

WHEN RECORDED, RETURN TO:

FENNEMORE CRAIG, P.C.  
Attn: Joseph Chandler, Esq.  
3003 North Central Avenue  
Suite 2600  
Phoenix, AZ 85012-2913



**B-4703 P-874**  
Page: 1 of 7  
ARES 4352722

FEE
\$7
\$8
\$5
\$1
\$2

10/29/09

---

FIRST AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
CROSS CREEK RANCH  
IN  
SEDONA, ARIZONA

---



THIS FIRST AMENDMENT ("First Amendment") to Declaration of Covenants, Conditions and Restrictions for Cross Creek Ranch is made this 15th day of May, 2008 (the "Effective Date") by the Board of Directors of the Cross Creek Ranch Community Association, an Arizona non-profit corporation.

RECITALS

A. Cross Creek Ranch is subdivision located in Sedona, Arizona ("Cross Creek Ranch"), the boundaries of which are shown on the Plat recorded in Book 48 of Maps and Plats, Pages 8 – 14, Official Records of Yavapai County Recorder, Yavapai County, Arizona (the "Plat").

B. Cross Creek Ranch is governed by that certain Declaration of Covenants, Conditions and Restrictions for Cross Creek Ranch dated June 19, 2003 and recorded on July 1, 2003 as Instrument No. 3599928 in Book 4047, Page 427, Official Records of Yavapai County Recorder, Yavapai County, Arizona (the "Declaration").

C. Cross Creek Ranch Community Association is an Arizona nonprofit corporation (the "Association") organized to administer and enforce the Project Documents, including the Declaration.

D. Pursuant to the Declaration, the Transition Date has occurred and control of the Association has transitioned from Declarant to the Board of Directors of the Association.

E. At a duly noticed and called May 15, 2008 Special Meeting of the Association, the requisite majority of the Members of the Association voted to authorized the Board of Directors to amend the Declaration to, among other things, dissolve the Cross Creek Ranch Water Company, an Arizona public service corporation (the "Water Company") and to assume all duties and obligations of the Water Company to provide water services to the Lots in Cross Creek Ranch as of the Effective Date of this First Amendment.

AMENDMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and the other terms and conditions set forth in this First Amendment, the Board of Directors of the Association with the requisite majority authorization of the Members of the Association hereby amend the Declaration as of the Effective Date as follows:

1. Defined Terms and Recitals. The foregoing Recitals are incorporated herein by this reference. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such term in the Declaration.

2. Water Company. Section 1.43 of the Declaration is hereby deleted in its entirety and superseded as follows:



Any reference to the "Water Company" in the Declaration on and after the Effective Date shall mean the Association.

3. Water Company Assessment. Section 1.44 of the Declaration is hereby deleted in its entirety and superseded as follows:

Any reference to the "Water Company Assessment" in the Declaration on and after the Effective Date shall mean a vacant Lot Water Assessment and/or a Water System Operating Assessment as defined in and levied and assessed pursuant to Section 6.5 of the Declaration.

4. Domestic Water Service. Section 2.2 of the Declaration is hereby amended as follows:

On and after the Effective Date, the Water System shall be owned and operated by the Association in accordance with all laws, rules and regulations promulgated by the applicable governmental authorities. The Association shall contract with qualified persons or companies to manage, operate, and maintain the Water System for the benefit of the Association. The cost of owning, maintaining and operating the Water System shall be paid for by the Association through Water Operating Assessments as set forth in Section 6.5 of the Declaration.

5. Water System and Sewer System; No Liability of Association and Declarant Parties.

Section 2.4(i) of the Declaration is hereby amended as follows:

On and after the Effective Date, the Board shall have no responsibility for the operation or maintenance of the Water System or Sewer System; and

The last paragraph of Section 2.4 shall be amended by adding the following:

In addition, on and after the Effective Date, the Board shall in no event be responsible for, or have liability (Including strict liability) for any claims, causes of action, losses, damages, costs or expenses (Including attorneys' fees and court costs) for any inconvenience or disturbances arising from the Water System or the Sewer System or the use of the thereof, Including any violation of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., The Arizona Environmental Quality Act, A.R.S. § 49-281 et seq., or any other similar state or federal law as such laws have been or may be amended from time to time. Each Owner, lessee and Resident, on behalf of its family members, invitees and licensees, covenants and agrees that it does knowingly and voluntarily assume all risks associated with the foregoing, Including the risks of inconvenience and disturbance arising



from the existence, operation, and maintenance of the Water System and Sewer System by the Association.

6. Water Services Restrictions. Section 3.7 of the Declaration is hereby deleted in its entirety and superseded as follows:

Except for certain Association irrigation purposes as provided in Section 4.10 of the Declaration, the Association shall be the sole provider of domestic water through the Water System for all Owners of Lots and Residential Units, Including any landscape irrigation water, subject to all fees, charges, rules, regulations and other requirements established by the Board, and if applicable, any Water Assessments adopted by the Board. No Lot shall contain any water well or water storage facility for such purpose. By acceptance of a deed or by acquiring any interest in a Lot, each Owner, Lessee and Resident agrees to be subject to the provisions of this Section. Each Owner, Lessee and Resident shall comply with all rules, regulations, and other requirements established by the Board for providing domestic water through the Water System.

7. Restrictions on Further Subdivision, Annexation, Property Restrictions and Rezoning. Section 3.20 of the Declaration is hereby amended as follows:

No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner and no portion less than all of any such Lot shall be conveyed or transferred by any Owner. No additional real property lying outside of the existing boundary for Cross Creek Ranch as originally shown on the Plat shall ever be annexed into Cross Creek Ranch. Two or more Lots shall not be combined into fewer Lots than originally shown on the Plat. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee, or other Person other than the Board on behalf of the Association against any part of the property without the provisions thereof having been first approved in writing by the Architectural Review Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person other than by the Board of the Association with the prior written approval of the Architectural review Committee and the proposed use otherwise complies with the Declaration.

8. Classes of Members and Voting Rights. Section 5.7 of the Declaration is hereby deleted in its entirety and superseded as follows:

The Transition Date has occurred and Declarant is no longer entitled to any votes concerning the Association. Each Owner shall be entitled to one (1) vote for each Lot owned in Cross Creek Ranch by such Owner for voting on all matters regarding the Association except for any vote concerning the operation, maintenance, replacement and repair of the



Water System or any Water System Operating Assessment or any Vacant Lot Water Assessment or similar Water System related issue (a "Water System Vote"). In the event of a Water System Vote, an Owner shall be entitled to only one (1) vote per Owner regardless of the number of Lots owned in Cross Creek Ranch.

9. Conveyance of Encumbrance of Common Area. Section 5.11(iv) of the Declaration is hereby amended as follows:

(iv) to a domestic water service entity (including the Association for operation and maintenance of the Water System) for the purpose of providing to the Owners and Residents domestic water service;

10. Water Company Assessments. Section 6.5 of the Declaration is hereby deleted in its entirety and superseded as follows:

6.5.1 In addition to any Water System Operating Assessment as described in Subsection 6.5.2, the Association, as long as the Association owns and controls the Water System, shall assess against each Lot that is Assessable Property and for which no Residential Unit has been constructed and no connection to the Water System has been established to such Lot (a "Vacant Lot") a "Vacant Lot Water Assessment" for the purpose of providing operating and capital funds to the Association until such connection has been established to such Lot and a Lot Owner is paying all fee and charges levied by the Association to supply domestic water through the Water System to such Lot. The total amount to be assessed against each Vacant Lot as a Vacant Lot Water Assessment shall be the amount that is reasonably estimated from time to time by the Board to produce the necessary funds for the Association to operate, maintain, repair, and replace the Water System in accordance with all laws, rules and regulations promulgated by the applicable governmental authorities (taking into account other sources if funds available to the Association) divided by the number of Vacant Lots in Cross Creek Ranch. Vacant Lot Water Assessments shall be collected on a monthly or quarterly basis or such other basis as may be selected by the Board. The Vacant Lot Water Assessment for a Lot shall cease on the first day of the month following a water connection and establishment of domestic water service to a Residential Unit on the Lot through the Water System. All Vacant Lot Water Assessments shall be used by the Association as set forth in this Subsection.

6.5.2 In addition to the fees and charges payable by the Owners to the Association pursuant to a Vacant Lot Water Assessment or to Association once a water connection is established to provide domestic water services to a Lot through the Water System, the Association, so long as the Association owns and controls the Water System, may (but shall not be obligated to) assess against each Lot which is an Assessable Property a



“Water System Operating Assessment” for the purpose of providing additional operating and capital funds to the Association for defraying, in whole or in part, the cost of operating the Water System and the cost of any upgrade, construction, reconstruction, repair or replacement of the Water System. The total amount to be assessed against each Lot as a Water System Operating Assessment shall be the amount that is reasonably estimated by the Board to produce the necessary funds for the Association to operate, maintain, repair, and replace the Water System in accordance with all laws, rules and regulations promulgated by the applicable governmental authorities (taking into account other sources of funds available to the Association) divided by the number of lots in Cross Creek Ranch. All Water System Operating Assessments collected by the Association shall be used by the Association as set forth in this Subsection.

11. Miscellaneous. Except as amended by this First Amendment, the Declaration remains in full force and effect. To the extent that the Declaration and this First Amendment conflict, this First Amendment shall govern and control. This First Amendment shall be governed by and construed in accordance with the laws of the State of Arizona.

[SIGNATURE BLOCK APPEARS ON NEXT PAGE.]

