615	0.035	17.7	2560

See Exhibit III.E.1: Off-Site Hydrology.



Exhibit III.E.1: Off-Site Hydrology



**LEGEND:**

- SITE BOUNDARY
- OFF SITE WATERSHED
- CONCENTRATION POINT

**Summary of Hydrologic Analysis (Off-site Existing Conditions)**

Concentration Point	Area (ac)	Length (ft)	Slope (ft/ft)	Basin Factor "N <sub>10</sub> "	T <sub>e</sub> (mm)	Q <sub>100</sub> (cfs)
OS1	336.2	7881	0.0462	0.035	16.1	1991
OS2	28.39	2448	0.0408	0.035	7.6	217
OS3	27.25	1480	0.0628	0.035	5	248
OS4	20.67	1444	0.0346	0.035	5	188
OS5	1137.9	17506	0.0705	0.035	24.1	5360
OS6	28.16	1862	0.0242	0.035	7.7	232
OS7	180.99	6267	0.082	0.035	10.2	1351
OS8	19.86	1905	0.0315	0.035	5	182
OS9	14.42	1370	0.0255	0.035	6.2	120
OS10	14.18	2018	0.0099	0.035	13	87
OS11	69.9	3478	0.0618	0.035	8	529
OS12	466.25	10587	0.0615	0.035	17.7	2560

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 www.psomas.com

**THE PLANNING CENTER**

NORTH  
  
 0' 700' 1400' 2800'  
 Scale: 1"=2800'

file: EMR-02\EMR-02\_PLANNING EXHIBITS-2.DWG\OFFSITE EXISTING HYDRO



## 2. Off-site Natural or Man-made Features

There are no significant off-site natural or man-made features located within the above watersheds that may affect or be affected by the site.

## 3. Acreage of Upstream Off-site Watersheds with 100-Year Discharges Greater than 100 cfs

As seen above in Table 1 there is only one off-site watershed, OS10, which is less than 100 cfs; therefore the area of upstream off-site watersheds with discharges greater than 100 cfs in the 100-year storm is approximately 2,330 acres.

## 4. Characteristics of On-site Hydrology

### a. *Approximate 100-year Floodplain:*

As part of the drainage analysis, the 100-year floodplains for the J-6 Ranch parcel were modeled using the Army Corps of Engineers HEC-RAS software program and the water surface elevation at different locations along the reach was determined. The 100-year floodplains were then constructed by connecting the various water surface elevations with respect to the existing relief. The 100-year floodplains are depicted on Exhibit III.E.4.a.

See Exhibit III.E.4.a: On-Site Hydrology

### b. *Areas of Sheet Flooding with average depth:*

In general, the runoff conveyed across this site is conveyed within the existing channels. In areas where sheet flow does occur, discharges generated on-site are such that the depth of flow is less than 1 foot. For these reasons, no sheet flow areas were mapped.

### c. *Federally-mapped Floodways and Floodplains:*

There are no FEMA Floodplains located within the site. Per FIRM Panel Map Number 0400120725B (December 4, 1984), the entire project is located in Zone X unshaded areas determined to be outside the 500-year floodplain as shown on Exhibit III.E.4.c.

See Exhibit III.E.4.c: FEMA FIRM Panel Map.

### d. *100-year Peak Discharges Exceeding 100 cfs:*

Twenty-five on-site watersheds, CP1 through CP25, were analyzed using the methodology outlined in the Hydrology Manual for Engineering Design and Floodplain Management within Pima County, Arizona (Reference 1). The results of the hydrologic analysis are presented in Table 2, below. There are seven concentration points with less than 100 cfs. As mentioned in the footnote of Table 2, except in Reach 1, 8 and 16 where flow was



combined with a compound watershed calculation, direct summation was used when necessary to combine watersheds flows. This has been depicted on Exhibit III.E.4.a.

**Table 2**  
**Summary of Hydrologic Analysis (On-site Existing Conditions)**

Concentration Point	Area (ac)	Length (ft)	Slope (ft/ft)	Basin Factor "N <sub>b</sub> "	T <sub>c</sub> (min)	Q <sub>100</sub> (cfs)	CPs Contributing	Q <sub>100</sub> Total (cfs)
CP1*	13.57	1330	0.0526	0.035	5.0	121	1, 21, 22, OS1 and OS5	6345
CP2	7.83	858	0.0641	0.035	5.0	72	2	72
CP3	15.13	1531	0.0294	0.035	6.3	126	3	126
CP4	16.44	1586	0.0284	0.035	6.6	134	4 and OS2	351
CP5	40.10	4870	0.0308	0.035	14.2	236	5, OS3 and OS4	672
CP6	1.78	501	0.0399	0.035	5.0	16	6	16
CP7	27.04	3536	0.0325	0.035	10.9	181	7	181
CP8*	60.03	2801	0.0214	0.035	11.5	380	8, 18, 19, 20, OS6 and OS7	2004
CP9	13.39	1344	0.0335	0.035	5.5	115	9	115
CP10	26.18	3076	0.0293	0.035	10.4	180	10	180
CP11	32.81	2709	0.0351	0.035	8.8	235	11, 25, OS8, OS9 and	647
CP12	44.36	1788	0.0308	0.035	6.8	375	12 and OS11	904
CP13	8.52	866	0.0346	0.035	5.0	85	13	85
CP14	24.09	2199	0.0296	0.035	7.8	199	14	199
CP15	23.06	1596	0.0345	0.035	5.8	215	15	215
CP16*	36.09	3568	0.0210	0.035	13.3	232	16 and OS12	2594
CP17	0.70	289	0.0173	0.035	5.0	7	17	7
CP18	17.84	2118	0.0496	0.035	6.3	145	18, 20	619
CP19	27.43	2868	0.0453	0.035	8.1	200	19	200
CP20	65.50	2980	0.0386	0.035	9.0	467	20	467
CP21	4.25	611	0.0327	0.035	5.0	43	21, OS1	2034
CP22	30.58	2303	0.0369	0.035	7.4	251	22 and OS5	5611
CP23	4.30	624	0.0321	0.035	5.0	39	23	39
CP24	11.34	1118	0.0581	0.035	5.0	110	24	110
CP25	2.30	493	0.0304	0.035	5.0	23	25 and OS8	205

\*Q<sub>100</sub> calculated with routing. In all other reaches when summation was necessary, the concentration points were summed directly.

## 5. Existing Drainage Conditions along Downstream Property Boundary

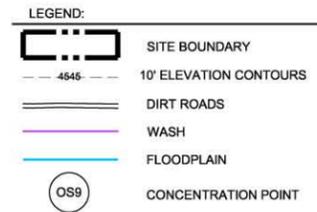
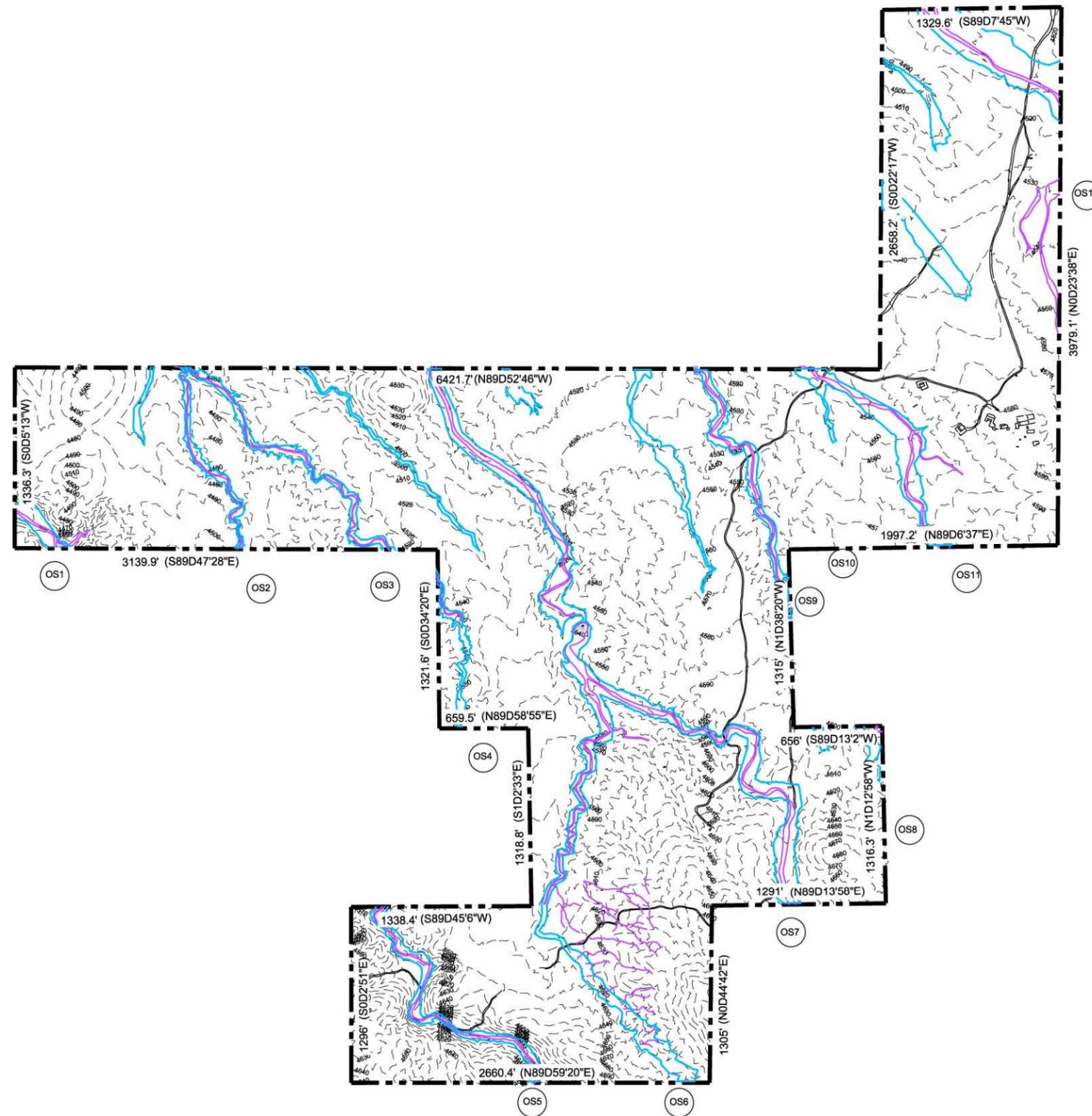
Under existing conditions, runoff generated on-site generally flows from the southeast to the northwest. Flow is primarily through channels; however, sheet flow occurs as well. Concentration points are located on the north, east and west sides



of the property due to its irregular geometry. In some instances flow leaves the site only to cross back onto the property slightly downstream.

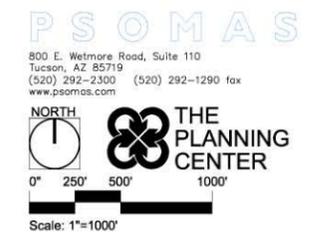


Exhibit III.E.4.a: On-Site Hydrology



Summary of Hydrologic Analysis (Off-site Existing Conditions)

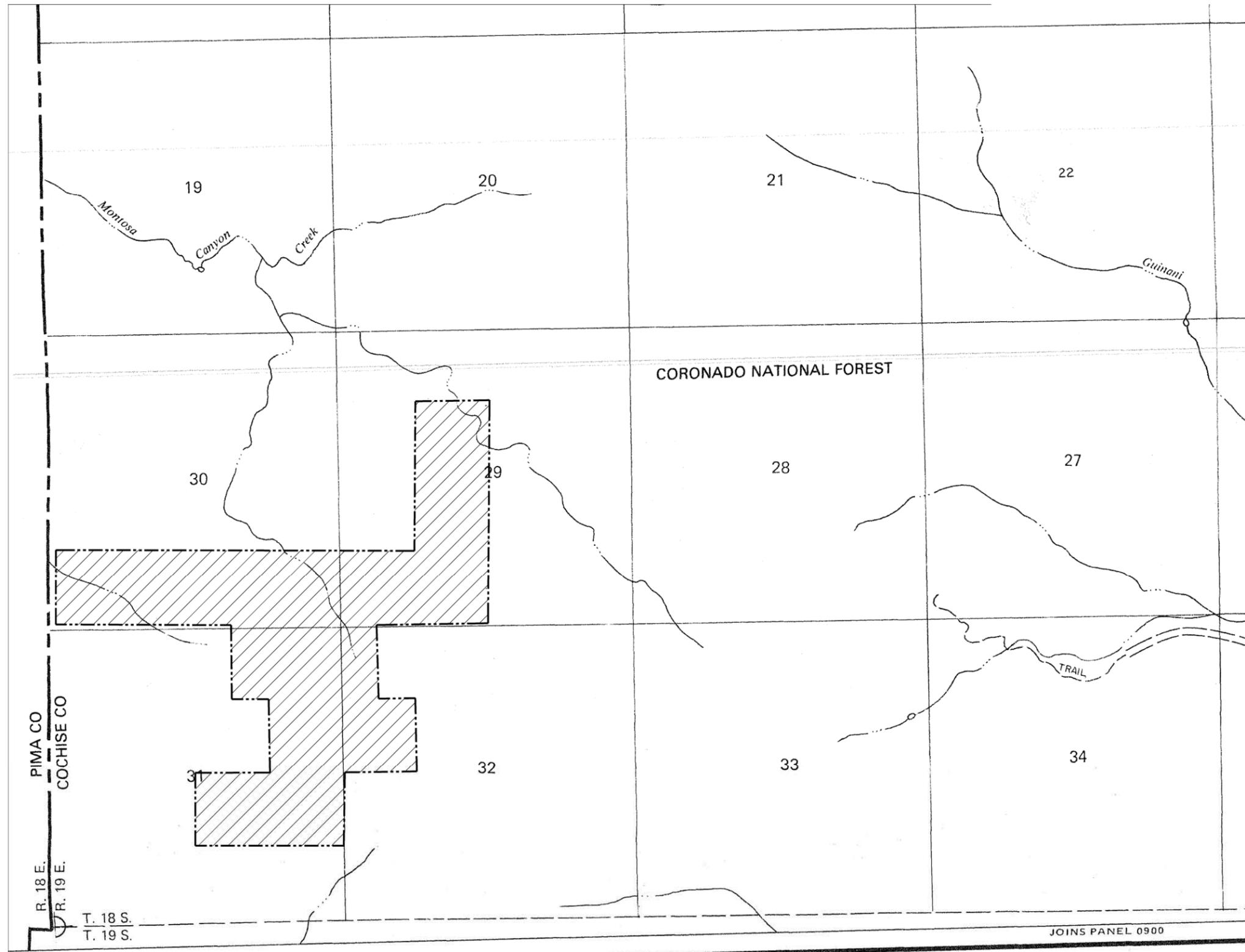
Concentration Point	Area (ac)	Length (ft)	Slope (ft/ft)	Basin Factor "N <sub>b</sub> "	T <sub>c</sub> (min)	Q <sub>100</sub> (cfs)
OS1	336.2	7881	0.0462	0.035	16.1	1991
OS2	28.39	2448	0.0408	0.035	7.6	217
OS3	27.25	1480	0.0628	0.035	5	248
OS4	20.67	1444	0.0346	0.035	5	188
OS5	1137.9	17506	0.0705	0.035	24.1	5360
OS6	28.16	1862	0.0242	0.035	7.7	232
OS7	180.99	6267	0.082	0.035	10.2	1351
OS8	19.86	1905	0.0315	0.035	5	182
OS9	14.42	1370	0.0255	0.035	6.2	120
OS10	14.18	2018	0.0099	0.035	13	87
OS11	69.9	3478	0.0618	0.035	8	529
OS12	466.25	10587	0.0615	0.035	17.7	2560



file: EMR-02\EMR-02\_PLANNING EXHIBITS-2.DWG\ONSITE EXISTING HYDRO



Exhibit III.E.4.c: FEMA FIRM Panel Map



LEGEND:  
 PROJECT AREA

**KEY TO MAP**

500-Year Flood Boundary  
 100-Year Flood Boundary  
 Zone Designations\*

100-Year Flood Boundary  
 500-Year Flood Boundary  
 Base Flood Elevation Line  
 With Elevation in Feet\*\*

Base Flood Elevation in Feet  
 Where Uniform Within Zone\*\*

Elevation Reference Mark

Zone D Boundary

River Mile

\*\*Referenced to the National Geodetic Vertical Datum of 1929

**\*EXPLANATION OF ZONE DESIGNATIONS**

ZONE	EXPLANATION
A	Areas of 100-year flood; base flood elevations and flood hazard factors not determined.
AD	Areas of 100-year shallow flooding where depths are between one (1) and three (3) feet; average depths of inundation are shown, but no flood hazard factors are determined.
AH	Areas of 100-year shallow flooding where depths are between one (1) and three (3) feet; base flood elevations are shown, but no flood hazard factors are determined.
A1-A30	Areas of 100-year flood; base flood elevations and flood hazard factors determined.
A99	Areas of 100-year flood to be protected by flood protection systems under construction; base flood elevations and flood hazard factors not determined.
B	Areas between limits of the 100-year flood and 500-year flood, or certain areas subject to 100-year flood with average depths less than one (1) foot or whose contributing drainage area is less than one square mile, or areas protected by levees from the base flood. (Medium shading)
C	Areas of minimal flooding. (No shading)
D	Areas of undetermined, but possible, flood hazards.
V	Areas of 100-year coastal flood with velocity (wave action); base flood elevations and flood hazard factors not determined.
V1-V30	Areas of 100-year coastal flood with velocity (wave action); base flood elevations and flood hazard factors determined.

**NOTES TO USER**

Certain areas not in the special flood hazard areas (zones A and V) may be protected by flood control structures.

This map is for flood insurance purposes only; it does not necessarily show all areas subject to flooding in the community or all hydrologic features outside special flood hazard areas.

For obtaining map panels, see separately printed Index To Map Panels.

INITIAL IDENTIFICATION:  
 SEPTEMBER 9, 1974

FLOOD HAZARD BOUNDARY MAP REVISIONS:  
 OCTOBER 3, 1978  
 DECEMBER 11, 1979

FLOOD INSURANCE RATE MAP EFFECTIVE:  
 DECEMBER 4, 1984

Refer to the FLOOD INSURANCE RATE MAP EFFECTIVE date shown on this map to determine where actual rates apply to structures in the areas where elevations or depths have been established.

To determine if flood insurance is available in this community, contact your insurance agent, or call the National Flood Insurance Program, at (800) 618-6620.

NATIONAL FLOOD INSURANCE PROGRAM

**FIRM**  
 FLOOD INSURANCE RATE MAP

COCHISE COUNTY,  
 ARIZONA  
 (UNINCORPORATED AREAS)

PANEL 725 OF 1575  
 (SEE MAP INDEX FOR PANELS NOT PRINTED)

COMMUNITY PANEL NUMBER  
 040012 0725 B

EFFECTIVE DATE:  
 DECEMBER 4, 1984

Federal Emergency Management Agency

**PSOMAS**

800 E. Wetmore Road, Suite 110  
 Tucson, AZ 85719  
 (520) 292-2300 (520) 292-1290 fax  
 www.psomas.com

**THE PLANNING CENTER**

Scale: 1"=2000'

file: EMR-02EMP-04-DP\_LA.DWG\FIRM



**F. *Vegetation and Wildlife***

The vegetation supported in the proposed project area is described as a diluted and weak representation of the Semidesert Grassland Biome (143.1). The supported vegetation is influenced by, and contains components of, the Biotic Community transitioning in from the near West and East (Chihuahuan Desertscrub), along with the Biotic Community transitioning in from the South (Madrean Evergreen Woodland/Oak Woodland Association). Plant species supported in the proposed project area and representing the Semidesert Grassland Biome include assorted grass species including Three-awn (*Aristida* spp.), Grama Grass (*Bouteloua* spp.), Burroweed (*Isocoma tenuisecta*), and Yucca (*Yucca* spp.). Plant species supported in the proposed project area and representing the Chihuahuan Desertscrub Biome include; Saltbush (*Atriplex* spp.), Burrobush (*Hymenoclea monogyra*), and Littleleaf Ratney (*Krameria parviflora*). Plant species supported in the proposed project area and representing the Madrean Evergreen Woodland/Oak Woodland Association Biome include; Emery Oak (*Quercus emoryi*), Mexican Blue Oak (*Quercus oblongifolia*), and Palmer Agave (*Agave palmeri*).

The vegetation described and supported in the proposed project area was thoroughly investigated during six days of on-site investigation by Jay Esler of J.K.E. Bio-Consulting. Also a review of Biotic Communities, Southwestern United States and Northern Mexico, David E. Brown Editor and Charles H. Lowe, was performed.

During the investigation of the proposed project area, no signs of, or observations of Federally Listed Threaten or Endangered Species, State Sensitive Species, or Bureau of Land Management Sensitive Species, were identified.



## **G. Existing Infrastructure and Utilities**

This portion of the Development Compatibility Report identifies the existing infrastructure and public services within Cochise County that will serve the project site including sewer, water, fire districts, schools and private utilities.

### **1. Sewer**

There is no public sewer that serves the site. Each lot within the proposed development will be required to provide individual septic tanks.

### **2. Water**

The project site has been approved for inclusion in the service area of Empirita Water Company, which will serve the proposed development. Additional discussion on water provisions is in Section IV.H.

### **3. Fire Service**

At the time of development, the project will be contributing to the Mescal Volunteer Fire Department or annex into the fire district if one is formed.

### **4. Schools**

The project site is within the Benson Unified School District #1 with no schools existing or currently planned within a one mile radius of the site. Bus service for schools within the district will serve the site. The public institutions that would serve the site are Benson Primary and Middle School and Benson High School.

### **5. Private utilities**

The project site is serviced by Sulphur Springs Valley Electric Cooperative. Telephone service to the project site is provided by Qwest.



# IV. LAND USE & DEVELOPMENT CAPABILITY

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## **A. Project Overview**

### **1. Requested Zoning**

The zoning request for the proposed J-6 Ranch development is SR-2.

### **2. Relationship to Adopted Plans**

The proposed rezoning to SR-2 is in conformance with the current Cochise County Comprehensive Plan designation (D-Rural).

### **3. Characteristics of Proposed Development**

The proposed development will consist of single-family conservation subdivision. Fifty percent or more of the site will be preserved as natural open space.

### **4. Rezoning Criteria**

Compliance with the following factors justifies a favorable rezoning request, as noted in the Cochise County Zoning Regulations, Chapter 22, Amendment 2208.03: Rezoning Criteria. Supporting data, unless otherwise noted, is provided throughout this document.

1. A Land Use Concept Plan has been submitted as Exhibit IV.B.2. Supporting data includes: planned uses (Section IV.A.3); general location, size and height of all structures (Section IV.B.1); setbacks (Section IV.B.1); proposed screening and landscaping (Section IV.E); significant features on-site (Sections III.A-G); and a statement that a subdivision plat will be submitted within one year of rezoning approval (Section IV.B.1).
2. The proposed development meets all regulations for a SR-2 Zoning District. Supporting data for these regulations can be found in Section IV.B.1.
3. The proposed zoning district will not adversely affect adjoining districts making them incapable for development.
4. The project site has no uses that do not conform to the regulations of the proposed zoning district. A description of existing uses can be found in Section III.C.
5. The proposed zoning district will be an extension of the existing SR-2 zoning north of the project site making it compatible with existing development. Additional supporting data can be found in Section IV.C.



6. The proposed zoning district is compatible with existing zoning districts and offers adequate buffering and transition of densities to adjacent properties. Additional supporting data can be found in Section IV.C and Section IV.E.
7. The proposed development will be providing adequate services and infrastructure. A Traffic Impact Analysis (TIA) has been submitted separate from this application. The TIA provides supporting data that addresses pre development and post-development traffic issues. The Development Capability Report identifies existing services and necessary improvements relating to water, streets, sewer, electricity, telephone and fire protection. Additional supporting data can be found in Sections III.G and IV.H.
8. The proposed development is consistent with the preservation of surrounding streets as defined in Section 102.B.3.a-g of the Cochise County Comprehensive Plan. Future circulation needs have been accounted for with the current construction of J-Six Ranch Road. Additional supporting data can be found in the TIA.
9. The proposed development has one access point to a major street.
10. The proposed zoning district is not GB, LI or HI and the proposed development is not considered an infill project.
11. The proposed development accounts for the unique topographic features found on-site. Appropriate measures to protect and develop around these areas will be better determined during the platting stage; however, preliminary measures can be found in Section IV.F, V.E.3 and Appendix B.
12. Water conservation measures will be stressed throughout the development of the proposed project. The project site does not lie within the Sierra Vista Sub-watershed Overlay Zone. Additional supporting data can be found in Section IV.K, V.E.4 and Appendix B.
13. Multiple neighborhood meetings have been held to discuss the proposed project to concerned and interested members of the community. The applicant's response to comments and questions raised at the upcoming neighborhood meeting will be included in a supplement to Section VII. Following submittal of this Report and the zoning application, another neighborhood meeting will be scheduled and Section VII of this Report will be supplemented following that meeting.
14. Hazardous materials are not involved with the proposed development.



## **B. Land Use Concept Plan**

The Land Use Concept Plan for J-6 Ranch is distinguished by its integrated character of land use and the rich variety of preserved open space. The proposed neighborhoods are connected by a network of natural open space area and trails. The project will be divided into 14 neighborhoods which can be seen in Exhibit IV.B.1. Each neighborhood differs in size and will offer a varied number of lots. The northern portion of the development will primarily consist of homes on 1-acre lots while the eastern and southern portions of the development will primarily consist of homes on 2-acre lots. The overall density will not exceed one home per one and one-half acres or one home per 2 acres if a conservation subdivision is not used (See Exhibit IV.B.2). Fifty percent of the total land area will be conserved as natural open space. At the time of platting, detailed studies and surveys will better determine the exact location of conservation areas; however, a Conceptual Conservation Plan has been provided which delineates potential areas for conservation set aside (Please refer to Section IV.F).

Exhibit IV.B.3 is an example of proposed project lottings on a portion of the site. This lot layout is only an example of how lots and building envelopes will be placed throughout the development. Further engineering studies will be needed to determine the final layout of lots and building envelopes.

See Exhibit IV.B.1: Neighborhood Plan, Exhibit IV.B.2: Conceptual Land Use Plan, Exhibit IV.B.3: Neighborhood 1, 2 and 3 Lot Layout.

### **1. Support Data for the Land Use Concept Plan**

*a. Site Area:*

The site area is approximately 556 acres.

*b. Maximum Proposed Dwelling Units:*

The maximum number of dwelling units proposed for J-6 Ranch is 371 units. This number considers a 34 percent density bonus for a conservation subdivision, which sets aside 50 percent of the property as undisturbed open space. The total lots will not be determined until the subdivision plat stage; however, the total lots will not exceed 371 or 278 lots if a conservation subdivision is not used.

*c. Site Coverage:*

Maximum site coverage will not exceed 25% of lot area. Site coverage is defined by the Cochise County Zoning Code as the square footage of the structures divided by the square footage of the lot.



d. *Building Heights:*

Building heights for principal structures will not exceed 30 feet above finished grade.

e. *Setbacks:*

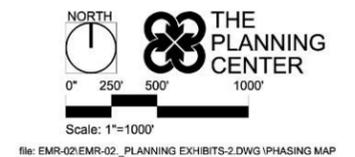
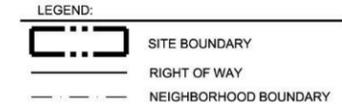
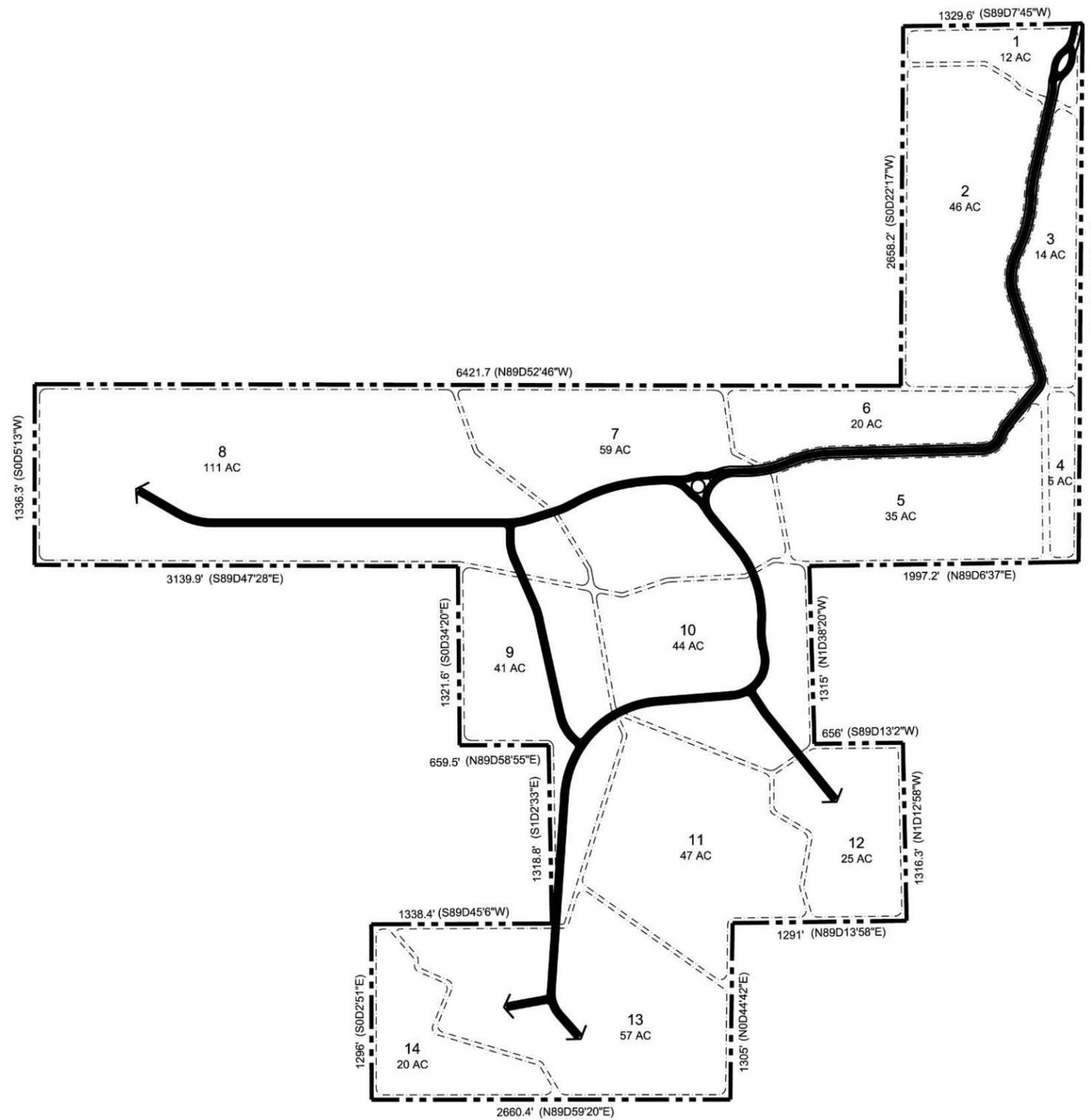
Minimum setbacks from property line or roadway will be a minimum of 20 feet. Minimum distance between principal structures will be 10 feet.

f. *Development Statement:*

It is the intent of the developer to submit a subdivision plat for at least one neighborhood in J-6 Ranch within one year of rezoning approval.



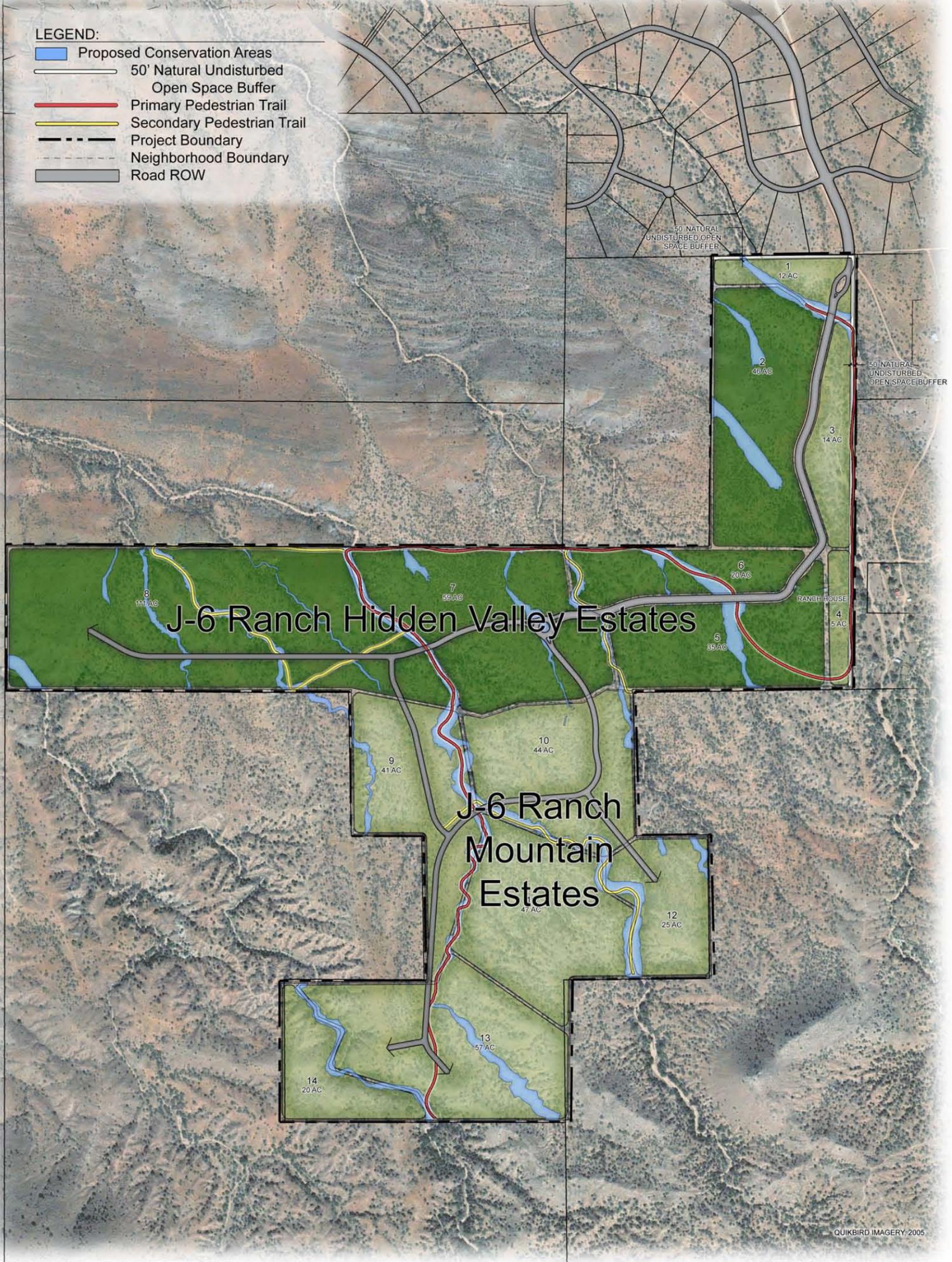
Exhibit IV.B.1: Neighborhood Plan



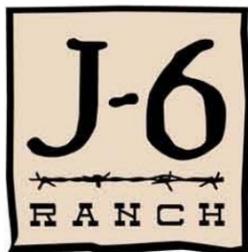
# CONCEPT PLAN

**LEGEND:**

- Proposed Conservation Areas
- 50' Natural Undisturbed Open Space Buffer
- Primary Pedestrian Trail
- Secondary Pedestrian Trail
- Project Boundary
- Neighborhood Boundary
- Road ROW



QUIKBIRD IMAGERY 2005



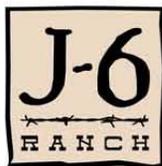
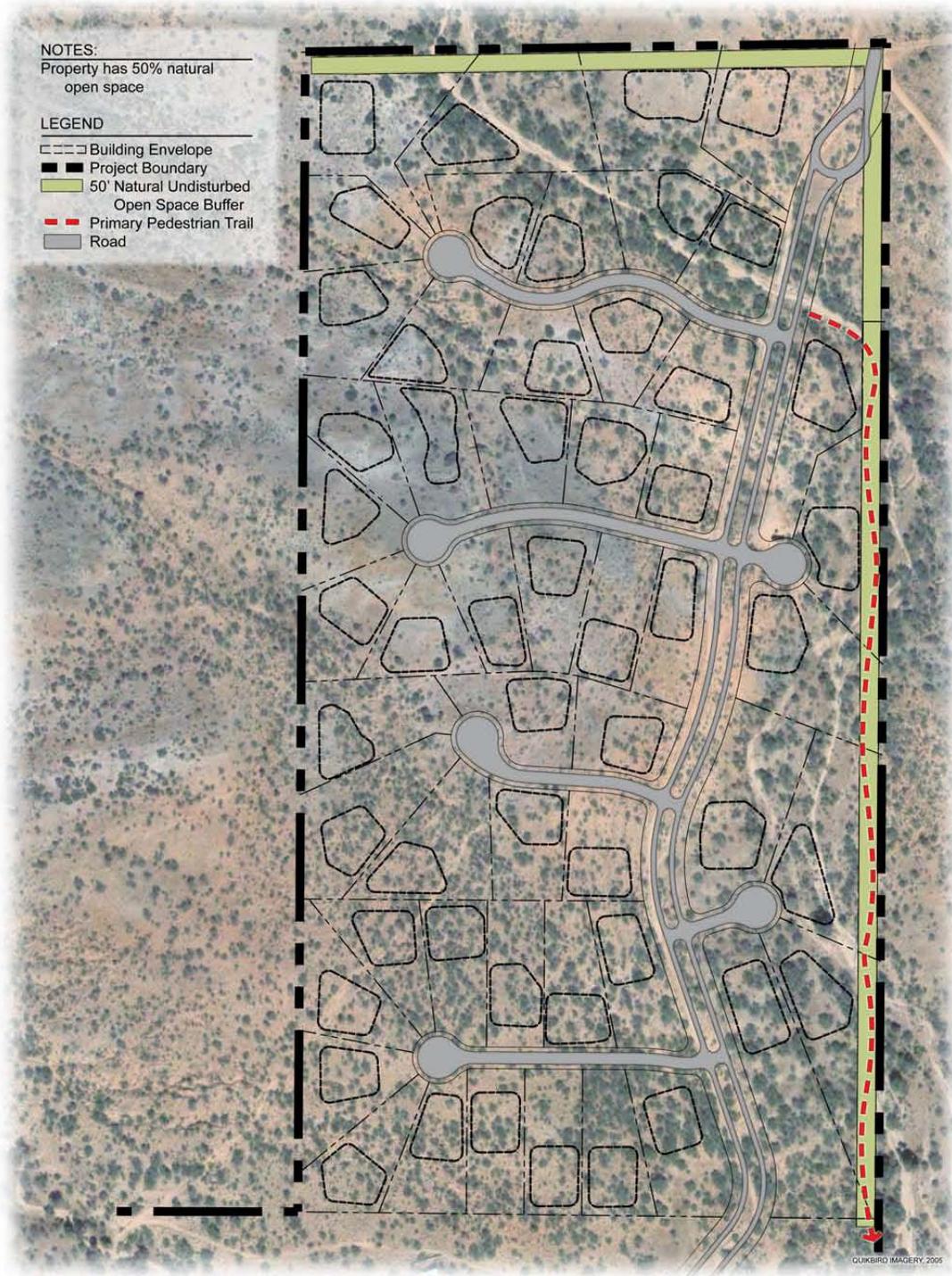
Easter Mountain Ranch, LCC  
 1050 E. River Road, Suite 300  
 Tucson, AZ 85718  
 Steve Lenihan (520) 293-1702 ext. 104  
 slenihan@usa.net  
 Duff Hearon (520) 293-1702 ext. 102  
 dhearon@ashlandgroup.net



Project #: EMR-02  
 Date: 06/14/11  
 Filename: EMR-02\_Concept Plan\_(c)\_24x36.psd



Exhibit IV.B.3: Neighborhoods 1, 2 & 3 Lot Layout



Easter Mountain Ranch, LCC  
1050 E. River Road, Suite 300  
Tucson, AZ 85718  
Steve Lenihan (520) 293-1702 ext. 104  
slenihan@usa.net  
Duff Hearon (520) 293-9000 ext. 102  
dhearon@ashlandgroup.net



Project #: EM0202  
Date: 04/21/09  
Filename: EMR-02\_Block1-2&3\_26x30.dwg



### **C. *Compatibility to Adjoining Development***

The proposed conservation subdivision allows for a transition of densities from a more dense development in the northern portion (approximately one house per one acre) of the project to a less dense development in the southern portion of the project (approximately one house per two acres). The density along the northern and eastern boundaries of the project are also one house per two acres providing a transition to lower density neighbors. The project adjacent to the site includes Redhawk II and III and projects adjacent to the north of the project. The nearby Jay Six Ranchettes consist of the same or greater density than the subject project.

The 50-foot undisturbed open space buffer along the east and northern boundary of the site provides buffering for lower density neighbors.

The total amount of natural open space preserved on the site also contributes to the compatibility to adjacent development. There are several regulations found in Section IV: Sustainability Standards and Section VI: Design Guidelines and Appendix B: CC&R's that places restrictions on building envelopes, minimizing impervious surfaces, maintaining a minimum of 50 percent open space, preserving environmentally sensitive lands, including wash corridors, FEMA floodplains, hillsides with slopes greater than 30 percent, significant wildlife areas and corridors and significant stands of unspoiled vegetation within areas to be preserved as natural open space.

In addition, J-6 Ranch will reflect the thoughtful integration of homes with the desert environment. Architectural styles will be based upon themes of the Southwest, as well as other building styles that respond appropriately to the desert surroundings.

To enforce the above standards, J-6 Ranch will be reviewed by a Sustainability Committee and Design Review Committee consisting of architects, representatives from the Owners, or the Board of Directors of the J-6 Ranch Homeowners Association, and representatives with specific expertise in areas covered by the Sustainability Plan to ensure that compatibility with adjacent development is maintained.

### **D. *Post-Development Hydrology***

The following section is from a preliminary hydrology report prepared by PSOMAS, Inc, which addresses on-site and off-site pre-development hydrologic characteristics and water resources.

#### **1. *Preliminary Development Response to Hydrology***

The J-6 Ranch project is approximately 556 acres which will have up to 371 lots with at least 50% natural open space. The lots will be custom graded to minimize site disturbance to the natural drainage. Natural drainage flows from southeast to northwest and is predominantly channelized. Floodplains were delineated for watersheds with over 100 cfs per Cochise County Floodplain Regulations.



Stormwater detention will be provided to reduce peak stormwater flows and water harvesting will be encouraged to attenuate any additional runoff generated by the development.

## **2. Encroachments into the 100-Year Floodplain**

Development of this parcel has avoided encroaching and channelizing the entire floodplain. Rather, the watercourses will generally be contained and redirected within only those portions necessary to facilitate the development of the parcel infrastructure. Dip structures and culverts will be used to allow flow over and/or under the proposed roads. At these sections, flow will not exceed 1 foot in the travel lane during a 100-year storm.

## **3. Post-Development Water Discharges**

Twenty-five on-site watersheds for the proposed developed conditions, CP D1 through CP D25, were analyzed using the methodology outlined in the Hydrology Manual for Engineering Design and Floodplain Management within Pima County, Arizona using the proposed site description provided above. The results of the hydrologic analysis are presented in Table 1, below. As mentioned in the footnote of Table 3, except in Reach 1, 8 and 16 where flow was routed, direct summation was used when necessary to combine watersheds flows. The anticipated post-development discharge flowing onto and leaving the site has been depicted on Exhibit IV.D.3.

See Exhibit IV.D.3: Post-Development Hydrology.



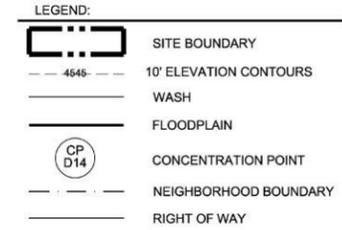
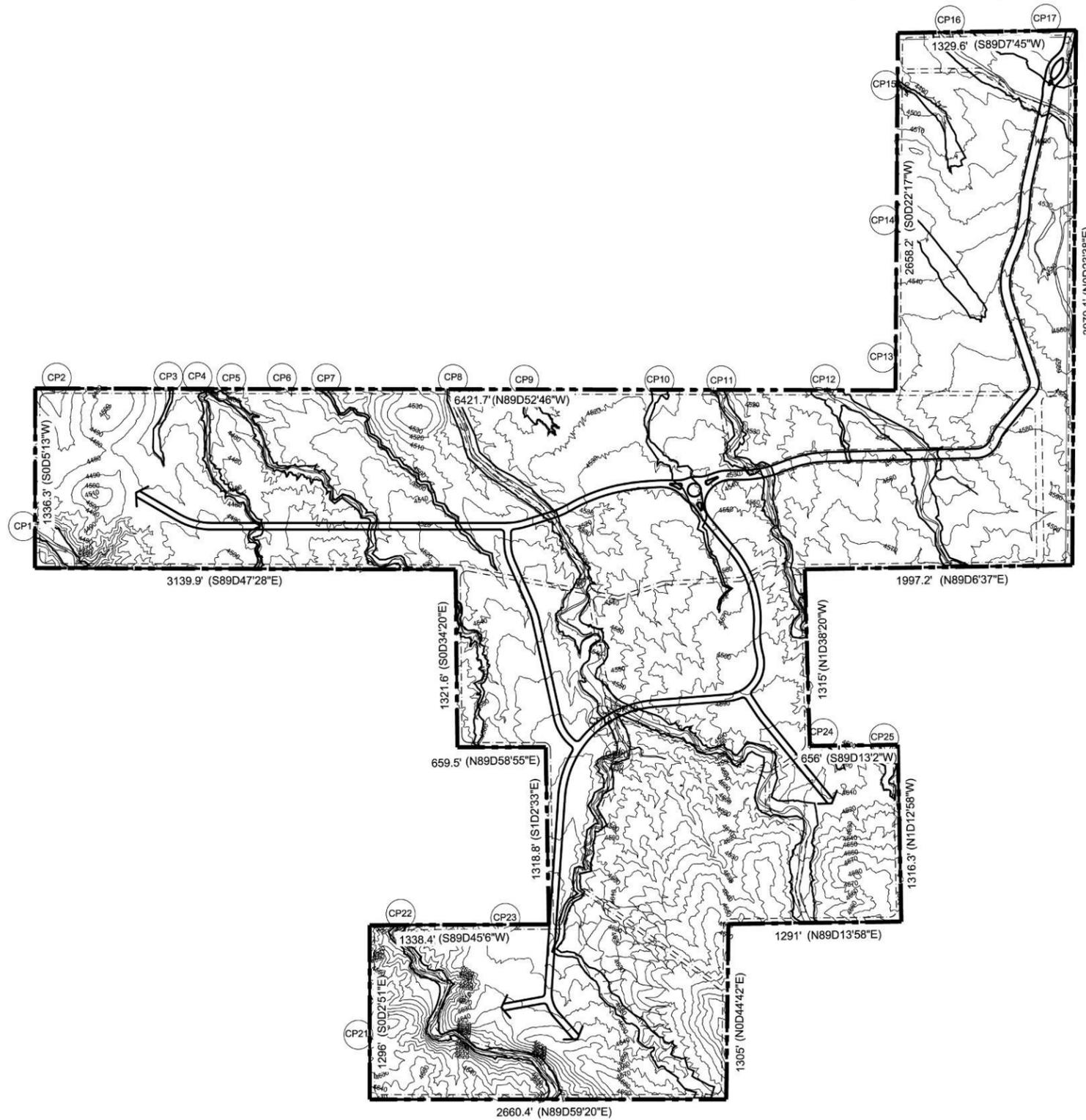
**Table 1**  
**Summary of Hydrologic Analysis (Proposed Conditions)**

Concentration Point	Area (ac)	Length (ft)	Slope (ft/ft)	Basin Factor "N <sub>b</sub> "	Impervious Area (%)	T <sub>c</sub> (min)	Q <sub>100</sub> (cfs)	CPs Contributing	Total Impervious Area (%)	Q <sub>100</sub> Total (cfs)
CP1*	13.57	1330	0.0526	0.035	20%	5.0	130	D1, D21, D22, OS1 and OS5	2%	6738
CP2	7.83	858	0.0641	0.035	20%	5.0	77	D2	20%	77
CP3	15.13	1531	0.0294	0.035	20%	6.1	135	D3	20%	135
CP4	16.44	1586	0.0284	0.035	20%	6.4	144	D4 and OS2	20%	361
CP5	40.1	4870	0.0308	0.035	20%	13.8	254	D5, OS3 and OS4	20%	690
CP6	1.78	501	0.0399	0.035	20%	5.0	17	D6	20%	17
CP7	27.04	3536	0.0325	0.035	20%	10.6	195	D7	20%	195
CP8*	60.03	2801	0.0214	0.035	20%	11.1	413	D8, D18, D19, D20, OS6 and OS7	10%	2125
CP9	13.39	1344	0.0335	0.035	20%	5.3	124	D9	20%	124
CP10	26.18	3076	0.0293	0.035	20%	10.1	194	D10	20%	194
CP11	32.81	2709	0.0351	0.035	20%	8.5	253	D11, D25, OS8, OS9 and OS10	20%	666
CP12	44.36	1788	0.0308	0.035	20%	6.6	397	D12 and OS11	20%	926
CP13	8.52	866	0.0346	0.035	20%	5.0	89	D13	20%	89
CP14	24.09	2199	0.0296	0.035	20%	7.7	209	D14	20%	209
CP15	23.06	1596	0.0345	0.035	20%	5.7	226	D15	20%	226
CP16*	36.09	3568	0.021	0.035	20%	13.0	245	D16 and OS12	3%	2749
CP17	0.7	289	0.0173	0.035	20%	5.0	7	D17	20%	7
CP18	17.84	2118	0.0496	0.035	20%	6.1	157	D18, D20	20%	660
CP19	27.43	2868	0.0453	0.035	20%	7.9	216	D19	20%	216
CP20	65.5	2980	0.0386	0.035	20%	8.7	503	D20	20%	503
CP21	4.25	611	0.0327	0.035	20%	5.0	44	D21, OS1	20%	2035
CP22	30.58	2303	0.0369	0.035	20%	7.2	265	D22 and OS5	20%	5625
CP23	4.3	624	0.0321	0.035	20%	5.0	41	D23	20%	41
CP24	11.34	1118	0.0581	0.035	20%	5.0	116	D24	20%	116
CP25	2.3	493	0.0304	0.035	20%	5.0	24	D25 and OS8	20%	206

\*Q<sub>100</sub> calculated with routing. In all other reaches when summation was necessary, the concentration points were summed directly.



Exhibit IV.D.3: Post-Development Hydrology

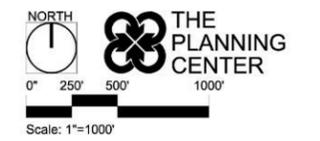


Summary of Hydrologic Analysis (Proposed Conditions)

Concentration Point	Area (ac)	Length (ft)	Slope (ft/ft)	Basin Factor "N <sub>b</sub> "	Impervious Area (%)	T <sub>s</sub> (min)	Q <sub>100</sub> (cfs)	CPs Contributing	Total Impervious Area (%)	Q <sub>100</sub> Total (cfs)
CP1*	13.6	1330	0.053	0.035	20%	5	130	D1, D21, D22, OS1 and OS5	2%	6738
CP2	7.83	838	0.064	0.035	20%	5	77	D2	20%	77
CP3	15.1	1531	0.029	0.035	20%	6.1	135	D3	20%	135
CP4	16.4	1586	0.028	0.035	20%	6.4	144	D4 and OS2	20%	361
CP5	40.1	4870	0.031	0.035	20%	13.8	254	D5, OS3 and OS4	20%	690
CP6	1.78	501	0.04	0.035	20%	5	17	D6	20%	17
CP7	27	3536	0.033	0.035	20%	10.6	195	D7	20%	195
CP8*	60	2801	0.021	0.035	20%	11.1	413	D8, D18, D19, D20, OS6 and OS7	10%	2125
CP9	13.4	1344	0.034	0.035	20%	5.3	124	D9	20%	124
CP10	26.2	3076	0.029	0.035	20%	10.1	194	D10	20%	194
CP11	32.8	2709	0.035	0.035	20%	8.5	253	D11, D25, OS8, OS9 and OS10	20%	666
CP12	44.4	1788	0.031	0.035	20%	6.6	397	D12 and OS11	20%	926
CP13	8.52	866	0.035	0.035	20%	5	89	D13	20%	89
CP14	24.1	2199	0.03	0.035	20%	7.7	209	D14	20%	209
CP15	23.1	1596	0.035	0.035	20%	5.7	226	D15	20%	226
CP16*	36.1	3588	0.021	0.035	20%	13	245	D16 and OS12	3%	2749
CP17	0.7	289	0.017	0.035	20%	5	7.1	D17	20%	7.1
CP18	17.8	2118	0.05	0.035	20%	6.1	157	D18, D20	20%	660
CP19	27.4	2868	0.045	0.035	20%	7.9	216	D19	20%	216
CP20	65.5	2980	0.039	0.035	20%	8.7	503	D20	20%	503
CP21	4.25	611	0.033	0.035	20%	5	44	D21, OS1	20%	2035
CP22	30.6	2303	0.037	0.035	20%	7.2	365	D22 and OS5	20%	5625
CP23	4.3	624	0.032	0.035	20%	5	41	D23	20%	41
CP24	11.3	1118	0.038	0.035	20%	5	116	D24	20%	116
CP25	2.3	493	0.03	0.035	20%	5	24	D25 and OS8	20%	206

\*Q<sub>100</sub> calculated with routing. In all other reaches when summation was necessary the concentration points were

PSOMAS  
 800 E. Wetmore Road, Suite 110  
 Tucson, AZ 85719  
 (520) 292-2300 (520) 292-1290 fax  
 www.psomas.com



file: EMR-02\EMR-02\_PLANNING EXHIBITS-2.DWG (POST HYDRO)



**4. Potential Drainage Impacts to Off-Site Land**

Runoff generated on-site will exit the property in the existing washes through the site. Flow is primarily through channels; however, sheet flow occurs as well. Concentration points are located on the north, east and west sides of the property due to its irregular geometry. In some instances flow leaves the site only to cross back onto the property slightly downstream. Through the use of custom graded lots, detention and promoting water harvesting on-site, there is no impact to the off-site land uses both upstream and downstream of the proposed development.

**5. Engineering and Design Features**

The use of detention will be used to mitigate any drainage increases due to on-site post-development discharges. Water harvesting will be utilized to accommodate these volumes where applicable. The proposed detention volumes are presented in Table 2.

**Table 2  
Summary of Detention Volumes (Proposed Conditions)**

CP	Detention Volume (Ac-Ft)
D1*	0.930
D2	0.165
D3	0.327
D4	0.147
D5	0.339
D6	0.034
D7	0.628
D8*	3.228
D9	0.315
D10	0.612
D11	0.303
D12	0.341
D13	0.124
D14	0.373
D15	0.363
D16*	0.749
D17	0.003
D23	0.068
D24	0.190

\*Q<sub>100</sub> calculated with routing. In all other reaches when summation was necessary, the concentration points were summed directly.



## **6. Conformance with Applicable Plans**

The preliminary development plan conforms to all applicable Cochise County policies relating to flood control. On-site and off-site flows were calculated using Pima County methodology.

### ***E. Screening and Buffering Methods***

The overall goal of screening and buffering methods used in J-6 Ranch is to maintain a natural desert theme incorporating plant materials indigenous to, and blending in with, the natural desert. The Sustainability Standards (Section V) and Design Guidelines (Section VI) address the need to utilize drought tolerant plantings and water efficient techniques that are in tune with the local climate. As shown on the Conceptual Land Use Plan (Exhibit III.B.2), a 50-foot natural undisturbed open space buffer has been provided along the northern and eastern boundary of the project to screen the proposed development from off-site properties. Natural (or landscaped) buffers will also be maintained along all roadways and properties adjacent to off-site private and public land.

The densities along the northern and eastern boundaries of the project are also one house per two acres providing a transition to lower density neighbors.

Landscape Buffers and screening techniques with native plants will preserve the aesthetic and biologic integrity of the desert environment. The Approved Plant List (Section VI: Design Guidelines, Exhibit B) and Prohibited Plant List (Section VI: Design Guidelines, Exhibit C), will assist Owners, landscape architects and builders in formulating landscape plans. Landscaping on all property outside of patio walls but within the Lot boundaries must consist of plants from the Approved Plant List, and must adhere to the conditions outlined elsewhere in these Design Guidelines with respect to all visible areas of a built Lot. The Approved Plant List is subject to change from time to time.

### ***F. Open Space***

The main goal of the project is to preserve the natural beauty of the land by conserving a majority of the project area as common and/or private natural open space. Detailed studies have been undertaken to understand topography, washes, wildlife corridors and other natural features. These studies will be utilized to protect natural open space resources and to ensure that open space elements are situated where they belong at the individual parcel level and the entire site level. Areas that will be considered for conservation set aside include a 50-foot natural undisturbed open space buffer along the northern and eastern project site boundary, wash corridors, FEMA floodplains, hillsides with slopes greater than 30%, significant wildlife areas and corridors, and significant stands of unspoiled vegetation.

A minimum of 50 percent or more of the property will be preserved as natural open space. Building envelopes will not exceed 25 percent of the total lot area. The grading on each lot will be limited to the building envelope, driveway, septic system areas, roadways and amenities. All vegetation will be protected by fencing off during construction activities, and



wash crossings will be minimized through open space areas designated to provide habitat connectivity. In addition, graded areas which will not be built upon must be revegetated with plant materials from the Approved Plant List. In built-out areas, architectural solutions must be implemented to reduce impacts of grading.

Common open space linkages will be located within each neighborhood. These contiguous areas provide residents of J-6 Ranch enjoyment of significant open spaces to each neighborhood, and the community at large. A system of open space areas adjacent to circulation roadways and washes provides the opportunity for natural trails throughout the development. By maintaining major washes in their natural state, wildlife corridors will be preserved. A Conceptual Conservation Plan has been provided which delineates potential areas for conservation set aside. This exhibit is not intended to dedicate portions of the site as undisturbed open space at this time. At the time of platting, detailed studies and surveys will better determine the exact location of conservation areas.

See Exhibit IV.F: Conceptual Conservation Plan.



Exhibit IV.F: Conceptual Conservation Plan



LEGEND:

- SITE BOUNDARY
- POTENTIAL CONSERVATION CORRIDORS
- RIGHT OF WAY
- EDGE OF STREET
- NEIGHBORHOOD BOUNDARY

NORTH

0' 100' 200' 400'

Scale: 1"=400'

THE PLANNING CENTER

file: EMR-02\EMR-02\_PLANNING EXHIBITS-2.DWG \CONSERVATED AREA



## **G. *Pedestrian Trails and Equestrian Provisions***

Pedestrian trails will be incorporated into the project as shown on the Conceptual Land Use Plan (Exhibit IV.B.2). Trails will be located in and around neighborhoods, within the right-of-way of major collector streets, and/or in community maintained open space areas to provide pedestrian circulation and recreation opportunities. Pedestrian trails following collector streets may consist of decomposed granite. Other trails following washes will be “experience” trails, which are typically unimproved (i.e., left natural) except for small directional signage for a more unique experience with nature.

The Redhawk equestrian facility will provide equestrian services to a limited number of residents within the project. In addition, there are other private equestrian facilities in the area which could serve residents of the project.

## **H. *Infrastructure and Utility Provisions***

Each lot within the project shall be served by water, electric and telephone. Each lot will also be responsible to provide an individual septic system. Provisions may be made for cable television, if available at the time of development.

Empirita Water Company currently has an 8-inch waterline in the J-Six Ranch Road immediately adjacent to the Property. Extension of electric and telephone along the J-Six Ranch Road to the project is currently in process. Upon completion of the electric and telephone service extensions to the project, the currently existing realigned J-Six Ranch Road will be paved and completed by the developer of Redhawk. Access into the development will be through the primary circulation roadway as shown on the Conceptual Land Use Plan (Exhibit IV.B.2). This roadway is intended to be a gated private drive for J-6 Ranch residents only.

## **I. *Water Supply***

Empirita Water Company received a favorable Physical Availability Determination from the Arizona Department of Water Resources in March 2007 confirming that there is sufficient water available to Empirita Water Company to serve the existing Redhawk I development as well as Redhawk II, Redhawk III and the subject J-6 Ranch project. A copy of the Physical Availability Determination is attached as Exhibit IV.I. In addition, in September 2008, the Arizona Corporation Commission approved the service area expansion to include all phases of Redhawk and J-6 Ranch.



Exhibit IV.I. Department of Water Resources Physical Availability Determination

Docket No. W-03948A-06-0490

**ARIZONA DEPARTMENT OF WATER RESOURCES**  
**Office of Assured and Adequate Water Supply**  
3550 N. Central Ave, 2<sup>nd</sup> Floor, Phoenix, AZ 85012  
Telephone 602 771-8585  
Fax 602 771-8689



Janet Napolitano  
Governor

Herbert R. Guenther  
Director

March 27, 2007

Larry Robertson  
Munger Chadwick, P.L.C.  
P.O. Box 1448  
Tubac, AZ 85646

**RE: Empirita Water Company, Cochise County, Arizona**  
**Application for a Physical Availability Demonstration**  
**(ADWR #52-700268.0000)**

Dear Mr. Robertson:

The Department has completed its review of the application for a Physical Availability Determination for the Empirita Water Company. The Department received the application on March 9, 2007. The study area consists of approximately 10,000 acres in Township 17 South Range 19 East, Township 17 South Range 18 East, G&S R B&M in Cochise County in southeastern Arizona.

In accordance with A.A.C. R12-15-702(C), the Department determined that a minimum of 321 acre-feet per year of groundwater is physically available for 100 years under A.A.C. R12-15-716(B) for adequate water supply purposes in the study area. With regard to water quality for the purpose of A.A.C. R12-15-719(A), the provider is currently in compliance with the Arizona Department of Environmental Quality drinking water compliance unit. With regard to water quality for the purpose of A.A.C. R12-15-719(B) the study area is not located within one mile of any known WQARF or Superfund site.

As with all PAD determinations issued by the Department, if the Department finds that the water supply is not available because the assumptions and information used in determining the physical availability under the current criteria prove incorrect, the Department will modify the availability of groundwater accordingly. The results of the Department's review fulfill the requirements of R12-15-703(B) and may be cited in applications for determinations of adequate water supply. These applications have certain additional requirements based on the assured water supply criteria referenced in A.R.S. § 45-108 and A.A.C. R12-15-701 et seq. For further information on these requirements, please contact the Office of Assured and Adequate Water Supply at (602) 771-8585.

The Department's determination is an appealable agency action. In order to appeal this decision, you must request an appeal within thirty (30) days from receipt of this letter. I have enclosed a summary of the appeals process and an appeal form should you wish to pursue this option.

If you have any questions regarding this Physical Availability Demonstration, please contact Doug Dunham at (602) 771-8590.

Sincerely,

  
Sandra Fabritz Whitney  
Assistant Director, Water Management

Celebrating 25 Years



## **J. *Traffic Impact***

PSOMAS, Inc. has prepared a Traffic Impact Analysis for the J-6 Ranch project. The Traffic Impact Analysis has been submitted to Cochise County Planning Department.

## **K. *Water Conservation Methods***

The developer of J-6 Ranch recognizes that water resources within Cochise County are extremely valuable and should be conserved to the greatest extent possible. Therefore, the developer of this project intends to incorporate design aspects and institute policies that will require water conservation in various facets of the project.

Water conservation is an essential component to the J-6 Ranch Sustainability Standards (Section V) and Design Guidelines (Section VI). One of the key regulations is prohibiting all new private wells on the Lots. This is a significant method to ensure that water is conserved and neighboring wells are not affected. The use of drought tolerant and native vegetative species will be strongly encouraged in landscaping within both the common and private areas, except in limited rear-yard areas. The use of low water irrigation systems, such as drip irrigation will be strongly encouraged among the residents of the community. Design Guidelines and Sustainability Standards will promote the installation of water conservation features such as gray water systems, low flow appliances, water harvesting systems and resident awareness of water conservation methods. Every effort will be made to ensure that all water used in this development is done in a manner which is prudent and which will minimize waste of this precious resource.

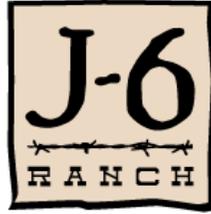
## **L. *Protection of Natural Resources***

Section V: Sustainability Standards, Section VI: Design Guidelines and Appendix B: Declaration of Covenants, Conditions, Restrictions and Easements contain a system of fundamental development standards that will provide guidance to the J-6 Ranch Design Review Committee for future development. These measures are to ensure the environmental sustainability of the development, resulting in a benefit to not only the residents of J-6 Ranch, but surrounding residents and Cochise County.



# V. SUSTAINABILITY PLAN





## SUSTAINABILITY PLAN

### October, 2010

#### **A. *Owner's Vision***

J-6 Ranch, with its natural beauty and rich history, felt like home the first moment we experienced it. This feeling was accompanied by our desire to preserve this pristine natural setting and its abundant plant and animal life. That preservation has become our commitment.

J-6 Ranch is the 556 acres where the historic pink ranch house stands with the Whetstones as its backdrop, on Jay-Six Ranch Road, south of Interstate 10 and Red Hawk. Our design for its development has progressed at a pace that has allowed us to carefully research and thoughtfully plan. It's been said, "All good things take time." We wholeheartedly agree.

Meeting with numerous neighbors in group settings, as well as in their homes – so as to listen, learn and share our plans – has been a valuable experience. We understand this beautiful setting has been cherished by many for years.

The majority of the J-6 Ranch site will be preserved as natural open space. A biologist has spent six days on the property to assist in the identification and preservation of plant species and wildlife.

Welcoming those folks who choose to enjoy our pedestrian and equestrian trails will be the tranquil rolling foothills with its majestic mesquites and scrub oaks. After decades of being closed off, we will open public pedestrian and equestrian access to the Coronado National Forest.

The rich history of the ranch house that has served as a landmark all these years will hold a prominent place in our plans. The stories of President John F. Kennedy and his brother Joe working J-6 Ranch as teenagers will continue to be enjoyed by many.

We are confident J-6 Ranch will be a model for all of Cochise County – increasing home values for all neighbors. Folks will be drawn to this area by its beauty, rural feel and history – and the desire to preserve them. That is the goal we share at J-6 Ranch.

*Steve Lenihan and Duff Hearon*



## **B. *Developing the Plan***

Developing a master plan for the J-6 Ranch community and developing this Sustainability Plan has been the result of several years of meetings and input from neighbors, planners and numerous others with expertise in various areas.

Shortly after purchasing the property in February 2006, and prior to preparing any plans for J-6 Ranch, the Owners met with interested neighbors in order to obtain some initial input from surrounding homeowners. About the same time, the Owners engaged biologist Jay Esler of JKE Bio-Consulting to do a thorough review of the vegetation and wildlife found at J-6 Ranch. Mr. Esler spent six full days on the property and has provided his recommendations with a view towards preserving the wonderful vegetation and wildlife.

The Owners then interviewed planners to assist in the preparation of a comprehensive master plan for J-6 Ranch. The Owners selected The Planning Center and have been guided by its president, Mike Grassinger, throughout the process.

The Owners engaged Duff James Hearon (the son of one of the Owners) to research the history of J-6 Ranch and the pink ranch house. With the assistance of a former owner of the J-6 Ranch and others who have been involved with the J-6 Ranch over the years, the young Mr. Hearon was able to compile numerous documents; Arizona Highways Magazine articles; photographs of President John F. Kennedy working at the J-6 Ranch as a teenager; a cowhide honoring Jack Speiden, a former owner of J-6 Ranch, signed by the who's who of Arizona politics, including former Senator and Presidential candidate Barry Goldwater and Governor Jack Williams; and various other pieces of memorabilia. As a result of his work, we hope to maintain this fine historical collection in the ranch house which will be used as a community center for J-6 Ranch.

The Owners continued to gather input from neighbors through a number of meetings, including meetings with the J-6/Mescal Community Development Organization, meetings with individual neighbors, and two larger meetings at the Cochise College, Benson campus. Approximately 600 neighbors, living south of Interstate 10 within two to three miles of J-6 Ranch were invited and approximately 60 to 70 people attended each of the meetings at Cochise College.

During the multi-year process of developing its master plan and this Sustainability Plan, the Owners have had numerous meetings with nearby homeowners in their homes. These meetings allowed for good give and take discussions in informal settings.

Water conservation has always been a key factor in sustainability policies in Arizona. Early on, the Owners worked with Empirita Water Company and its hydrogeologist, Chuck Dickens, in evaluating the amount of water available to J-6 Ranch and the adjacent Redhawk Ranch, both of which will be served by Empirita Water Company, and the impacts on wells in the area. To review the work of Mr. Dickens, the Owners engaged Errol Montgomery & Associates. Mark Cross, president of Errol Montgomery & Associates,



reviewed and confirmed the work of Mr. Dickens. Mr. Cross also performed his own well impact study. While the Arizona Department of Water Resources typically looks at a five-year well impact study, Mr. Cross recommended that a 100-year well impact study be performed in order that the effect on neighboring wells could properly be gauged. The results of the study concluded that there would be no significant impact on neighboring wells; the closest neighbor's well to the Empirita Water Company well field (including the J-6 Ranch wells) was approximately three-quarters of a mile to the north of the well field.

The developers of Redhawk, the Owners, and Empirita Water Company applied to the Arizona Department of Water Resources in order to obtain a Designation of Water Adequacy. The Designation approved by the Arizona Department of Water Resources was for substantially more water than needed to provide water for the entire service area of Empirita Water Company including all phases of Redhawk and J-6 Ranch at full build out.

Once the Designation of Water Adequacy was approved by the Arizona Department of Water Resources, Empirita Water Company was able to apply to the Arizona Corporation Commission to expand its service area to include all phases of Redhawk and J-6 Ranch. In September, 2008, the Arizona Corporation approved the application of Empirita Water Company to so expand its service area.

Also early in the process, the Owners engaged PSOMAS, a civil engineering firm, and Shade Tree Consulting, to assist the Owners in water conservation matters. PSOMAS recommended that the portion of each lot that is graded be done so in a manner so as to retain water on site to be used for landscaping and to assist in recharge. Shade Tree Consulting came up with numerous other ideas in order to further the water conservation efforts.

The Owners have discussed green-build matters and the use of solar energy with homebuilders and others with expertise in this area. It is the intent that the Sustainability Committee, which will include members with a wide range of expertise in various sustainability areas, shall have the flexibility to experiment in several areas, including green building and the use of solar energy. The Committee will also look at the new technologies that may come during the life of this project.

In consultation with Jim Lynch, a development consultant and avid hiker, and Mike Grassing of The Planning Center, the Owners have developed guidelines for the preservation of open space and for a two-tier trails system for homeowners within J-6 Ranch, as well as a pedestrian and equestrian trail easement for neighbors to use to access the Coronado National Forest.

The Owners also received significant community input as a result of its participation in the comprehensive plan amendment meetings for the Mescal, J-6 and Skyline area, and its participation in the Cochise County Visioning process. Further, this Sustainability Plan could not be as complete as it is without input from numerous governmental agencies, including most significantly, the Cochise County Planning Department.



## **C. The Plan**

*Capitalized terms when used in this Sustainability Plan shall have the same meaning as is assigned to such term in the Declaration of Covenants, Conditions, Restrictions and Easements for J-6 Ranch adopted \_\_\_\_\_, 2010, and recorded as Fee No. \_\_\_\_\_, official records of Cochise County, Arizona (“Declaration”).*

### **1. Purpose and Intent**

The J-6 Ranch community is distinguished by its integrated character of land use with the natural environment. In order to achieve the long-term vision of a community in balance with its surroundings, principles must be identified and carried out to incorporate elements of sustainability within the J-6 Ranch for its future residents.

Detailed studies have been undertaken to understand the natural environment of the property, including topography, hydrology, wildlife and other natural features, as well as the historical nature of the property. These studies will be utilized to protect and sustain the natural resources and to ensure that open space elements are situated where they belong at the individual parcel level and the entire site level.

The sustainability guidelines featured in this report shall be included in the permanent zoning restrictions that will restrict the Property in perpetuity. Other rules and regulations will also be part of recorded covenants, conditions and restrictions (that will last into perpetuity and shall not expire) or part of the J-6 Ranch Design Review Committee Guidelines.

### **2. Sustainability Guidelines**

The following sustainability guidelines have been prepared for J-6 Ranch to guide the planning, design and construction of the community. These measures support principles of environmental, social and economic sustainability within the development.

#### *a. Community Context and Design*

Residents and visitors should have a sense that a neighborhood area fits in with its unique context and has a distinct sense of place.

- Create a unique and identifiable image for the project that contributes to its sense of place.
- Require significant architectural styles of the southwest region in the selection of architectural themes.



- Design neighborhoods to feel more personal where repetition is broken up by open space, community features, or special elements occurring as part of the coordinated design of houses within view of each other.
- Integrate pedestrian connectivity into the neighborhood design. Vehicular access points within the neighborhood will be minimized with public safety in mind.
- Restrict homes, accessory structures (including guesthouses) and private yards to the building envelopes designated for each lot. The use of building envelopes is crucial to the goal of maintaining the natural beauty of the area and to conserve site resources. To the extent possible, building envelopes will be located in the least vegetated area and avoid washes on each lot. Building envelopes shall not be more than 15,000 square feet for one-acre lots and 25,000 square feet for two-acre lots.
- Vary building envelope locations from the street to create a more pleasing streetscape.
- Minimize impervious surfaces to lessen the heat island effect and reduce stormwater runoff by decreasing the overall number of roadways throughout the development, reducing roadway widths, and using paving alternatives for roads, driveways and trails where feasible.
- Create areas of open space interlinked by a trail system that are easily accessible by residents to provide gathering areas, points for recreation and opportunities for interaction that add to the quality of life and contribute to a sense of place.

*b. Pedestrian Circulation*

- Develop trails as part of the total community circulation and connect open spaces. They will be located in and around neighborhoods, within the right-of-way of major collector streets, and/or in community maintained open space areas to provide pedestrian circulation and recreation opportunities.
- Design trails to meander through areas with trees to take advantage of the shade and natural beauty of the site where appropriate.
- Improve some of the trails with materials such as decomposed granite. These trails will typically be adjacent to streets. Other trails following washes will be “experience” trails, which are typically unimproved (i.e., left natural) except for small directional signage.

*c. Open Space*



- Maintain 50 percent or more of the Property as natural open space. Site coverage shall not exceed 25 percent of the total lot area per SR-87 zoning requirements. Site coverage is defined by the Cochise County Zoning Regulations as the total percentage of the site covered with structures, buildings and impervious surfaces other than landscaping, walls and fences.
- Preserve environmentally sensitive land areas of a development site in their natural state and integrate development in a manner that makes such land areas accessible and a part of the development's overall contiguous open space system.
- Limit grading to the building envelope, driveway, septic system areas, roadways and amenities.
- Prohibit delineation of property lines by grading, walls, fencing or landscaping.
- Protect existing vegetation by fencing off during construction activities.
- Direct run-off from improved lots and roadways to existing washes and drainageways.
- Minimize open space and wash crossings through open space areas designated to provide habitat connectivity.
- Include wash corridors, FEMA floodplains, hillsides with slopes greater than 30 percent, significant wildlife areas and corridors and significant stands of unspoiled vegetation within areas to be preserved as natural open space.
- Prohibit horses and other animals, except household pets, on the Property. Horseback riding is allowed in any equestrian easements designated by the Declarant.

*d. Water Resources*

- Prohibit new private wells on the Lots.
- Use water-efficient native and drought-tolerant plants for landscape.
- Reduce water consumption by using water-conserving plumbing fixtures.
- Promote resident awareness of water conservation methods.
- Install high efficiency drip irrigation systems for residential and street landscape.



- Provide opportunities for grey water reuse, such as providing stub outs for grey water irrigation for residences.
- Incorporate water harvesting techniques within street rights-of-way, along the edge of roadways and in landscape areas by directing rain water runoff to recessed planting areas.
- Require passive water harvesting techniques for residences, including the use of grading techniques to direct water to existing or new vegetation.
- Use water harvesting techniques to collect water from residential rooftops, and direct it to planting areas as a means of supplementing irrigation.
- Include a community pool to discourage the construction of pools on individual lots.
- Limit the size of pools on lots through Design Review Committee Guidelines.

e. *Landscaping*

Landscape design features and plantings within J-6 Ranch are intended to compliment the natural beauty of the local environment. Guidelines address the need to utilize drought tolerant plantings and water efficient techniques that are in tune with the local climate.

- Employ water conservation as an important criterion for plant selection. Low-water-use plants that reflect and enhance the image of the Sonoran Desert landscape should predominantly be used.
- Encourage trees that produce large canopies and provide shade, as well as trees that provide dense screening. Care must be taken not to block neighbors' views of the mountains.
- Group or cluster trees and shrubbery, as well as accent, color, or ground cover plantings to create strong accent points and highlight major entries to developments.
- Design on-site drainage to put as much water back into the groundwater system as possible and to keep the streets as dry as possible. On-site drainage, including roof drainage, should be directed and collected to planting areas as a means of supplementing irrigation to landscape materials. The use of rainwater harvesting and grey water for landscaping shall also be encouraged.
- Utilize underground drip irrigation systems, rather than traditional spray type irrigation systems, in most landscape situations. Automatic irrigation systems are required for all designed landscapes within private



and transition zones to ensure establishment and sustainability of the landscape. Where revegetation has occurred within a natural zone, the plant materials must be irrigated with a temporary drip system.

- Landscape median-divided collector streets by retaining and/or enhancing the natural vegetation or by installing landscaping consisting of low-maintenance, drought-resistant plant materials, canopy trees, and drip irrigation systems.
- Limit the use of turf to public and private recreation areas and enclosed rear yards of residences. Turf will be prohibited in amenity landscape and streetscape areas and front yards of homes, except where recreational elements are incorporated into the design.
- Establish a network whereby builders to contact local organizations for salvaging of non-protected native plants prior to grading and disturbance.

*f. Protection of Dark Skies*

- Limit exterior residential lot lighting to low-voltage lighting (except for building-mounted downward directed lighting intended to illuminate a doorway or other needed home security lighting).
- Prohibit high-mounted, widely spaced pole or wall fixtures designed to illuminate large areas from a single source, except as required by Cochise County or other Governmental or fire and safety requirements.
- Allow lighting of specified outdoor recreational uses in common areas having unique requirements for nighttime visibility and limited hours of operation.
- Require downward directed light in order to prevent light pollution, and to increase visibility for pedestrians.
- Use energy efficient lighting or solar powering lighting where practical.

*g. Solar*

- Orient buildings to take advantage of passive solar techniques. Where possible, the building footprint shall be oriented with the long dimension on an east-west axis to take advantage of the benefits of passive solar heating on the south side in the winter, and minimizing heat load on the east and west side of the building in the summer.
- Minimize door and window openings on the easterly and westerly building facades where the sun strikes the building in late spring, summer and early fall.



- Shade easterly, westerly and southern facades with landscaping or other shading devices such as trellises or other techniques to reduce sun exposure in late spring, summer and early fall.

*h. Building*

- Encourage the use of eco-friendly materials where feasible. Incorporation of green building elements will create a healthy environment for the residents, and increases in energy efficiency will reduce the cost of living for residents.
- Encourage builders to increase the building energy efficiency rating. This can be accomplished by any one or a combination of measures. The following is a list of measures that may be implemented:

**General:**

- Install efficient heating and other appliances, such as water heaters, cooking equipment, refrigerators, furnaces and boiler units.
- Select and locate trees carefully to protect the building(s) from energy consuming environmental conditions and to shade paved areas.
- Improve the thermal integrity/efficiency of buildings, and reduce the thermal load by encouraging automated and timed temperature controls or occupant sensors.
- Install energy efficient windows.
- Utilize recycled insulation.

**Roof:**

- Install or offer as an option EPA/DOE Energy Star labeled roof materials.
- Install or offer as an option roof photovoltaic energy systems as a standard feature (on new homes).

**Components:**

- Install or offer as an option low nitrogen oxide (NOx) hot water heaters.
- Install or offer as an option high efficiency Energy Star heating or ground source heat pumps or equivalent.
- Install or offer as an option energy efficient interior lighting.
- Install or offer as an option built-in energy efficient appliances.



- Install door sweeps and weather stripping if more efficient doors and windows are not available.
- Install energy-efficient and automated controls for air conditioning.
- Install or offer as an option energy-efficient lighting.
- Install electrical outlets on the exterior walls of both the front and back of residences to promote the use of electric landscape maintenance equipment.
- Install or offer as an option a gas outlet for use with outdoor cooking appliances, and in any proposed fireplaces, including outdoor recreational fireplaces or pits.
- Install high efficiency filters.

*i. Culture and History*

- Preserve and enhance the Owners collection of historical materials and put on display in the ranch house/community center for the viewing by J-6 Ranch homeowners.
- Provide for the Homeowner's Association to open the historical collection for viewing by others on a periodic basis as determined by the Association.

*j. Economic Development*

- Utilize local businesses and providers (Cochise County and City of Benson) during the construction of J-6 Ranch.
- Promote local businesses and organizations to J-6 residents.
- Provide high speed data options to residents to encourage home-based occupations and telecommuting.

*k. Coronado National Forest*

- Establish a public pedestrian and equestrian trail easement on the western end of J-6 Ranch to facilitate public access to the Coronado National Forest.



## **D. Implementation of the Plan**

### **1. Adoption**

This Plan has been adopted by the Declarant on the date set forth next to the signature of the Declarant at the end of this Plan.

### **2. Design Review Committee**

To ensure that the guidelines identified in this Plan are implemented, a Design Review Committee shall be established to review all plans proposed for development within the J-6 Ranch community. The Design Review Committee's authority and role shall include:

- Review and approval of all subdivision plats, development plans, landscape plans and architectural drawings proposed within J-6 Ranch prior to submittal of said plans to Cochise County for review. A letter of approval from the Design Review Committee shall be provided to the Cochise County Planning Department at the time of plan submittal.
- Review, approve and amend, as necessary, the J-6 Design Review Committee Guidelines.
- Ensure that proposed development in J-6 is consistent with the Design Review Committee Guidelines and this Plan.

### **3. Sustainability Committee**

A Sustainability Committee shall be established to:

- Periodically review the Plan and the compliance therewith by the Declarant, builders, homeowners and others.
- As a result of such periodic reviews, to make recommendations for amendments to the Plan. The Sustainability Committee is encouraged to amend the Plan where certain provisions are not feasible due to changing technology, or for other reasons. The Sustainability Committee is also encouraged to experiment in new areas, including the use of solar energy, other water conservation measures, etc. on a test basis prior to applying such guidelines to all of J-6 Ranch.

The Sustainability Committee shall consist of members with expertise in various areas covered by the Plan. The Sustainability Committee shall consist of two representatives from the Owners, or the Board of Directors of the J-6 Ranch Homeowners Association, if Owners no longer own any portion of the Covered Property (as defined in the Declaration), and three to five representatives with specific expertise in areas covered by the Plan, including without limitation, hydrology, hydrogeology, water conservation, biology, water distribution and delivery, green-build, and solar energy.



The Sustainability Committee shall meet not less than once each calendar year. A meeting of the Sustainability Committee may be called at the request of any two members of the Sustainability Committee, but meetings of the Sustainability Committee may not be called more often than quarterly without the approval of a majority of the members of the Sustainability Committee.

## ***E. Amendments/Enforcement***

### **1. Amendments**

This Plan may be amended upon the occurrence of all of the following: (i) a majority vote of the Sustainability Committee, (ii) a majority vote of the members of the Board of Directors of the J-6 Ranch Homeowners Association, Inc., and (iii) so long as the Declarant owns any portion of the Covered Property, the approval of the Declarant.

### **2. Enforcement**

This Sustainability Plan may be enforced solely by the Sustainability Committee or the Board of Directors of the J-6 Ranch Homeowners Association, Inc. or the Declarant. No other persons or entities shall have the right to enforce the provisions of this Sustainability Plan. The remedies and methods of enforcement set forth in the Declaration shall apply with respect to enforcement of this Sustainability Plan.



# VI. DESIGN GUIDELINES

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## **A. Purpose of the Development Guidelines and Design Guidelines**

These Design Guidelines are intended to and shall serve as the Design Guidelines referenced in the Declaration of Covenants, Conditions, Restrictions and Easements for J-6 Ranch (the “Declaration”).

These Design Guidelines have been prepared to ensure that the overall planning philosophy for J-6 Ranch is carried out as each portion of the community is built. Hence, the Design Guidelines are intended first as an information source to builders, architects or Owners interested in J-6 Ranch, and second as a regulatory mechanism to ensure that all improvements are completed in an environmentally sensitive manner, and are consistent with the intent of the Declaration.

In connection with the Design Guidelines, a mandatory program of architectural review has been established to evaluate every development proposal. The purpose of the review program is to ensure that the high standards set forth in the Declaration and in this document are upheld in the development.

These Design Guidelines are binding on all Owners, as well as any person, company or firm which intends to construct, reconstruct or modify any permanent or temporary improvement (buildings, landscaping, etc.) in J-6 Ranch or in any way alter the natural setting of the desert environment.

## **B. Relationship to Declaration**

The Design Guidelines are adopted in accordance with the Declaration, and shall be enforced in accordance with the terms of the Declaration.

## **C. Definitions**

Unless the context otherwise specifies or requires, the following words or phrases when used in these Design Guidelines shall have the following meanings. Terms used but not defined herein shall have the meaning specified in the Declaration.

**“Architect”** means a person appropriately licensed to practice architecture or landscape architecture in any of the United States and who provides “Qualified Architectural Services.”

**“Building Envelope”** means the area on each Lot, determined by the DRC, which may be graded for the construction of a house, yard and related improvements. See Section F.f below.

**“Common Area”** means all real property and the improvements or amenities thereon and all personal property and facilities that shall from time to time be owned, controlled or operated by the Association.



**“Declaration”** means the Declaration of Covenants, Conditions, Restrictions and Easements for J-6 Ranch.

**“Design Guidelines”** means the restrictions, review procedures and construction regulations adopted and enforced by the DRC as set forth herein and as amended from time to time by the DRC.

**“DRC”** means the Design Review Committee established pursuant to the Declaration.

**“Excavation”** means any disturbance of the surface of the land (except to the extent reasonably necessary for planting of approved vegetation), including any trenching which results in the removal of earth, rock or other substance from a depth of more than twelve (12) inches below the natural surface of the land or any grading of the surface of the land.

**“Fill”** means any addition of earth, rock or other materials to the surface of the land, which increases the natural elevation of such surface.

**“Improvement”** means any changes, alterations or additions to a Lot, including any Excavation, Fill, Dwelling Unit or buildings, outbuildings, roads, drive-ways, parking areas, wall, retaining walls, stairs, patios, courtyards, landscaping, hedges, poles, signs and any Structure or other improvement of any type or kind. Exterior art and sculpture which are Visible from Neighboring Property or Common Area are also considered an Improvement.

**“Indigenous Species”** means a species of plant, whether ground cover, shrub, cactus or tree, which is native to the Arizona Upland Subdivision of the Sonoran Desert Scrub Biotic Community.

**“Light Reflective Value”** means the reflectivity of a surface measured by a calibrated light meter. The value represents the percentage of light reflected from a surface-pure which will equal a value of one hundred percent (100%), flat black will equal a value of zero percent (0%).

**“Lot”** means a subdivided Lot or other building site as shown on the plats for The \_\_\_\_\_, as it may be amended or resubdivided from time to time.

**“Natural Grade”** means the existing contour of a homesite, prior to any alterations, grading, or site work performed on a Lot.

**“Owner”** means a person or entity who owns a Lot or Improvement within the Covered Property, whether beneficially, as a co-owner, or otherwise. For the purposes herein, the Owner may act through an agent or representative, provided that such agent or representative is authorized in writing to act in such a capacity.

**“Owner’s Deposit”** means the amount specified by the DRC, which an Owner must pay prior to beginning any construction in J-6 Ranch. If the Owner or any of his agents should violate the Declaration or these Design Guidelines and it becomes necessary for either the DRC or Board to remedy the violation, the cost of the remedy may be charged against the Owner’s Deposit.

**“Qualified Architectural Services”** means a level of professional service equal to that of an individual or company that has demonstrated competency in the site analysis, planning and technical knowledge in an environment with similar opportunities and constraints as are customary to J-6 Ranch. Further, it is essential that the provider of services be able to



communicate the potential of the site based on its physical configuration and the requirements of the Design Guidelines to an Owner and then be able to translate the needs and wants of the Owner into a design plan consistent with the requirements of the site and the Design Guidelines. An individual deemed qualified shall also show a complete understanding of these Design Guidelines and the desire to abide by them.

**“Structure”** means anything constructed or erected on a Lot, the use of which is required to be located on the ground or attached to something having location on the ground.

**“Visible from Neighboring Property”** shall mean with respect to any given object or activity, that such object or activity is or would be visible without artificial sight aids from six (6) feet above any portion of any other Lot or Common Area with an elevation equal to that portion of the Lot upon which such object or activity is located.

#### **D. Architectural Design Theme**

The architectural theme for J-6 Ranch reflects the thoughtful integration of homes with the desert environment. Themes of the Southwest, as well as other building styles that respond appropriately to the desert surroundings, are encouraged.

Acceptable building materials include quality masonry, integral colored block approved by the DRC, faux stone and a variety of frame stucco finishes. The use of wood as a predominant exterior material is not encouraged as it has a history of weathering poorly and is not a traditional feature of this environment.

Generally, the colors listed in Exhibit A, “Standard Exterior Colors,” are acceptable for use on the exterior of homes and related improvements. Highly reflective colors or materials are prohibited on all wall and roof surfaces. All architectural elements, including color, are subject to approval of the Design Review Committee.

#### **E. Landscape Theme**

Numerous plants have been selected as uniquely suited to the area. Landscaping with these plants will preserve the aesthetic and biologic integrity of the desert environment. The Approved Plant List, attached hereto as Exhibit B, will assist Owners, landscape architects and builders in formulating landscape plans.

Consistent with the overall design philosophy, the landscape theme shall emphasize the preservation and enhancement of native plant life. In instances where removal of plant life cannot be avoided, all reasonable efforts must be made to relocate plant materials in accordance with the guidelines contained herein. Should revegetation and replanting be necessary, only plant materials listed in the Approved Plant List may be used. The only exception to this policy is that non-native material may be used in areas within patio walls (subject to the Prohibited Plant List provisions herein). Landscaping on all property outside of patio walls but within the Lot boundaries must consist of plants from the Approved Plant List, and must adhere to the conditions outlined elsewhere in these Design Guidelines with respect to all visible areas of a built Lot. The Approved Plant List is subject to change from time to time.



The natural area and designated areas outside the patio walls consist of undisturbed natural desert vegetation and graded or undisturbed areas. No non-native plant materials may be introduced in these areas. In addition, no water (except for water harvesting or temporary water for replacement of native plants), fertilizing or other maintenance activities may occur in the natural area other than those required for clean-up of man-made debris.

The differentiation of natural areas is to assure the continued integrity of the natural habitat in the regions outside the developed area as well as visual continuity of the development by limiting the use of exotic species to visually unobtrusive areas.

The plant types set forth in the Prohibited Plant List, attached hereto as Exhibit C, include species with characteristics which are potentially incompatible with natural areas and Indigenous Species by reason of profuse and obnoxious pollen, excessive height, weed-like characteristics (with the exception of hydroseed), high water demands and other traits. Under no circumstances is it permissible to plant any items from this list on any portion of J-6 Ranch, including within enclosed patio areas. The Prohibited Plant List is subject to change from time to time.

## ***F. Custom Lot Grading and Drainage***

Additional grading may be necessary in the course of development of homes and other improvements on Lots within J-6 Ranch. Except for grading proposed or performed by the developer, grading within J-6 Ranch must adhere to the following guidelines:

1. A grading plan that illustrates existing and proposed contours, cut and fill areas, retaining wall and slope treatment within the subject area must be included with the preliminary submittal to the Design Review Committee for review.
1. Grading, to the extent possible, should result in curved, undulating contours, rather than sharp or squared contours, to create a rolling, natural appearance. Homebuilders must maintain grading flow as originally occurs across the Lots, except that swales and/or berms may be created to take advantage of water harvesting.
2. Graded areas which will not be built upon must be revegetated as soon as possible with plant materials from the Approved Plant List. In built-out areas, architectural solutions must be implemented to reduce impacts of grading.
3. With the exception of roadways and erosion protection, no permanent or temporary improvements may be built in a drainage course.
4. All areas of cut and/or fill which result from grading or related site work must be landscaped or improved at or about the time of original construction in accordance with plans approved by the Design Review Committee. Site preparation may not result in a cut and/or fill which covers a vertical distance of more than twelve (12) feet. If the vertical distance exceeds eight (8) feet, a terrace must be constructed in the middle of the slope or wall. All areas of cut and/or fill having a slope<sup>1</sup> not

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<sup>1</sup> A three to one (3:1) slope is defined as a slope for which the horizontal distance is three times the corresponding change in vertical elevation. A two to one (2:1) slope is defined as a slope for which the horizontal distance is twice the corresponding change in vertical elevation. A one to one (1:1) slope is



steeper than three to one (3:1) shall be replanted with vegetation which, upon maturity, will have a density of at least that existing in the natural landscape of surrounding areas. All areas of cut and/or fill having a slope steeper than two to one (2:1) and not steeper than one to one (1:1) must be resurfaced with natural stones ("rip rap") that blend in with or complement the natural setting and may be replanted in locations terraced for that purpose.

5. A Building Envelope not to exceed the greater of (i) one-third (1/3<sup>rd</sup>) of the square footage of the Lot, but not more than 25,000 square feet, or (ii) 15,000 square feet, shall be determined by DRC. Grading shall be prohibited outside the Building Envelope except for driveways, utility runs, septic tanks, leach fields and related improvements.
6. All areas of cut and/or fill having a slope steeper than one to one (1:1) must be retained by concrete masonry or other approved means.
7. Retaining walls must be constructed of appearance grade concrete block, or painted smooth stuccoed concrete, giving due consideration to the height and other physical aspects of the retaining wall. Alternative plans for site preparation and for landscaping, resurfacing or retaining areas of cut and/or fill may be implemented only with prior approval in writing from the Design Review Committee. All landscaping, revegetation, and retaining walls must be maintained by the Owner of the Lot on which the improvements are situated.

## **G. Lighting**

Lighting may be utilized only as necessary to provide the functional requirements of safety, security and identification. Unnecessary use of light is prohibited in the interest of energy efficiency and maintenance of the quiet nighttime environment.

Light standards for individual home landscaped areas and Common Areas may not exceed twenty-four (24) inches in height and must consist of a "pagoda" type or other low-profile design. The light source must be shielded to reduce dispersal of ambient light in a skyward direction. The light must be directed only down and onto the street in a limited radius. The standards must be separated sufficiently to create isolated "pools of light" on the pavement, rather than a continuous, saturated condition. In keeping with this philosophy, the use of low pressure sodium or incandescent fixtures is recommended. High pressure sodium lighting is prohibited.

Additional lighting restrictions are contained in the Sustainability Plan.

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herein defined as a slope for which the horizontal distance is equal to the corresponding change in vertical elevation.

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## H. Design Review Process

This section of the Design Guidelines is intended to apply to any structure not built by the original developer. This section shall apply to any Owner wishing to modify a Dwelling Unit or any Lot-only purchaser wishing to construct a Dwelling Unit on any Lot in J-6 Ranch.

The architectural review process encompasses the three phases: (1) Preliminary Submittal; (2) Final Design Submittal/Pre-Construction Conference; and (3) Final Inspection of the Improvements.

The DRC may, in its sole discretion, employ the services of an Architect to review submitted plans for conformance to the Design Guidelines. From time to time during the architectural review process, an Owner and/or his representative may meet or communicate informally with the Architect. While it is the intent of these informal meetings to provide direction to the Owners, any comments or suggestions made are done solely to provide direction and they do not represent any official approval or disapproval by the Committee.

It is strongly recommended that an Owner retain competent professional services for planning and architecture. A thorough analysis and understanding of a particular Lot and the Owner's special needs and living patterns, as well as the ability to convey to the DRC through drawings and/or model, the concept and architecture of a proposed Dwelling Unit or other Improvement, are all important elements of the architectural review process. If an Owner elects to do his own architecture or to retain non-professional services, and the result in either case is not approved by the DRC, the Committee has the right to require that an Owner thereafter utilize professional architectural services. The DRC may require an Owner to retain Qualified Architectural Services after the rejection of two consecutive submittals before any additional submittals will be reviewed.

The architectural review process is intended to operate concurrently with the plan review process required by Cochise County for obtaining a building permit. However, the architectural review process is independent of Cochise County plan review and is solely intended to enforce the Design Guidelines. The architectural review process provides adequate checkpoints to ensure that time and money are not wasted on plans and architecture which do not adhere to the Design Guidelines or to the overall principles of J-6 Ranch. The Owner is responsible for strictly complying with the Design Guidelines, and all other applicable provisions of the Declaration or rules and regulations of any governmental authority, in order to bring the architectural review process to a timely and satisfactory conclusion.

The architectural review process allows for the evaluation of each proposed improvement for appropriateness to the Lot and the location of the building envelope for the Lot. What is acceptable in one situation may not be acceptable in another. The goal is for the appearance and character of all Dwelling Units and Improvements, including exterior art and sculpture, to harmonize with and enhance their natural and manmade surroundings rather than to dominate, and contrast sharply, and thereby distracting from the experience of the project environment as a whole.

**NOTE: REVIEW BY COCHISE COUNTY REQUIRED**



In addition to landscape and architectural reviews by the Design Review Committee, review by Cochise County, the governmental jurisdiction overseeing development in J-6 Ranch, may be required. Both reviews can take place concurrently, however if the DRC requires a change to the plans, it may be necessary to re-submit for a second review. Please contact Cochise County Development Services for specific submittal requirements of Cochise County.

## 1. Preliminary Submittal

At this step, the DRC reviews conceptual and/or preliminary plans to ensure conformance with the Design Guidelines before the Owner finalizes the plans.

The DRC shall conduct review of plans during its regular meetings or at such other times as it deems appropriate. Owners, Architects or Owners may be asked to attend specific meetings of the DRC. The DRC will make every effort to respond in writing within fifteen (15) working days after review of the complete submittals, provided that the plans are in accordance with the requirements outlined.

Three (3) sets of submittal plans are required as follows:

- a. the Lot Owner's name, address and Lot number;
- b. copy of original plot plan supplied by developer;
- c. names, address, license and phone number of any contractor(s) to be used;
- d. detailed description of work to be done;
- e. Site Plan (scale at 1' = 20' or larger), showing the entire property, with the Dwelling Unit, and all other Structures, driveway, parking area, existing and proposed topography, proposed finished floor elevations, all trees of 4" caliper or greater, special terrain features to be reserved and trees that are proposed to be removed;
- f. Roof Plans and Floor Plans (scale ¼" = 1'0") showing both existing and proposed finished floor elevations; and
- g. all exterior elevations (scale ¼" = 1'0") showing both existing and proposed grade lines, plate heights, ridge heights, roof pitch and an indication of all exterior materials and colors.

A non-refundable architectural review fee in the form of a check made out to J-6 Ranch Homeowners Association for \$200 must be submitted with the preliminary submittal. In the case of an addition to an existing home, the architectural review fee will be based on the total area under roof of the proposed addition and will be \$0.10 per square foot, with a minimum fee of \$200.



Approval of a preliminary submittal will be considered valid for one (1) year from the date of approval. The submittal will be considered abandoned if final plans are not submitted in that period and the Owner will be required to start the architectural review process at the preliminary review stage (including payment of the architectural review fee) if the plans become active again.

## **2. Final Architectural Submittal/Pre-Construction Conference**

After Preliminary Approval is obtained from the DRC, the following documents are to be submitted for Final Review. Final review will not commence until the submittal is complete. Three (3) sets of submittal plans are required as follows:

- a. the Lot Owner's name, address and Lot number;
- b. copy of original plot plan supplied by developer;
- c. names, address, license and phone number of any contractor(s) to be used;
- d. detailed description of work to be done;
- e. site plan (scale at 1' = 20' or larger), showing the entire property, location of the Dwelling Unit and all buildings, driveway, parking area, existing and proposed topography, finished floor elevations, special terrain features to be preserved, trees to be removed, all utility sources and connections, and site walls;
- f. floor plans (scale 1/4" = 1'0") showing finished floor elevations;
- g. roof plan (scale 1/4' = 1'0"), showing all roof pitches;
- h. building section (scale 1/4" = 1'0"), indicating existing and proposed grade lines;
- i. all exterior elevations (scale 1/8" = 1'0") showing both existing and proposed grade lines, plate heights, roof pitch and an indication of exterior materials/colors;
- j. samples of all exterior materials and colors, and literature on window and glass specifications, as requested by the DRC depicting or describing all exterior materials. All samples must be identified with color, number, and light reflective value;
- k. complete landscape plan (scale 1" = 20') showing size and type of all proposed plants, irrigation system, all decorative materials or borders, all retained plants and transplanted plants, indication of plant storage area, materials and debris confinement area;



- l. exterior lighting plan showing location and manner of installation for each lighting, as well as cut sheets for each light to be used; and
- m. a grading and drainage plan showing existing and proposed topography at one foot contour intervals and a driveway section.

The DRC will review the plans and attempt to respond in writing within fifteen (15) days after the review, but no later than thirty (30) days after a submittal is complete.

Prior to commencing construction, the Owner must meet with a representative of the DRC to review construction procedures and coordinate activities in J-6 Ranch.

Upon written receipt of final approval from the DRC, and having satisfied all of Cochise County's review processes, the Owner shall post an Owner's Deposit in the amount of \$1,000.00 with the Association, which amount may be from time-to-time changed by the Association Board. This money would be used to pursue completion of the project should the Owner fail to complete the project in a timely manner.

The Owner shall satisfy all conditions and commence construction of any work pursuant to the approved plans within one (1) year from the date of such approval. If the Owner fails to begin construction within this time period, any approval given shall be deemed revoked unless, upon the written request of the Owner made to the DRC prior to the expiration of said twelve (12) month period and upon finding by the DRC that there has been no change in circumstances, the time for such commencement may be extended in writing by the DRC.

Construction will be deemed commenced once the Lot has been disturbed, (or, in the case of previously disturbed Lots, when any additional construction activities begin). Construction must proceed in a continuous manner through the completion of the Dwelling Unit. If construction ceases for a period greater than three (3) months, the DRC may require that either construction immediately resume or that the Lot be returned to its natural condition. The Owner's Deposit may be forfeited if either alternative is not achieved within three months of written notice of the Owner by the DRC. In addition, the Owner shall be responsible to bring the property into acceptable appearance as determined by the Board.

The Owner shall, in any event, complete the construction of any Improvement on his Lot within twelve (12) months after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to labor strikes, fires, national emergencies or natural calamities.

If the Owner fails to comply with this schedule, the DRC shall either have the exterior of the Improvements completed in accordance with the approved plans or remove the Improvements, with all expenses incurred to be reimbursed to the DRC by the Owner.



Owners and Owners shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be removed from each construction site at least once a week to a dumping site located outside of J-6 Ranch. Lightweight materials, packaging and other items shall be placed in a closed container, covered or weighted down to prevent wind from blowing such materials off the construction site. Owners and Owners are prohibited from dumping, burying, or burning trash anywhere in J-6 Ranch. Disposal of any type of chemical, cleaner, fuels, oils, or any toxic or environmentally harmful materials is absolutely prohibited in J-6 Ranch.

During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming an eyesore, or affecting other Lots and any Common Area. Any clean-up costs incurred by the Association in enforcing these requirements will be billed to and paid by the Owner. Dirt, mud, or debris resulting from activity on each construction site shall be promptly removed from public or private roads, Common Areas and driveways or other portions of J-6 Ranch.

Owners and Owners are advised of the fact that the Lots and Common Areas contain valuable native plants and other natural landscaping materials that should be protected during construction, including topsoil, rock outcroppings, boulders and plant materials.

Materials that cannot be removed and are to be saved should be marked and protected by flagging, fencing or barriers. The DRC shall have the right to flag major terrain features or plants which are to be preserved and fenced off for protection. Any trees or branches removed during construction must be promptly cleaned up and removed immediately from the construction site. The Owner shall be responsible for controlling dust and noise from the construction site in compliance with applicable government regulations and the Design Guidelines.

Temporary construction signs shall be limited to one sign per site not to exceed eight (8) square feet of total surface area. The sign shall be free standing and the architectural design and location of such a sign shall first be approved by the DRC and must meet applicable Cochise County sign regulations.

Daily working hours for each construction site shall be from thirty (30) minutes before sunrise to thirty (30) minutes after sunset, Monday through Saturday, and shall be in compliance with Cochise County's restrictions regarding weekends and Holidays.

### **3. Final Inspection of the Improvements**

Upon completion of any Dwelling Unit or other Improvements and prior to occupancy, the Owners shall give written notice of completion to the DRC. Within twenty (20) days of such notification, a representative of the DRC may inspect the Dwelling Unit or other Improvements for compliance. If all Improvements comply with these Design Guidelines, the DRC may issue a written approval to the Owner, constituting a final release of the Improvements by the DRC, said release to be issued within thirty (30) days of the final inspection. If it is found that the work was not done in strict compliance with the approved plans or any portion of these Design Guidelines, the DRC may issue a written



notice of noncompliance to the Owner, specifying the particulars of noncompliance, said notice to be issued within thirty (30) days of the final inspection. The Owner shall have thirty (30) days from the date of notice of noncompliance within which to remedy the noncompliant portions of the Improvement. The Owner may request the DRC for additional time. However, if an extension is not granted, and the Owner has failed to remedy the noncompliance, the DRC may take action to remove at the Owner's cost the noncompliant Improvements as provided for in these Design Guidelines, including, without limitation, injunctive relief or the imposition of a fine.

If, after receipt of written notice of completion from the Owner, the DRC fails to notify the Owner of any failure to comply within thirty (30) days following the DRC's inspection, the Improvements shall be deemed to be in accordance with the final plan, at which time the Owner's Deposit will be returned to the Owner.

The approval by the DRC of any plans, drawings or specifications for any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing or specification subsequently or additionally submitted for approval. Failure to enforce any of the Design Guidelines shall not constitute a waiver of same.

The DRC reserves the right to waive or vary any of the procedures set forth herein at its discretion.

## ***I. Landscape and Architectural Standards***

The intent of these guidelines and standards is to promote a quality living environment which preserves the integrity of the desert environment and the development philosophy of the Declarant.

### **1. Landscaping**

- a. The landscaping to be placed on all visible portions or bufferyards of each built Lot or any portion of a built Lot not enclosed by a wall must be compatible with the standards set by the Developer and must have the written approval of the Design Review Committee.

Each Owner agrees that exterior landscaping will be completed within six (6) months after the close of escrow. If unforeseen conditions make a time extension necessary, the Owner must submit a written request for same.

- b. Each Owner is responsible for landscaping the area between the property line and the curb in front or at the side of the home bordering his or her property to the same standards and within the same time-frames applicable to other visible portions of built Lots.
- c. Plantings and streetscape sculpture/furniture in all bufferyard areas, mini-oases, buffer-overlay zone, right-of-way, and retention/detention areas must conform to Cochise County standards.



- d. Landscape plans for any visible portion of each built Lot must incorporate decomposed granite or crushed rock of muted earth tones or neutral colors, as outlined in Exhibit E, "Decomposed Granite and Crushed Rock Specifications," on all portions of the yard and coordinate with individual themes of approved ground cover plants, bushes and trees from the Approved Plant List.
- e. Undisturbed natural vegetation must be maintained in the natural area. Revegetation with approved plant materials must occur in areas disturbed by construction activities. No restrictions on vegetation exist within areas enclosed by a patio wall, except those governed by the Prohibited Plant List.
- f. Each Owner is responsible to see that no structure, tree, shrub, fence, or any exterior addition to their home or yard interferes in a significant or substantial manner with any other neighbor's views or enjoyment of such neighbor's property. Even though the Design Review Committee may have approved landscaping plans, if subsequent growth of trees, shrubs or plants is to a height or size that interferes with a neighbor's view and such neighbor renders a complaint with the Design Review Committee, and if after physical examination the Design Review Committee deems the complaint valid and reasonable, the Design Review Committee may require the Owner to trim said tree or plant, or remove same, so as to not block or interfere with such neighbor's view. The Owner shall have thirty (30) days from the date of notice to comply.
- g. Landscaping along the roads and on corners shall not hinder the safety of drivers.
- h. Each Owner of a Lot shall maintain all landscaping on the Lot in good condition or repair, neatly trimmed, properly cultivated, and in attractive and viable condition, free of trash, rubbish, debris, weeds, dead or decaying vegetation (including compost piles), other unsightly material, and any plant or other vegetation which the Design Review Committee determines, for aesthetic or health reasons, should not be permitted within J-6 Ranch.

## **2. Exterior Material, Color, Appearance**

The exterior house surface must be of an approved "CMU Grade" masonry or frame, with smooth stucco or faux stone which can include accent areas of sand finish stucco, or other suitable materials as approved by the Design Review Committee to promote and enhance the desert environment. Exterior treatments and colors shall be consistent with those standards prescribed in Exhibit A. Dominant colors such as black, white or red are not allowed.

## **3. Roofs**

Roof design and construction material are subject to review and approval by the Design Review Committee. Roof lines must be compatible with the overall character of the topography, flat in some areas, more pitch in others. Pitched



roofs must be constructed of flat concrete tiles, all of which must exhibit muted earth tones. Colors permitted are also prescribed in Exhibit A. Reflective or white finishing materials are prohibited. Other roof materials may be approved by the Design Review Committee. No mechanical equipment of any kind will be permitted on roofs unless placed by the Developer during the original construction period. All vents and other projections must be colored to blend with the roof.

Flat roofs may be constructed of felt roofing materials and finished in neutral colors, but must be enclosed by parapet walls. Reflective or white finishing materials are prohibited.

#### **4. Reflective Finishes**

No highly reflective finishes (other than glass, which may not be mirrored) may be used on exterior surfaces.

#### **5. Building Projections**

All architectural building projections, including chimney flues, vents, gutters, downspouts, utility boxes, air conditioning, porches, railings and stairways, must match the color of the main Dwelling Unit or must be of an approved color.

Evaporative coolers are prohibited. Basketball hoops or similar types of apparatus may not be installed or attached on any Dwelling Unit.

Certain satellite dishes and other reception devices are permitted under 47 CFR Part 1, Subpart S, Section 1.400 (or any successor provision) promulgated under the Telecommunications Act of 1996. However, it is requested that prior to installation the Design Review Committee be notified of the proposed placement of such device in order that we protect the views of neighboring homes and maintain architectural conformity and integrity in the neighborhood. Roof top antennas and dishes are discouraged if good reception is available elsewhere. Those types of receptive devices allowed by this Telecommunications Act are:

- a. A “dish” antenna that is one meter (thirty inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service.
- b. An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable). Such antennas may be mounted on “masts” to reach the height needed to establish line-of-sight contact with the transmitter. Masts higher than twelve (12) feet may be subject to local permitting requirements.
- c. An antenna that is designed to receive television broadcast signals. Masts higher than twelve (12) feet may be subject to local permitting requirements.



All other reception devices not covered in the above mentioned act require prior architectural approval.

**6. Flag Poles**

Flagpoles and flags of any nature will require specific DRC approval, but are permitted to the extent that the law prohibits regulation or limitation by the DRC. Except as permitted, and except where standards for approval are prohibited by law, all flags and flagpoles must be submitted to and approved by the DRC.

**7. Patios and Courtyards**

Patios and courtyards must be designed as an integrated part of the main Dwelling Unit and located entirely within the Lot.

**8. Sidewalks**

The sidewalk sections of the Lot shall be completed at the time a Dwelling Unit is constructed on the Lot. Installation of sidewalks is the responsibility of the Lot Owner and shall be constructed per the Association standards, to match the size, sitting and appearance of the existing sidewalks within the immediate area.

**9. Walls**

- a. No patio wall, retaining wall or screening wall may be constructed within \_ J-6 Ranch without the prior written approval of the Design Review Committee. Walls should be a visual extension of the architecture of the main Dwelling Unit. The texture and color of walls must conform to the standards prescribed by the Design Review Committee, as outlined in Exhibit D, "Patio Wall Materials", and may not exceed sixty (60) inches in height, as measured from the average finished grade of the highest Lot, without written approval of the Design Review Committee.

The location of all patio walls are subject to the written approval of the Design Review Committee. The location of a patio wall may be restricted due the slope of the Lot. In such cases, patio walls may be permitted to be constructed only at the top of the slope or at the immediate bottom of the slope. The location and design of a patio wall may also be restricted due to existing washes on a Lot or other floodplain issues.

- b. Should an Owner's Lot include a sloped area entirely within the boundaries of the Lot, the Owner may or may not elect to build a patio wall to enclose the sloped area. Should the Owner elect to build the wall to enclose the sloped area, the wall may not be constructed in such a way as to affect the original drainage plan. Should the Owner elect to not construct a wall on the Lot, or to construct the wall in such a way as to not enclose the sloped area, the Owner will be responsible for landscaping and maintaining the slope to the standards described herein as referring to grading and drainage of slopes.



- c. Ornamental iron fences, which were built as a part of the Developer's original construction may not be removed without approval of the Design Review Committee. An Owner may not change the color of painted wrought iron fencing without DRC approval and paint colors must be consistent with J-6 Ranch standard exterior colors as set forth in Exhibit A.

## **10. Free-Standing Foundations**

All exterior wall materials must be continued down to finish grades, thereby eliminating unfinished foundation walls.

## **11. Solar Applications**

The use of passive and active solar designs is encouraged. Components of these systems must be designed and installed so as not to create any adverse visual impact upon any portion of the community, to the extent permitted by law. All designs and placement are subject to review and approval by the Design Review Committee.

## **12. Service Yard/Mechanical Units**

Walls are required as screening for a service yard, if any, to enclose all above-ground garbage and trash containers, and other outdoor maintenance and service facilities. Air conditioning units must be screened by walls on no fewer than two sides of the unit. All above-ground meters must be adequately screened by landscaping so they are not visible from the street or neighboring properties.

## **13. Building Height**

Maximum building height for dwelling units will be thirty (30) feet, as measured from the finished floor elevation to the highest point on the roof excluding chimneys and other vents.

## **14. Building Size**

Single-family Dwelling Units must have a minimum size of 2,000 square feet of finished living space, exclusive of garages, patios, decks, etc.

## **15. Setbacks**

Building setbacks are defined in the Final Plat for J-6 Ranch, and by the approved Building Envelope for each Lot. No Improvements other than approved driveways and approved landscaping may be installed, constructed, erected or modified outside the approved Building Envelope.



**16. Driveway Surface**

In accordance with the Design Guidelines, each driveway must be asphalt or concrete. Glazing or other finishing material for driveways is subject to the written approval of the Design Review Committee.

**17. Damage to Developer Installed Improvements**

The Design Review Committee, at its own discretion, may require an Owner or Owner-hired contractor to pay a Repair Guarantee Fee of \$1,500 at the time of submittal for any project that may affect developer installed improvements. This includes, but is not limited to, retaining walls, sidewalks/curbs, irrigation, swimming pools/spas, or landscaping. If an Owner or Owner-hired contractor causes damage to retaining walls, sidewalks/curbs, irrigation or planting as originally installed by the Developer, this damage must be repaired or replaced at the Owner's expense.

If the Owner fails to perform the necessary repairs after written notice and request from the Association, the Association has the right at any time to make necessary repairs or replacement, and to deduct the cost from the Repair Guarantee Fee, with any overage additionally assessed to the Owner.

**18. Signage**

Signs of any nature will require specific DRC approval, but are permitted to the extent that the law prohibits regulation or limitation by the DRC. Except as permitted by the express terms of state statutes, and except where standards for approval of signs are prohibited by law, all signs of any nature, other than those of the Declarant, must be submitted to and approved by the DRC, and may be disapproved by the DRC.

**19. Garage and Parking Spaces**

Garages must be integrated with the architecture of the Dwelling Unit in material and massing. Detached garages are not permitted. Each Dwelling Unit shall contain parking for at least two automobiles in an enclosed garage. Carports are not permitted. Two additional parking spaces are required to accommodate guest parking. Other than automobiles, all vehicles including trucks, boats, trailers, campers, pick-up trucks with camper shells or storage and recreational vehicles must be kept in a closed structure or screened from View of Neighboring Property. RV and boat parking within J-6 Ranch is allowed for a period not to exceed forty-eight (48) hours for the purposes of loading and unloading as long as they do not obstruct the flow of traffic within the subdivision.

**20. Lot Grading**

- a. Finished Lot grading shall be done with a minimum of disturbance to topographic features, and graded areas shall be kept to a minimum to reduce impacts on the surrounding desert environment.



- b. Under no circumstances may the Lot drainage patterns established by the Developer be altered by a landscaping plan, or during the implementation of a landscaping plan.
- c. Where graded Lots have sloped areas with a steepness between one-to-one (1:1) and two-to-one (2:1), as defined above, the slope must be covered with river rock or a similar material approved by the Design Review Committee. Where graded Lots have sloped areas with a steepness between two-to-one (2:1) and three-to-one (3:1), the slope must be covered with decorative crushed rock of a minimum 3/4" size, or similar material approved by the Design Review Committee. Where graded Lots have sloped areas with a steepness of three-to-one (3:1) or greater, the slope must be covered with decorative decomposed granite of muted earth tones or neutral colors, as outlined in Exhibit E, or similar material approved by the Design Review Committee.

## **21. Variances**

Any variance from the requirements or conditions outlined in these Design Guidelines must receive prior written approval from the Design Review Committee.

## **22. Licensed Contractors**

The Design Review Committee advises that Owners select a licensed and bonded contractor for any improvement/construction projects on their property. Licensing status may be checked by calling the Registrar of Contractors.

## **23. Pools**

The DRC shall establish guidelines limiting the size of pools.

# ***J. Design Review Committee***

## **1. Members**

The DRC may consist of an architectural consultant appointed by the Association. Each member shall hold office until such time as the member resigns or has been removed or a successor has been appointed.

## **2. Resignation of members**

Any member of the DRC may, at any time, resign from the DRC upon written notice delivered to the Association.

## **3. Duties**

It shall be the duty of the DRC to consider and act upon such proposals or plans related to the development of custom Lots in J-6 Ranch that are submitted



pursuant to the Design Guidelines, to enforce the Design Guidelines, and to amend these Design Guidelines when deemed appropriate by the DRC.

**4. Meetings**

The DRC shall meet from time to time as necessary to properly perform its duties. The vote of a majority of the members shall constitute an act by the DRC. The DRC may act through an “Action-In-Lieu” of holding a meeting of DRC members. A documented Action-In-Lieu shall have the same force and effect as a meeting of the DRC members.

**5. Appeals**

In the event an applicant desires to appeal a decision of the DRC, such an appeal shall be made within five (5) days of being notified of the DRC decision, addressed to the J-6 Ranch Homeowners Association Board of Directors. The Board of Directors will review the DRC decision for possible amendment, re-affirmation or overruling. The decision of the Board of Directors shall be final on all matters related to DRC decisions.

**6. Compensation**

The members of the DRC shall receive no compensation for services rendered unless authorized to do so by the Developer and/or the Association. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of their duties. Professional consultants and representatives of the DRC retained for assistance in the review process shall be paid such compensation as the Developer and/or Association determines.

**7. Amendment of Design Guidelines**

The DRC may, from time to time and in its sole discretion, amend or revise any part or all of these Design Guidelines, provided such amendment has the written approval of the Declarant during the period of the Class B Membership pursuant to the Declaration, and the approval of the Board thereafter.

Each Owner is responsible for obtaining from the DRC a copy of the most recently revised Design Guidelines.

**8. Non-Liability**

Neither the DRC, any member thereof, nor the Developer, shall be liable to the Association or to any Owner or other person for any loss or damage claimed on account of any of the following:

- a. The approval or disapproval of any plans, drawings and specifications, whether or not defective.
- b. The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.



- c. The development, or manner of development of any property within J-6 Ranch.

Every Owner or other person, by submission of plans and specifications to the DRC for approval, agrees that he will not bring any action or suit against the DRC, any of its Members, nor the Developer, regarding any action taken by the DRC.

Approval by the DRC of any Improvement at J-6 Ranch only refers to these Design Guidelines and in no way implies conformance with local government regulations. It shall be the sole responsibility of the Owner to comply with all applicable government ordinances or regulations, including but not limited to zoning ordinances, grading ordinances and local building codes.

## **9. Enforcement**

The DRC may, at any time, inspect a Lot or Improvement and, upon discovering a violation of these architectural standards, provide a written notice of noncompliance to the Owner, including a reasonable time limit within which to correct the violation. If an Owner fails to comply within this time period, the DRC or its authorized agents may enter the Lot and correct the violation at the expense of the Owner of such Lot, and expense to be secured by a lien upon such Lot enforceable in accordance with the Declaration.

In the event of any violation of these Design Guidelines, the DRC may, at its sole discretion and in addition to restoration expenses, impose without limitation a punitive fine, commensurate with the severity of the violation.

## **10. Severability**

If any provision of these Design Guidelines, or any section, clause, sentence, phrase or word, or application thereof in any circumstances, is held invalid, the validity of the remainder of these Design Guidelines, and the application of any such provision, section, clause, sentence, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of these Design Guidelines shall be construed as if such invalid part were never included. All provisions hereof shall be subject to provisions of law, and any provision inconsistent therewith shall be deemed revised consistent therewith.



**Exhibit A: Standard Exterior Plant Colors**

**STANDARD ROOF TILE COLORS**

**Exhibit B: Approved Plant List**

TREES:

Canopy and Street Trees

Pecan	Carya illinoensis, many cvs.
Blue Palo Verde	Cercidium floridum
Arizona Ash	Flaxinum velutina
Thornless Honeylocust	Gleditsia triacanthos
Ironwood	Olyena tesota
Pine sp.	Pinus sp.
Pistache	Pistacia atlantica
Mesquite	Prosopsis sp.
Heritage Oak	Quercus virginiana 'Heritage'
African Sumac	Rhus lancea
Acacia sp.	Acacia sp.

Parking Area Trees

Blue Palo Verde	Cercidium floridum
Silver Dollar Gum	Eucalyptus polyanthemos
Mexican Palo Verde	Parkinsonia aculeata
Chilean Mesquite	Prosopsis chilensis
Pine sp.	Pinus sp.

Accent Trees

Acacia sp.	Acacia sp.
Blue Palo Verde	Cercidium floridum
Desert Willow	Chilopsis linearis
Oleander Tree	Nerium oleander (standard)
Pine sp.	Pinus eldarica
Texas Ebony	Pithecellobium flexicaule
Willow Pittosporum	Pittosporum phillyraeoides
Palm sp.	Washingtonia sp. & Pheonix sp.

SHRUBS:

General Shrubs

Catclaw acacia	Acacia greggii
Saltbush	Atriplex sp.
Red Bird of Paradise	Caesalpinia pullcherima
Yellow Bird of Paradise	Caesalpinia gilliesii
Fairy Duster	Calliandra eriophylla
Feathery Cassia	Cassia artemisiodes
Silvery Cassia	Cassia phyllodinea
Shrubby Senna	Cassia wislizenii
Desert Hackberry	Celtis pallida
Bush Dalea	Dalea pulcherima
Hopbush	Dodonaea viscosa
Brittlebush	Encelia farinosa
Mexican Honeysuckle	Justicia ghiesbreghtiana
Bush Lantana	Lantana camara
Creosote	Larrea tridentata
Texas Ranger	Leucophyllum frutescens
Wolfberry	Lycium berlanderi
Oleander	Nerium oleander
Tobira	Pittosporum tobira sp.
Autumn	SageSalvia greggii
Jobba	Simmondsia chinensis
Texas Mountain Laurel	Sophora secundiflora
Arizona Rosewood	Vauquelinia californica

Accent Shrubs

Saguaro	Carnegiea gigantea
Desert Spoon	Dasyliirion wheeleri
Ocotillo	Fouquieria splendens
Red Aloe	Hesperaloe parviflora
Cholla Varieties	Opuntia sp.
Prickly pear	Opuntia sp.
Soaptree	Yucca elata
Spanish Bayonet	Yucca aloifolia
Yucca	Yucca species

*GROUNDCOVERS:*

Sand Verbena	Abronia villosa
Trailing Acacia	Acacia redolens
Dwarf Coyote Bush	Baccharis pilularis

Desert Marigold	Baileya multiradiata
Indigo Bush	Dalea greggii
Trailing Lantana	Lantana montivdensis
Myoporum	Myoporum parviflora
Mexican Primrose	Oenothera berlandieri
Baja Primrose	Oenothera drummondii
Verbena	Verbena gooddingii
Desert Zinnia	Zinnia pumila

VINES:

Queen's wreath	Antigonon leptopus
Creeping fig	Ficus pumila
Cat Claw	Macfadyena unguis-cati

*RIPARIAN PLANTS:*

Trailing Acacia	Acacia redolens
Desert Willow	Chilopsis linearis
Trailing Indigo Bush	Dalea greggii
Hopbush	Dodonaea viscosa
Texas Ranger	Leucopyllum frutescens sp.
Mesquite	Prosopis sp.
Texas Mountain Laurel	Sophora secundiflora

*OASIS PLANTS:*

Annual flowers	Varies
Mediterranean Fan Palm	Chamaerops humilis
Citrus	Citrus sp.
Bermuda grass (hybrid types)	Cynodon dactylon (hybrids only)
Pineapple Guava	Feijoa sellowiana
Carolina Jasmine	Gelsemium sempervirens
Primrose Jasmine	Jasminum mesnyi
Crepe Myrtle	Lagerstroemia indica
Bush Lantana	Lantana camara
Arizona Sycamore	Platanus wrightii
Pomegranate	Punica granatum
Indian Hawthorne	Raphiolepis indica
Asian Jasmine	Trachelospermum asiaticum
Star Jasmine	Trachelospermum jasminoides
Vinca	Vinca major

**Exhibit C: Prohibited Plant List**

1. In private areas, any species of tree whose mature height may reasonably be expected to exceed the approved building height may be prohibited, with the exception of those species specifically listed as approved by the Architectural and Landscape Review Committee.
2. In all areas, olive trees (*Olea europea*) are prohibited because of their allergy-producing pollens.
3. In all areas, all varieties of mulberry (*Morus* species) are prohibited because of their allergy-producing pollen.
4. In all areas, common bermuda grass (*Cynodon dactylon*) are prohibited because of its allergy-producing pollen. Lawns and irrigated ground covers will be limited in use to areas confined by walls. Hybrid Bermuda grasses are acceptable. Grass types shall be included in Architectural and Landscape Review Committee submittals.
5. Other plant material may be subsequently added to or deleted from this list as determined appropriate for \_\_\_\_\_ by the Architectural and Landscape Review Committee.

**Exhibit D: Patio Wall Materials**

Type and Color: Due to the nature of the lots the color and type of wall material will be reviewed on an individual basis upon receipt of submittal to the ARC.

Block Size: 4" wide - 8" high - 16" long OR 6" wide - 4" high - 16" long

Cap Block Size: 8" wide - 4" high - 16" long (NOTE: ALL walls must be capped)

Ornamental Iron: 1" x 1" top and bottom rail with 5/8" vertical pickets.

All ornamental iron to be painted Arden Green or Black.

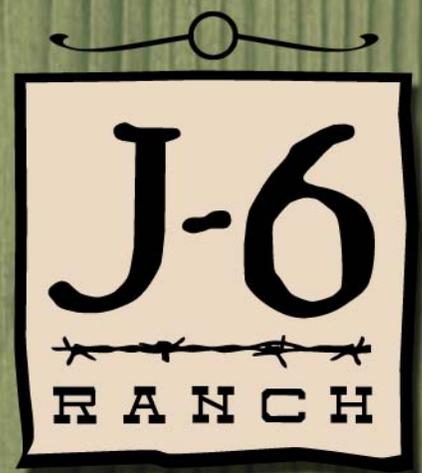
**Exhibit E: Decomposed Granite and Crushed Rock Specifications**

<u>Size</u>	<u>Color</u>
3/8"	Mission Red
3/8"	Sunset Rose
1/2"	Navajo Gold (also available in 3/4")
1/4"	Desert Brown
12"	Sonoran Tan
2" to 6"	Catalina Natural Stone
6" to 12"	Catalina Natural Stone or Salt River Rock

Other materials as may be approved by the Architectural and Landscape Review Committee

# VII. CITIZEN REVIEW REPORT

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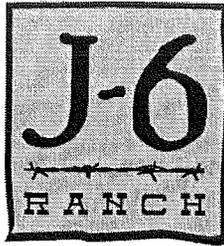
*A. Introduction*

Our neighborhood meeting was held on May 7, 2011, at the Benson Campus of Cochise College. Using Cochise County and Pima County tax records, we sent over 600 invitations for the meetings by U.S. Mail to neighbors living south of Interstate 10 and within approximately three (3) miles of the project. The mailing list is attached as Exhibit A. Approximately 20 people attended the meeting.

*B. Copy of Notice Sent to Property Owners.*

A copy of the Notice sent to property owners to invite them to the neighborhood meeting follows.





April 8, 2011

Dear Neighbor,

We have continued to work diligently on our proposed community at J-6 Ranch. Given what is the “new normal” for our economy, we have waited longer than we originally anticipated to submit an application for rezoning of our property. As we prepare to submit this application, we would like to invite you to a meeting which will be held at 9:00 a.m. on May 7, 2011, at Cochise College, Benson Campus at 1025 State Highway 90, Benson, Arizona. In addition, we invite you to submit written comments or questions to us with respect to our proposed community.

**Community Location:**

Approximately two miles south of Interstate 10 on J-Six Ranch Road. See the attached regional context map showing the property in relation the City of Benson.

**Community Description:**

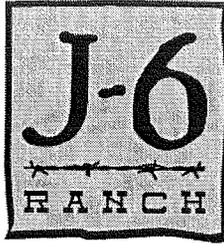
A five hundred fifty-six acre parcel surrounded by the Coronado National Forest on the south, State land to the north and residences on large lots to the east. The community will include the preservation of one-half of the property as open space and contains an average density of one home per one and one-half acres (a little less dense than the nearby J-Six Ranchettes). See the attached concept plan showing the proposed land uses within the community.

**Owner’s Vision:**

Our goal is to preserve the rich history and the wonderful habitat for plants and wildlife so that others, like you, will want to own a home in J-6 Ranch. See attached “Owner’s Vision.”

**Community Summary:**

- The J-6 Ranch plan fully conforms to the Cochise County Comprehensive Plan.
- The average lot size in the J-6 Ranch will be larger than the typical lot in the J-Six Ranchettes.
- Fifty percent or more of the site will be preserved as natural open space. A biologist spent six days on the property so as to assist in the identification and preservation of plant species and wildlife.



- After decades of being closed off, we will open access to the forest for pedestrian and equestrian users. We will also provide vehicular access for the fire department.
- As for the historic ranch house...We've all heard about its rich history, which includes former President John F. Kennedy and his brother Joe working the ranch as teenagers. There is much more that has been discovered in the research done by Duff's son and some J-6 Ranch neighbors. The ranch house will be an important part of our new community.

### **Sustainability Plan:**

Following almost five years of planning and receiving input from our neighbors in the J-6 Ranch area, we have put together a Sustainability Plan that will set the J-6 Ranch apart from other communities. The Sustainability Plan provides specific standards relating to the conservation of water, the vegetative and wildlife resources, preservation of the historic ranch house, creation of trails, dedication of open space, strict "dark skies" requirements governing lighting, and many other matters which we believe are important to the first-class community which will be J-6 Ranch. We will involve several persons having expertise in the areas covered by our Sustainability Plan to be on our Sustainability Committee to monitor the rules and to update our Sustainability Plan to reflect new technology and evolving community standards. The Sustainability Committee will include persons with expertise in solar energy, water conservation, biological resources, green-building and other expertises important to our Sustainability Plan.

### **Meeting:**

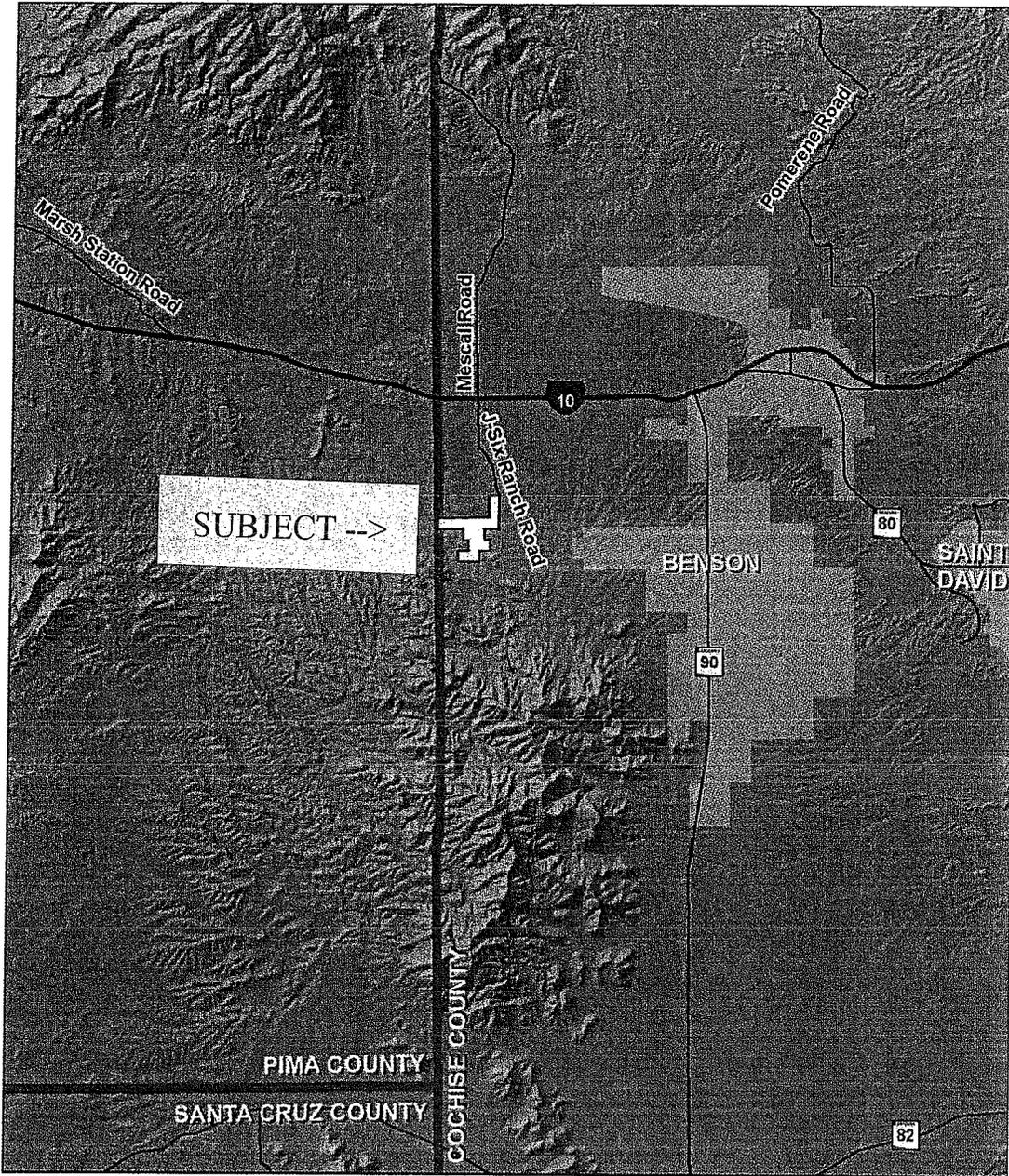
We look forward to seeing you at our meeting at Cochise College, Benson Campus, at 9:00 a.m. on May 7, 2011. Whether you are able to attend the meeting or not, please feel free to submit your questions and comments to us by email ([slenihan@usa.net](mailto:slenihan@usa.net)) or U.S. Mail (J-6 Ranch c/o Easter Mountain Ranch, L.L.C., 1050 E. River Road, Suite 300, Tucson, AZ 85718).

Sincerely,

Steve Lenihan

Duff C. Hearon

Regional Context



Legend

- Interstate 10
- Major Roadways
- Site Boundary
- Incorporated City/Community
- County Boundary

NORTH

THE PLANNING CENTER

0 2.0 4 Miles

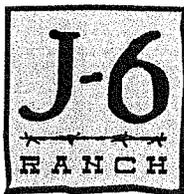
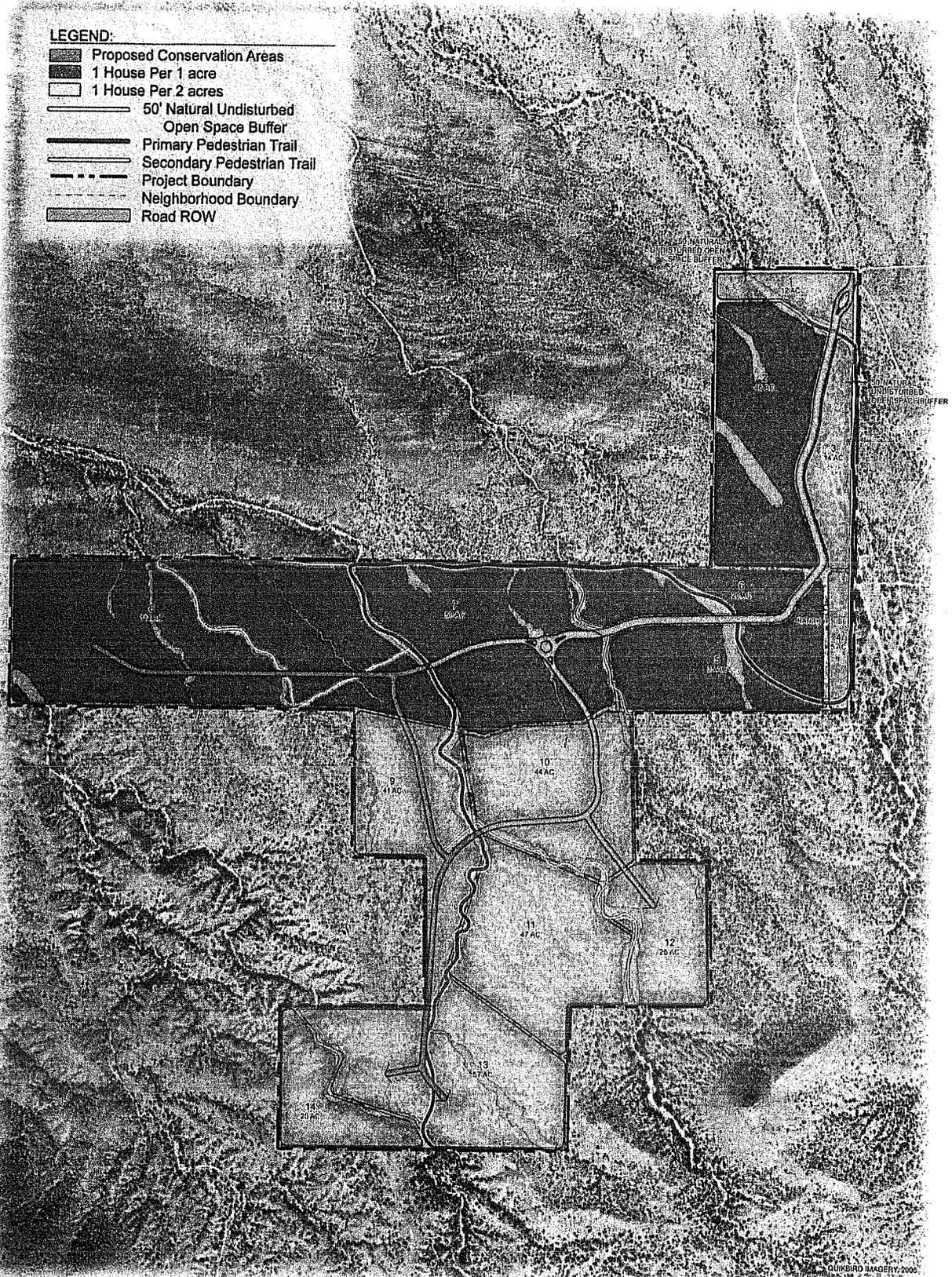
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# CONCEPT PLAN

**LEGEND:**

-  Proposed Conservation Areas
-  1 House Per 1 acre
-  1 House Per 2 acres
-  50' Natural Undisturbed Open Space Buffer
-  Primary Pedestrian Trail
-  Secondary Pedestrian Trail
-  Project Boundary
-  Neighborhood Boundary
-  Road ROW



Easter Mountain Ranch, LCC  
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## OWNER'S VISION

**J-6 Ranch**, with its natural beauty and rich history, felt like home the first moment we experienced it. This feeling was accompanied by our desire to preserve this pristine natural setting and its abundant plant and animal life. That preservation has become our commitment.

**J-6 Ranch** is the 556 acres where the historic pink ranch house stands with the Whetstones as its backdrop, on J-Six Ranch Road, south of Interstate 10 and Red Hawk. Our design for its development has progressed at a pace that has allowed us to carefully research and thoughtfully plan. It's been said, "All good things take time." We wholeheartedly agree.

Meeting with numerous neighbors in group settings, as well as in their homes – so as to listen, learn and share our plans – has been a valuable experience. We understand this beautiful setting has been cherished by many for years.

The majority of the **J-6 Ranch** site will be preserved as natural open space. A biologist spent six days on the property to assist in the identification and preservation of plant species and wildlife.

Welcoming those folks who choose to enjoy our pedestrian and equestrian trails will be the tranquil rolling foothills with its majestic mesquites and scrub oaks. After decades of being closed off, we will open pedestrian and equestrian access to the Coronado National Forest.

The rich history of the ranch house that has served as a landmark all these years will hold a prominent place in our plans. The stories of President John F. Kennedy and his brother Joe working **J-6 Ranch** as teenagers will continue to be enjoyed by many.

We are confident **J-6 Ranch** will be a model for all of Cochise County – increasing home values for all neighbors. Folks will be drawn to this area by its beauty, rural feel and history – and the desire to preserve them. That is the goal we share at **J-6 Ranch**.

C. *Sign-in Sheets from Neighborhood Meeting*

A copy of the sign-in sheet for the neighborhood meeting follows.



J-6 RANCH NEIGHBORHOOD MEETING - COCHISE COLLEGE BENSON CAMPUS - May 7, 2011

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Judice	Robinson						
Larry	Worrier						
Barb	Napier						
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Marlene	Jensen				85602		
Dora	SMITH	PO Box 544			85602		JKRECH@gmail.com
CHIEF	LOCKWOOD	J-51X			85602		HIDMALL5@MSN.COM
Ed	Sorring	J SIX			85602		Sorring@usn.com
Bill	Waltley	J Six	Benson		85602		WALTLEY@MSN.COM
Mary	McCool	J6	Benson		85602		kenmccol@aol.com
Wayne	Price	J6	Benson		85602		wprice@earthlink.net
MARILYN	FOX	J4	BENSON		85602		
THORNTON	EVERETT	J6	BENSON		85602		
Harold	Strong	Jkyline	"		"		kistrey@jwarr.com
Joyce	Mossy	J Six	BENSON		85602		joyce@jwarr.com
Diana	Bennett	59905 Hwy 92	Henderson	AZ	85615		dbennett@f.s.fed.us
I	Wikel				85630		wikel@theriver.com



D. *Questions and Answers*

A summary of the questions asked by neighbors at the neighborhood meeting and responses to those questions follows.



**J-6 Ranch Neighbors' Meeting**  
**May 7, 2011 at 9:00 a.m.**  
**Cochise College Benson Campus**

The following questions came from neighbors in attendance at a J-6 Ranch Neighborhood Meeting on May 7, 2011, at 9:00 a.m. at the Cochise College Benson Campus. In excess of 600 invitations were mailed to neighbors located north of Interstate 10 and within two to three miles of the subject property. Twenty-one of these neighbors were in attendance.

### **Questions from Neighbors in Attendance**

*Can you define 50% open space?* Under our proposed SR-2 zoning, at least 50% of the property will be maintained as natural open space, except that septic tanks, leach fields and other sewage disposal facilities shall be allowed in the otherwise natural open space. Utilities will also be allowed in the otherwise natural open space; however, it is expected that utilities will generally be located under roads and driveways.

*So you are limiting the footprint the owner can build on? Can the owner build up to 50% on his property?* Under our proposed SR-2 zoning, an owner may not build on 50% of his property. An owner may grade 15,000 square feet on a one-acre lot plus driveways and grading for sewage disposal systems. An owner may grade 25,000 square feet on a two-acre lot plus driveways and grading for sewage disposal systems.

*Is the owner able to fence his own property?* While an owner shall be allowed to place a patio wall around his patio/yard area within the grading limits, under our proposed SR-2 zoning, an owner shall not be allowed to fence, wall, hedge or otherwise delineate the boundary line of his property.

*What is the number of total homes proposed?* Three hundred seventy-one (371) is the maximum allowed by the zoning we are requesting.

*What zoning are you hoping to obtain?* The zoning we are requesting is SR-2. This is similar to RU-2. It would allow one home per two acres, or one home per acre and one-half in the event a conservation subdivision were used.

*Can you do a development more like Red Hawk?* While we believe Red Hawk is a very nice development, we are attempting to improve on Red Hawk and ask for slightly more density in order to accomplish that. For example, instead of grading 100 foot wide right-of-ways for our roads, we will grade the minimum width allowed by Cochise County so as to preserve as much of the natural vegetation as possible. Further, the roads will be maintained by the homeowners association for J-6 Ranch so that the taxpayers will have no obligation for road maintenance in our J-6 Ranch community, unlike Red Hawk. Also, we will provide for an onsite community center and recreation facilities for our residents, again not burdening the taxpayer with these types of costs.

*How will people gain access to the pedestrian/equestrian pathway?* As part of our rezoning, the pedestrian/equestrian easement to the Coronado National Forest will be accessed at the west end of our property through Red Hawk and across state land.

*Do you have a proposed lot plan already?* While we have previously submitted conceptual lot plans for a couple of our neighborhoods to show how the building envelopes will work, we do not have a true lot plan at this time.

*Is this a gated community?* Yes, that is why roads are maintained by us and not the taxpayers.

*When you say vegetation and shade, will that use more water?* As part of our Sustainability Plan, we will grade portions of the property to direct water flow to certain areas to enhance vegetation. This will result in saving water, rather than using more water.

*Will they all be custom homes?* At this time we plan on selling lots to individual homebuyers or small groups of lots to builders who will build custom or semi-custom homes on the lots.

*How do you enforce all the design standards?* This will be done through the homeowners association. Unlike the J-6 Ranchettes where apparently the CC&Rs have expired, our CC&Rs (and Design Guidelines) will never expire and will be enforceable by an HOA. As some of you have experienced, it is very difficult for an individual person to have the financial resources or the time to enforce design standards or other matters contained in the CC&Rs.

*Do you know what your minimum square footage will be at this point? Will there be a maximum?* We have not established a minimum or maximum square footage at this time; however, we do anticipate establishing both.

*How many wells are you proposing to drill on site? Where is the water coming from?* There will be no new wells drilled on site. The water will come from existing wells owned by J-6 Ranch in Pima County. It is possible that the existing ranch wells may be used to water common area landscaping.

*How soon do you plan to move the project forward?* While the general real estate market is not good at this time, we anticipate platting a portion of the property once the rezoning is approved. We do believe that with targeted marketing to the U of A Science and Technology Park, the Border Service, Fort Huachuca, and others that we will be able to create a market for J-6 Ranch.

*Is the Sustainability Plan available? Are the CC&Rs available, too? May we request them?* Copies of the Sustainability Plan will be placed on the back table and you may take them as you leave. Also, we will be happy to email you copies of the CC&Rs. Just contact our office.

*In your Sustainability Plan, have you considered the need for fire breaks for insurance when building near a National Forest?* We do plan to have the homeowners association responsible for mowing the grasslands so as to reduce the risk of fire. We will also work with the fire district and the national forest to further reduce the risk of fire.

*What are you planning for water issues like fire hydrants?* We have agreed with the fire department that we would provide the same facilities as Red Hawk for access to water to put out fires.

*What will you do for your neighbors to the north if their wells draw down?* Both Empirita Water Company's hydrologist, Chuck Dickins, and our hydrologist, Errol Montgomery & Associates have done well impact studies and concluded that there will be no significant drawdown to any neighbors' wells. However, as many of you know, Jim Vermilyea of Empirita Water Company stood up at one of our prior meetings and agreed that Empirita Water Company would provide water service for neighbors if they requested. When we obtain our zoning, we will be in a position to obtain his promise in writing.

*Can you explain where the Forest Service will have access to the forest?* In addition to the public pedestrian/equestrian easement at the west end of the property, we would give the Forest Service access through our gate and through our roads for emergencies. We would give the same access to the fire district.

*Is that access to the National Forest dedicated to the U.S. or County?* We have not yet determined whether the equestrian and pedestrian easement will be granted to the federal or county government.

*Is there a place to park there? What is the actual road access to that point? Is there a road there or will you create one? Will it cross state land?* As we finalize arrangements for the pedestrian/equestrian easement, we will also need to finalize arrangements for parking. Please keep in mind that there has been no public access across our property going back to at least 1981 when Neal Simonson, our predecessor, purchased the property. What we are doing will create access which has not existed in at least the last thirty years.

*Are you on the boundaries of the Fire District now?* We have not been annexed into the fire district as yet, but we do anticipate annexing into the fire district at such time as we start selling lots and/or homes.

*Is the mausoleum still on the property?* Yes, we are hopeful that the mausoleum can be donated to a veterans' group in Benson or Sierra Vista so that it may be put to good use as it is a beautiful marble mausoleum. As most of you may know, there are no persons buried in the mausoleum.

*Are you going to have swimming pools?* We are not going to prohibit swimming pools. However, we will have a community pool. That will discourage homeowners from having pools.

*Where is your well?* As previously stated, the wells which will serve J-6 Ranch are located in Pima County. (The location was pointed out on the map.)

*Do you have any information about when lots will sell?* We do not. We cannot provide this until we complete the rezoning and prepare a Public Report. As previously stated, we do believe that we will create a niche market for J-6 Ranch.

*What happens with the J-6 Ranch Road at I-10 with increased traffic?* PSOMAS, our consulting engineers, has done a traffic study for J-6 Ranch Road and concluded that J-6 Ranch Road will be at approximately seventy-five percent (75%) of capacity with the *full buildout of all phases of Red Hawk and all J-6 Ranch.*

*Are you in support of no connection of J-6 Ranch Road to Highway 90?* We do not have a position one way or the other on a connection between J-6 Ranch Road and Highway 90. We are fine with whatever the neighbors decide.

*You mention restrictions on the fences property owners can have. Have you done this in other states?* No, we have not done a development in other states. However, having building envelopes and prohibiting fencing of entire lots has become common in large lot communities in Arizona.

*Will you allow animals, like horses, on these properties? Any animals besides domestic?* We will allow domestic animals. We will not allow horses and other non-domestic animals. While we expect to have some horse-people in J-6 Ranch, we believe the existing equestrian facilities in the area can more than adequately serve their needs.

# APPENDIX A: ADDRESSES



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CAREFREE AZ 85377

*Copy*

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TUCSON AZ 85728

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BENSON AZ 85602

FISCHER THOMAS R & PATRICIA L  
1720 S CIRCLE BAR RD  
BENSON AZ 85602

WILHITE GLENN M & SUSANN M  
1177 HACIENDA DR  
EL CAJON CA 92020

NEBEL DAVID E & MARY L  
4855 EAST REATA ROAD  
FLAGSTAFF AZ 86004

WILLIAMS FAMILY TRUST (3)  
302 W ADIRONPACK  
TUCSON AZ 85737

O DELL DONALD WAYNE JR &  
995 W 4TH ST STE G-100  
BENSON AZ 85602

WILLIAMS STEPHEN WAYNE  
12026 VIA HACIENDA  
EL CAJON CA 92019

OBERSTEIN CAREN J & STEVEN A  
105 E BUENA VISTA DR  
TEMPE AZ 85284

*Send  
copies to  
Walter Parilla  
Realtor Search  
Msida O. Faya*

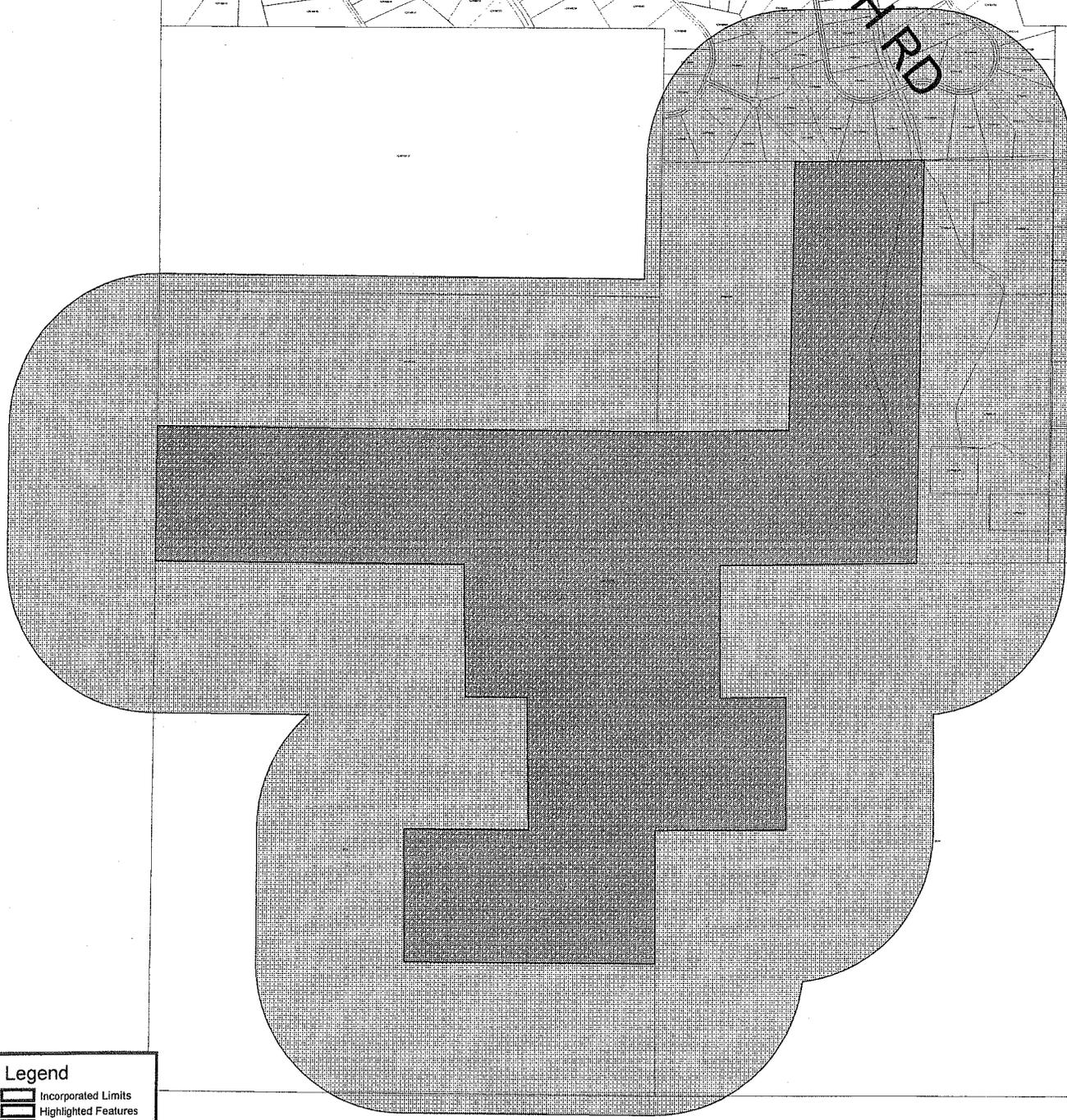
THUNDER RANCH ESTATES UNIT IV LL  
2090 N KOLB RD #120  
TUCSON AZ 85715

TITLE SECURITY AGENCY OF AZ TR#96  
7840 E BROADWAY BLVD STE 210  
TUCSON AZ 85710

TRIGG RICK A  
3063 W EASTER MOUNTAIN RD  
BENSON AZ 85602

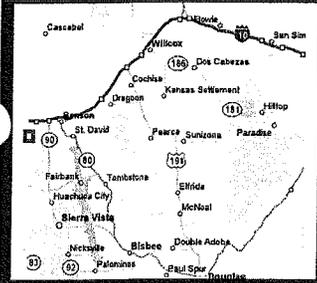
IRO VINCENT R  
5040 W EASTER MTN RD  
BENSON AZ 85602

FINCH RD



**Legend**

- Incorporated Limits
- Highlighted Features
- Buffer
- Current Features
- Roads
- Driveway
- Parcels
- Milepost
- Address



PrAp -11-06  
124-01-013H  
Easter Mountain Rch  
1500' Buffer

This map is a product of the  
Cochise County GIS



Phillip & Ruby Allen  
532 S. Alandale Avenue  
Tucson, AZ 85710

Ione Dolan  
16261 S. Whetstone Avenue  
Benson, AZ 85602

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16850 S. Maricopa Avenue  
Benson, AZ 85602

Ronina & James Parrott  
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James & Lois Briggs and Kenneth Orms  
4500 E. Grant Road  
Tucson, AZ 85712

Richard Fasanella  
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Tucson, AZ 85730

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Florence & Lloyd Mack  
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Seemon Andras Mahl  
24925 E. Maricopa Place  
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Maria & Rafael Monge  
16201 S. Whetstone Avenue  
Benson, AZ 85602

Carol & Paul Humphrey  
16525 S. Whetstone Avenue  
Benson, AZ 85602

Cecilia & Michael Price  
16221 S. Whetstone Avenue  
Benson, AZ 85602

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6302 Harper Place NW Apt 113  
Albuquerque, NM 87109

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Benson, AZ 85602

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Rapid City, SD 57702

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5128 Yvette Avenue  
El Paso, TX 79924

Joyce & Thomas Compton  
25120 E. Apache Trail  
Benson, AZ 85602

Mary Lou & George Berry  
25290 E. Tonopah Trail  
Benson, AZ 85602

Chris Peterson  
25310 E. Walapai Trail  
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Edwa-Jane Morgan  
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Tucson, AZ 85711

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Cynthia & Bob Beaugureau  
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Chandler, AZ 85224

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Pauletta & Ronald Swanson  
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Ruthie & Paul Brown  
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Kwong Yeong  
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Norman Williams  
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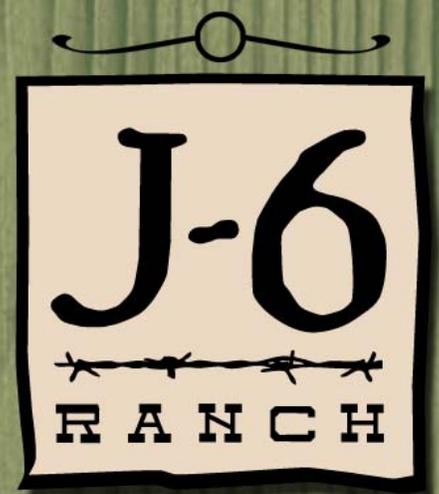
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# APPENDIX B: C,C, & R's



**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
J-6 RANCH**

TABLE OF CONTENTS

Page

ARTICLE I. DEFINITIONS

1.1 "Additional Covenants" ..... 2  
1.2 "Agencies" or "Agency" ..... 2  
1.3 "Annexable Property" ..... 2  
1.4 "Annual Assessments" ..... 2  
1.5 "Architectural and Landscape Review Committee" or "ARC" ..... 2  
1.6 "Architectural and Landscape Review Guidelines" or "ARC  
Guidelines" ..... 2  
1.7 "Articles" ..... 2  
1.8 "Assessments" ..... 3  
1.9 "Assessment Lien" ..... 3  
1.10 "Assessment Period" ..... 3  
1.11 "Association" ..... 3  
1.12 "Association Rules" ..... 3  
1.13 "Board" ..... 3  
1.14 "Building Envelope" ..... 3  
1.15 "Bylaws" ..... 3  
1.16 "Common Area" ..... 3  
1.17 "Common Expenses" ..... 4  
1.18 "County" ..... 4  
1.19 "Covered Property" ..... 4  
1.20 "Declarant" ..... 4  
1.21 "Declarant Affiliate" ..... 4  
1.22 "Declarant Control Period" ..... 4  
1.23 "Declaration" ..... 5  
1.24 "Delinquent Amount" ..... 5  
1.25 "Development Agreement" ..... 5  
1.26 "Dwelling Unit" ..... 5  
1.27 "J-6 Ranch Sustainability Committee" or "J-6SC" ..... 5  
1.28 "J-6 Ranch Sustainability Plan" or "Sustainability Plan" ..... 5  
1.29 "Event of Foreclosure" ..... 5  
1.30 "First Mortgage" ..... 5  
1.31 "First Mortgagee" ..... 6  
1.32 "Governing Documents" ..... 6  
1.33 "Improvement" ..... 6  
1.34 "Lot" ..... 6  
1.35 "Maintenance Assessments" ..... 6  
1.36 "Member" ..... 6  
1.37 "Membership" ..... 6  
1.38 "Occupant" ..... 6  
1.39 "Owner" ..... 6  
1.40 "Person" ..... 6  
1.41 "Plat" ..... 7

**TABLE OF CONTENTS**  
**(cont'd)**

	Page
1.42 "Private Area" .....	7
1.43 "Resident" .....	7
1.44 "Single Family" .....	7
1.45 "Special Assessments" .....	7
1.46 "Special Use Fees" .....	7
1.47 "Special Zoning Conditions" .....	7
1.48 "Tenant" .....	7
1.49 "Transitional Area" .....	8
1.50 "Visible From Neighboring Property" .....	8
<b>ARTICLE II. PROPERTY AND PERSONS BOUND BY THIS DECLARATION</b>	
2.1 General Declaration .....	8
2.2 Owners and Occupants Bound .....	8
<b>ARTICLE III. EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREA</b>	
3.1 Easements and Rights of Enjoyment .....	9
3.2 Delegation of Use .....	11
3.3 Waiver of Use .....	11
3.4 Acceptance of Certain Common Area and Other Areas .....	11
3.5 Ranch House .....	12
3.6 Easements for Streets Benefiting the Association .....	13
3.7 Trail System .....	13
<b>ARTICLE IV. ARCHITECTURAL, sustainability, AND LANDSCAPING RESTRICTIONS AND CONTROL</b>	
4.1 Control By Declarant of All Architectural and Landscaping Matters .....	13
4.2 Architectural and Landscape Review Guidelines .....	14
4.3 Power and Duties Upon Assignment to ARC .....	16
4.4 Obligation to Obtain Approval .....	16
4.5 Organization of Architectural and Landscape Review Committee .....	18
4.6 Waiver and Variance .....	18
4.7 Liability .....	18
4.8 Appeal to Board .....	19
4.9 Fees .....	19
4.10 Inspection .....	20
4.11 Administrative and Related Fees .....	20
4.12 J-6 Ranch Sustainability Committee .....	21
<b>ARTICLE V. PERMITTED USES AND RESTRICTIONS</b>	
5.1 Covenants, Conditions, Restrictions, and Easements Governing Use .....	21
5.2 Variances .....	37

**TABLE OF CONTENTS**  
**(cont'd)**

	Page
5.3	Additional Restrictions by Additional Covenants..... 38
5.4	Declarant's Exemption ..... 38
5.5	Sales Offices, Administrative Offices, and Other Facilities ..... 38
5.6	Unmanned Privacy Gate..... 38
5.7	Savings Clause..... 39
 ARTICLE VI. ORGANIZATION OF ASSOCIATION	
6.1	General Purpose and Charge ..... 39
6.2	Board of Directors and Officers..... 39
6.3	Association Rules ..... 40
6.4	Personal Liability..... 40
6.5	Mergers or Consolidations ..... 40
 ARTICLE VII. MEMBERSHIPS AND VOTING	
7.1	Votes of Owners ..... 41
7.2	Membership is Appurtenant to Ownership ..... 41
7.3	Declarant ..... 41
7.4	Membership Classes ..... 41
7.5	Right to Vote ..... 42
7.6	Members' Rights ..... 42
7.7	Control by Declarant, and Rights of the Class B Member ..... 43
7.8	Transfer of Membership..... 43
 ARTICLE VIII. ASSESSMENTS AND CREATION OF LIEN	
8.1	Creation of Assessment Lien; Personal Obligation of Lot Owner ..... 43
8.2	Annual Assessments ..... 44
8.3	Annual Assessment Period..... 44
8.4	Association's Rights in Spending Funds from Year to Year ..... 45
8.5	Rate of Assessment..... 45
8.6	Maintenance Assessments ..... 45
8.7	Fines and Penalties. .... 46
8.8	Special Assessments..... 47
8.9	Obligation of Developer Owner..... 47
8.10	Billing and Collection Procedures ..... 48
8.11	Collection Costs and Interest on Delinquent Amounts..... 48
8.12	Working Capital Fund, Reserves and Transfer Fees ..... 49
8.13	Declarant's Exemption ..... 50
8.14	Payment of Deficiencies ..... 50
8.15	Savings Clause..... 51
 ARTICLE IX. ENFORCEMENT OF THE ASSESSMENT LIEN	
9.1	Association Remedies to Enforce Assessments..... 51
9.2	Subordination of Assessment Lien ..... 52

**TABLE OF CONTENTS**  
**(cont'd)**

Page

ARTICLE X.	MAINTENANCE	
10.1	Common Area and Public Rights-of-Way .....	52
10.2	Standard of Care .....	53
ARTICLE XI.	RIGHTS AND POWERS OF ASSOCIATION	
11.1	Rights, Powers and Duties of the Association .....	53
11.2	Rules and Regulations.....	53
11.3	Association's Rights of Enforcement.....	54
11.4	Enforcement Methods and Means .....	54
11.5	Contracts with Others; Bulk Service Agreements .....	55
ARTICLE XII.	EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA	
12.1	Eminent Domain .....	56
12.2	Authority to Purchase Insurance.....	57
12.3	Individual Responsibility.....	57
12.4	Insurance Claims .....	58
ARTICLE XIII.	DISPUTE RESOLUTION	
13.1	Approval of Association Action .....	58
13.2	Alternative Method for Resolving Disputes .....	59
13.3	Claims.....	59
13.4	Mandatory Procedures.....	60
13.5	Amendment of Article; Severability .....	61
ARTICLE XIV.	ANNEXATION AND DE-ANNEXATION	
14.1	Annexation of Additional Property.....	62
14.2	Declarations of Annexation .....	62
14.3	Annexation by Owners.....	63
14.4	De-Annexation of Property.....	63
14.5	Protection of Declarant. ....	64
ARTICLE XV.	TERM; AMENDMENTS; TERMINATION	
15.1	Term; Method of Termination.....	64
15.2	Amendments.....	65
15.3	Condemnation Proceeds etc.....	66
ARTICLE XVI.	MISCELLANEOUS	
16.1	Additional Covenants.....	66
16.2	View Impairment .....	67
16.3	Assumption of Risk .....	68
16.4	Enforcement Rights .....	69
16.5	Interpretation of the Covenants.....	69
16.6	Severability .....	69

**TABLE OF CONTENTS**  
**(cont'd)**

	Page
16.7 Change of Circumstances.....	69
16.8 Declarant's Disclaimer of Representations .....	70
16.9 Successors and Assigns.....	70

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR J-6 RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR J-6 RANCH is executed this \_\_\_\_ day of \_\_\_\_\_, 2010, by Easter Mountain Ranch, L.L.C., an Arizona limited liability company ("Declarant").

**RECITALS**

**A.** Declarant is the owner of land located in Cochise County, Arizona, which is more particularly described as follows:

Lots \_\_ through \_\_, and Common Areas \_\_ and \_\_, of the subdivision of Cochise County, Arizona, known as J-6 Ranch, recorded in Book \_\_\_\_\_ Page\_\_\_\_\_, Cochise County Records (the initial "**Covered Property**"), and that certain additional real property legally described in Exhibit "A" hereto and which is Annexable Property.

**B.** The Covered Property shall be the initial property encumbered and governed by this Declaration. This Declaration provides for the discretionary future annexation of additional real property, including but not limited to all or portions of the Annexable Property. The Annexable Property, and any other real property which may be annexed hereunder, shall become a part of the Covered Property only if and when annexed under the purview hereof in accordance with the terms hereof.

**C.** The Covered Property, as such property may change from time to time, shall be known as J-6 Ranch, and Declarant desires to see that the Covered Property be developed as a master-planned residential community, with open spaces and other features and characteristics.

**D.** Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the provisions hereof, which are for the purpose of protecting the value, desirability, attractiveness and character of the Covered Property and which shall run with all of the property. This Declaration shall be binding on all persons or entities having any right, title or interest in the Covered Property, or any part thereof, and shall inure to the benefit of the aforementioned parties and their successors and assigns.

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

**ARTICLE I.  
DEFINITIONS**

As used in this Declaration, the following terms shall have following meanings:

- 1.1 **"Additional Covenants"** Shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any other instrument approved by Declarant or by the Board, including those which may be adopted pursuant to Section 16.1 hereof.
- 1.2 **"Agencies" or "Agency"** Shall mean the Federal Housing Administration (FHA), Veterans Administration (VA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), and any other governmental agency or financial institution insuring or guaranteeing residential loans, or purchasing such loans on the secondary market.
- 1.3 **"Annexable Property"** Shall mean any or all real property described in Exhibit A hereto as Annexable Property, but excluding property already a part of the Covered Property. The Annexable Property may be annexed pursuant to the annexation provisions hereof. In addition to the Annexable Property, certain rights are reserved herein to annex additional and other real property.
- 1.4 **"Annual Assessments"** Shall mean the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.
- 1.5 **"Architectural and Landscape Review Committee" or "ARC"** Shall mean the committee(s) formed pursuant to Article IV of this Declaration.
- 1.6 **"Architectural and Landscape Review Guidelines" or "ARC Guidelines"** Shall mean the rules and regulations adopted, amended and supplemented by the Declarant and Architectural and Landscape Review Committee pursuant to Section 4.2 of this Declaration, which shall include the J-6 Ranch Design Guidelines adopted by the Declarant on \_\_\_\_\_, 2010, and which shall, unless the context clearly indicates otherwise, include the J-6 Ranch Sustainability Plan.
- 1.7 **"Articles"** Shall mean the Articles of Incorporation of the Association, as amended or restated from time to time.

- 1.8 **"Assessments"** Shall mean all Annual Assessments, Maintenance Assessments and Special Assessments, and shall include any charges or fines hereunder which are stated to be secured by the Assessment Lien.
- 1.9 **"Assessment Lien"** Shall mean the charge and continuing servitude and lien against a Lot for payment of Assessments and Special Use Fees as described in Section 8.1 of this Declaration.
- 1.10 **"Assessment Period"** Shall mean each period for which Assessments are to be levied against a Lot pursuant to this Declaration, as more particularly described in Section 8.3 below.
- 1.11 **"Association"** Shall mean "J-6 Ranch Homeowners Association," an Arizona nonprofit corporation, its successors and assigns.
- 1.12 **"Association Rules"** Shall mean the rules and regulations adopted by the Association pursuant to Section 6.3 of this Declaration.
- 1.13 **"Board"** Shall mean the Board of Directors of the Association.
- 1.14 **"Building Envelope"** Shall mean that developable area within the Lot in which all improvements must be built, and the only area in which alterations to the existing landscape may occur. The Building Envelope for each Lot shall be determined by Declarant or the ARC, and each Owner shall be notified in writing, by delivery of a plot plan, of the precise limits and scope of the Building Envelope for his or her Lot.
- 1.15 **"Bylaws"** Shall mean the Bylaws of the Association, as amended or restated from time to time. The Bylaws contain the operational procedures of the Association.
- 1.16 **"Common Area"** Shall mean those Common Areas labeled as such and shown on the Plat, and all improvements, structures, or amenities thereon, including but not limited to the ranch house and associated amenities as described in Section 3.5, and all easements and licenses, and all other real property and personal property which shall from time to time be owned, controlled or operated by the Association within the Covered Property (including, but not limited to, areas used for landscaping, flood control, drainage, active or passive recreational areas, if any, open space, walkways, trails, and pedestrian and vehicular ingress and egress), or with respect to which the Association has undertaken administrative, maintenance or other similar responsibilities. To the extent accepted by the Association, Common Area shall include easements for trails

established over and across Lots either by plat dedication or by separate instrument.

- 1.17 "Common Expenses"** Shall mean the expenses incurred or to be incurred by the Association, as estimated by the Board, for the benefit of the Members and Owners within the Covered Property, generally, including reasonable reserves, and which are, in the sole and absolute discretion of the Board, determined to be properly chargeable by Assessments to all Owners and Members.
- 1.18 "County"** Shall mean Cochise County, Arizona.
- 1.19 "Covered Property"** Shall mean the property subject to this Declaration commencing first with the Covered Property as defined above, and including real property and improvements from within the Annexable Property, or from within other real property, later annexed pursuant to a Declaration of Annexation.
- 1.20 "Declarant"** Shall mean Easter Mountain Ranch, L.L.C., an Arizona limited liability company and any Declarant Affiliate or assignee of the rights and duties granted or reserved to Declarant herein, which assignment may be in whole or in part.
- 1.21 "Declarant Affiliate"** Shall mean any Person owning any portion of the Covered Property and directly or indirectly controlling, controlled by or under common control with the Declarant or, if a trust, the beneficiary of Declarant, and shall include without limitation, any general or limited partnership, limited liability company, corporation or trust in which the Declarant or the beneficiary of Declarant (or another Declarant Affiliate) is a general partner, managing member, controlling shareholder, or beneficiary.
- 1.22 "Declarant Control Period"** Shall mean the earlier of:
- 1.22.1 the period of time expiring one hundred twenty (120) days after: all Lots within the Covered Property have been conveyed to persons other than Declarant or a Declarant Affiliate;
- 1.22.2 such date as Declarant relinquishes its rights which may be exercised during the Declarant Control Period; or

Should annexations or subsequent events cause Declarant to own portions of the Covered Property after the Declarant Control Period has first expired, the Declarant Control Period shall revive subject to the provisions above.

- 1.23 **"Declaration"** Shall mean this Declaration of Covenants, Conditions, Restrictions and Easements, as amended, restated, or supplemented from time to time.
- 1.24 **"Delinquent Amount"** Shall mean any Assessment or Special Use Fee, or installment thereof, not paid when due.
- 1.25 **"Development Agreement"** Shall mean any Development Agreement by and between Declarant and Cochise County relating to the development of the Covered Property.
- 1.26 **"Dwelling Unit"** Shall mean any building, or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.
- 1.27 **"J-6 Ranch Sustainability Committee" or "J-6SC"** Shall mean the committee(s) formed pursuant to Article IV of this Declaration.
- 1.28 **"J-6 Ranch Sustainability Plan" or "Sustainability Plan"** Shall mean that certain document entitled "J-6 Ranch Sustainability Plan" adopted by the Declarant on \_\_\_\_\_, 2010, which document provides design, development, and conservation guidelines for the Covered Property with emphasis on integrating the built environment with natural features of the surrounding area and preserving open space.
- 1.29 **"Event of Foreclosure"** Shall mean the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust or other encumbrance inferior in priority to an Assessment Lien.
- 1.30 **"First Mortgage"** Shall mean any mortgage or deed of trust on any Lot with the first priority over any other mortgage or deed of trust encumbering such Lot.
- 1.31 **"First Mortgagee"** Shall mean the holder of any First Mortgage.

- 1.32 "Governing Documents"** Shall mean this Declaration, the Articles of Incorporation and Bylaws of the Association, the Architectural and Landscape Review Guidelines and the Association Rules, as same may from time to time be amended.
- 1.33 "Improvement"** Shall mean any structure or improvement, including any Dwelling Unit or modification thereof, any patio, outbuilding, pool, wall, path, driveway, excavation, landscaping, fixture, antenna, satellite system, fence, coping, awning, sunshade, flagpole, or other structure or improvement or appurtenance, and including decorative or aesthetic changes, such as color changes or changes to materials.
- 1.34 "Lot"** Shall mean an area of real property designated as a "Lot" on any recorded subdivision plat.
- 1.35 "Maintenance Assessments"** Shall mean the Assessments, if any, levied by the Board pursuant to Section 8.6 of this Declaration.
- 1.36 "Member"** Shall mean any Owner or Person entitled to Membership, including Declarant for so long as Declarant is a Class A or Class B Member and whether or not Declarant owns any Lot.
- 1.37 "Membership"** Shall mean the rights and duties of Members, including Declarant so long as Declarant is a Class A or Class B Member, with respect to the Association.
- 1.38 "Occupant"** Shall mean any Person, other than an Owner, occupying a Lot, or any portion thereof or building or structure thereon, as a Resident, Tenant, licensee or otherwise, other than on a merely transient basis.
- 1.39 "Owner"** Shall mean the record holder of legal title to the fee simple interest in any Lot or, in the case of a recorded "contract" (as that term is defined in A.R.S. § 33-741(2)), the holder, of record, of the purchaser's or vendee's interest under said contract, but excluding others who hold such title merely as security, such as any trustee under a deed of trust. An Owner shall include any Person who holds record title to a Lot in joint ownership or as an undivided fee interest.
- 1.40 "Person"** Shall mean a corporation, partnership, limited liability company, joint venture, natural person or individual, trust or any other legal entity.

- 1.41 **"Plat"** Shall mean a recorded plat for the Covered Property, and any amendment or resubdivision thereof, and in the event of successive plats for portions of the Covered Property, the term shall include all such plats unless the context clearly indicates otherwise.
- 1.42 **"Private Area"** Shall mean the area of a Building Envelope upon which Improvements have not been built, and include private patios, rear yards and similar areas.
- 1.43 **"Resident"** Shall mean:
- 1.43.1 each Owner who resides on the Covered Property and the members of the immediate family of each Owner who reside on the Covered Property;
- 1.43.2 each Tenant who resides on the Covered Property and the members of the immediate family of each Tenant who reside on the property;
- 1.43.3 guests of an Owner or Tenant.
- 1.44 **"Single Family"** Shall mean a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household. "Single Family" use shall not include any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, except that this prohibition shall not apply to those specific types of group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.
- 1.45 **"Special Assessments"** Shall mean the assessments, if any, levied by the Board pursuant to Section 8.8 of this Declaration.
- 1.46 **"Special Use Fees"** Shall mean any fees charged by the Association for use of the Common Area pursuant to this Declaration.
- 1.47 **"Special Zoning Conditions"** Shall mean those certain conditions pertaining to the establishment of a residential conservation subdivision in Cochise County, Arizona.
- 1.48 **"Tenant"** Shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in

A.R.S. § 33-1310(11) or otherwise.

- 1.49 **“Transitional Area”** Shall mean, unless otherwise in writing determined by the ARC, the area of a Lot between the Building Envelope and the exterior lot boundaries of the Lot.
- 1.50 **"Visible From Neighboring Property"** Shall mean, with respect to any given object, that such object is or would be reasonably visible to a Person six feet tall, standing at ground level on neighboring property (either Lots or Common Area) six feet back from the property line of the neighboring property, provided, however, that the ARC shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the ARC shall be binding in that regard, subject to any appeal rights to the Board.

**ARTICLE II.  
PROPERTY AND PERSONS BOUND  
BY THIS DECLARATION**

- 2.1 **General Declaration** Declarant desires to facilitate development of the Covered Property in accordance with this Declaration which establishes a general plan of development for the custom home-planned community legally known as Easter Mountain. This Declaration provides a flexible and reasonable procedure for the future expansion of the Covered Property and provides for its overall development, administration, maintenance and preservation.
- In accordance with the foregoing, as portions of the Covered Property are developed, Declarant, without obligation, may record one or more Additional Covenants designating Common Area, and may establish such additional covenants, conditions and restrictions as may be appropriate for the respective portions of the Covered Property. Nothing in this Declaration shall be construed to prevent or limit Declarant's right to modify the development of the Covered Property, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot or Common Area.
- 2.2 **Owners and Occupants Bound** Upon the recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or

deed transferring any interest in any Lot to or from such Owners or Occupants.

**ARTICLE III.  
EASEMENTS AND RIGHTS OF ENJOYMENT  
IN THE COMMON AREA**

**3.1 Easements and  
Rights of  
Enjoyment**

Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Area, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner's Lot. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Area so long as they remain Occupants. The foregoing grants and rights are subject to the following limitations, in addition to all other limitations and reserved powers set forth in this Declaration:

***Right to Modify and  
Change***

3.1.1 The rights, duties and obligations of the Association, and the reserved right of Declarant, and of the Association, to modify the use of Common Area, or to convey same free of claims or rights of the Owners or Members, subject to provisions of zoning, applicable law, or other instruments of record;

***Special Use Fees***

3.1.2 The right of the Association pursuant to this Declaration to charge reasonable Special Use Fees for the use of the Common Area. Any such Special Use Fees shall be set by the Board from time to time, in its sole discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Common Area (other than private streets) selected by the Board to be subject to a Special Use Fee, and shall be intended to collect revenue from the actual users of such selected Common Area so that all of the costs of operating such selected Common Area are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other persons utilizing such selected Common Area;

**Suspension of Rights**

3.1.3 The right of the Association, after such notice and hearing as may be required by law, to suspend the voting rights and the rights to use and enjoyment of the Common Area (other than roads) by any Owner or occupant, as the case may be, for any period during which an Assessment remains delinquent, or for a period not to exceed 60 days for any single infraction of this Declaration, the Association Rules, or the ARC Guidelines (provided such suspension shall not be limited if the infraction remains uncured);

**Limitation of Guests**

3.1.4 The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Area; and

**Regulation, Mortgages and Conveyances; Power of Association**

3.1.5 The right of the Association to regulate use of the Common Area in accordance with this Declaration, and to mortgage or convey portions of Common Area with the affirmative vote or written consent, with or without a meeting, of Declarant and Owners representing at least two-thirds (2/3rds) of the total votes held by the Members.

**Broad Reserved Powers of Declarant**

Notwithstanding the foregoing, Declarant may at any time cause the Association to convey, and the Association, with the consent of Declarant so long as Declarant owns any Lot, may convey minor, insignificant, or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters), and portions of Common Area determined by Declarant to be more burdensome or costly to own than the concomitant benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board, with the consent of Declarant so long as Declarant owns any Lot, determine that such conveyance or transfer is in the best interests of the Association or Covered Property. Furthermore, Declarant may at any time resubdivide Common Area into Lots or other Common Area or dedicated land, and may cause the Board or Association to execute such instruments as may be necessary to cause such resubdivision or dedication, and no consent or approval shall be required of any other Members nor shall a meeting of Members be required.

Any sale, disposition or resubdivision of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof.

In addition, the Association shall in all cases have the right, with the consent of Declarant so long as it owns any Lot, to convey and dedicate to the public lands and interests such as public roads, streets, drainageways, culverts, parks, sewer facilities (if any) and other Common Area, and such action shall not require the approval of any Owners or Members of the Association.

**3.2 Delegation of Use**

Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his or her rights of use and enjoyment in the Common Area to the members of his or her family or his or her occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules, and in the event of such delegation, including any lease of a Lot, the Owner shall be deemed to have relinquished his or her right of use and enjoyment for the period of such lease or delegation. Without limitation, the Rules may limit the number of guests, prescribe restrictions on certain types of gatherings or events, and impose Special Use Fees for certain gatherings or events.

**3.3 Waiver of Use**

No Owner shall be exempt from personal liability for Assessments, except Declarant as provided herein, nor shall any Owner have any right to release a Lot from the liens or charges arising under this Declaration by waiver of the right of use and enjoyment of Common Area or for any other reason, and no Owner shall in any fashion or by any means have a right of set-off of claims against any sum owned to the Association.

**3.4 Acceptance of Certain Common Area and Other Areas**

In the course of development and sale of land within the Covered Property, fee title to land that, in the future, is to become Common Area, may be held by, or transferred to, Persons acquiring fee title to portions of the Covered Property. Notwithstanding that fee title to such land may be held by Persons other than the Association (or Declarant), such land may, upon acceptance by the Association, become Common Area. If such areas become Common Area of the Association, whether by plat or otherwise, all Owners and Occupants shall have the easements, licenses and rights to the use and enjoyment of such Common Area as with respect to the other

Common Area generally. Such rights shall be subject in all cases to the provisions of this Declaration and the Association Rules. In the event such areas are to become Common Area, the Association shall accept same only if such land is free of monetary liens or encumbrances affecting such areas.

Notwithstanding the foregoing, Declarant shall have the absolute right to require that the Association accept title to future Common Area and open spaces shown upon any Plat or other instrument pertaining to the Covered Property, whether the Plat or other instrument was recorded prior to or after annexation of the land under the purview hereof as a portion of the Covered Property, and such right of Declarant shall, without limitation, extend to all areas of the annexed property that Declarant determines are appropriate for Common Area designation or otherwise appropriate for Association control and maintenance.

Future Common Area to be accepted may include, but shall not be limited to, such open spaces, landscaped areas, trails and recreational areas, if any, and other areas or facilities, but no representation or warranty is made as to any such facilities or which shall be offered or included in the Covered Property or within Common Area. Further, the Declarant may at any time in writing elect, in its sole discretion, to convert any Lot or portion thereof to Common Area, and to convey same to the Association, but no commitment or representation of any nature exists in that regard. It is acknowledged that should a future feature, such as a recreational amenity, be included within the Common Area, or should new areas be annexed into the Covered Property, the Association shall have the right to increase Assessments by the maximum permitted by law to assure adequate funds, and shall further have the right to impose a Special Assessments during such initial fiscal years as may be necessary due to limitations upon increases in the Annual Assessment.

### **3.5 Ranch House**

The Common Area may at Declarant's sole and absolute discretion, and only upon future annexation, include, among other improvements, structures, or amenities thereon, a ranch house and associated amenities or improvements located within the Annexable Property.

**3.6 Easements for Streets Benefiting the Association**

To permit the expansion or adjustment of the width or alignment of the improved private roads throughout the Covered Property, an easement for private roadways, slope and slope maintenance is hereby reserved and granted in favor of Declarant and the Association, for a distance and width of twenty (20) feet into each Lot on either side of the private streets shown on the Plat. The extent and dimension of the easement shall be measured from, and shall be parallel and coterminous with, the exterior boundary of the private road right of way shown on the Plat or, where applicable, the exterior boundary of the private street and slope easements shown on the Plat, whichever is farther from the road centerline. The easement reserved and granted pursuant to this provision shall be perpetual, but if unused after the expiration of ten (10) years after completion of construction of all private streets within the Covered Property, the easement shall terminate.

**3.7 Trail System**

A trail system for pedestrian and recreational use by Owners and Occupants will be developed within the Covered Property. The trails, portions of which may be improved and portions of which may be substantially preserved in its natural state, may be located within open space areas, within the boundaries of private Lots, along the shoulders of preserved wash areas located in the Covered Property, and/or within portions of the easement described in Section 3.6 above. Declarant may establish such trail systems as Common Area and, whether or not so designated, the Association may be required to maintain such trail systems as a Common Expense.

**ARTICLE IV.  
ARCHITECTURAL, SUSTAINABILITY, AND LANDSCAPING  
RESTRICTIONS AND CONTROL**

**4.1 Control By Declarant of All Architectural and Landscaping Matters**

***Reserved Rights of Declarant***

4.1.1 Broad Reserved Rights of Declarant. Each and every Owner, and all other Persons, by accepting a deed or otherwise having ownership, possession or control over any Lot agrees that Declarant, as the initial entity planning for the development of the Covered Property, and as an initial Owner of all or portions of the Covered Property, has a vital and legitimate interest in seeing the Covered Property developed in a manner consistent with Declarant's wishes and plans, as those plans may from time to time change.

**Approval Required**

4.1.2 All Development to be Approved. Accordingly, Declarant does hereby delegate to the ARC, which shall be deemed a committee of the Board, the right to review and approve plans, specifications and submittals made pursuant to this Declaration. As more specifically set forth below, no development, construction, grading, improvement, landscaping or other work or alteration of any land shall be commenced unless and until the ARC has given its prior written approval of same, which approval may be granted or denied in the sole and absolute discretion of the ARC.

**ARC and ARC Guidelines**

4.1.3 ARC and ARC Guidelines. The ARC shall be guided in its functions by the Architectural and Landscape Review Guidelines (the "ARC Guidelines") and the J-6 Ranch Sustainability Plan.

**Protection of Declarant**

4.1.4 Declarant's Interests Protected. So long as Declarant is a Class B Member, or for so long as Declarant owns any portion of the Covered Property, whichever period shall last expire, Declarant may act, or cause the ARC to act, in Declarant's interest and as Declarant determines based upon its desires for the Covered Property. Declarant's rights reserved hereunder may in writing be waived, terminated or assigned.

**Delegation of Review Rights**

4.1.5 Delegation and Resumption of Rights. Declarant may at any time while it is a Member of the Association elect to revoke or rescind its delegation of authority to the ARC, and Declarant may at any time reassume, to the exclusion of the ARC, jurisdiction over the matters delegated to the ARC. Furthermore, Declarant shall have the right to veto any decision of the ARC which Declarant for any reason determines, in its sole discretion, to be inappropriate or inadvisable.

**4.2 Architectural and Landscape Review Guidelines**

**Content of Guidelines**

4.2.1 Content of ARC Guidelines. The initial ARC Guidelines, including the J-6 Ranch Sustainability Plan, shall be adopted by Declarant, or by the Board with the written approval of Declarant. The J-6 Ranch Sustainability Plan has been approved by Declarant, and is deemed a part of the ARC Guidelines. Unless the context clearly indicates otherwise, reference to the ARC Guidelines shall be deemed to include the J-6 Ranch Sustainability Plan. So long as Declarant owns any portion of the Covered Property, Declarant may amend or supplement the ARC Guidelines with no other approval or

consent required. The Board may amend or supplement the ARC Guidelines after expiration of the Declarant Control Period, except that Declarant's written approval shall be required so long as Declarant owns any portion of the Covered Property. The J-6 Ranch Sustainability Plan may only be amended upon the majority vote by the members of the J-6 Ranch Sustainability Committee, and a majority vote of the members of the Board, and, so long as the Declarant owns any portion of the Covered Property, the approval of the Declarant.

4.2.2 The ARC Guidelines may be different for various portions of the Covered Property. The ARC Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for ARC review and the standards for development within all or various portions of the Covered Property. Further, the ARC Guidelines may include, without limitation, provisions regarding:

- (a) the appearance and style of Dwelling Units, and the size or maximum Lot coverage of Dwelling Units and other Improvements;
- (b) architectural design of Improvements and Dwelling Units, with particular regard to the harmony of the design with surrounding structures and topography;
- (c) placement of buildings and all other Improvements, with the ARC and the Declarant having the right to designate Building Envelopes upon each Lot and to require and enforce adherence to the requirement that all buildings or other Improvements be located solely within the Building Envelope unless otherwise approved in writing by the ARC or Declarant. Further, pursuant to the ARC Guidelines or otherwise, Private Areas and Transitional Areas, and other areas, such as building setback areas, may be required to be established on each Lot for the purposes set forth herein or in the ARC Guidelines;
- (d) landscaping design, content and conformity with the natural desert character of the Covered

Property;

- (e) improved and unimproved trails throughout the Covered Property;
- (f) water conservation measures;
- (g) requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning yard and building ornaments Visible from Neighboring Property, recreational equipment, exterior lighting and exterior furniture Visible from Neighboring Property, and other items or improvements Visible From Neighboring Property;
- (h) signage and mailboxes; and
- (i) perimeter and screen wall design and appearance.

***Force and Effect***

4.2.3 Force and Effect. The ARC Guidelines shall have the same force and effect as the Association Rules.

**4.3 Power and Duties Upon Assignment to ARC**

Except as provided herein, it shall be the duty of the ARC to consider and act upon all proposals or plans submitted to it pursuant to the provisions hereof, and to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

**4.4 Obligation to Obtain Approval**

***Mandatory Submittal***

4.4.1 Mandatory Submittal of Plans and Specifications. Except as otherwise expressly provided in this Declaration or the ARC Guidelines, without the prior written approval by the ARC or by Declarant, as applicable, of plans and specifications prepared and submitted to the ARC in accordance with the provisions of this Declaration and the ARC Guidelines, clearly showing the limits of all grading and other disturbance, as well as the location of all open space and the location of the Building Envelope:

- (a) No Dwelling Unit may be commenced or constructed, and no Improvements, alterations, repairs, excavation, grading, landscaping or other work shall be done which in any way alters the exterior appearance of any property or

improvements thereon from their natural or improved state; and

- (b) No building, fence, exterior wall, pool, roadway, driveway or other structure, improvement or grading shall at any time be commenced, erected, maintained, altered, changed or made on any Lot.

In furtherance of the foregoing, and consistent with the overall theme for J-6 Ranch, the ARC shall be guided in its review of all plans and submittals by those certain goals and aspirations which are to be encouraged and achieved within the Covered Property and which are more specifically set forth in the ARC Guidelines, including the J-6 Ranch Sustainability Plan. In addition, each Owner in all cases shall comply with all rules and regulations of the Association intended to fulfill and achieve the goals and purposes therein set forth, including those pertaining to water conservation, landscaping, and open space preservation.

***Landscaping***

4.4.2 Landscaping. All areas of a Lot located outside of a Building Envelope shall be deemed either Transitional Area or open space and shall remain undisturbed unless otherwise approved in writing by Declarant or the ARC. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by Declarant or the ARC in accordance with the ARC Guidelines, and except for replacements of plants previously approved and which remain acceptable in accordance with the then current ARC Guidelines.

***Changes and Deviations***

4.4.3 Changes or Deviations. No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by Declarant or by the ARC, shall be permitted without approval of the change or deviation by Declarant or by the ARC, as applicable.

**Verbal Statements**

4.4.4 Verbal Statements. In no event shall Declarant or the ARC be bound by any verbal statements, no single member thereof having the right to bind the committee.

**4.5 Organization of Architectural and Landscape Review Committee**

The ARC is a committee of the Board, but appointed by Declarant for the periods of time set forth herein, and thereafter by the Board. The ARC shall be organized as provided in the Bylaws. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant. The right to appoint and remove all regular and alternate members of the ARC at any time while Declarant is a Member of the Association, and so long as Declarant shall own any portion of the Covered Property or Annexable Property, shall be and is hereby vested solely in the Declarant, unless in writing waived or assigned by Declarant. Any actions by Declarant in reference to approval of Improvements or appointment of ARC members shall be deemed performed on behalf of the Association. Until appointment of the ARC, the Declarant may in all respects assume and act in the role of the ARC.

**4.6 Waiver and Variance**

The ARC may grant variances and waivers from the requirements of the ARC Guidelines if it believes it is in the best interests of the Covered Property to do so, or if hardship justifies the variance. In addition, Declarant may at any time grant a variance or waiver. The approval by Declarant or by the ARC of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Declarant or the ARC, 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.

**4.7 Liability**

Neither Declarant nor the ARC (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

- (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective;

- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (c) the development of any Lot; or
- (d) the execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct, provided, however, that with respect to the liability of a member of the ARC, 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 any of the foregoing provisions of this Section, the Declarant or the ARC, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner (other than the Owner applying for consent or approval, whose views the Declarant or the ARC shall be required to hear) with respect to any plans, drawings, specifications, or any other proposal submitted for review.

#### **4.8 Appeal to Board**

Any Owner who initially made application to the ARC, and who is aggrieved by a decision of the ARC, may appeal the decision to the Board in accordance with procedures to be established in the ARC Guidelines. In the event the decision of the ARC is overruled by the Board on any issue or question, the prior decision of the ARC shall be deemed modified to the extent specified by the Board. There shall be no appeal from a decision of Declarant, and no appeal from a decision of the ARC may be taken so long as Declarant has the right to appoint the members of the ARC pursuant to the Bylaws or this Declaration.

#### **4.9 Fees**

##### ***Power to Assess***

4.9.1 Power to Assess Fees. Declarant or the ARC, as applicable, may establish a reasonable processing fee to defer the costs of considering any requests for reviews and approvals or for appeals, which fee shall be paid at the time the request for approval or review is properly submitted. Such fees need not be set forth in the ARC Guidelines.

***Refundable and Non-Refundable Fees and Deposits***

4.9.2 Refundable and Non-Refundable Fees and Deposits. In addition, Declarant or the ARC may implement: a) refundable and non-refundable fees and deposits for revegetation and restoration of any site, including any disturbed area of a Lot lying outside the approved Building Envelope, with a portion of a fee being non-refundable should an Owner default in its obligations to restore or revegetate a site when required hereunder or by the ARC, or should the Association or the ARC incur cost as a result thereof; b) refundable and non-refundable fees to assure that all damage or degradation to Common Area, streets and roads caused or to be caused by construction traffic is promptly repaired or otherwise addressed by the Owner responsible therefor, or to enable the Association to accomplish such work, itself, or to establish a fund for future restoration of such areas; and c) such deposits as may be appropriate to assure completion of components of any work that may interrupt or interfere with the use of Common Area or operations of the Association.

**4.10 Inspection**

Declarant, any member or authorized consultant of the ARC, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot after reasonable notice to the Owner of such Lot in order to inspect the improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with any approved plans, the ARC Guidelines, and this Declaration.

**4.11 Administrative and Related Fees**

The Board may levy and charge to each Owner reasonable fees and charges for administrative time and expense in reviewing, approving or assuring compliance by each Owner with the provisions of this 3.7.

**4.12 J-6 Ranch Sustainability Committee**

The J-6 Ranch Sustainability Committee (J-6SC) and Sustainability Plan. The J-6SC shall be guided in its functions by the J-6 Ranch Sustainability Plan, and shall coordinate to the extent reasonable or necessary with the ARC.

***Purpose of the J-6SC***

4.12.1 Purpose of the J-6SC. Unlike the ARC or Declarant, as applicable, which have the power to, among other things as provided herein, assess fees and approve or deny plans and specifications prepared and submitted to the ARC in accordance with the provisions of this Declaration and the ARC Guidelines, the J-6SC shall be primarily an oversight committee to monitor adherence to the J-6 Ranch Sustainability Plan and any Special Zoning Conditions pertaining to the Covered Property relating specifically to issue of sustainability, all in furtherance of the objective to conserve natural resources, and to preserve open space and the natural landscape of the land.

***Organization of the J-6SC***

4.12.2 Organization of the J-6SC. The J-6SC is a committee of the Board, but appointed by Declarant for the periods of time set forth herein, and thereafter by the Board. The right to appoint and remove all regular and alternate members of the J-6SC at any time while Declarant is a Member of the Association, or so long as Declarant shall own any portion of the Covered Property or Annexable Property, shall be and is hereby vested solely in the Declarant, unless in writing waived or assigned by Declarant.

**ARTICLE V.  
PERMITTED USES AND RESTRICTIONS**

**5.1 Covenants, Conditions, Restrictions, and Easements Governing Use**

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots:

5.1.1 Prohibited Uses. The following uses are prohibited:

- (a) any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by

reason of risk of fire or explosion, or which is otherwise materially injurious to the perceived value of any Lot; and

- (b) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, County of Cochise or any other governmental entity having jurisdiction over the Covered Property.

***Plat Notes***

5.1.2 Plat Notes. In addition to the restrictions contained herein, the Covered Property shall be subject to all applicable restrictions and limitations set forth on the Plat for the Covered Property. Further, all Owners shall comply with the rules, regulations and restrictions set forth in the ARC Guidelines, including the J-6 Ranch Sustainability Plan, which, among other things, provides for the protection and preservation of open space areas, the establishment of improved and natural trails throughout the community, and sets forth certain environmentally friendly measures meant to preserve natural resources and reduce structural and visual disturbances affecting the Covered Property and surrounding landscape.

***Building Envelope Regulation/Slopes, Reports etc.***

5.1.3 Duty of Association. Each Owner acknowledges certain grading limitations imposed upon the Covered Property pursuant to the ARC Guidelines, the Sustainability Plan, provisions of the recorded Plat, or by applicable zoning. Without limitation, disturbance beyond the area of approved Building Envelopes is to be limited. In addition, no more than fifty percent (50%) of the Covered Property may be improved with structures or permanently covered with impervious surfaces, and no greater density than one (1) Dwelling Unit per one and one-half (1.5) acres shall be permitted upon complete development of the Covered Property and Annexable Property. Density is not measured phase by phase, but, rather, shall be determined based upon a phasing plan approved by the Declarant and the ARC providing for future annexation and appropriate preservation of open spaces to meet the goals of the Sustainability Plan and to comply with applicable Special Zoning Conditions. The Association shall as a Common Expense maintain annual reports and monitor

development such that the Association is aware of the total area of disturbance within the Lots, thereby enabling the Association to take enforcement action in the event of any failure to conform. Disturbance within Building Envelopes must be approved by the ARC and conform to the ARC Guidelines, to the extent applicable.

***Duty of Maintenance***

5.1.4 Duty of Maintenance. Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot, including buildings, Improvements, private drives, easement areas and grounds thereon, in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements. Each Owner shall be responsible for the maintenance and repair of all utility lines, and such maintenance obligation shall include maintenance and repair of all leaching fields and related improvements. Further, each Lot shall have its own private septic system, and each Owner shall be responsible for the maintenance and repair of the septic system located within such Owner's Lot.

5.1.5 No Improvement on any Lot shall be permitted to fall into disrepair and each such building and Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the Improvement. In the event any building or Improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or Improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within the time limits established by the Board, the Board and its agents and representatives are empowered to enter on the Lot and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

***Building Exteriors***

5.1.6 Building Exteriors. All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans

and designs approved in accordance with Article 4.

***On Site Grading and Drainage***

5.1.7 On Site Grading and Drainage. No water shall be drained or discharged from any Lot, or building thereon, except in accordance with applicable County ordinances and approvals of the ARC.

***Utility Lines and Connections***

5.1.8 Utility Lines and Connections. All utility wires, lines, pipes, conduits, facilities, connections and installations (including, without limitation, electrical, telephone, cable television, water, gas and sanitary septic and sewer, if any) shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance the ARC, as applicable. All transformers shall be placed on or below the surface of the Lot. Temporary above-ground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of Declarant or the ARC.

Notwithstanding the above, the following permitted uses may be installed and maintained above ground:

- (a) Existing utility installations, for so long as Declarant shall approve; and
- (b) Any future relocation of existing utility installations, for so long as Declarant shall approve, as well as above ground transformers and pedestals for electricity, telephone, cable television, etc., so long as same are approved by Declarant or the ARC.

No other utility or service equipment or lines may be installed or relocated on any Lot or the Common Area except as approved by Declarant or the ARC.

***Overhead Encroachment***

5.1.9 Overhead Encroachments. No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of Declarant or the ARC. The Association shall have the right to cause an Owner to trim any offending tree, shrub or planting.

***Permissible***

5.1.10 Permissible Encroachments.

**Encroachment**

Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, Improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by an Owner may from time to time encroach in minor degree upon the Common Area or other Lots in the Covered Property. Such minor and incidental encroachments, such as those caused by good faith survey error, shall be deemed permissible, particularly where removal of Improvements would cause gross economic waste. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

**Further Subdivision**

5.1.11 Restriction on Further Subdivision, Property Restrictions and Rezoning.

- (a) So long as Declarant is a Member of the Association, all subdivision plats, and Additional Covenants must be submitted to and approved by Declarant before being recorded or approved by the County, as applicable. Except for property owned by the Declarant, after a subdivision plat has been approved, no Lot, or any portion of a Lot, shall be further subdivided and no portion less than all of the Lot shall be conveyed or transferred by any Owner without the prior written approval of the Declarant. The combining of a Lot or Common Area with an adjacent Lot or Common Area, where no additional Lot is created, and which is approved by Declarant or the Board if applicable shall not be deemed a resubdivision in accordance with the foregoing requirements.
- (b) No proposed application for rezoning, variance or use permit for any portion of the Covered Property shall be made, filed, submitted to, or recorded with County or any other governmental authority or agency unless it has first been approved by Declarant so long as Declarant is a Member of the Association.
- (c) Neither subsection (a) nor (b) shall apply to portions of the Covered Property owned by Declarant or to subdivision plats or Additional

Covenants submitted or proposed by Declarant and pertaining to portions of the Covered Property owned by Declarant. Declarant may at any time, of its own volition, and with no other consent or approval required, resubdivide all or any portion of the Lots or Common Area.

- (d) Declarant may at any time in writing relinquish all or a portion of its approval rights under this Section. After Declarant no longer is a Member of the Association, or after Declarant may have relinquished its rights under this Section, the Board shall succeed to the right to approve of subdivision plats or Additional Covenants, unless Declarant has assigned such right to one or more Persons, in which case the Board shall succeed to such rights only after such Persons no longer own any portion of the Covered Property.

***Maintenance of  
Landscaping and  
Driveways***

5.1.12 Maintenance of Landscaping and Driveways. Each Owner shall be responsible for the proper maintenance of all landscaping on the Owner's Lot (including set back areas). Such maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly materials.

All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately.

All bed areas shall be kept free of weeds and cultivated periodically as needed. No area shall be over watered so as to create a risk of damage to nearby structures or Improvements. Landscaping may be required to be placed on a Lot within certain time frames established by the ARC Guidelines. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot.

Any Owner who fails to properly maintain the landscaping upon the Lot shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot after receiving notice from the Board to do so, and after such hearing and notice as may be required by law, the Association is empowered to enter upon the Lot, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as Maintenance Assessments.

***Nuisances, Dust Control  
and Construction  
Activities***

5.1.13 Nuisances; Dust Control; Construction Activities. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Association may, but is not required, to take action to abate what any Owner may consider a nuisance.

***General Parking and  
Street Parking  
Regulations, etc.***

5.1.14 Vehicles and Parking. As used in this Section: (i) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (ii) "Streets" means the streets shown on any Plat of the Covered Property.

(a) No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar

equipment or vehicle may be parked, kept or stored on the Streets. Provided, however, that the Board may adopt rules and regulations governing the subject matter and further restricting such parking or establishing limited exceptions thereto, such as for loading and unloading, emergencies, special events, limited occasions, and the like.

(b) Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area. No Motor Vehicles designed or used for carrying merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents.

(c) It is also the intent of this Section to require that Motor Vehicles owned or leased by an Owner, Lessee or Resident of the Lot be parked only in the garage, carport, driveway or approved driveway expansion areas situated on the Lot, as constructed in the course of original construction or approved by Declarant or the ARC, but not in the Streets. Accordingly, Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage or carport situated on the Lot to the extent space is available in the garage or carport for the parking of such Motor Vehicles. If space is not available in the garage or carport, then Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot, but not in the Streets. Parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may only be parked on an approved driveway expansion area if space for the parking of such Motor Vehicles is not available either in the garage or carport or in the driveway constructed as part of the initial construction or Improvements on the Lot. The parking of a Motor Vehicle owned or leased by and Owner, Lessee or Resident of a Lot on a driveway expansion area is also subject to such rules and regulations as may be adopted by the Board.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes

of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or, in the case of visits, parties, or events, on the Streets or in designated parking spaces on the Common Area.

Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident may be parked in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property, nor stored or parked on the Streets or any other part of the Common Area. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on the Streets or any other part of the Common Area.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section, and establishing certain exceptions that may in certain cases be warranted. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board, the provisions of this Section shall control.

This Section shall not prohibit the parking of vehicles protected by A.R.S. § 33-1809.

**Commercial Vehicles**

Commercial Vehicles. No vehicle shall be parked on the Covered Property if the exterior of the vehicle contains or exhibits any signage relating to a commercial enterprise or commercial activity that is visible from the exterior of such vehicle (and the vehicle is not kept in an approved enclosed garage), except such signage that is limited to the exterior driver or passenger door of such vehicle shall be permitted if the vehicle is used by the Owner as regular transportation in commuting to work.

No vehicle shall be permitted to park on a Lot, even if such vehicle otherwise qualifies under the preceding paragraph, or other provisions hereof, if such vehicle is used for a commercial enterprise or activity and such vehicle has ladders, work beds, lights and/or other commercial items attached to or hanging from such vehicle so as to be visible from the exterior of such vehicle (and the vehicle is not kept in an approved enclosed garage), except as provided in Section 5.1.14(b) above.

The foregoing restriction shall not apply to vehicles protected by law from prohibition by covenant, nor to vehicles parked within an enclosed structure approved by the ARC, nor to commercial vehicles of contractors and others working on the Covered Property, nor to vehicles of vendors, business invitees and others in the process of temporarily serving the Covered Property.

**Temporary Occupancy Prohibited**

5.1.15 Temporary Occupancy and Temporary Buildings; Outside Storage. No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed or maintained on a Lot with the prior written approval of Declarant or the ARC, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened

by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of improvements on any Lot, necessary construction materials and supplies may be stored on the Lot without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. Declarant or the ARC, as applicable, is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

***Health and Welfare***

5.1.16 Health and Welfare. In the event uses of, activities on, or facilities upon a Lot are deemed by the Board to be a nuisance or to adversely affect the health or welfare of Owners or Occupants, the Board or the ARC may make rules restricting or regulating their presence.

***Incidental Uses***

5.1.17 Incidental Uses. The Board may approve, regulate and restrict incidental uses of property. By way of example and not of limitation, the Board may adopt Rules governing recreational facilities, if any, or other facilities.

***Antennas, Dishes, etc.***

5.1.18 Antennas and Dishes; Solar Devices. No television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible

pursuant to rules of the Association may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Residence and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of Declarant or the ARC, which shall give due regard to state law restricting the limitation of such devices.

***Clothes Drying***

5.1.19 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot without the prior written consent of the ARC unless they are not Visible From Neighboring Property.

***Mineral Exploration;  
Water Withdrawal***

5.1.20 Mineral Exploration, Withdrawal of Water, etc. No Lot shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, and no well may be drilled within the Covered Property.

***Diseases and Insects***

5.1.21 Diseases and Insects. No Owner or Occupant shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

***Window Treatments***

5.1.22 Window Coverings. No visible window covering or reflective covering may be placed, or permitted to remain, on or adjacent to the exterior of any window of any building, structure or other improvement without the prior written approval of the ARC;

***Lot Coverage***

5.1.23 Lot Coverage. The percentage of each Lot which may be covered by buildings (as well as the location of such buildings and other improvements on each Lot) shall be subject to the review and approval of the ARC as part of its review of plans for proposed improvements on such Lot pursuant to this Declaration, but shall in no event violate County ordinances and regulations in effect from time to time. This Section shall not apply to Declarant's Lots.

**Single Family Use**

5.1.24 Single Family Use. No structure whatsoever, other than one private, detached Single Family residence per Lot, together with such private garage, guest facilities, recreational and storage facilities which may be approved in advance by Declarant or the ARC in accordance with this Declaration, shall be erected, placed or permitted on any Lot, and all such permitted improvements, other than the driveway, shall, unless otherwise in writing approved by Declarant or the ARC, be located solely within the approved Building Envelope. No mobile home, manufactured home, modular home or prefabricated home shall be permitted on any Lot.

**Commercial Restriction**

5.1.25 No Commercial Use. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot except as set forth herein. The Declarant may maintain sales offices, construction offices, administrative offices and sales models on the Lots and Common Area within the Covered Property, as well as associated and ancillary services and facilities in connection therewith, including parking areas, and open spaces. Further, an Owner or Occupant may carry on a "Home Occupation" as provided below. A "Home Occupation" as permitted hereby means work within the Dwelling Unit (such as the performance of accounting work, creation of art work, etc.) provided that:

- (a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;
- (b) the business activity conforms to all zoning requirements for the Lot; and
- (c) the business activity does not involve traffic by persons who do not reside therein, nor regular arrival of employees of the Owner; and
- (d) the business activity is lawful and consistent with the residential character of the neighborhood and does not constitute a nuisance or hazard or offensive use within the Covered Property as determined in the discretion of the Board.

If the Board determines that the Home Occupation violates the provisions hereof, then the Board shall have the authority to require that the Home Occupation in question cease immediately. In no event shall any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, be permitted within the Covered Property, except that this prohibition shall not apply to group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

### ***Leasing***

5.1.26 Leasing. The entire (but not less than all) of a Dwelling Unit may be leased to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration and the Association Rules. Each Owner shall provide to the Association a copy of any written lease agreement for any Lot, and Tenants shall be required in each form of lease to abide by all provisions of this Declaration. Should a tenant fail to so abide, the Association shall have the right to cause the Owner to declare a default under the lease and to take appropriate action, including eviction of the tenant. Leases shall be for a term not less than six (6) months in duration.

### ***Animals***

5.1.27 Animals. No animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property. The Board shall have the right by Rule or otherwise to determine what shall constitute a generally recognized house pet, and what a reasonable number of such pets shall, in any instance, constitute.

Notwithstanding the foregoing, no permitted pets may be kept on any Lot which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. The Board has the right, after notice and the opportunity for a hearing, to require the removal of any pet

which the Board, in its sole discretion, has determined is a nuisance. Persons walking pets shall carry a "pooper scooper" (a hand held shovel or other instrument designed for removing animal excrement from the ground) with them at all times and shall remove the pet's excrement from the Covered Property.

***Garbage and Trash Regulation***

5.1.28 Garbage. No garbage or trash shall be allowed, stored or placed on a Lot except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. The Board may also determine to require that the Association or individual Owners shall employ one or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Covered Property or portions thereof. The Board may establish regulations as to the times and duration that waste containers may be Visible From Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers.

***Machinery and Equipment***

5.1.29 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot, except:

- (a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures or improvements thereon; or
- (b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or portions of the Covered Property.

***Signs***

5.1.30 Signs. To the extent permitted by law, no signs may be erected or placed within the Covered Property, except such signs as are permitted by the ARC Guidelines, and further except for those signs approved by the Board or by Declarant. Declarant may approve such signs without any other consent or approval. The Board may enact rules limiting "for sale" or "for lease"

signs and the ARC Guidelines may regulate the nature, number, location, content and design of any sign, as permitted by law. Nothing herein shall prohibit any Owner from erecting, displaying, or placing signs upon Owner's Lot, the Common Areas, or any other place in the Covered Property, pursuant to and as permitted by applicable laws.

After providing notice to any Owner that a sign advertising that Owner's house for sale or lease is in violation of the Governing Documents, to the extent not protected by state law, and provided that such violation is not a protected usage of a sign under state law, the Association has the right to remove such signs from the Common Areas, the Lot or any other place in the Covered Property and to dispose of such signs. The Association has an easement over any Lot for that express purpose and in exercising its easement rights is not guilty of trespassing.

In addition to the foregoing, Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across all Common Area for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Covered Property, but in no event later than twenty (20) years after the date this Declaration is recorded.

***Model Homes***

5.1.31 Model Homes. With Declarant's written approval, which approval may be withheld at Declarant's sole discretion, model homes of persons in the business of selling custom homes may be permitted, provided same are in compliance with the provisions of this Declaration and ordinances of the County.

***Open Range***

5.1.32 Declarant's Reserved Right for Open Range. Each Owner and the Association does hereby acknowledge that the grazing of cattle and livestock upon each and every Lot, until commencement of construction of a Dwelling Unit upon such Lot, is of critical value and benefit to Declarant. Declarant reserves, and specifically shall have the right, to graze cattle and livestock upon all or portions of the Covered Property, and

upon each and every Lot, at its sole discretion. Until an Owner commences the construction of a Dwelling Unit upon such Owner's Lot, subject to all necessary requirements, conditions, and approvals contained herein, the Lot shall be deemed "open range," whereby cattle and livestock are permitted to enter onto and graze upon Owner's Lot and any other open range areas, all without compensation or payment of any fee, cost or damage to any Owner. The Association, the members of the Board, the officers of the Association, the management company of the Association, and Declarant shall be fully released of any liability related to the grazing of cattle or livestock in such open range areas, and shall have no duty to fence and prevent the entrance of cattle upon such areas. Declarant and Declarant's agents, assigns and affiliates shall have an easement upon, over and across each Lot for the grazing of cattle and livestock pursuant to the rights hereby reserved and confirmed. No amendment of this Section 5.1.32 shall be permitted without written approval by Declarant.

## **5.2 Variances**

The Declarant may, at its sole discretion, grant variances from the restrictions set forth in Article 5 if Declarant determines that the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants and that:

- (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; or
- (b) a change of circumstances has rendered the particular restriction obsolete; or
- (c) other circumstances warrant a variance in Declarant's sole and absolute discretion.

Declarant may assign to the ARC its right to grant and approve variances. Such assignment may be subject to terms, conditions, and limitations. Any request made to Declarant or to the ARC, shall be made in writing and be accompanied by supporting documentation. Declarant or the ARC shall approve or disapprove of requests, promptly and in writing, as the particular circumstances may warrant. All decisions of Declarant or the ARC shall be final and non-appealable. No variance

granted by the ARC may be given that reverses or alters a decision made by Declarant unless Declarant shall consent thereto.

**5.3 Additional Restrictions by Additional Covenants**

Declarant may require prior to the development of any Lot, the imposition of special conditions in Additional Covenants in any case where deemed appropriate in the sole and absolute discretion of Declarant, and may require adequate provision for assessments and maintenance of the subject property and improvements and such other provisions as are deemed proper.

**5.4 Declarant's Exemption**

Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant or a Declarant Affiliate or their agents during the period of development and construction on the Covered Property of improvements, landscaping or signs deemed necessary or convenient by Declarant or a Declarant Affiliate, in its sole discretion, to the development or sale of property within the Covered Property.

**5.5 Sales Offices, Administrative Offices, and Other Facilities**

Notwithstanding any other provision of this Declaration to the contrary, the Declarant and any Declarant Affiliate may maintain sales offices, construction offices, administrative offices and sales models on the Lots and Common Area within the Covered Property, as well as associated and ancillary services and facilities in connection therewith, including parking areas, open spaces and walking and recreational areas.

**5.6 Unmanned Privacy Gates**

One or more unmanned privacy gates restricting vehicular access to the Covered Property shall be located on the Covered Property. The Association shall undertake and be solely responsible for all costs associated with operation, repair, and maintenance of the unmanned privacy gates, which are to be maintained in good working order to the extent reasonably possible. The unmanned privacy gates are not security gates, and neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor the Declarant nor any other Person or entity, shall be liable or responsible for, or in any manner considered a guarantor or insurer of the security of any Owner or Occupant of any Lot or any tenant, guest or invitee of any Owner or Occupant or for any property of any such

persons.

**5.7 Savings Clause**

The provisions of this Declaration shall be construed to be consistent with law, and should any provision violate law, then applicable law shall govern. Without limitation, no provision hereof shall be construed to prohibit the placement of solar heating or other such devices or antennae on Lots, provided such placement conforms to such lawful requirements hereof or of the ARC Guidelines which do not conflict with law, nor shall the provisions hereof prohibit the placement of the American Flag or other flags protected by law from regulation or prohibition by recorded covenants, or the parking of public service or other protected vehicles as provided by law, again subject to the ARC Guidelines and rules and regulations of the Association not in conflict with such laws.

**ARTICLE VI.  
ORGANIZATION OF ASSOCIATION**

**6.1 General Purpose and Charge**

The Association is a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

**6.2 Board of Directors and Officers**

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the Class B Membership, the Board shall consist of at least three (3) directors who shall be Members or individuals designated by a corporate, partnership or other non-individual Member, and all directors may be appointed by the Declarant and the Class B Member during the Declarant Control Period. The initial directors appointed by Declarant may serve extended terms as provided in the Bylaws.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Class B Members to the Class A Members. The Board may appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation to be paid to the manager.

### **6.3 Association Rules**

By a majority vote of the Board, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property or the Common Area. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein, and may be enforced in the same manner as the provisions of this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association. During the period while the Class B Membership continues to exist, the Class B Member may disapprove of actions of the Board to adopt, amend or repeal the Rules.

### **6.4 Personal Liability**

No Board member, officer, ARC member, committee member, employee or representative of the Association, or the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall, not apply to any Person-who has failed to act in good faith or has engaged in willful or intentional misconduct.

### **6.5 Mergers or Consolidations**

The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives,

methods, and taxable status and format of operation are similar to those of the Association.

**ARTICLE VII.  
MEMBERSHIPS AND VOTING**

**7.1 Votes of Owners**

Every Owner of a Lot, including Declarant, shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Class A Member shall have one (1) vote for each Lot owned. The Class B Member shall have three (3) votes for each Lot owned.

**7.2 Membership is Appurtenant to Ownership**

Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only the Memberships for each Lot as are described herein. Joint ownership or ownership of undivided interests in any Lot as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot. Rather, the votes must be cast together in one unit.

**7.3 Declarant**

Declarant shall be a member of the Association for so long as it owns any Lot, and shall have other specified rights hereunder during the Declarant Control Period.

**7.4 Membership Classes**

The Association shall have two classes of Members:

***Class A Members***

7.4.1 Class A. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1.

***Class B Members***

7.4.2 Class B. The Class B Member shall be the Declarant who shall have the number of votes provided in Section 7.1. The Class B Membership shall terminate and be converted to a Class A Membership if Declarant in writing relinquishes Class B Membership while it still owns any Lot.

Declarant shall have the right to assign its rights and privileges as the Declarant and as the Class B Member in whole or in part. Such assignment may include all special voting and other provisions set forth herein.

Should Declarant elect to relinquish its Class B Membership while it still owns any Lot, Declarant shall be a Class A Member entitled to Class A votes for all Lots which it owns, and no such relinquishment or conversion shall affect any reserved rights of Declarant as otherwise set forth herein.

#### **7.5 Right to Vote**

Class A votes shall only be cast by the Owner of the Lot to which such vote is attributable. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof, for example, the recorded deed showing the name of the Owner of such Lot. The vote for each Member must be cast as a single unit, and solely by the Owner as and when applicable.

In the event that a Lot for which an Owner may vote is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot all such votes shall be deemed void.

#### **7.6 Members' Rights**

Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the ARC Guidelines.

**7.7 Control by Declarant, and Rights of the Class B Member**

Declarant, as the Class B Member has the right to control the Association. Such control shall exist by virtue of the right, at all times during the Declarant Control Period, to appoint all directors of the Association, as well as their replacements in the event of death, removal, resignation or otherwise. Additionally, Declarant may amend this Declaration, may amend the Articles and Bylaws of the Association, may appoint the ARC, and may veto amendments proposed to be made by the Class A Members. The Class B Member and Declarant shall have such additional and other rights and powers as are set forth herein or in other Governing Documents, including the right to disapprove of actions of the Board.

**7.8 Transfer of Membership**

The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot shall operate to transfer the Membership appurtenant to ownership to the new Owner.

**ARTICLE VIII.  
ASSESSMENTS AND CREATION OF LIEN**

**8.1 Creation of Assessment Lien; Personal Obligation of Lot Owner**

Each Owner by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree to pay to the Association the Assessments and Special Use Fees when due. The amount and time for payment of the Special Use Fees and the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Special Use Fees and the Assessments, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate.

Assessments, together with interest thereon and late charges and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and

collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot at the time when such Assessments become due and payable. This provision shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

**8.2 Annual Assessments**

The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth hereinbelow. The Annual Assessments levied by the Association shall be used to accomplish the duties and purposes of the Association within the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Area, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. The Annual Assessments shall take into account the Common Expenses of the Association.

Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

**8.3 Annual Assessment Period**

Except as otherwise provided herein below, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence upon conveyance of the first Lot from Declarant or any Declarant Affiliate to an Owner other than Declarant or a Declarant Affiliate, and shall terminate on December 31 of the same year. The Annual Assessments shall be prorated for the initial Assessment Period. Without limitation, Assessments shall commence upon initial conveyance to any Person or entity, other than Declarant or to a Declarant Affiliate.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the Delinquent Amount of any Assessment, as provided herein, and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law.

Delinquent payments shall, to the extent permitted by law, apply first to the principal amount of any delinquent Assessments, then to accrued interest, and then to late fees and other sums due. The Owner shall also be liable for attorneys fees and legal costs, including litigation related expenses and expert witness fees, if any. Attorneys fees and costs incurred shall to the extent permitted by law, be deemed a part of the delinquent Assessment, and shall be secured by the lien therefor. This provision shall be subject to such limitations as are imposed by A.R.S. § 33-1807.

**8.4 Association's Rights in Spending Funds from Year to Year**

The Association shall not be obligated to spend in any year all monies received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year. The Board shall at any time have the right to adjust the Assessment made, and issue invoices for any additional sums due, subject to such limitations as exist at law.

**8.5 Rate of Assessment**

The amount of the Annual Assessments, Maintenance Assessments, and Special Assessments shall be established by the Board, in its sole discretion. In establishing its budget and creating its plan for Assessments each year, the Board shall establish an Annual Assessment per Lot payable by the Owner of each Lot.

**8.6 Maintenance Assessments**

The Association may assess Maintenance Assessments against a Lot in the event the need for maintenance or repair of areas maintained by the Association is caused through:

- (a) the willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law); or
- (b) the maintenance of a Lot by an Owner, or failure to maintain, so as to present a nuisance, or to substantially detract from or negatively affect the appearance or quality of any neighboring Lot or other area; or

- (c) the maintenance of a Lot by an Owner, or failure to maintain, so as to violate this Declaration; or
- (d) any use of, or activity on, any Lot that causes maintenance or repair costs incurred or to be incurred by the Association with respect to Common Area to be substantially greater than those costs which would typically be incurred in relation to such Common Area, whether such use or activity is of a continuing nature or an isolated event.

In any such case, the Board may, depending upon the circumstances, give notice to the Owner of such Lot that unless specified corrective action is taken within a specified time period, the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action.

If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, at the Owner's sole cost, the Board is authorized and empowered, subject to such notice and hearing as may be required by law, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys, fees, shall be charged to the Owner as a Maintenance Assessment.

The Maintenance Assessment shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot is subject, shall be secured by the Assessment Lien, and shall be due fifteen (15) days after written demand or notice by the Board.

In no case may any form of Maintenance Assessment be levied or charged with respect to Lots owned by Declarant. All provisions of this Section are subject to limitations established at law.

**8.7 Fines and Penalties.**

If any Owner, his or her family, or any licensee, invitee, tenant or lessee violates the provisions hereof, or any provision of any of the ARC Guidelines or other rules of the Association, the Board after providing the Owner with notice of the violation and an opportunity for a hearing as required by law, may levy a fine upon the Owner, may

suspend the violator's right to use the Common Area (other than private streets) and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorneys' fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Owner and its family members, guests and invitees.

The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date, may be charged to the Owner of the Lot in question, and may be collected as provided by law.

In no event shall any fine be imposed for a default or violation of the Governing Documents, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for hearing and complying with other applicable provisions of law.

**8.8 Special Assessments**

In addition to the Annual Assessments, the Board may levy a Special Assessment a) for the purpose of constructing improvements to Common Area; b) correcting an inadequacy in the Association's accounts; c) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owned by the Association; or d) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate, including increased expenses encountered by the Association in connection with increased insurance costs, taxes, or new or expanded Common Area amenities or features, including such amenities or features within any annexed land. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments shall be approved by the Class B Member so long as such Membership exists.

**8.9 Obligation of Developer Owner**

8.9.1 The Owner of a Lot is entitled to pay only 50% of the otherwise applicable Annual or Special Assessment for each Lot owned, until the earlier of:

Reduced 50%  
Assessment Ratio

- (a) the date of substantial completion of construction of a Dwelling Unit on the Lot, or six (6) months from commencement of construction thereof, in either case as determined by Declarant in its sole and absolute discretion; or
- (b) two (2) years after the date of the initial conveyance of the Lot from Declarant to the first Owner thereof.

***Duty to Notify***

8.9.2 If an Owner ceases to qualify for the reduced rate set forth above during any Assessment Period, such Owner shall immediately notify the Board, in writing, of its change in status. If an Owner of a Lot having the right to pay the reduced rate fails to notify the Board of the date the payment amount is to be increased, that Owner will still be liable for the full amount of the Assessment as of the date it was required to pay that full or greater amount of the Assessment and such Owner's failure to notify the Board will not relieve the Owner of liability for the full amount of the Assessment.

**8.10 Billing and Collection Procedures**

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

**8.11 Collection Costs and Interest on Delinquent Amounts**

Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within fifteen (15) days after the due date. Any Delinquent Amount shall bear interest from its due date until paid at a rate equal to twelve percent (12%) per annum. The Owner shall be liable for all costs, including but not limited to attorneys, fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount, and such amounts, to the extent permitted by law, shall be deemed a part of the

Assessment Lien.

**8.12 Working Capital Fund, Reserves and Transfer Fees**

To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, each purchaser of a Lot (other than Declarant or a Declarant Affiliate) shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot (the "Working Capital Fund Contribution"). In addition, if approved and implemented by the Board, each purchaser of a Lot (other than Declarant or a Declarant Affiliate) shall pay to the Association immediately upon becoming the Owner of a Lot, an additional sum of money not greater than twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot to be used to fund reserves for items of capital maintenance, repair or replacement as determined by the Board (a "Reserve Contribution"). Such reserves may be in addition to any other reserves funded or established by the Association.

A Working Capital Fund Contribution and, if established by the Board, a Reserve Contribution, shall continue to be payable upon each subsequent sale of a Lot. Funds paid to the Association as a Working Capital Fund Contribution pursuant to this Section may, without limitation, be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration or the Articles or Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

The Association may also collect reasonable administrative transfer fees (the "Administrative Transfer Fees") to compensate it for, among other things, expenses in complying with State law as it pertains to providing notice and documents to prospective purchasers, or for other expenses of the Association relating to transfers and refinancing, limited only by provisions of State law. Such Administrative Transfer Fees shall be in amounts and payable at such times as determined by the Board.

**8.13 Declarant's Exemption**

Anything in this Declaration to the contrary notwithstanding, neither the Declarant nor any Declarant Affiliate shall be liable for, nor shall they be required to pay, Assessments of any nature for Lots owned by them. Nor shall Declarant or a Declarant Affiliate be liable for the payment of any Assessments for any Lot that, having been previously sold to a purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure.

**8.14 Payment of Deficiencies**

In consideration for Declarant's and each Declarant Affiliate's exemption from Assessments, and each Owner's Assessment reduction, Declarant, each Declarant Affiliate and each Owner paying reduced Assessments shall pay, for any given Assessment Period in which Declarant and such Declarant Affiliates or Owners paying reduced Assessments have paid or contributed to the Association less than the full Annual Assessment for each Lot owned by them, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Area (i.e., only for actual budget deficits), but only in accordance with the terms hereof, and only up to the full Annual Assessment for each such Lot actually owned by Declarant or such Declarant Affiliates or Owners paying reduced Assessments in the Covered Property. A shortfall or deficiency shall exist if current ordinary and budgeted expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that Declarant and any such Declarant Affiliates shall not be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year, which decrease was not approved by Declarant, nor for any shortfall or deficiency incurred after expiration of the Class B Membership.

In the event of a shortfall or deficiency, each Owner then paying reduced Assessments shall first pay its ratable share of same, based upon the number of Lots owned by each such Owner and ordinarily payable in the absence of reduced Assessments, compared to the total number of Lots owned by all Owners paying reduced Assessments, up to the full amount of the otherwise applicable Annual Assessment for each Lot owned by such Owners, if not already paid. Thereafter, if any shortfall or deficiency remains, Declarant and each Declarant Affiliate shall pay its

ratable share of same, up to the full amount of the Annual Assessment for each Lot or Block owned by Declarant and any Declarant Affiliates, again based upon Lots owned and Assessments ordinarily payable in the absence of any exemption.

Declarant and any Declarant Affiliate or Developer Owner may at any time at their sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay instead up to the full Annual Assessment for each Lot owned by Declarant or by such Declarant Affiliate or Owner paying reduced Assessments. Declarant's, and each Declarant Affiliate's and Owner's, obligation to contribute toward a deficiency as provided herein is supported by a lien on Declarant's Lots and the Lots of each Declarant Affiliate and Owner paying reduced Assessments.

**8.15 Savings Clause**

Notwithstanding the provisions of this Article, or any other provision of this Declaration, the extent of any lien of the Association shall be subject to such provisions as are established at law or in equity, including such limitations as are established and imposed by A.R.S. § 33-1807.

**ARTICLE IX.  
ENFORCEMENT OF THE ASSESSMENT LIEN**

**9.1 Association Remedies to Enforce Assessments**

If any Owner fails to pay any Assessments when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking any and all action available at law or in equity, including:

9.1.1 Bringing an action against the Owner to recover judgment against the Owner who is personally liable for the Assessments; and,

9.1.2 Foreclosing the Assessment Lien against the appropriate Lot in accordance with then prevailing Arizona law, including such limitations as are established by A.R.S. §33-1801 et seq. Though not required, the Association may record notice of its lien, and all costs of preparation of such notice, recording and releasing same, including attorneys fees and costs, shall be paid by the delinquent Owner, with all expense thereof being a part of the lien of the Assessment.

**9.2 Subordination of Assessment Lien**

The Assessment Lien shall have priority from the date of recording of this Declaration, and shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any Lot, except as provided by law. Without limitation, the Assessment lien is junior to:

- (a) the lien of any First Mortgage encumbering a Lot; and
- (b) the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot pursuant to any First Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. No Event of Foreclosure shall relieve the Owner whose interest was foreclosed from liability for Assessments payable through the date of such Event of Foreclosure.

In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a First Mortgagee obtaining an interest in a Lot through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

**ARTICLE X.  
MAINTENANCE**

**10.1 Common Area and Public Rights-of-Way**

***Association Duty***

10.1.1 Areas of Association Responsibility. Except as provided below, the Association, or its duly delegated representative, shall maintain and otherwise manage Common Area. Common Area to be maintained by the Association may be identified on recorded subdivision plats approved by Declarant or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto.

***Rights of Way***

10.1.2 Rights of Way. The Association may also in its discretion elect to maintain landscaping and similar improvements within public rights of way located within the Covered Property to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity with respect to such public rights of way.

**10.2 Standard of Care**

The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas so that the Covered Property will reflect a high degree of pride of ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Areas.

**ARTICLE XI.  
RIGHTS AND POWERS OF ASSOCIATION**

**11.1 Rights, Powers and Duties of the Association**

In addition to the rights and powers of the Association set forth in the Governing Documents, the Association shall have such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Governing Documents shall be available for inspection at the office of the Association during reasonable business hours. To the extent development may be governed by a Development Agreement by and between Declarant or its affiliates and Cochise County, the Association shall in performing its duties and functions comply with the specific terms thereof that pertain to the Association.

**11.2 Rules and Regulations**

In addition to the right to adopt, amend and repeal rules and regulations (the "Rules") on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations, as a part of the Rules, with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of the Governing Documents. Upon adoption, the Association's Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

**11.3 Association's Rights of Enforcement**

The Association shall have the right, but not the obligation, to enforce the provisions of this Declaration and all Additional Covenants that shall have been executed pursuant to or subject to the provisions of this Declaration. Whether or not the Association shall fail or refuse to enforce the provisions of this Declaration or the Additional Covenants after receipt of written request to enforce from any Owner, then any Owner shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

**11.4 Enforcement Methods and Means**

The Association, after affording such notice and opportunity for a hearing, or to be heard, and subject to all other provisions of law, may enforce the provisions hereof at law or in equity, including, but not limited to:

- (a) Imposing reasonable monetary penalties, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her guests, invitees and Tenants or residents.
- (b) Suspending an Owner's right to vote after notice and opportunity to be heard.
- (c) Suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than 15 days delinquent in paying any Assessment or other charge owed to the Association.
- (d) Exercising self-help or taking action to abate any violation of the provisions hereof.
- (e) Requiring an Owner at the Owner's expense to remove any offending condition, structure or improvement on the Owner's property, and further requiring the said Owner to restore his or her property to the condition in which it previously existed, without such action being a trespass.
- (f) Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform and further activities on the Covered Property.

- (g) Towing vehicles which are parked in violation of the provisions hereof.
- (h) Filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate.

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

**11.5 Contracts with Others; Bulk Service Agreements**

Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates, provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association shall be for a term not exceeding the maximum term permitted by law.

The Association may, without limitation, provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or may be funded as otherwise determined by the Board in accordance with this Declaration. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and

facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. If all Lots within the Covered Property are to be served by a particular bulk service agreement, the Board shall have the option either to (a) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include such costs in the Assessments for each such applicable year, or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly).

**ARTICLE XII.  
EMINENT DOMAIN AND INSURANCE INVOLVING  
THE COMMON AREA**

**12.1 Eminent Domain**

In the event of a threatened taking of all or any portion of the Common Area, the owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Any awards received on account of the taking shall be paid to the Association. In the event of a total taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, and all holders of liens and encumbrances, as their interest may appear of record.

The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation.

**12.2 Authority to Purchase Insurance**

The Association shall as a Common Expense purchase and maintain such property damage and liability insurance upon the Common Area and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions.

Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers, liability insurance covering all officers and directors of the Association as well as all regular and alternate members of the ARC, the Declarant, and, to the extent such insurance is reasonably available, and at the Board's discretion, any property manager under contract with the Association, all in amounts and on terms adequate to permit the Association to indemnify such persons pursuant to the provisions hereof and pursuant to the provisions of the Articles and Bylaws. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

**12.3 Individual Responsibility**

It shall be the sole responsibility of each Owner or Occupant to provide insurance for real or personal property or interests owned or held by such Owners within the Covered Property, including, but not limited to, homeowners insurance, hazard, fire and casualty insurance, liability insurance, and property damage insurance covering all additions and Improvements to Lots, furnishings and personal property therein, and personal liability.

Each Owner and Occupant shall also provide such other insurance as such Person desires. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Area. Neither the Association nor any Board member nor

Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

**12.4 Insurance Claims**

The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association covering Common Area and improvements thereon, property or interests of the Association, liability of the Association, and other such insurance.

Each Owner shall execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing.

The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

Any Owner who causes any damage or destruction of any areas for which the Association maintains insurance, is responsible for the payment of any deductible portion of the insurance, which will become a Maintenance Assessment against the Owner and the Lot.

**ARTICLE XIII.  
DISPUTE RESOLUTION**

**13.1 Approval of Association Action**

13.1.1 Except as provided in this Article, the Association may not commence a legal proceeding or an action within the purview of Section 13.3 without the approval of at least two-thirds (2/3rds) of the Class A votes of Members eligible to vote. This Article shall not apply, however, to (i) actions brought by the Association to enforce governing documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

13.1.2 Prior to the Association or any Member commencing any proceeding to which Declarant,

any Declarant Affiliate, or beneficiary thereof, is a party, including but not limited to an alleged defect of any improvement, Declarant and each Declarant Affiliate shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

**13.2 Alternative Method for Resolving Disputes**

Declarant, its beneficiaries, members, partners, officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Owners and Members of the Association, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 13.3 (singularly, "Claim," and collectively, "Claims") to the procedures set forth in Section 13.4.

**13.3 Claims**

Unless specifically exempted below, all claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of this Declaration, or to the Articles or Bylaws ("Governing Documents") or the rights, obligations and duties of any Bound Party under the Governing Documents; (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of 13.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of 13.4:

- (a) any lawsuit by the Association against any Bound Party to enforce the provisions hereof

pertaining to assessments, fines or charges;

- (b) any lawsuit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions hereof;
- (c) any lawsuit between or among Owners, which does not include Declarant, Declarant Affiliate, their beneficiaries, members, partners, officers, directors, employees or agents, or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and
- (d) any lawsuit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above identified in this Section may be submitted to the alternative dispute resolution procedures set forth herein.

#### **13.4 Mandatory Procedures**

13.4.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party" or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (c) the proposed remedy; and
- (d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

13.4.2 Negotiation.

- (a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (b) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), the Claim shall be pursued by the Claimant in arbitration.

***Arbitration Required***

13.4.3 Binding Arbitration.

Upon Termination of Negotiations, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such claims shall not be decided by or in a court of law. Arbitration shall take place in Pima County, Arizona. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

**13.5 Amendment of Article;  
Severability**

Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty years from the effective date of this Declaration. The provisions of this Article shall be deemed severable, and should any portion be declared unenforceable by any court of competent jurisdiction, the remaining provisions shall be unaffected.

**ARTICLE XIV.  
ANNEXATION AND DE-ANNEXATION**

**14.1 Annexation of  
Additional  
Property**

14.1.1 Declarant may, in its sole discretion, at any time and from time to time up to the date which is twenty-five (25) years after the date this Declaration is recorded, annex to the Covered Property any land adjacent or in close proximity to the Covered Property, including without limitation any or all of the Annexable Property. To effect such annexation, a Declaration of Annexation covering the annexed property (or the applicable portion or portions thereof) shall be executed and recorded by Declarant.

The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the property sought to be annexed as of the date of recordation or such later date, if any, as may be set forth in such Declaration of Annexation, making such property annexed, and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association. In addition to the foregoing, and notwithstanding any decision not to annex property, Declarant may grant easements for ingress, egress, utilities, and other purposes for the benefit of the annexed property, all on terms deemed by Declarant to be reasonable, and easements shall be deemed reserved over and across all streets and roads in favor of any land not annexed.

**14.2 Declarations of  
Annexation**

The annexations authorized under this Article shall be made by recording a Declaration of Annexation, which instrument may contain additional or, at Declarant's discretion, different covenants, conditions, restrictions, easements or other terms. The portions of the property annexed in accordance with this Article shall thereupon become fully a part of the Covered Property, with each lot shown upon any subdivision plat thereof being deemed a "Lot" hereunder, and with the Association to accept any and all Common Area shown upon any such plat, unless Declarant should determine otherwise. Unless otherwise approved in writing by Declarant in its sole discretion, and as specifically set forth in a Declaration of Annexation approved by Declarant, all provisions of this Declaration shall apply to land annexed hereunder, including provisions pertaining to voting rights and Assessments.

Without limitation, a Declaration of Annexation may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the annexed property (or the applicable portion or portions thereof. In no event, however, shall any such Declaration of Annexation revoke or conflict with this Declaration except to the extent specifically permitted hereby.

**14.3 Annexation by Owners**

The Association may, from time to time, annex to the Covered Property additional property adjacent or reasonably adjacent to the Covered Property provided that such annexation has been approved by the Owners holding at least seventy-five percent (75%) of the total votes then entitled to be cast by the Members, with or without a meeting, subject to the right of the Declarant and Class B Member to disapprove the action.

To effect such annexation, a Declaration of Annexation covering the proposed property shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the property. The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the property described therein, making such property and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association. Unless otherwise approved in writing by Declarant, any Declaration of Annexation approved pursuant to this Section 14.3 shall be consistent with this Declaration and not in conflict therewith

Any annexation during the period of the Class B Membership shall have the written approval of the Class B Member. Absent such approval, any such annexation shall be deemed void.

**14.4 De-Annexation of Property**

Declarant may, in its sole discretion, at any time and from time to time up to the date which is twenty-five (25) years after the date this Declaration is recorded, de-annex or withdraw from the Covered Property any portion or portions thereof (subject to the written consent of the owner of the portion or portions to be de-annexed or withdrawn, if other than Declarant).

To effect such de-annexation or withdrawal, Declarant shall execute and record a Declaration of De-

Annexation setting forth the legal description of the portion or portions of the Covered Property to be de-annexed or withdrawn, and such Declaration shall be executed by the Declarant and the Owner of the land to be withdrawn. The land to be withdrawn may include any portion of the Covered Property, including Lots and Common Area. Recording such Declaration of De-Annexation shall constitute and effectuate the de-annexation and withdrawal of the applicable portion or portions of the Covered Property described therein, and such property and the Owners and Occupants thereof shall no longer be subject to this Declaration or the jurisdiction of the Association. Notwithstanding the preceding sentence, except as otherwise provided in the applicable Declaration of De-Annexation, de-annexation or withdrawal of any portion or portions of the Covered Property will not be effective until the owner of the property to be de-annexed or withdrawn has paid all unpaid Assessments applicable to such property (unless exempt), prorated to the date of de-annexation or withdrawal.

It is specifically understood that this right of de-annexation or withdrawal may be exercised in Declarant's sole and absolute discretion, and that once de-annexed or withdrawn, none of the provisions hereof shall apply to or encumber the land. Further, the Class B Member may cause the Association to grant and convey such easements as may be necessary to benefit such land de-annexed or withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

**14.5 Protection of Declarant.**

The provisions of this Article may not be amended without the written approval of Declarant.

**ARTICLE XV.  
TERM; AMENDMENTS; TERMINATION**

**15.1 Term; Method of Termination**

This Declaration shall be effective upon its recordation and, as amended from time to time, shall continue in full force and effect in perpetuity unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes entitled to be cast by the entire Membership. Upon the recording of a Certificate of Termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in

accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona. No such termination shall be effective unless approved in writing by Declarant so long as Declarant owns any portion of the Covered Property, and no such termination may occur unless and until adequate arrangements have been made for the care and maintenance of all Common Area.

## **15.2 Amendments**

### ***Broad Power of Declarant***

15.2.1 By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may amend this Declaration for any purpose whatsoever, and without the consent or approval of any Owners or Members, or any other Person, regardless of whether any such amendment is uniform in nature, and such amendments may change or impact the provisions hereof regarding voting rights, assessments and use restrictions.

In addition to the foregoing, and without limitation, for so long as Declarant owns any portion of the Covered Property or Annexable Property Declarant may of its own volition, and without the consent or approval of any Owners or Members, or any other Person, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with applicable law; (b) to satisfy the requirements of any Agency pertaining to lending criteria, or established as conditions for the acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors; or (c) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

Any amendment during such time as Declarant is a Member of the Association or the Owner of any Lot shall require the written approval of the Declarant. Further, so long as Declarant owns any land from within the Covered Property, Declarant may, without any other consent or approval, amend this Declaration to clarify the application of the provisions hereof to any land which may be annexed, or for any other reasonable purpose in connection with any land which may be annexed.

### ***Power of Association***

15.2.2 By the Association. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the

affirmative vote or written consent, or any combination thereof, of Owners, including Declarant, who in the aggregate own at least two-thirds (2/3) of the Lots within the Covered Property, and Declarant's consent as well so long as Declarant is a Member of the Association.

15.2.3 By the Board. At any time, the Board may, with Declarant's written consent so long as Declarant is a Class B Member or a Class A Member of the Association, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with applicable law; or (b) to satisfy the requirements of any Agency pertaining to lending criteria, or established as conditions for the acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors.

**15.3 Condemnation Proceeds etc.**

15.3.1 Condemnation or Insurance Proceeds. No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area.

15.3.2 Payment of Charges by First Mortgagees. First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may have become charges against any Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Area in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

15.3.3 Right of Inspection of Records. Any First Mortgagee shall be entitled to inspect current copies of the Governing Documents, and the books, records, and financial statements of the Association during normal business hours.

**ARTICLE XVI.  
MISCELLANEOUS**

**16.1 Additional Covenants**

In furtherance of the orderly sale and development of the Covered Property, and of the protection and enhancement of the value of the Covered Property, Declarant shall have the right, power and authority (but not the obligation), where in Declarant's discretion the

circumstances so warrant, to execute prior to, with or after the sale of any portion of the Covered Property by any purchaser, a supplement to this Declaration adding additional covenants or restrictions, qualifying or limiting the application of this Declaration to such land, or entirely excepting such land from the coverage hereof any from all of the restrictions, limitations or other provisions included herein.

Such additional covenants or restrictions may be referred to herein as the "Additional Covenants." No such Additional Covenants shall exempt any such land or the respective Owners thereof from the obligations to pay Assessments hereunder or from the Assessment Lien in regard thereto or deprive such land or its Owner of membership and voting rights otherwise established by this Declaration, except that Declarant at all time shall have the right record a Declaration of De-Annexation with respect to any land.

Such Additional Covenants shall be recorded and shall be binding upon Declarant, the Association, the ARC and each Owner and Occupant. Declarant shall deliver a true and complete copy of any such Additional Covenants to the Association within a reasonable time after recordation thereof. After conveyance of a Lot to an Owner thereof, de-annexation of such land or the imposition of Additional Covenants thereon shall require the consent of such Owner.

## **16.2 View Impairment**

Neither the Declarant, nor the Association nor any other Person or entity guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot, from adjacent Lots or Common Area will be preserved without impairment. Neither the Declarant, nor the Association nor any other Person or entity shall have the obligation to prune or thin trees or other landscaping except as required by the ARC or ARC Guidelines. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view which exists at any point in time for a Lot may be impaired or obstructed by further construction, including, without limitation, by construction of improvements (including without limitation, landscaping) by Declarant, or by any other Person or entity (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including,

without limitation, any broker or salesperson, has any right to bind Declarant, the Association or any other Person or entity with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

**16.3 Assumption of Risk**

Neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor the Declarant nor any other Person or entity, shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or Occupant of any Lot or any tenant, guest or invitee of any Owner or Occupant or for any property of any such persons. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risks associated with the use and enjoyment of the Covered Property, including all Common Area.

Neither the Association, the members of the Board, the officers of the Association, the Association's management company nor the Declarant shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Covered Property. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines or utility sub-stations and further acknowledges that neither the Association, the members of the Board, the officers of the Association, the Association's management company nor the Declarant have made any representations or warranties, nor has any Owner or Occupant, or any tenant, guest, or invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

No provision hereof, or of the articles of incorporation or bylaws of the Association, or of the ARC Guidelines, shall be interpreted as creating a duty of the Association, the members of the Board, the officers of the Association, the management company of the Association or the Declarant or any other Person or entity to protect or further the health, safety, or welfare of any Person, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Covered Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the Board, the Association's management company, and the Declarant, their directors, officers, committee and board members, employees, agents, contractors, subcontractors, successors, and assigns arising from or connected with any matter for which the liability has been disclaimed.

**16.4 Enforcement Rights**

Each Owner (including Declarant, so long as Declarant is an Owner) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

**16.5 Interpretation of the Covenants**

Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions in Article V hereof. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

**16.6 Severability**

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

**16.7 Change of Circumstances**

Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

**16.8 Declarant's  
Disclaimer of  
Representations**

Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Covered Property can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.

No provision or content of any development plan showing or applicable to the Covered Property shall be deemed a representation that any facility, land or feature shall be included either in the Covered Property or the Common Area.

While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

**16.9 Successors and  
Assigns**

Any reference in this Declaration to Declarant shall include any successors or assignees of all or a specified portion of Declarant's rights and powers hereunder. Any such assignment shall be evidenced by a recorded instrument executed by Declarant and its successor or assignee whereby such rights and powers (or any specified portion thereof) are specifically assigned.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

**DECLARANT:**

**Easter Mountain Ranch, L.L.C., an Arizona limited liability company**

By: The Lenihan Company, an Arizona corporation, Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARIZONA     )  
  )ss.  
COUNTY OF COCHISE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of The Lenihan Company, an Arizona corporation, Manager of Easter Mountain Ranch, L.L.C., an Arizona limited liability company.

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

My commission expires:  
\_\_\_\_\_

**EXHIBIT A**

**ANNEXABLE PROPERTY**

