

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
for  
WHITE MOUNTAIN LAKES UNIT NUMBER 18

THIS DECLARATION, made on the date hereinafter set forth by RFK Silver Creek Corporation, an Arizona corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Navajo County, Arizona, which is more particularly described as follows:

WHITE MOUNTAIN LAKES, UNIT NUMBER 18  
A subdivision of a portion of Sections 10, 11,  
14 and 15, Township 11 North Range 22 East,  
Gila and Salt River Base and Meridian, Navajo  
County, Arizona.

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

ARTICLE I

DEFINITIONS

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.

Section 2. "Architectural Committee Rules" shall mean the rules adopted by the Architectural Committee.

Section 3. "Articles" shall mean the Articles of Incorporation of the Association which are, or shall be, filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 4. "Association" shall mean and refer to White Mountain Lakes Unit 18 Association, an Arizona non-profit corporation, its successors and assigns.

Section 5. "Board" shall mean the Board of Directors of the Association.

Section 6. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 7. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is described as follows:

Roadways and easements as recorded on the plat of  
White Mountain Lakes Unit Number 18.

Section 8. "Declarant" shall mean RFK Silver Creek Corporation, an Arizona corporation, including its successors and assigns.

Section 9. "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 10. "Common Area" shall mean the grounds, walks, parking areas, lighting fixtures, fences, walls, hedges, plantings, plants, trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 11. "Rules" shall mean the rules adopted by the Board, as they may be amended from time to time.

Section 12. "Lot" shall mean any one of the lots or parcels of property designated above on page 1 of Declaration, on which a residence is or may be located.

Section 13. "Member" shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

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

Section 15. "Property" or "Properties" shall mean and refer to that certain real, personal, or mixed property hereinbefore described which is subject to this Declaration, and such additions hereto as may hereafter be brought within the jurisdiction of the Association.

Section 16. "Public Purchaser" shall mean any person or other legal entity who becomes an Owner of any Lot covered by this Declaration.

Section 17. "White Mountain Lakes Unit Number 18" shall mean Property located in the County of Navajo, State of Arizona, which becomes subject to this Declaration, together with such other property as may from time to time be annexed thereto.

Section 18. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, for the purposes for which the Common Area is intended, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to charge reasonable fees for the use of any facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the facilities by an Owner for any period during which any assessment against his Lot remains unpaid or for any infraction of this Declaration;

(c) the right of the Association to dedicate, transfer or convey, all or any part of the common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members as hereinafter provided. No such dedication, transfer, or conveyance shall be effective unless an instrument, signed by Members representing two-thirds (2/3) of the votes entitled to be cast by Members and agreeing to such dedication, transfer, or conveyance, has been recorded.

Section 2. Owner's Easement of Enjoyment Limitations.

(a) An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot and such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

(b) The Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

(c) Each Owner, tenant and occupant of a Lot may use the Common Area in common with the Owners, tenants, and occupants of the other Lots in accordance with the purposes for which it is intended without hindering or encroaching upon the lawful right of such others.

(d) No Owner will be exempted from liability for assessments with respect to the Common Area by waiver of the enjoyment of the right to use the Common Area or by abandonment of his Lot or otherwise.

ARTICLE III

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. General Declaration. Declarant has developed the Property covered by this Declaration into various Lots. Declarant intends to sell and convey, to Public Purchasers, Lots in the property so developed subject to this Declaration. Declarant hereby declares that all of the said Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of said Property and every part thereof. All of this Declaration shall run with all of said Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest.

ARTICLE IV

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 1. Permitted Uses and Restrictions - Residential.

The permitted uses, easements, and restrictions for all Property covered by this Declaration, shall be as follows:

A. RESIDENTIAL USE. All property shall be used, improved, and devoted exclusively to Single Family Residential Use. No mobile homes or recreational vehicles shall be permitted for storage or occupancy on any lot. No gainful occupation, profession, trade or other non-residential use shall be conducted on any such Property. Nothing herein shall be deemed to prevent the leasing of any Lot to a single family, from time to time, by the Owner thereof, subject to all of the provisions of this Declaration. No structure whatever, other than one private Single Family Residence, not less than 1800 square foot liveable area, together with a private garage for not more than three (3) automobiles, shall be erected, placed, or permitted to remain on any Lot. No building or structure shall be erected on any Lot, the front walls of which are closer than forty (40) feet from the front property line; the rear walls thereof shall not be closer than twenty (20) feet from the rear property line; the side walls thereof shall not be closer than ten (10) feet to the side lot line or ten percent (10%) of the width of the Lot, whichever is greater.

B. ANTENNAS, AIR CONDITIONING UNITS, WATER SOFTENING UNITS. No antenna, air conditioning unit, evaporative cooler, water softener, solar collector, or other similar object which is not part of the basic structure of a dwelling or other building shall be placed upon or above the roof of any dwelling or other building. Any of said objects shall be architecturally concealed from view according to plans approved by the Board.

C. UTILITY SERVICE. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Property unless the same shall be contained in conduits or under or on buildings or other structures approved by the ARCHITECTURAL COMMITTEE.

D. IMPROVEMENTS AND ALTERATIONS. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of any Property or the Improvements located thereon from its natural or improved state existing on the date such Property was first conveyed or transferred by DECLARANT to a Public Purchaser shall be made or done without the prior approval of the ARCHITECTURAL COMMITTEE, except as otherwise expressly provided in this DECLARATION. No building, fence, wall, or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the ARCHITECTURAL COMMITTEE or any committee established by the ARCHITECTURAL COMMITTEE for the purpose. Pursuant to its rulemaking power, the ARCHITECTURAL COMMITTEE shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The ARCHITECTURAL COMMITTEE shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring Property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the ARCHITECTURAL COMMITTEE. No substantial landscaping, planting, or replanting of any area of a Lot shall be commenced until such landscaping plan showing the proposed planting and landscaping has been approved in writing by the ARCHITECTURAL COMMITTEE. The ARCHITECTURAL COMMITTEE, before giving such approval, may require that changes be made to comply with such requirements as the ARCHITECTURAL COMMITTEE, in its absolute discretion and consistent with the purposes of this Declaration, may impose to assure that such plan shall be suitable. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the ARCHITECTURAL COMMITTEE. All decisions of the ARCHITECTURAL COMMITTEE shall be final and no Lot Owner or other parties shall have recourse against the ARCHITECTURAL COMMITTEE or any of its members, for or with respect to any decision made in good faith. Neither the ARCHITECTURAL COMMITTEE nor any member thereof shall be responsible for structural or other defects of any kind or nature whatsoever in plans or specifications submitted to the ARCHITECTURAL COMMITTEE and/or in structures or improvements erected in accordance therewith. All structures to conform to Navajo County building requirements.

E. MAINTENANCE OF LAWNS AND PLANTINGS. The ASSOCIATION shall maintain the lawns and plantings on all Common Areas, and for this purpose, DECLARANT and the ASSOCIATION shall have the right, at any time, to plant, replace, maintain and cultivate landscaping, shrubs, trees, grass and plantings on any Common Area, and on such easements over an OWNER'S Lot as may have been granted to DECLARANT or the ASSOCIATION, regardless of whether any OWNER or the ASSOCIATION is responsible hereunder for maintenance of such areas. No OWNER shall remove, alter, injure or interfere in any way with any landscaping, shrubs, trees, grass or plantings placed upon any Common Area by DECLARANT or the ASSOCIATION without the written consent of the ASSOCIATION having first been obtained. The ASSOCIATION or its authorized agents shall have the right to enter upon any Lot, at any reasonable time, for the purpose of planting, replacing, maintaining, or cultivating such landscaping, shrubs, trees, grass or plantings in the Common Area, and shall not be liable for trespass for so doing.

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

G. REPAIR OF BUILDINGS. No building or structure upon any Property shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. The Association shall have the right, after thirty (30) days notice to Owner, to repair, paint, or otherwise maintain the exterior of any building or other structure (and without notice in the event of an emergency) which the Association, acting through its Board determines in its discretion is in violation of this provision. All costs and expenses, including reasonable attorneys fees, incurred by the Association shall be borne by the Owner, and shall be paid to the Association on demand plus interest at the maximum lawful rate for contracting parties from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in a like manner as assessments levied pursuant to Article VII.

H. TRASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or kept on any Property except in covered containers of a type, size and style which are approved by the ARCHITECTURAL COMMITTEE. In no event shall such containers be maintained so as to be visible from neighboring Property except to make the same available for collection and, then, only the shortest time reasonably necessary to effect such collection. The BOARD shall have the right, in its sole discretion, to require all OWNERS to subscribe to a trash service. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.

I. OVERHANGS. No tree, shrub, or planting of any kind of any Property shall be allowed to overhang or otherwise to encroach upon any Common Area from ground level to a height of twelve (12) feet, without the prior approval of the ARCHITECTURAL COMMITTEE.

J. RIGHT OF WAY. During reasonable hours, DECLARANT, any member of the ARCHITECTURAL COMMITTEE, any member of the BOARD, or any authorized representative of any of them, shall have the right to enter upon and inspect any Property and the Improvements thereon, except for the interior portions of any building, for the purpose of ascertaining whether or not the provisions of this DECLARATION have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

K. MACHINERY AND EQUIPMENT. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the permitted uses of such property, and except that which DECLARANT or the ASSOCIATION may require for the operation of and maintenance of the Common Area.

L. RESTRICTION ON FURTHER SUBDIVISION. No Lot within the Property covered by this Declaration shall be further subdivided or separated into smaller lots or parcels by any OWNER, and no portion less than all of any such LOT, nor any easement or other interest therein, shall be conveyed or transferred by any OWNER, without the prior written approval of the BOARD.

M. SIGNS. No signs whatsoever which are visible from neighboring property shall be erected or maintained on any Lot.

N. DECLARANT'S EXEMPTION. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by DECLARANT, or its duly authorized agents, of improvements or signs four square feet or smaller necessary or convenient to the development or sale of Lots within the Property.

O. UTILITY EASEMENTS. There is hereby created a blanket easement upon, across, over and under the above described Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue

of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said Property except as initially developed and approved by the DECLARANT or thereafter approved by the BOARD. This easement shall in no way effect any other recorded easements on said Property. This easement shall be limited to improvements as originally constructed.

P. ANIMALS. No animals or fowl, poultry, or livestock, other than a reasonable number of recognized domestic household pets, shall be maintained or permitted on any Lot, and then only if they are kept thereon solely as household pets and not for commercial purposes. No household pet shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. No structure for the care, housing, or confinement of household pets shall be maintained so as to be visible from neighboring property. Upon the request of any Lot Owner, the Board shall determine, in its sole discretion and consistent with the purposes of this Declaration, whether for the purposes of this paragraph a particular animal shall be considered to be a domestic household pet, or a nuisance, or whether the number of animals on any Lot is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein. All household pet animals shall be kept on a leash or otherwise confined to the Owner's property.

Q. CLOTHES LINES. No exterior clothes lines shall be installed on any Lot, any number of Lots, or any portion of a Lot.

R. BUILDING EXTERIOR AND FENCES. The exterior portions of all buildings and fences, except if constructed of adobe or brick, shall be painted, stained, or otherwise finished immediately upon completion. Colors will conform to natural setting color schemes. Since portions of the subdivision are adjacent to the White Mountain Lake and also the golf course, any fences (which must be approved by the ARCHITECTURAL COMMITTEE) must be of a nature and located so as to enhance the subdivision.

S. DUST AND ENVIRONMENTAL CONTROL. Under no circumstances shall the Owner of any Lot or parcel of land disturb the natural soil, grass or growth; unless the Owner immediately thereafter constructs on, paves, gravels, or re-plants such disturbed areas with ground cover approved by the ARCHITECTURE COMMITTEE. It being the intention of this provision that the natural terrain of any Lot or parcel be left undisturbed until such time as construction of the residence is commenced and thereafter disturbed only to the minimum extent possible.

T. IMPROVEMENTS. Construction, alteration, or erection of any dwelling on any Lot, any combination of Lots, or any part of a Lot shall be completed within one hundred eighty (180) days from the issuance of a building permit from the Committee. However, in extraordinary instances, the Committee has the right to lengthen this time period.

U. OCCUPANCY OF STRUCTURES. No structure shall be occupied or used for the purpose for which it is designed or built until the same shall have been substantially completed and all utilities connected and operating.

V. PARKING AND VEHICLES. All vehicles shall, when not being used, be kept within an enclosure, hidden from view, with the enclosure approved by the Committee. There shall be no outside storage or parking nor shall any vehicle other than ground or water vehicles be allowed on any Lot or parcel.

W. ROOFS. All roofs are to be of a material and of a color to blend with the natural landscape; in no event shall any roof be reflective or have solar collectors which are visible to any property, including but not limited to property outside the immediate area affected by these reservations. All roofs and roof structures and appurtenances are to be approved by the Committee.

X. UNNATURAL DRAINAGE. Under no circumstances shall any owner of any Lot or parcel of land be permitted to deliberately alter the topographic conditions of his Lot or parcel in any way that would permit additional quantities of water from any source, other than what nature originally intended, to flow from his property onto any adjoining property or public right of way.

Y. STORAGE OF MATERIAL. No material shall be stored on any lot except under a cover approved by the Committee or during the period of actual construction.

Z. ACCESSORY BUILDINGS. Accessory buildings shall not be constructed upon a lot until the construction of the principal building has been actually commenced and accessory buildings shall not be used for dwelling purposes. Any such accessory building is subject to Committee approval.

Section 2. Permitted Uses and Restrictions - Common Area.  
The permitted uses and restrictions for Common Areas shall be as follows:

A. Permitted Uses.

(1) Access for vehicles and pedestrians between public streets and any parking areas situated on the Property and any Owner's Lot; limited, however, for purposes connected with or incidental to any use being made of any portion of any Owner's Lot.

(2) Access for persons engaged in maintaining any portion of the Common Area of any Owner's Lot.

(3) Such other uses as may be adopted from time to time by the Board and set forth in the Association's Rules and Regulations.

(4) In general, the Common Area shall be used for the benefit of the Owners, for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment to be derived from such reasonable and proper use, without hindering the exercise of or encroaching upon the right of any other Owner to utilize the Common Area, provided that no unlawful use shall be permitted.

B. Restricted Uses.

(1) The Common Area shall not be used by Owners for storage of supplies, materials or personal property of any kind.

(2) Such other restrictions as may be adopted by the Board and set forth in the Association's Rules and Regulations.

(3) In general, no activity shall be carried on nor condition maintained by any Owner upon the Common Area which despoils the appearance of the property or hinders or encroaches upon the right of any other Owner to utilize the Common Area as reasonably intended.

C. Maintenance by Association. The Association may, at any time, as to any Common Area, conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

(1) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any responsible for the maintenance and upkeep of such area) in accordance with (a) the last plans thereof approved by the Board, (b) the original plans for the improvement, or (c) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed;

(2) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, and parking area;

(3) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(4) Place and maintain upon any such area such antennas, signs, markers and lights as the Board may deem appropriate for the proper identification, use and regulation thereof, subject to the approval of the Architectural Committee;

(5) Remove all papers, debris, filth and refuse from the Common Area and wash or sweep paved areas as required; clean and relamp lighting fixtures as needed;

(6) Repaint striping, markers, directional signs, etc., as necessary;

(7) Pay all real estate taxes and assessments on the Common Area;

(8) Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Area;

(9) Pay for and keep in force at the Association's expense public liability insurance in companies acceptable to the Association in amounts and with limits of liability desired by the Owners or required of the Owners pursuant to any other recorded document affecting the Property, such insurance to name the Association or the Owners or both as named insureds;

(10) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration;

(11) The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area; and

(12) Nothing herein shall be construed so as to preclude the Association from delegating its powers set forth above to a manager or agent or to other persons, firms or corporation.

**D. Damage or Destruction of Common Area By Owners.**

In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, or agents, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

**ARTICLE V**

**THE ASSOCIATION**

**Section 1. Organization.**

A. **The Association.** The Association is an Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

B. **Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of Directors and such Officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws, as same may be amended from time to time.



Section 2. Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth in the Articles and Bylaws, as same may be amended from time to time.

Section 3. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Rules". The Rules may restrict and govern the use of any area by an Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with the Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Said Rules shall have the same force and effect as if they were set forth in and were a part of the Declaration.

Section 4. Personal Liability. No member of the Board of any Committee of the Association, or any officer of the Association, or any Manager, shall be personally liable to any Owner, or to any other party, including the Association, for any damage loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, any Manager, or any other representative or employee of the Association, or the Architectural Committee, or any other Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, act in good faith, without wilful or intentional misconduct.

## ARTICLE VI

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be the Owners, with the exception of the Declarant and each Class A member shall be entitled to one (1) vote for each lot owned.

Class B. Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership.

Section 3. When more than one person holds an interest in any Lot, only one (1) person shall be the Member. Such persons holding an interest shall designate the person to be the Member and give written notice thereof to the Association. The vote for such Lot may be exercised as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. The votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that Joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted as said votes shall be deemed void.

Section 4. In any election of the members of the Board, every Owner entitled to vote at such an election shall have the right to cumulate his votes and give one candidate, or divide among any number of the candidates, a number of votes equal to the number of Lots owned by the Owner multiplied by the number of directors to be elected. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 5. Each member shall have such other rights, duties, and obligations as set forth in the Articles and Bylaws, as same may be amended from time to time.

Section 6. The Association membership of each Owner of a Lot shall be appurtenant to said Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to the Owner's Lot and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under the provisions of a deed of trust or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of said Lot shall operate to transfer said membership to the new Owner thereof.

## ARTICLE VII

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Property and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners of the Property and for the improvement and maintenance of the Common Area, and, without limiting the generality of the foregoing, to provide and maintain a security system for the Owners of the Property subject to this Declaration; to construct and maintain a remote controlled electrically operated entry gate system; to provide and maintain a sewage disposal; to maintain private roadways; to maintain and operate such lighting as may be desired; and to provide for and maintain such landscaping as may be reasonably required in connection with the foregoing items.

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for each Improved Lot shall be Forty ---- Dollars (\$40.00) and fifty (50%) percent thereof for each Unimproved Lot. A Lot shall be deemed "Improved" when a Single Family Residence has been completely constructed thereon, but in no event later than one hundred eighty (180) days after the start of construction thereon. All other lots shall be deemed "Unimproved" Lots.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board each year not more than Twenty-Five (25%) percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above Twenty-Five (25%) percent by a vote of the Members representing two-thirds (2/3) of the votes entitled to be cast by each class of members, at a meeting duly called for this purpose.

(c) The Board may increase or decrease the annual assessment, and shall fix the assessment annually, but not in an amount in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy

in any assessment year or term not extending beyond twenty (20) years, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of Members representing two-thirds (2/3) of the votes entitled to be cast by each class of Members, at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty-six and two-thirds (66 2/3) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis.

**Section 7. Date of Commencement of Annual Assessments:**

**Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner other than Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

**A. Enforcement by Suit.** The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of Ten (10%) percent per annum from the date of delinquency, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner or Member.

**B. Enforcement by Lien.** There is hereby created a claim of lien, with power of sale, on each and every Lot within the Property to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots covered by the Declaration, together with interest thereon at the rate of Ten (10%) percent per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall

constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within Ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

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

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 5 hereinafter. Any such lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a realty mortgage or by the exercise of a power of sale in the manner provided by law under the trust deed, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event of such foreclosure, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VIII

### ARCHITECTURAL CONTROL

**Section 1. Organization, Power of Appointment and Removal of Members.** There shall be an Architectural Committee, organized as follows:

**A. Committee Composition.** The Architectural Committee shall consist of 3 regular members and 2 alternate members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board or an officer of the Association.

**B. Alternate Members.** In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

C. Initial Members. The following persons are hereby designated as the initial members of the Architectural Committee:

Office No. 1	M. G. Riddlebarger
Office No. 2	Joann Divers
Office No. 3	Mike Osborn

The Board may act as the Architectural Committee if so determined by the majority vote of the members of the Association at a duly called meeting for this purpose.

D. Terms of Office. Unless the initial members of the Architectural Committee have resigned or been removed, their terms of office shall be for a period of one year, or until the appointment of their respective successors. Thereafter, the term of each Architectural Committee member appointed shall be for a period of one year and until the appointment of his successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed.

E. Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Committee at any time, shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Architectural Committee by the Board except by the vote or written consent of two-thirds (2/3) of all of the members of the Board. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the recordation of a declaration identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed therefrom.

F. Resignations. Any regular or alternate member of the Architectural Committee may at any time resign from the Committee by giving written notice thereof to Declarant or to the Board, whichever then has the right to appoint Committee members.

G. Vacancies. Vacancies on the Architectural Committee however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint Committee members. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

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

Section 3. Meetings and Compensation. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of Paragraph B of Section 1 above, the vote or written consent of any two regular members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee shall not be entitled to compensation for their services.

Section 4. Architectural Committee Rules. The Architectural Committee may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as "Architectural Committee Rules". Said Rules shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use within the Property.

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

Section 6. Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any Property, or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, 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 Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the architectural Committee.

Section 7. Time for Approval. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been complied with.

#### ARTICLE IX

#### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may not be amended during the first twenty (20) year period except for amendments that may become necessary to meet Federal Lending Requirements. Thereafter this Declaration may be amended by an instrument signed by Owners representing not less than sixty-six and two-thirds (66 2/3%) percent of the votes entitled to be cast by each class members. Any amendment must be recorded.

Section 4. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners of Lots within the Property. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of this Declaration.

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

Section 6. Resolutions Committee. Remedies provided by this Declaration is cumulative and not exclusive.

Section 7. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, at P. O. Box 839 White Mountain Lake, Arizona 85912; if to the Architectural Committee, at P. O. Box 839 White Mountain Lake, Arizona 85912; if to an Owner, to the address of any Lot within the Property owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association; and if to Declarant, at 7705 East Greenway Road, Scottsdale, Arizona 85260; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

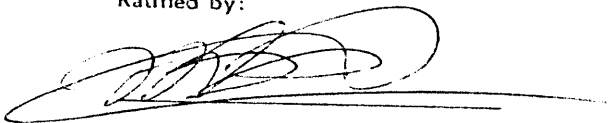
Section 8. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing hereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 17<sup>th</sup> day of August.

RFK Silver Creek Corporation, an  
Arizona corporation

By:   
Melvin G. Riddlebarger, President

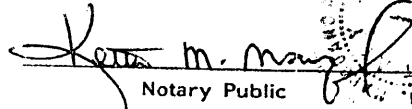
Ratified by:



STATE OF ARIZONA )  
 ) ss  
County of Maricopa )

On this, the 17<sup>th</sup> day of August 1984 before me, the undersigned officer, personally appeared M. G. Riddlebarger, who did acknowledge himself to be the President of RFK SILVER CREEK CORPORATION, an Arizona corporation, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself.

In Witness Whereof, I hereunto set my hand and official seal:

  
Notary Public

My Commission Expires:

JUNE 11, 1987

STATE OF ARIZONA )  
 ) ss  
County of Maricopa )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 1984, before me, the undersigned officer, personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein set forth.

In Witness Whereof, I hereunto set my hand and official seal.

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

My Commission Expires:  
\_\_\_\_\_



84 13965

RECORDED AT THE REQUEST OF  
Lenne Engineering  
August 29 A. D. 1984 AT 10:20 O'CLOCK A M.  
IN DOCKET 749 Off. Records PAGE 761-777,  
RECORDS OF NAVAJO COUNTY, ARIZONA Incl.  
JAY H. TURLEY RECORDER  
BY Rodney Johnson DEPUTY



749 - 777