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Road Maintenance Agreement

WHEN RECORDED, MAIL TO:
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c/o Aspey, Watkins & Diesel, P.L.L.C.
123 N. San Francisco St., Ste. 300
Flagstaff, Arizona 86001

ROAD MAINTENANCE AGREEMENT

(Properties Located within the Amended Plat known as Howard Mesa Ranch, Phase One - Unit One, Phase One – Unit Two, Phase One-Unit Three and Phase One- Unit Four and Howard Mesa Subdivision, and Howard Mesa Phase Two more commonly known as Howard Mesa Ranch and Four Hills Ranch, Coconino County Arizona)

This ROAD MAINTENANCE AGREEMENT ("Agreement") is made effective this 30th day of April, 2015, by the undersigned entities (each, a "Party" and together, "Parties"), in recognition of the following facts and intentions:

A. The undersigned **Howard Mesa Property Owners Association** ("HMR") represents the owners of the Lots within Howard Mesa Ranch Phase One.

B. The undersigned **Four Hills Ranch Property Owners Association** ("FHR") represents the owners of the Lots within Howard Mesa Ranch Phase Two.

C. All of FHR's members depend upon portions of the private roads commonly known as Latigo Road, Big Elk Road, and W. Jackrabbit Drive (collectively the "Common Roads") for access to the main public road nearest to Howard Mesa Ranch Phase Two, which is Arizona State Highway 64. The Common Roads are also used by members of HMR to access their respective properties within the Howard Mesa Ranch subdivision.

D. The Common Roads are located on land that is owned by HMR's members.

E. The Common Roads are subject to an easement ("Easement"), which was recorded on June 21, 2001, as Document Number 3096106 in the Official Records of Coconino County. A copy of the Easement is attached to this Agreement as "**Exhibit A**," and it is made a part of this Agreement as if restated here.

F. The Common Roads are more exactly described in the legal description within the Easement, and that legal description is adopted here to describe the "Common Roads" for the purposes of this Agreement.

G. The Easement gives all of FHR's members the unqualified right to travel across the Common Roads to access their properties from Arizona State Highway 64. The right to use the Common Roads is also reserved unto the members of HMR.

H. HMR and FHR intend this Agreement to resolve present and future disputes over what their respective rights and duties are regarding the Common Roads.

I. This Agreement is intended to clarify and acknowledge FHR's and HMR's rights and duties under the law as they exist at the time of signing, and explain these rights and duties in a thorough and understandable way, so that future disputes will not occur.

J. This Agreement is also intended to streamline administrative matters of maintenance and repair, and increase transparency of operations, in order to resolve past disagreement, as well as to prevent further and future disputes.

K. This Agreement is not intended to be a constraint or prohibition against direct, voluntary communication and cooperation by and amongst the Boards for HMR and FHR. The Parties affirm that friendly and respectful communication, in the spirit of cooperation, will maximize quality and efficiency of maintenance and repairs for the Common Roads.

L. The signatures of the Boards for HMR and FHR are conclusive evidence that these Parties have agreed to be bound by the terms of this Agreement, and are fully authorized to do so.

M. The Boards desire and authorize this Agreement to be recorded in the official records of Coconino County, Arizona so that all future Board members are aware of provisions contained herein and shall be bound by same for the term hereof, and any and all renewals hereof.

N. Although this Agreement sets the minimum standard practices and activities as between the Parties, and the Parties are binding themselves, their successors, and assigns to perform the terms hereof, this Agreement may not be interpreted as prohibiting, limiting, and/or discouraging voluntary and open communication and cooperation between the Boards for HMR and FHR, subject to the terms hereof.

NOW, THEREFORE, HMR and FHR both hereby declare and agree as follows:

1. Definitions. Terms of art are designated in this Agreement by their capitalization. The following terms of art, as they are used herein, are specially defined as follows:

- i. "Annual Common Roads Plan": means a plan developed by the Primarily Responsible Association that specifies generally the anticipated maintenance and repairs (if any) for the Common Roads for the up-coming year. The Annual Common Roads Plan shall include an approximate schedule of anticipated bladings of the Common Roads and other specific repair and/or maintenance projects as may be necessary or desirable. The Annual Common Roads Plan shall also include an

estimate of anticipated costs associated with each of the maintenance and repair projects contemplated for the up-coming year.

- ii. “Common Roads”: means those certain parcels of real property, privately owned by HMR’s members, which are the subject of the Easement (defined above) in favor of FHR and its members, and are more particularly defined in the legal description attached to the Easement. This legal description is adopted here to also define the Common Roads for the purposes of this Agreement.
- iii. “Common Roads Bank Account”: means that certain bank account that shall be created and held in the name of the Independent Account Administrator for the benefit of FHR and HMR with regard to the Common Roads, which bank account shall be a separate bank account dedicated solely and exclusively for the purpose of payment of expenses related directly to the Common Roads.
- iv. “Improvements”: means those actions and/or activities that are intended to raise or improve the level of development, usability, or condition of the Common Roads above the level which exists at the time of the signing of this Agreement.
- v. “Independent Account Administrator”: means that independent and neutral third party, as selected according to the terms of this Agreement, who shall be tasked with maintaining and administering the Common Roads Bank Account, and whose duties shall be those provided for as specified in this Agreement. Payment of the Independent Account Administrator shall be made from the Common Roads Bank Account as an administrative expense. Fees to be paid to the Independent Account Administrator out of the Common Roads Bank Account shall not exceed 15% of the total annual budget set by this Agreement in any given 12-month period.
- vi. “Maintenance and Repairs”: means those activities reasonably necessary to keep the Common Roads in a serviceable condition, and allow travel over and across them. “Maintenance and Repair” includes only those actions and activities that are needed to keep the Common Roads at the level of development, usability, and condition as exists at the time of the signing of this Agreement, or to restore the Common Roads to that condition after degradation or damage. It does not include any “Improvements” as that term is defined above.
- vii. “Other Association”: means, during any given term of service by a Party to this Agreement as the Primarily Responsible Association, the other Party to this Agreement that is not then the association primarily responsible for conducting and arranging maintenance and repair of the Common Roads pursuant to the provisions of this Agreement.
- viii. “Primarily Responsible Association”: means, during any given term of service, the Party to this Agreement that is primarily responsible for conducting and arranging maintenance and repair of the Common Roads during that Party’s given term of service, all pursuant to the provisions of this Agreement.

2. Property Subject to this Agreement. This Agreement applies only to the Common Roads, as defined above.

3. Right of Access by FHR. The Parties acknowledge and agree that the Easement gives FHR and all of its members the unqualified right to enter and travel across any and all portions of the Common Roads.

i. HMR acknowledges and agrees that it has a duty to not prohibit FHR and/or its members from using the Common Roads, or to interfere with that use, except as specifically provided for in, and limited by, this Agreement.

ii. HMR acknowledges and agrees that it and its members cannot, and will not, block off or obstruct the Common Roads at any location, or in any way, so as to prevent, or otherwise interfere with, FHR's and/or its members' use of the Common Roads, except as specifically provided for in, and limited by, this Agreement.

4. Right of Access by HMR. The Parties acknowledge and agree that HMR's members own the Common Roads (but subject to the Easement), and that this ownership gives HMR and all of its members the unqualified right to enter and travel across any and all portions of the Common Roads.

i. FHR acknowledges and agrees that it has a duty to not prohibit HMR and/or its members from using the Common Roads, or to interfere with that use, except as specifically provided for in, and limited by, this Agreement.

ii. FHR acknowledges and agrees that it and its members cannot, and will not, block off or obstruct the Common Roads at any location, or in any way, so as to prevent HMR and/or its members from using the Common Roads, except as specifically provided for in, and limited by, this Agreement.

5. FHR's Right to Repair & Maintain the Common Roads. The Parties acknowledge and agree that the Easement gives FHR the unqualified right to repair and/or maintain the Common Roads.

6. HMR's Right to Repair & Maintain the Common Roads. The Parties acknowledge and agree that HMR's members' ownership of the Common Roads gives HMR the unqualified right to repair and/or maintain the Common Roads.

7. Necessary Closures or Access Limitations Are Not Breach. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to prohibit such reasonable and limited road closures and/or limitations of access as are necessary for repair and/or maintenance of the Common Roads. Closing or limiting access to the Common Roads for the sole purpose of repairing and/or servicing shall not be deemed a violation of this Agreement, so long as:

i. a reasonable notice of closure(s) is provided to FHR and HMR members;

1. posting a sign disclosing any anticipated closure(s) at the entrance of Big Elk shall be deemed reasonable notice; and
 - ii. the closure or limitation of access is reasonably necessary; and
 - iii. it is done in good faith; and
 - iv. it is strictly limited in scope to only those areas directly affected by the repair and/or maintenance; and
 - v. it is strictly limited in time of closure or limitation to only what is reasonably necessary to complete repair or maintenance safely and effectively; and
 - vi. it leaves at least one viable lane of traffic to Arizona State Highway 64 via the Common Roads available during the entire duration of the closure or limitation, or provides some alternative access means to bypass the closed or restricted portion of the Common Roads.
8. Improvements. This Agreement is not intended to provide for dealing with any Improvements to be made to the Common Roads.
 - i. Improvements are not to be paid from the Common Roads Bank Account.
 - ii. If either FHR or HMR wishes to make any Improvements to the Common Roads, the Party proposing the Improvements shall present such plans to the other Party.
 1. If both Parties agree upon the Improvements, they shall share costs of constructing the Improvements as their agreement specifies. The Improvements shall then be included in the new standard for the Common Roads under this Agreement. Maintenance and repair of the Common Roads under this Agreement shall also include maintenance and repair of the agreed-upon Improvements after their completion.
 2. If the non-proposing party does not agree to the Improvements, then the one proposing the Improvements must bear 100% of all costs of constructing the Improvements, as well as any increases in maintenance and repair costs that those Improvements make necessary above the levels existing under the condition of the Common Roads at the time this Agreement is signed. Any increases to the costs of maintenance and repair that are made necessary by any non-agreed-upon Improvements must be contributed to the Common Roads Bank Account by the one constructing those Improvements, together with that Party's standard yearly contribution.
9. Independent Account Administrator. Initially, FHR and HMR shall jointly select a qualified independent third party to act as Independent Account Administrator. Initially, the Independent Account Administrator shall be:

M J Heher, CPA, PC

809 Riordan Rd #202
Flagstaff, Arizona 86001
Telephone: (928) 556-0102
Fax: (928) 556-0117
Email: mjheher@aol.com

- i. Duties. The Independent Account Administrator shall have the following duties:
1. The Independent Account Administrator shall establish the Common Roads Bank Account for the benefit of FHR and HMR.
 2. The Independent Account Administrator shall administer and maintain the Common Roads Bank Account.
 3. Within two (2) business days of receipt thereof, the Independent Account Administrator shall provide a copy to the Other Association of any and all invoices submitted by the Primarily Responsible Association. For purposes of this Subparagraph 9(i), "business day" means a day on which the Independent Account Administrator's office is open for business.
 - a. Copies of invoices may be provided to the Other Association via fax, email, or mail, to the person designated to receive such.
 - b. Both FHR and HMR are entitled to one copy of any information or report from the Independent Account Administrator. If FHR and/or HMR make a request for any additional copies, the Party requesting such additional copies shall pay the full expense of the copies requested out of its own separate funds, and shall not be reimbursed such cost out of the Common Roads Bank Account.
 4. The Independent Account Administrator shall pay expenses for maintenance and repair of the Common Roads as submitted to him/her in accordance with this Agreement.
 - a. It is the sole and exclusive duty of the Primarily Responsible Association to verify and assure that any and all expenses and/or invoices are properly characterized as maintenance and/or repair of the Common Roads, pursuant to this Agreement.
 - b. The Independent Account Administrator is not required to, and shall not, assess the character or validity of any invoice submitted by the Primarily Responsible Association. Instead, the Independent Account Administrator is entitled to presume that any and all invoices submitted by the Primarily Responsible Association are properly characterized as maintenance and/or repair of the Common Roads, unless directed otherwise by court order.

- c. Upon receipt of any invoice from the Primarily Responsible Association, the Independent Account Administrator must wait a minimum of five (5) business days after he/she has sent a copy of the invoice to the Other Association before paying the invoice, unless the invoice specifies that a fee of some kind will be assessed if the invoice is not paid sooner. For purposes of this Subparagraph 9(i), "business day" means a day on which the Independent Account Administrator's office is open for business
 - d. After the above-referenced required waiting period has ended, any invoice submitted to the Independent Account Administrator by the Primarily Responsible Association shall be paid promptly by the Independent Account Administrator, unless otherwise forbidden by court order.
 - e. Any dispute or challenge of an expense or invoice as violative of this Agreement must be resolved solely between FHR and HMR according to the terms of this Agreement.
 - f. FHR and HMR hereby expressly waive any and all claim(s) against the Independent Account Administrator with relation to the payment of any invoice submitted to the Independent Account Administrator by the Primarily Responsible Association, unless such payment was made in violation of a court order, after the Independent Account Administrator received actual notice of such court order.
5. The Independent Account Administrator shall keep records related to payment of expenses in association with the maintenance and repair of the Common Roads.
 - a. The Independent Account Administrator shall keep all records entrusted to him/her for a period of not less than three years.
 6. The Independent Account Administrator shall provide information to FHR and HMR regarding the Common Roads Bank Account (including, without limitation, present account balance, debits, and like information) upon reasonable request by FHR or HMR.
 - a. Such information may be provided to FHR or HMR via fax, email, or mail, to the person designated by FHR and HMR to receive such.
 - b. Both FHR and HMR are entitled to one copy of any information or report from the Independent Account Administrator. If FHR and/or HMR make a request for any additional copies, the Party requesting such additional copies shall pay the full expense of the copies requested out of its own separate funds, and shall not be reimbursed such cost out of the Common Roads Bank Account.

7. The Independent Account Administrator shall provide an accounting compilation of the Common Roads Bank Account's income and expenses on at least an annual basis, but also upon reasonable request by FHR or HMR.
 - a. The Parties agree that the expense for preparation of **one** accounting compilation of the Common Roads Bank Account per year may be paid out of the Common Roads Bank Account, with **one** copy thereof to be sent to each FHR and HMR.
 - b. Additional compilations reasonably requested by a Party shall be paid for solely and exclusively by the requesting Party, out of its own separate funds, and not out of the Common Roads Bank Account. Neither shall a requesting Party be reimbursed from the Common Roads Bank Account the expense of any additional compilation(s) requested.
 - c. FHR and HMR may, at any time, request an audit of the Common Roads Bank Account, the records kept by the Independent Account Administrator, and/or the administration of any financial matters with relation to the maintenance and repair of the Common Roads. However, the full and total expense of any such audit shall be paid exclusively by the Party requesting an audit. This includes any and all fees and/or costs incurred by the Independent Account Administrator as a result of participating in, or cooperating with, such requested audit. The expenses of any audit requested are not to be paid out of the Common Roads Bank Account. Neither shall a requesting Party be reimbursed the expense of any audit(s) requested from the Common Roads Bank Account.
8. The Independent Account Administrator shall perform such other duties as are necessary to fulfil the purposes of this Agreement.
 - ii. Fees. Unless otherwise specified by this Agreement, the professional fees for the services of the Independent Account Administrator shall be paid from the funds deposited in the Common Roads Bank Account.
 1. Initially, the maximum fee that may be paid to the Independent Account Administrator out of funds in the Common Roads Bank Account shall be no more than 15% of the annual budget in any given 12-month period.
 2. This maximum fee percentage to be paid out of funds in the Common Roads Bank Account may be altered by written and signed agreement of both FHR and HMR.
 3. Notwithstanding any other term of this Agreement, nothing shall prohibit a Party from paying the Independent Account Administrator any fees exceeding the 15% limit specified in this Agreement out of its own sole and separate funds.

iii. Term of Service. The Independent Account Administrator shall serve until validly changed, or he/she resigns, withdraws, becomes incapacitated, or otherwise becomes unwilling or unable to fulfill his/her duties.

1. The Independent Account Administrator may be changed by written and signed agreement of both FHR and HMR.
2. If the Independent Account Administrator should at any time resign, withdraw, be incapacitated, or otherwise become unwilling or unable to fulfill his/her duties, upon the occurrence of such an event, and if the Parties cannot mutually agree upon a replacement, the Parties agree to comply with the following procedures to select a replacement:
 - a. The Primarily Responsible Association serving at the time the present Independent Account Administrator no longer serves shall locate a suitable replacement to take over duties as the replacement Independent Account Administrator.
 - b. As much as practicable, the Primarily Responsible Association serving at the time of such an event must use reasonable diligence to locate a replacement who is comparable in qualifications and cost to the prior Independent Account Administrator.
 - c. The Primarily Responsible Association must present the name, contact information, qualifications, and cost of any proposed replacement Independent Account Administrator to the Other Association prior to entering into any contract for service with that proposed replacement.
 - d. If the Other Association, in its sole and exclusive discretion, rejects the replacement Independent Account Administrator proposed by the Primarily Responsible Association, then the Other Association must locate another proposed replacement, who must be, as much as practicable, comparable in qualifications and cost to the prior Independent Account Administrator, and present the name, contact information, qualifications, and cost of its proposed replacement to the Primarily Responsible Association.
 - e. If the Primarily Responsible Association, in its sole and exclusive discretion, rejects the replacement proposed by the Other Association, then the Primarily Responsible Association must locate yet another proposed replacement, who must be, as much as practicable, comparable in qualifications and cost to the prior Independent Account Administrator, and present the name, contact information, qualifications, and cost of its proposed replacement to the Other Association.

i. This second proposal by the Primarily Responsible Association may only be rejected by the Other Association for any or all of the following reasons:

1. Cost of the proposed replacement Independent Account Administrator exceeds that of the prior Independent Account Administrator by thirty percent or more (30%+);
2. The proposed replacement was subjected to any applicable professional discipline action of any kind;
3. The proposed replacement was convicted of any crime involving theft, embezzlement, forgery, fraud, or perjury (or any equivalent offenses); and/or
4. The proposed replacement had judgment entered against him/her, to any degree, in any civil action for embezzlement, fraud, breach of fiduciary duty, misrepresentation, or conversion (or any equivalent claims).

f. If the Other Association cannot prove, by credible evidence, one of the foregoing reasons for rejection of the second proposal by the Primarily Responsible Association, then this second proposal shall automatically become the Independent Account Administrator without the approval of the Other Association.

g. If a replacement Independent Account Administrator has not been selected after complying with all of the previous provisions of this Subparagraph 9(iii), the Parties shall continue to alternate locating proposed replacements and presenting the proposals to the other Party for approval. But in each subsequent proposal, such proposals may only be rejected by the other Party for the reasons set forth in Subparagraph 9(iii)(2)(e) above. If at any point no rejection to a proposed replacement is valid, then that proposed individual shall automatically become the Independent Account Administrator without the approval of the other Party.

10. Maintenance & Repair. In fulfillment of its duties pursuant to this Agreement, the Primarily Responsible Association:

- i. shall locate and enter into contracts with contractors and/or qualified worker(s) to perform any needed maintenance and repairs on the Common Roads, subject to all of the following provisions and conditions:

1. The Primarily Responsible Association shall have discretion on the choice of which contractors and/or qualified worker(s) to employ to perform maintenance and repairs on the Common Roads.
2. The Primarily Responsible Association must act in good faith to assure that costs and qualifications are reasonable for the work the Primarily Responsible Association orders done.
3. Any contractors and/or qualified worker(s) retained pursuant to this Agreement must be appropriately licensed, bonded, and insured.
4. No contract with any contractors and/or qualified worker(s) may be for a term greater than twelve (12) months.
5. There is no requirement to obtain bids.
6. Notwithstanding that the Primarily Responsible Association need not obtain bids, once in any given 24-month period, any Party may initiate a "Bidding Procedure." "Bidding Procedure" means the process outlined as follows:
 - a. The Party initiating the Bidding Procedure may choose to obtain not more than three (3) bids in its discretion, and at its own cost, within any given 30-day period.
 - b. Such bid(s) must be provided to the responding Party within 30 days of obtaining the first such bid.
 - c. Within 30 days of receiving the bid(s) from the initiating Party, the responding Party may solicit not more than three (3) of its own bids in response, and must provide all bid(s) obtained, if any, to the initiating Party within that timeframe. Any bid(s) obtained by the responding Party shall be at its sole discretion and at its own cost.
 - d. Regardless of which Party is the initiating Party, the Primarily Responsible Association will not be required to change contractors and/or qualified worker(s), unless the price of the contractor and/or qualified worker being used (or proposed to be used) by the Primarily Responsible Association is more expensive by twenty-five percent or greater (25%+) than the mean average of all bids obtained by both parties during the Bidding Procedure.
 - e. If the price of the contractor and/or qualified worker(s) being used (or proposed to be used) by the Primarily Responsible Association is more expensive by twenty-five percent or greater (25%+) than the mean-average of all bids obtained during the Bidding Procedure, then the Primarily Responsible Association cannot renew that contract (or if no contract yet exists, then it cannot enter that contract in the first instance), and the Primarily Responsible

Association must select a contractor whose cost is no greater than 24.99% above the mean-average of all bids obtained during the Bidding Procedure.

- ii. shall obtain invoices for all work performed for maintenance and/or repair of the Common Roads.
- iii. shall, within one calendar week of receipt of any invoice(s) for work performed for maintenance and/or repair of the Common Roads, provide such invoices to the Independent Account Administrator, who must pay all maintenance and repair costs for the Common Roads out of the Common Roads Bank Account in a timely fashion.
 1. It is the sole and exclusive duty of the Primarily Responsible Association to verify and assure that any and all expenses and/or invoices are properly characterized as maintenance and/or repair of the Common Roads, pursuant to this Agreement.
- iv. must keep copies of all invoices, bids (if any), contracts (if any) and any other written documentation of maintenance and repair of the Common Roads for a period of not less than three years.
- v. shall provide the Other Association with an Annual Common Roads Plan no later than May 31st of each year, or the following business day if May 31st should fall on a weekend or holiday.
 1. The Annual Common Roads Plan shall provide, at a minimum, for quarterly bladings of the Common Roads.
 2. The Annual Common Roads Plan may also include any additional necessary or desirable maintenance and/or repair projects anticipated to be accomplished in the year covered under the said Annual Common Road Plan.
 3. The Annual Common Roads Plan shall also include an estimate of anticipated costs associated with each of the maintenance and repair projects contemplated for the up-coming year.
 4. The Other Association shall review the Annual Common Roads Plan, and may (but need not) respond, in writing (including by email), to the Primarily Responsible Association within fifteen (15) business days of when the Annual Common Roads Plan was transmitted to the Other Association with any comments or proposed additions desired (if any), to the Annual Common Roads Plan.
 5. If there are sufficient funds available in the standard yearly budget for that Annual Common Roads Plan, then the Primarily Responsible Association shall perform the additional matters proposed by the Other Association.

6. If there are insufficient funds to pay for all or some of the items proposed by the Other Association, then the Primarily Responsible Association must explain to the Other Association that there will not be enough funds to cover some or all items proposed by the Other Association.
 7. If there are insufficient funds, the Primarily Responsible Association shall in good faith propose a prioritized list of projects that can be accomplished within the yearly budget.
 8. The Primarily Responsible Association and the Other Association may, *upon mutual agreement of both entities*, make such additional contributions as may be necessary to pay for those additional matters that exceed the standard yearly budget, with FHR to cover 60% thereof, and HMR to cover 40% thereof.
- vi. At any point after the fifteen-day review period, the Other Association may advise the Primarily Responsible Association in writing (including by email) of any necessary maintenance or repair that must be done to the Common Roads, but is not otherwise adequately addressed in the Annual Common Roads Plan.
1. As used in this Agreement, “necessary” shall have its ordinary meaning, qualified as follows:
 - a. If a matter can reasonably be postponed to a new budgeting year, or if a matter constitutes an “Improvement,” that matter is not “necessary” under this Agreement.
 - b. If a matter is adequately addressed in the Annual Common Roads Plan, that matter is not “necessary” under this Agreement, except if the matter constitutes an emergency that concerns a dangerous and/or hazardous condition involving the Common Roads, and the schedule for addressing that matter in the Annual Common Roads Plan would allow the danger or hazard to persist for longer than one month.
 - c. In all cases, matters that constitute an emergency that concerns a dangerous and/or hazardous condition involving the Common Roads shall be considered as “necessary” under this Agreement.
 2. The burden of establishing that a particular item of maintenance and/or repair of the Common Roads not addressed by the Annual Common Roads Plan is necessary rests with the Other Association, by a preponderance of evidence standard.
- vii. If the Other Association observes that a particular necessary item of maintenance or repair that it previously advised the Primarily Responsible Association of remains unperformed for a period of one month, then the Other Association may send a final written notice (including by email) to the Primarily Responsible Association,

requesting that the work be commenced within one week, weather reasonably permitting. If the maintenance or repair work has still not commenced one week after the final written notice was sent to the Primarily Responsible Association, the Other Association shall have the right to contract to have such work performed itself.

1. The Other Association shall be reimbursed from the Common Roads Bank Account for any such necessary maintenance or repair work ordered by the Other Association under this Subparagraph 10(vii), but only if the Other Association provides the Primarily Responsible Association with an invoice for the work performed, and there are sufficient funds in the Common Roads Bank Account to cover the invoice. The Primarily Responsible Association must deliver any such invoice(s) to the Independent Account Administrator for payment, unless such work was not *necessary*, or if there are insufficient funds in the Common Roads Bank Account to cover the invoice.
2. If the work performed was not *necessary*, then any such work ordered or performed at the request of the Other Association shall be the sole financial responsibility of the Other Association.
3. If no invoice from the contractor or worker is provided to the Primarily Responsible Association, then any work ordered performed by the Other Association shall be the sole financial responsibility of the Other Association.
4. If necessary work is performed pursuant to this Subparagraph 10(vii), but there are insufficient funds in the Common Roads Bank Account to cover the invoice for necessary maintenance or repairs, then the Other Association and the Primarily Responsible Association shall jointly share the cost of the invoice out of their sole and exclusive funds, with FHR to cover 60% thereof, and HMR to cover 40% thereof.

11. Service as Primarily Responsible Association & Transition. The Parties hereby agree that for the term of this Agreement, FHR and HMR shall alternate being the Primarily Responsible Association according to the following schedule:

- i. Initially, upon the recording of this Agreement in the Official Records of Coconino County, FHR shall serve an initial term as the Primarily Responsible Association, which initial term shall end at 11:59 p.m. on April 30, 2017.
- ii. Thereafter, beginning at 12:00 a.m. on May 1, 2017, HMR shall serve an initial term as the Primarily Responsible Association, which initial term shall end at 11:59 p.m. on April 30, 2019.
- iii. After the conclusion of HMR's initial term, and beginning at 12:00 a.m. on May 1, 2019, FHR shall serve a standard term of three (3) years as the Primarily Responsible Association, ending at 11:59 p.m. on April 30, 2022.

- iv. After conclusion of FHR's standard term, and beginning at 12:00 a.m. on May 1, 2022, HMR shall serve a standard term of three (3) years as the Primarily Responsible Association, ending at 11:59 p.m. on April 30, 2025.
- v. Thereafter in perpetuity for as long as this Agreement (and/or any renewal hereof) shall remain in effect between the parties, FHR and HMR shall alternate serving standard terms of three (3) years each as the Primarily Responsible Association.
- vi. Approximately 90 days prior to the expiration of every term of service, the currently-serving Primarily Responsible Association's representative(s) must meet with the representative(s) of the Other Association, to provide a briefing for the Other Association on the state of the Common Roads, the Common Roads Bank Account, progress on the Annual Common Roads Plan, all contracts (if any), and any other information relevant to the performance of its duties that would assist the Other Association in preparing a new Annual Common Roads Plan and/or would otherwise prepare the Other Association to assume the duties of the Primarily Responsible Association.

12. Maintenance & Repair Costs. The Parties acknowledge and agree that they are both jointly responsible for contributing to the costs of maintenance and repair of the Common Roads. The Parties additionally acknowledge that each has no authority to dictate or interfere with the other's duties under their respective Conditions Covenants & Restrictions. The Parties further recognize and affirm herewith that nothing in this Agreement shall operate to provide either of the Parties any right to alter, amend or otherwise influence or interfere with the other's internal operations under their respective Conditions Covenants & Restrictions. The Parties hereby agree that all maintenance and repair costs shall be shared in the following manner:

- i. There shall be a standard yearly budget for maintenance and repair of the Common Roads, which shall initially be in the amount of \$14,400.00.
- ii. Unless otherwise specified by other parts of this Agreement, FHR shall make a yearly contribution of 60% of the budget as its portion of the annual budget for maintenance and repair of the Common Roads, which amount shall initially be \$8,640.00, until such time as a change to yearly contribution pursuant to this Agreement shall occur. Future adjusted yearly contributions shall be calculated according to the applicable provisions of this Agreement. This contribution shall, without invoice, notice or demand, be deposited by FHR in the Common Roads Bank Account no later than 5:00 p.m. (M.S.T.) on April 30th of each year (or the following business day if April 30th should fall on a weekend or holiday).
- iii. Unless otherwise specified by other parts of this Agreement, HMR shall make a yearly contribution of 40% of the budget as its portion of the annual budget for maintenance and repair of the Common Roads, which amount shall initially be \$5,760.00, until such time as a change to yearly contribution pursuant to this Agreement shall occur. Future adjusted yearly contributions shall be calculated according to the applicable provisions of this Agreement. This contribution shall, without invoice, notice or demand, be deposited by HMR in the Common Roads

Bank Account no later than 5:00 p.m. (M.S.T.) on April 30th of each year (or the following business day if April 30th should fall on a weekend or holiday).

- iv. If at any time there are insufficient funds in the Common Roads Bank Account to pay for any immediately necessary maintenance or repairs to the Common Roads (i.e., those items that cannot reasonably be postponed until the next normal assessment of yearly contributions have been paid, and are reasonably necessary for the safe continued use of the Common Roads), then the Parties agree that each shall make such additional contributions as are required to pay for those immediately necessary maintenance or repairs.
 1. A bid for such immediately necessary maintenance or repairs shall be obtained by the Primarily Responsible Association and presented to the Other Association.
 2. FHR shall make an additional contribution to the Common Roads Bank Account of 60% of the required funds to pay for the immediately necessary maintenance or repairs.
 3. HMR shall make an additional contribution to the Common Roads Bank Account of 40% of the required funds to pay for the immediately necessary maintenance or repairs.

13. Changes to Yearly Budget or Contributions. The amount of the standard yearly budget and/or the amount of each of the Parties' contributions shall be adjusted as follows:

- i. If the yearly budget specified above is proved by the Primarily Responsible Association to be no longer sufficient to cover the standard maintenance and repair of the Common Roads, then the yearly budget shall be increased to an amount that is sufficient to consistently cover all standard maintenance and repair of the Common Roads.
 1. The Primarily Responsible Association shall prove that the yearly budget specified above is insufficient by creating a list of all actual expenditures for maintenance and repair of the Common Roads for two successive years, and providing those lists to the Other Association. If the total cost of all actual expenditures exceeds the current standard yearly budget for two successive years, then the next year's standard yearly budget shall be increased to the amount of the higher of the two years, plus \$1,000.00. FHR's portion to contribute towards that new standard yearly budget shall be 60%, and HMR's portion to contribute towards that new standard yearly budget shall be 40%.
 - a. Example 1: In year "X", total actual expenditures on maintenance and repair of the Common Roads were \$16,000.00. In year "Y" (the following successive year), total actual expenditures were \$15,500.00. Then, automatically, the yearly budget for the next year after proof of this is presented must be adjusted to \$17,000.00

(\$16,000 + \$1,000). FHR's portion of this new amount would be \$10,200, and HMR's portion would be \$6,800.

b. Example 2: In year "X", total actual expenditures on maintenance and repair of the Common Roads were \$19,000.00. In year "Y" (the following successive year), total actual expenditures were \$13,300.00. Then there is no adjustment to the standard yearly budget set by this Agreement.

ii. Additionally, the standard yearly budget and/or the Parties' contributions may be altered in the future if both HMR and FHR agree in writing, with notarized signature of both associations.

14. Reserves. Initially, at the end of each April, if there is any money left remaining in the Common Roads Bank Account after the full payment of any given year's maintenance and repairs, those remaining funds will be retained and earmarked under an accounting entry as "Reserves," until the amount held as Reserves reaches a specified target amount:

i. Reserves shall be held for use in unexpected contingencies and emergencies related to the maintenance and/or repair of the Common Roads that would otherwise exceed the normal contributions in any given year.

ii. The "Target Reserves Amount" shall initially be \$8,000.00.

iii. This Target Reserves Amount may be altered in the future if both HMR and FHR agree in writing, with notarized signature of both associations.

iv. If it ever becomes necessary to use any of the Reserves, any and all excess sums remaining in the Common Roads Bank Account at the end of any given year shall be used to replenish the Reserves, until the Target Reserves Amount is again achieved.

15. Credit for Excess Funds. If in any given year, at the end of April of that year, there are funds remaining in the Common Roads Bank Account that are in excess of the Target Reserves Amount, then the Parties shall receive a credit for their proportionate share of those excess funds, and reduce their yearly contribution by that credit. The credit shall be calculated in the following manner:

i. At 5:00 p.m. (M.S.T.) on March 31st of every year (or the next business day thereafter if it falls on a weekend or holiday), any funds remaining in the Common Roads Bank Account will be verified by the Primarily Responsible Association.

ii. The Primarily Responsible Association shall then calculate any amount that is in excess of the Target Reserves Amount, and shall give Notice of any such amount to the Other Association as soon as practicable after verification specified in Subparagraph 15(i) is made.

iii. 60% of that excess amount shall be a credit to FHR, and 40% of that excess amount shall be a credit to HMR.

- iv. FHR and HMR may reduce their yearly contribution for the coming year by the amount of their respective credits.
 1. Example 1: At 5:00 p.m. (M.S.T.) on March 31st of 20XX, the Primarily Responsible Association checks the account balance for the Common Roads Bank Account. The account balance is \$9,000.00 at that time. The Target Reserves Amount is \$8,000. The Primarily Responsible Association advises the Other Association that there is \$1,000 of excess. 60% of that excess (\$600.00) becomes a credit to FHR, and 40% of that excess (\$400.00) becomes a credit to HMR. In the next month (by April 30th), FHR shall only pay a yearly contribution for that year which is reduced from the standard yearly contribution of \$8,640 to \$8,040. Likewise, HMR shall only pay a yearly contribution for that year which is reduced from the standard yearly contribution of \$5,760 to \$5,360.
 2. Example 2: Same scenario, but the account balance is \$5,000.00. There will be no credit for the following year, because the account balance reveals that the Reserves have not achieved the Target Reserves Amount of \$8,000. FHR and HMR must both make their full standard yearly contribution in the coming year.

16. Common Roads Bank Account. All contributions from **both** FHR and HMR for maintenance and repair of the Common Roads must be deposited into a segregated bank account called the Common Roads Bank Account, which Common Roads Bank Account shall be dedicated solely and exclusively for payment of expenses related directly to the Common Roads.

- i. The Common Roads Bank Account shall be opened by the Independent Account Administrator, and administered by the Independent Account Administrator for the benefit of FHR and HMR at a federally-insured financial institution of the Independent Account Administrator's choosing.
- ii. Any banking fees, accounting fees, or any other costs associated with the maintenance and/or administration of the Common Roads Bank Account shall be paid out of the contributions to the Common Roads Bank Account, subject to the limits on the allowable compensation payable to the Independent Account Administrator described above.
- iii. To the extent reasonably practicable, FHR and HMR shall be given full access to view online account information and account balances, and have authority to request written account information for the Common Roads Bank Account.
- iv. To the extent reasonably practicable, FHR and HMR shall be given authority to make direct deposits to the Common Roads Bank Account.
- v. To the extent reasonably practicable, during the term of this Agreement (or any renewal hereof), only the Independent Account Administrator will be given authority to draw upon the account, in conformity with this Agreement.

1. If it is not reasonably practicable to have the Independent Account Administrator be the sole entity authorized to draw upon the account, then the serving presidents of both FHR and HMR shall jointly be added to the Common Roads Bank Account as an additional signor.
 2. Unless the financial institution selected by the Independent Account Administrator requires otherwise, it shall be necessary for **both** FHR's and HMR's presidents to jointly execute any draft, authorize any withdrawal, close the account, or perform any other action with regard to the Common Roads Bank Account, other than to request or view information.
- vi. Notwithstanding any other provision of this Agreement, if during the term of this Agreement (or any renewal hereof), the Independent Account Administrator should resign, withdraw, be incapacitated, or otherwise become unwilling or unable to fulfill his/her duties, upon the occurrence of any such event, all funds then remaining in the Common Roads Bank Account shall be withdrawn (minus any amounts necessary to pay any and all fees, charges, and outstanding checks or drafts then pending), with 60% thereof disbursed to FHR and 40% thereof disbursed to HMR. The Parties must hold these funds separately from all other moneys, until a new Independent Account Administrator can be selected. The Common Roads Bank Account shall thereafter be closed when completely empty.
1. Following closure of the Common Roads Bank Account, a new Independent Account Administrator shall be selected pursuant to the terms of this Agreement, and this new Independent Account Administrator shall open a new Common Roads Bank Account.
 2. Upon opening of a new Common Roads Bank Account, FHR and HMR shall immediately contribute the amounts received disbursed to them at the closing of the prior Common Roads Bank Account towards the new Common Roads Bank Account.
- vii. In the event that this Agreement should ever terminate finally, and not be renewed, then all amounts contained in the Common Roads Bank Account shall be withdrawn (minus any amounts necessary to pay any and all fees, charges, and outstanding checks or drafts then pending), with 60% thereof disbursed to FHR and 40% thereof disbursed to HMR. The Common Roads Bank Account shall thereafter be closed when completely empty.

17. Term of Agreement. The initial term of this Agreement shall be for the period of ten (10) years, beginning at the date of the recording of this Agreement. Thereafter, this Agreement shall automatically be renewed for successive ten (10)-year-terms if no cancellation of the Agreement is recorded. A cancellation of this Agreement is only valid if it contains the notarized signatures of at least 51% of the members of the boards of directors for **both** FHR and HMR. This said signed cancellation must certify that the quorum and vote requirement of 51% have been met. This said cancellation is not valid until it is recorded, and it shall not take effect until 30 days after said recording.

18. No Alteration of CC&Rs: The respective Boards of FHR and HMR agree that this Agreement does not in any way alter their respective Conditions Covenants and Restrictions, nor does this Agreement in any way limit the rights and obligations of the Associations and their members with respect to the use of the Common Roads. In the event of a conflict between the provisions of their respective CC&Rs and the provisions of this Agreement, the provisions of this Agreement shall control.

19. Construction. The provisions of this Agreement shall be liberally construed to promote and effectuate the fundamental purposes as set forth in this Agreement.

20. Default. Except as specifically provided otherwise in this Agreement, a default hereunder shall include the breach or failure of any Party to perform any of its obligations under this Agreement. In the event of any default hereunder by any Party that is not cured within ten (10) days after written notice from any other Party (provided that, if the nature of the cure of such default reasonably requires more than ten (10) days, the Party in default shall have such reasonable time as is reasonably necessary to cure such default, as long as he or she shall commence such cure within such ten (10) day period and shall diligently pursue completion of the cure thereafter), the other Party shall be entitled to pursue all rights and remedies available at law or in equity, including, but not limited to, declaratory judgment and/or the right of specific performance.

21. Recordation. This Agreement shall be recorded in the Official Records of Coconino County after its execution by FHR and HMR.

22. Notices. All notices required to be given hereunder shall be in writing and shall be conveyed by: (a) personal delivery to the Party's statutory agent; (b) U.S. Mail to the address of the Party's statutory agent, via certified or registered mail, postage prepaid, with return receipt requested; or (c) by email to the Parties at their respective addresses as set forth here:

If to FHR: bellwether.ranch@gmail.com (Sherrian Bloomquist, Pres.)

If to HMR: doc6869@hotmail.com (George Riojas, Pres.)

[With cc to tony@tonycullumlaw.com](mailto:tony@tonycullumlaw.com)

or as otherwise authorized by such Party, by a signed writing, to the other. Notice given by personal delivery shall be deemed to be given upon delivery to the appropriate address against receipt therefor (or upon refusal of acceptance). Notice given by U.S. Mail shall be deemed to have been given two days after deposit in the U.S. Mail. Notice by email shall be deemed to have been given as of the date of sending, unless an error message results. Each party may designate from time to time another address in place of the address set forth above by notifying the other party in the same manner as provided in this Section.

23. Time of Essence. Time is of the essence as to all terms in this Agreement.

24. Attorney's Fees. Except as specifically provided otherwise in this Agreement, in the event of litigation to enforce the terms of this Agreement, the prevailing party shall be

entitled to receive any and all reasonable attorneys' fees, any and all expenses, and any and all costs of suit incurred by it in the course of litigation.

25. Interpretation. In the event of any ambiguity, this Agreement shall not be construed in favor of or against any Party on account of the one of the Parties having prepared this Agreement or any documents that may be prepared pursuant to this Agreement.

26. Binding Effect. This Agreement shall be applicable to and bind the Parties hereto and their members, officers, directors, affiliates, agents, employees, licensees, successors, heirs, executors, personal representatives and assigns, if any. As stated in the Recitals above, the Parties are free to communicate and cooperate voluntarily, and to adopt such informal conventions that differ from the terms provided in this Agreement for so long as the Parties can agree thereon. Nevertheless, it is understood and specifically agreed by and between the Parties that the express terms of this Agreement (and/or any valid Modification(s) hereof), shall govern and control in the event of any disagreement or dispute between the Parties with regard to any issue touching and/or concerning the maintenance and repair of the Common Roads. Any prior informal conventions adopted, which do not constitute a valid and effective Modification of this Agreement (as provided for herein), will not constitute a waiver of any term hereof. At any time, and in their sole discretion, either Party may require abandonment of any or all differing informal conventions, and require full and strict compliance with the express terms of this Agreement (and/or any valid Modification(s) hereof).

27. Entire Agreement. This Agreement constitutes the entire agreement between the Parties, as to the maintenance and repair of the Common Roads and there are no other agreements or understandings in regard to this transaction other than as set forth herein. All other and prior agreements or any kind, written or oral, are deemed to be subsumed within and/or cancelled and replaced by this Agreement.

28. Other Documents. The Parties each shall execute and deliver to each other such other documents or instruments as may be reasonably necessary to give effect to the terms and provisions of this Agreement.

29. Incorporation of Recitals. The recitals of fact and intention on the first page of this Agreement are true and correct, and constitute an integral part of this Agreement.

30. Modification. Unless otherwise specified herein, no change, modification, or waiver of this Agreement, in any respect or to any extent, shall be valid and binding unless it is accomplished by written and notarized agreement of a simple majority of the boards of directors for *both* FHR and HMR. Such Modification shall be Recorded, and shall be effective only upon such Recording.

31. Severability. If any court of competent jurisdiction determines that any of the provisions of this Agreement or any part hereof, is or are invalid or unenforceable, the remainder of the provisions shall not thereby be affected and shall be given full effect without regard to any invalid portions.

32. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature

and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

HOWARD MESA PROPERTY OWNERS ASSOCIATION:

By: George G. Riojas

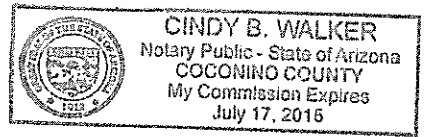
Its: President

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

The foregoing instrument was acknowledged before me this 05 day of MAY, 2015, by George G. Riojas, as President of the Howard Mesa Property Owners Association.

My Commission Expires:
July 17 2015

Cindy B Walker
Notary Public



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

FOUR HILLS RANCH PROPERTY OWNERS ASSOCIATION

By: [Signature]
Its President

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

The foregoing instrument was acknowledged before me this 21st day of May, 2015, by Sherrian D. Bloomquist, as President of Four Hills Ranch Property Owners Association.

My Commission Expires:
January 14, 2019

Aspen G
Notary Public

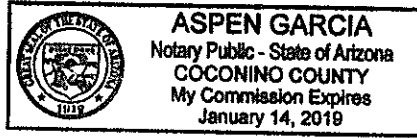


EXHIBIT “A”
Easement



EXHIBIT "A"

Those roadways known as, "Latigo Road" (including S. Latigo Rd.), "W. Jackrabbit Drive" and "Big Elk Road" are located throughout the "Howard Mesa Ranch Phase One" and "Howard Mesa Subdivision" developments (shown on the Plats recorded at fee numbers; 3004866; 98-35069; 3026240; 3046429 & 99-05422 in the official records of the Coconino County Recorder's Office), more specifically as follows:

LATIGO ROAD (including S. Latigo Road): Beginning at the entrance to "Howard Mesa Ranch Phase One" and "Howard Mesa Subdivision" off Arizona State Highway 64 in Unit 5 (Section 34) of Howard Mesa Ranch Phase One and continuing in an overall northwesterly direction through Unit 3 (Section 28), Unit 2 (Section 21), Unit 10 (Section 17), and Unit 8 (Section 7), ending at the entrance to the "Four Hills Ranch" (aka; "Howard Mesa Ranch Phase Two") along the west section line of Section 7.

BIG ELK ROAD: Beginning along the east section line of Section 33 (Howard Mesa Subdivision) at the junction of Latigo Road and running in a northwesterly direction continuing through the north section line and ending at the middle of the west section line of Section 28 (junction of S. Latigo Road and W. Jackrabbit Drive).

W. JACKRABBIT DRIVE: Beginning in Unit 4 (Section 29) at the middle of the east section line of Section 29 (the junction of S. Latigo Road and Big Elk Road) and continuing in a southwesterly direction through Unit 4 and Unit 12 (Section 31), ending at the entrance to the "Four Hills Ranch" (aka; Howard Mesa Ranch Phase Two) along the west section line of Section 31.

All located in Township 25 North, Range 2 East, of the Gila and Salt River Meridian, Coconino County, Arizona.

