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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

INDEX

SECTION 1 - DEFINITIONS .....2  
SECTION 2 - USE RESTRICTIONS .....4  
SECTION 3 - ASSOCIATION .....9  
SECTION 4 - ARCHITECTURAL COMMITTEE .....10  
SECTION 5 - FUNDS AND ASSESSMENTS .....11  
SECTION 6 - GENERAL PROVISIONS.....14

Unofficial Copy

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE SANCTUARY**

THIS DECLARATION made and dated this second day of November, 2006 by The Sanctuary at Lake Mary Crossing, LLC, an Arizona LLC, as "Declarant." Declarant is the owner of all the following described real property, ("The Sanctuary) situated in the County of Coconino, State of Arizona, to wit:

Lots 1 through 21 of The Sanctuary, according  
To Book of Maps, Page , Official Records  
Of Cocounty County, Arizona (the "Project")

WHEREAS, the Declarant, about to convey lots of said described property, hereby declares that the Sanctuary is held and shall be conveyed subject to restrictions, conditions, covenants, easements, charges, and agreements set forth in this Declaration, to wit:

All of the limitations, restrictions, conditions, covenants,  
easements, charges, and agreements shall constitute covenants  
which shall run with the land and shall be binding upon Declarant,  
its successors and assigns, and all parties having or acquiring any  
right, title or interest in or to any part of the Project

**SECTION 1  
DEFINITIONS**

- 1.1 **"Annual Assessment"** shall mean the assessments levied against each Lot, and the Owner thereof, pursuant to Section 5.3 hereof.
- 1.2 **"Architectural Committee"** or "Committee" shall mean the committee created pursuant to Section 4 hereof.
- 1.3 **"Architectural Rules and Guidelines"** or "Guidelines" shall mean the rules and regulations adopted from time to time by the Committee.
- 1.4 **"Articles"** shall mean the Articles of Incorporation of the Association which have been or will be filed in the office of the Arizona Corporation Commission, as said Articles may be amended from time to time.
- 1.5 **"Assessment"** shall mean an Annual Assessment, Special Assessment or Extraordinary Assessment as set forth in Section 5 herein.
- 1.6 **"Assessment Lien"** shall mean the lien created and imposed by Section 5 herein.
- 1.7 **"Association"** shall mean and refer to the Sanctuary Homeowners Association, Inc., an Arizona non-profit corporation, its successors or assigns, which has been or will be

established pursuant to this Declaration. The owner of a Lot shall automatically be a Member of the Association.

- 1.8 **"Association Rules"** or "Rules" shall mean the rules and regulations adopted by the Board and/or Committee as they may be amended from time to time.
- 1.9 **"Board"** shall mean the Board of Directors of the Association.
- 1.10 **"Bylaws"** shall mean the Bylaws of the Association, as such may be amended from time to time.
- 1.11 **"Committee"** shall have the same meaning as "Architectural Committee" as set forth in 1.3 above.
- 1.12 **"Common Area"** or "Common Areas" shall mean any and/or all real property, including any improvements thereto, that are now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- 1.13 **"Declaration"** shall mean the covenants, conditions and restrictions hereinafter set forth in this entire document, as said document may be amended from time to time.
- 1.14 **"Extraordinary Assessments"** shall mean any Assessment levied pursuant to Section 5.4 of this Declaration.
- 1.15 **"Declarant"** shall mean The Sanctuary at Lake Mary Crossing, LLC, its principals, successors and assigns.
- 1.16 **"Improvement"** or "Improvements" shall mean any buildings, pools, fences, walls, hedges, plantings, planted trees and shrubs and any and all structures, improvements and landscaping of any type and kind.
- 1.17 **"Ingress, Egress and Utility Easement"** shall mean each common Ingress, Egress and Utility Easement as shown on the Plat.
- 1.18 **"Landscape Easement Areas"** shall mean all drainage easements.
- 1.19 **"Lessee"** shall mean the lessee or tenant under a lease, oral or written, of any Lot including an assignee of or sublessee under a lease.
- 1.20 **"Lot"** shall mean any of the 21 lots in the Project.
- 1.21 **"Trailers and Motor Vehicles"** Trailers and Motor Vehicles, including a mobile home, a bus, a motor home, a truck larger than 3/4 ton, trailers of any kind, a mini-bike, a motor-bike, a motorcycle, a truck camper, or a permanent tent or similar structure, are not to be kept or maintained anywhere within the Project.
- 1.22 **"Plat"** shall mean that certain plat of The Sanctuary subdivision recorded in Book \_\_\_\_\_ of Maps, Page \_\_\_\_\_ of the Official Records of the \_\_\_\_\_ Coconino County, Arizona Recorder, together with any other plats of all or any portion of the project, as the same are amended from time to time.



## SECTION 2 USE RESTRICTIONS

- 2.1 Single Family Residential Use No structure whatever, other than a Residence together with a private garage which will be built for a minimum of two but no more than four cars, unless written approval from the Architectural Committee is granted for a larger private garage facility, or such other customary outbuilding(s) and structure(s), shall be erected, placed or permitted to remain on any Lot. A private garage, guest house or other such customary outbuilding(s) shall not be constructed or erected prior to the completion of construction of the Residence, provided, however, that such additional building(s) may be constructed simultaneously with the Residence. No occupation, profession, trade or other non-residential use shall be permitted on any Lot.
- 2.2 Minimum Livable Area Any Residence shall contain a minimum of 2500 square feet of livable area unless otherwise approved by the Committee. The minimum square footage includes the walls of the Residence, but is exclusive of open porches, breezeways, pergolas, courtyards, attached garages or any similar extension or projection. All Residences shall be of new material as may be approved by the Architectural Committee. No buildings shall be moved from any other location onto any Lot. No prefabricated building or other structure of any nature whatsoever, permanent or temporary, shall be moved or placed upon, or assembled or otherwise maintained on any Lot, provided, however that a temporary office, trailer office, tool shed, lumber shed and/or office may be used if a temporary use permit is obtained from the City of Flagstaff and it is removed at completion of construction or selling of the Residence for which it was maintained, whichever is later.
- 2.3 Setback Requirements As shown on Final Plat.
- 2.4 Plan Approval of Improvements and Alterations No Residence, Improvement, addition, alteration, repair, excavation or other work which in any way alters the exterior appearance of any improvement or any portion of any Lot from its natural or improved state as existing on the date of this Declaration, and no building, fence, wall, drive, approach or other structure shall be commenced, erected, maintained, improved, altered, made or done, until the plans and specifications for the same in all construction details, including shape, height, materials, floor plans, colors and location, shall have been submitted to and approved in writing by the Committee. The Committee shall have the right to take into consideration the suitability of any proposed Residence or Improvement, materials to be used, the harmony thereof with the surroundings and any other such factors as may be deemed relevant, and to refuse to approve any plans or specifications, whether for new construction or for subsequent alteration or repair of existing Residences or Improvements, which are not suitable or desirable, in its sole and absolute opinion, for aesthetic or other reasons. No changes or deviations in or from such plans and specifications once approved, shall be made without the prior written approval of the Committee. All decisions of the Committee shall be final and no Owner or other party shall have recourse against the Committee for its refusal to approve any such plans and specifications. All Residences, Improvements, additions, alterations, repair, excavation or other work shall be approved by the City of Flagstaff and shall be in full compliance with all regulations, ordinances or laws enacted by the City of Flagstaff.



- 2.5 Temporary Occupancy No trailer, tent, shack, garage or barn, and no temporary building or structure of any kind shall be used at any time for a Residence on any Lot or Common Area. Temporary buildings, structures, or construction trailers shall be removed immediately upon completion of construction of the Residence or Improvement.
- 2.6 Vehicles. No Vehicle shall be placed, kept, constructed, reconstructed, maintained or repaired on any Lot or street (public or private) without the Lot Owner's receipt of the Association's prior written approval of such Owner's maintenance of the Vehicle and the manner of screening or concealing the same such that the Vehicle is not visible from neighboring property and streets. The restrictions in this Section 2.6 do not apply to automobiles or station wagons, and the terms "bus," "van," and "truck," set forth in Section 1.19 above shall not include 3/4 ton (or less) capacity pick-up trucks used solely for pleasure and passenger purposes (and not commercial purposes) which have no campers or camper shells of any nature whatsoever. The provisions of this Section 2.6 shall not apply to emergency vehicle repairs, or to temporary construction buildings, structures or trailers used exclusively for and during the construction of a Residence or Improvement.
- 2.7 Building Site. In order to avoid unnecessary destruction of the natural beauty and native plants of The Sanctuary, careful consideration shall be given to the design and construction of each Residence and Improvement and the sites thereof. Spill banks or cuts created by the development of building sites, patio areas or private drives must be graded and reduced to the minimum slope possible. All terrain affected by such spill banks or cuts shall be completely landscaped, covered with a rock rip-rap material such as Eonite-treated rock and restored to the nearest reasonable approximation of its natural state. Retaining walls may be permitted if no other form of landscaping, covering or restoration is feasible. All proposed spill banks and cuts as well as any other disturbance of the natural terrain, including the use of retaining walls, shall be submitted to the Architectural Committee together with the plans and other supporting documents as set forth in Section 2.4 hereinabove. No site preparation, grading or any type of construction shall commence until written approval is obtained from both the Architectural Committee and by the City of Flagstaff.
- 2.8 Landscaping. All front yard landscaping and, all landscaping upon those portions of any Lot which are visible from any other Lot, Street or Common Area shall only be installed by the Owner of the Lot in accordance with a landscaping plan which includes a minimum of 10 trees of 15 gallons or larger and which conforms to the then current restrictions and regulations of the City of Flagstaff and has been submitted to and duly approved by the Committee. Said landscaping plan shall be submitted along with the plans and specifications for the construction of the Residence unless otherwise agreed upon in writing. All such landscaping (pursuant to the approved plan) must be installed by the Owner of the Lot within sixty (60) days following the final inspection of the Residence and issuance of a certificate of occupancy by the City of Flagstaff. Each Owner shall at all times keep all trees, shrubs, ground cover and plantings of every kind on the Lot neatly trimmed and at all times keep such Lot free from trash, weeds and other unsightly material. The yards and grounds in connection with all improved Lots shall be cultivated and planted to an extent sufficient to maintain an appearance not out of keeping with that of typical improved Lots in The Sanctuary. During prolonged absence, each Owner will arrange for the care of his/her Lot during such absence. If an Owner does not clean up or maintain his/her Lot in accordance with the foregoing provision of this Section 2.8, the



Association may give written notice thereof to the Owner and, if such Owner fails to clean up or maintain his/her Lot within thirty (30) days from the date such written notice is given, the Association may have that Owner's lot cleaned up or maintained, with the expenses incurred by the Association in so doing to be levied against that Owner as an Extraordinary Assessment under Section 5.4 hereof, with the Association to have all attendant remedies including the Assessment Lien referred to in Sections 5.1 and 5.9 hereof.

- 2.9 Fences. No fence shall be constructed upon any Lot unless its design and style and colors are approved by the Committee. No "chain-link" fence shall be placed anywhere on the Lot.
- 2.10 Screening. Air conditioners, television antenna dishes, coolers, pool filters, firewood storage, building, or repair materials, storage facilities, lawn and yard tools and equipment, and other temporary or permanent equipment must be screened or completely stored so as to be substantially invisible from the streets and other Lots or Residences. Screening shall be constructed of the same material as the adjacent building or wall. All heating and air conditioning units shall be ground mounted.
- 2.11 Drainage Easement. No Owner shall fill, block or obstruct any drainage easement or drainage structure on his/her Lot, nor shall any Owner cause or suffer to be erected on the Lot any building or obstruction for the purpose, directly or indirectly, of obstructing, blocking or filling any such drainage easement or drainage structure. Each Owner agrees to make, repair and maintain all such drainage easements and structures on the Lot, making good nevertheless, at his/her own expense, all damage which may be caused to said drainage easements and structures on the Lot. Each Owner agrees to repair at his/her own expense, all damage to any structure on any Lot which may be damaged directly or indirectly by his/her obstructing, blocking or filling such drainage easement.
- 2.12 Roofing Materials shall consist of urethane foam, metal tile or concrete derivative shingle, or other material as approved in writing by the Committee. Metal flashings, vents, gutters, downspouts, wires or pipes must be matched to the roof or wall color and texture. No white, light color or highly reflective roofing, either because of color or material resulting in the possibility of glare into other residences in The Sanctuary will be permitted.
- 2.13 Animals. No animals, livestock, fowl or birds such as pigeons shall be kept on any portion of the property. A reasonable number of animals such as dogs or cats, may be kept as house pets. No structure or equipment for the care, confinement, feeding or housing of a permitted house pet(s) shall be maintained so as to be visible from neighboring property. Upon written request of any Owner, the Board shall determine, in its sole and absolute discretion, whether for the purposes of this Section an animal shall be regarded as a house pet; whether the number of animals is reasonable; or, whether the animal(s) is(are) a nuisance. Noisy pets, such as barking dogs, which are bothersome to a majority of Owners whose Lots adjoin the Lot where these pets are kept, must be removed.
- 2.14 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Residence or Improvement within The Sanctuary so as to be visible from neighboring property.
- 2.15 Utility Service. Upon completion of construction of a Residence, together with any and all outbuilding(s), all lines, wires or other such devices for the transmission or furnishing of electric current or power, including telephone, television and radio signals, shall be contained in conduits or cables installed and maintained underground or contained or concealed in or on Improvements



as approved of in writing by the Architectural Committee.

- 2.16 Garbage and Refuse Disposal No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers. All containers used for the storage or disposal of such material shall be kept in a clean and sanitary condition. In no event shall such containers be maintained so as to be visible from neighboring property. All trash, garbage or other waste awaiting pickup shall be placed within one or more approved City of Flagstaff receptacles, or within such device as approved in writing by the Committee. No substance, thing or material shall, be kept upon the Lot that will emit a foul or obnoxious odor, or cause any noise that might disturb the peace, quiet, comfort or serenity of the other owners or occupants. Bulk trash may only be placed for pick up on the day of pick up.
- 2.17 Lot Division None of the Lots in The Sanctuary shall be re-subdivided into smaller lots nor conveyed in less than the original dimensions as shown on the Plat, except for the installation of public utilities, in which event the remaining portion of said Lot shall, for the purpose of this paragraph, be treated as an entire Lot.
- 2.18 Nuisances: Construction Activities No rubbish, trash or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Common Area within The Sanctuary and no odors shall be permitted to arise there from which would in any way be detrimental, unsightly, unsanitary or offensive to any owner in The Sanctuary. No noxious or offensive activity shall be carried on upon any Lot or Common Area, nor shall anything be done thereon which may be or may become an annoyance or, nuisance to any other owner in the Sanctuary. Normal construction activities and parking in connection with the building of Improvements shall not be considered a nuisance or otherwise prohibited, by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled or located only in such areas as may be approved in writing by the Committee. Without limiting the generality 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 portion of a Lot. The Architectural Committee, in the exercise of its sole discretion, shall have the right to determine the existence of any nuisance whether described herein or not. Noise caused by improperly muffled motor vehicles will not be permitted. Construction machinery and equipment must be operated within the manufacturers' recommendations and specifications and only during reasonable working hour.
- 2.19 Completion of Construction. Any construction on any Lot shall be completed within eighteen (18) months from the construction start date, subject to extension equal to delay caused by an act of God, strikes, actual inability of the owner to procure delivery of necessary material or by interference by other persons or forces beyond the control of the owner to prevent. Financial ability of the owner or his contractor to secure labor or materials or discharge liens or attachments shall not be deemed a cause beyond his control.
- 2.20 Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations two (2) feet above the streets or roadways in The



Sanctuary shall be permitted to remain on any corner Lot within the triangular area formed, by the street property lines and a line connecting them at points fifty (50) feet from the intersection of the street property lines extended. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained, at sufficient height above the roadways to prevent obstruction of such, sight lines.

- 2.21 **Parking.** No vehicles shall be parked on the streets during City snow removal periods. No vehicle which is abandoned or inoperable shall, be stored or kept on any Lot, roadway or street within The Sanctuary in such a manner as to be seen from any other Lot or from any other streets within The Sanctuary.
- 2.22 **Deeds.** Deeds of conveyance of all or any of the Lots shall incorporate by reference all of the provisions contained in this Declaration. However, whether or not recited in such deeds, this Declaration shall be binding on every owner of every Lot in The Sanctuary.
- 2.23 **Subordination.** Nothing contained in this Declaration will be deemed to invalidate the lien of any mortgage or deed of trust prior to foreclosure, provided, however, that any purchaser at any mortgage foreclosure sale, or sale under deed of trust, shall hold title subject to all the provisions of this Declaration.
- 2.24 **Term .** This Declaration and the covenants herein shall run with the land and shall be binding on the undersigned, the owners and all of their successors in title, interest or possession in and to every part of The Sanctuary until January 1, 2030, and thereafter the same shall be automatically extended for successive periods of ten (10) years, unless and until the Owners of two-thirds majority of the Lots amend or revoke the same by written instrument, duly acknowledged and recorded.
- 2.25 **Advertising.** No advertising signs, billboards, or other unsightly objects shall be erected, placed or permitted to remain on any Lot except for one "For Sale" sign, with a size not to exceed twenty (24) inches by thirty (30) inches.
- 2.26 **Easements.** Easements, as indicated upon the Plat, are reserved for the installation and maintenance of public service utilities, vehicular ingress and egress, and other uses for public or quasi-public good. No Residences, structures or buildings shall be placed upon such easements or interference made with the free use of the same for the purposes intended.
- 2.27 **Responsibility.** Each Owner is responsible for the succeeding Owner of his/her Lot being notified of the contents of this Declaration.
- 2.28 **Reflective Materials.** No foil or other light reflective material shall be placed in window or glass areas of any Residence or Improvement at any time. Reflective sidings or other such reflective materials or articles must be screened so as not to be visible from neighboring property.



- 2.29 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of any portion of the Project, and, all valid laws, zoning ordinances and regulations of all government bodies having jurisdiction thereof shall be observed.
- 2.30 Repair of Buildings. No building or structure upon any portion of the Project 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.

### SECTION 3 ASSOCIATION

- 3.1 Establishment of the Association The Association shall be established as a non-profit corporation by filing with the Arizona Corporation Commission the Articles of Incorporation of the Association in conformance with all applicable laws and regulations. The Association shall be governed by and in accordance with the requirements set forth herein and shall be organized for the purposes and with the powers set forth herein. 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, herself or itself, his or her heirs, personal representatives, successors, transferees and assigns, binds himself, herself, his/her heirs, personal representatives, successors, transferees and assigns, to automatically become members of the Association upon its establishment, subject to the rights and obligations set forth herein.
- 3.2 Membership and Voting Right Every owner of a Lot shall be a Member of the Association. Such membership shall be appurtenant to and may not be separated from ownership of any Lot. There shall be two classes of membership:

**Class A** Class A Members shall be all owners with the exception of the Declarant so long as Declarant is a Class B member, and Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person or party holds an interest in any Lot, all such persons or parties shall be Members. The vote for any such Lot shall be exercised as they among themselves determine, but in no event shall more than, one (1) vote be cast with respect to any Lot.

**Class B** The Class B Member shall be the Declarant and the Declarant shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease when Declarant no longer owns any lot.

Each Member shall have such other rights, duties and obligations as set forth in the Articles and Bylaws of the Association as they may be amended from time to time. The membership of each owner shall be appurtenant to the Lot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to the Lot and then only to the transferee of ownership to such Lot, and any attempt to make a prohibited transfer shall be void. The affairs of the Association shall be conducted by a Board of not less than three (3) nor more

than five (5) Directors, who shall not receive any compensation from the Association for such duties, with the assistance of such officers designated in the Articles or Bylaws. So long as there is Class B membership:

- a) The Board of Directors shall be appointed by the Architectural Committee;
- b) The officers shall be appointed by the Board of Directors; and
- c) Persons other than owners may serve as officers and directors.

When the Class B membership ceases to exist, the officers and directors shall be elected or appointed as provided for in the Articles and Bylaws,

## SECTION 4 ARCHITECTURAL COMMITTEE

- 4.1 Creation of Architectural Committee. An Architectural Committee is hereby established and shall perform the functions set forth in this Declaration and the Article and Bylaws. The Committee shall be composed of at least three (3) members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership or appointment. A member need not be, but may be, a member of the Board of Directors or an officer of the Association. The following persons are hereby designated as the initial members of the Architectural Committee:

J. Richard Smail  
Nury Smail  
Kat Smail

Thirty (30) days following the sale of the last Lot by Declarant, the Board of Directors or any other Class A Members shall be appointed as the Architectural Committee as so determined by the majority vote of the Members of the Association at a duly called meeting for this purpose.

- 4.2 Appointment and Removal. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor.

Any member of the Committee who fails to attend three (3) consecutive meetings of the Committee may be removed by the unanimous vote of the remaining members and his/her vacancy shall be filled as aforesaid. The members shall be appointed for a period of at least one (1) year, or until the appointment of their respective successors. Any new member appointed to fill a vacancy shall serve the remaining term of a Member who has resigned or been removed. Members who have resigned or been removed may be reappointed.

- 4.3 Purpose of the Committee. The purpose of the Architectural Committee is to assure that the character, design, exterior materials, color, roof, proportions, elevations, location and use of each Improvement shall be in harmony with its surroundings and not be



offensive or aesthetically detrimental to any property within The Sanctuary. The Committee's majority decision of approval or disapproval shall be in writing. Except for judicial construction, the Committee shall have the exclusive right to construe and interpret the provisions of this Declaration and in the absence of any adjudication to the contrary by a court of competent jurisdiction, the Committee's interpretation of the provisions hereof shall be final, conclusive and binding as to all persons, parties and property benefited or bound by the provisions hereof.

- 4.4 Waiver. The approval by the Architectural Committee of any 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.
- 4.5 Liability Neither the Architectural Committee nor any member thereof acting in good faith shall be liable to the Association, any owner or any other party, for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development or non-development of any portion of The Sanctuary, or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

## SECTION 5 FUNDS AND ASSESSMENTS

- 5.1 Creation of the Lien and Personal - Obligation of Assessments. Each owner, other than the Declarant, is deemed to covenant and agree to promptly pay to the Association all sums contemplated under this Declaration, including, without limitation, Annual Assessments, Extraordinary Assessments, Special Assessments, and such other Assessments and expenses of the Association as may be incurred, fixed, established or collectable from time to time as provided for within this Declaration, or within the Articles or Bylaws of the Association. The Assessments, together with interest, costs, reasonable late fees, and reasonable attorneys' fees, shall be a charge on the land and a continuing lien ("Assessment Lien") upon the Lot or Lots against which each such Assessment is made, and shall also be the personal obligation of the person or party who was the owner of such Lot or Lots at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall pass to successors in title of the owner of the Lot at the time the Assessment fell due. No Lot shall be sold, transferred or conveyed by any owner without all Assessments having been paid in full, whether or not an Assessment Lien has been filed or recorded.

- 5.2 Purpose of Assessments

- (a) The Assessments levied by the Association shall be used for expenses of the Association to promote the health, safety and welfare of the residents of The Sanctuary or for the improvement, maintenance and replacement of any private facilities, retention/recreation areas, Common Areas, streets, etc., connected with The Sanctuary which have not been accepted for maintenance by the City of Flagstaff.
- (b) The Association shall also be responsible for the maintenance of all  
  
landscape common areas.

### 5.3 Annual Assessments-Maximum Amounts

- (a) Until the first meeting of the Association to determine the maximum Annual Assessment, the initial Annual Assessment for each Lot conveyed by Declarant to an owner shall be \$400 whether such Lot be improved, developed or undeveloped. Such Annual Assessments shall be in addition to other Assessments set by the Board of Directors.
- (b) From and after January 1 of the year immediately following the first meeting of the Association to determine the maximum Annual Assessment, the Annual Assessment may be increased each year not more than ten percent (10%) above the maximum Annual Assessment set for the previous year. Said maximum Annual Assessment may be increased above ten percent (10%) by a two-thirds (2/3) vote of all the Class A and Class B Members or their proxies at a meeting duly called for that purpose.
- (c) The Annual Assessments provided for herein shall commence as to all Lots not owned by the Developer on the first day of the month following the conveyance of the first Lot by Declarant to an owner. The maximum Annual Assessment shall be adjusted according to the number of months remaining in the calendar year, and the Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether the assessments on a specified Lot have been paid. The Developer shall not be subject to any Annual Assessments until title to at least nine (9) lots have been conveyed by Developer to third persons.

### 5.4 Extraordinary Assessments. The Association may levy an Extraordinary Assessment against an owner, and such owner's Lot, for the following expenses:

- (a) Any expenses cause by the misconduct of such owner;
- (b) Any expense incurred by the Association resulting from any owner's failure to clean up or maintain his/her Lot and any Improvement



thereon in accordance with Section 2.8 or any other terms of this Declaration; and

- (c) Any expense incurred by the Association as a result of repairs, maintenance or replacement to the Common Area or to portions of any Lot the Association is obligated to maintain which is caused by the willful or negligent act of an owner, his/her family, guests, invitees or animals.

- 5.5 Special Assessments. In addition to the Annual Assessment authorized herein, the Association may levy, during any assessment year, a Special Assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of any landscaping or other Improvement installed upon the Common Area, provided that such Special Assessment shall have the written consent of not less than two-thirds (2/3) of the votes of all the Class A and Class B Members voting in person or by proxy at a meeting duly called for that purpose. Said Special Assessment shall be payable over a period not to exceed the next twelve (12) months.
- 5.6 Insurance. The Association shall carry a policy of fire and casualty insurance sufficient to cover all Improvements on and to the Common Area. The Association also shall carry broad form public liability insurance (with at least One Million (1,000,000.00) Dollars combined single limits) covering all injury, death and damage caused by the Association or any of its officers, directors, agents and employees. Premiums for all insurance required or permitted by this Section 5.6 shall be part of the expenses for which the Annual Assessments are made. The policy type, limits and all terms and conditions shall be as determined by the Board in its sole and absolute discretion. The Association may carry such other policies of insurance in such amounts, limits and types as may be determined by the Board in its sole and absolute discretion.
- 5.7 Subordination of Assessment Lien. The Assessment Lien shall be subordinate to the lien of any first mortgage held by, or first deed of trust of which the beneficiary is, a lender who has loaned funds with the Lot as security, or such lender's successors and assigns. The Assessment Lien shall also be subject and, subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Any sale or transfer of a Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to judicial, or nonjudicial foreclosure, or any proceeding in lieu thereof, shall extinguish the Assessment Lien with respect to payments which became due prior to such sale or transfer, but any Assessments or other charges against the Lot which accrued prior to such sale or transfer shall remain the obligation of the owner of the Lot at the time when such Assessments and charges became due and payable. No sale or transfer shall relieve such Lot from liability for any Assessments which thereafter become due or from the Assessment Lien thereof.
- 5.8 Uniform Rate of Assessment. Both Annual and Special Assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis with



due dates as determined by the Board of Directors in its sole and absolute discretion.

- 5.9 Delinquency. Any Assessment provided, for in this Declaration which is not paid when due shall be delinquent. If any such Assessment is not paid within thirty (30) days after the delinquency date, a late charge of twenty-five (\$25.00) Dollars per month, or such other amount as the Association shall from time to time determine, shall be levied and, in addition to the late charge, the Assessment shall bear interest from the date of delinquency until paid at the rate of eighteen percent (18%) per annum. The Association may, at its option, bring an action at law against an owner personally obligated to pay the same and/or foreclose the Assessment Lien against the owner's Lot or Lots in accordance with the then prevailing law of the State of Arizona relating to the judicial or non-judicial foreclosure of

mortgage or deed of trust liens (howsoever the Board of Directors shall decide) upon real property. If an action is commenced, there shall be added to the amount of such Assessment the late charge, interest, expenses incurred in connection with collection of the debt secured by the Assessment Lien, the costs of preparing and filing the Complaint, and such judgment shall include said late charge, interest, collection costs, reasonable attorneys' fees, and the costs of the action. Each Owner vests in the Association, or its agents, the right and power to bring all actions at law or equity against such owner for the collection of such delinquent Assessments. At any foreclosure sale of a Lot or Lots authorized pursuant to the then prevailing laws of the State of Arizona, the Association, through its duly authorized agents, shall have the power to bid on such Lot or Lots at the sale, using Association funds or funds borrowed for such purpose, and to acquire and hold, lease, mortgage and convey the same.

- 5.10 Cumulative Remedies. The Assessment Lien and the rights to foreclosure thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its successors or assigns may have hereunder and, by law or equity, including an action to recover a money judgment for unpaid Assessments, as above provided.

## SECTION 6 GENERAL PROVISIONS

- 6.1 Enforcement These covenants, conditions, reservations, easements, charges and restrictions may be enforced by the Declarant, and/or the Association and/or any owner of any Lot, and any violation thereof may be restrained or enforced by any court of competent jurisdiction and/or damages may be awarded against any such violator. Nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. In the event any such person or party employs an attorney or attorneys to enforce the compliance with or specific performance of the terms and conditions of this Declaration, and prevails in such action, the owner or owners against whom the action is brought shall pay all attorney's fees and costs incurred in connection with such action.

- 6.2 Severability Invalidation, of any one of these covenants, conditions, reservations, easements, charges or restrictions by judgment or court



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The Sanctuary - Final CC&Rs, October 17, 2006

order shall in no way affect any of the other provisions, which shall remain in full force and effect.

6.3 No Legal Opinion. This Declaration affects the rights and obligations of owners, Members and other parties. All owners, Members and others, at their own expense, are encouraged to obtain a legal opinion from counsel of their choosing regarding their rights and obligations under this Declaration. Nothing in this Declaration, nor any act or representation of Declarant, the Association and/or its Board, or the Architectural Committee, is to be construed to imply that the rights and obligations of owners, Members or others have been reviewed or examined by legal counsel or to imply that Declarant, the Association or the Committee, or any one or any of them, express in any way a legal opinion of the rights and obligations of any party hereunder.

6.4 Waiver or Abandonment. The waiver of, or failure to enforce any breach or violation of any covenants, conditions, reservations, easements, charges or restrictions herein contained, shall not be deemed to be a waiver or abandonment of such covenants, conditions, reservations, easements, charges or restrictions, or a waiver of the right to enforce any subsequent breach or violation of such covenants, conditions, reservations, easements, charges or restrictions. The foregoing shall apply regardless of whether any person or party affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation.

6.5 Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

6.6 Topic Headings. The marginal or topical headings of the paragraphs or sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or sections of this Declaration.

6.7 Declarant's Right to Amend. Notwithstanding the provisions of Section 2.24 hereof, Declarant, its successors and assigns, hereby reserves the right to amend this Declaration as may be necessary or appropriate in its sole discretion, such right to amend to continue until such time as the Class B membership of Declarant, its successors or assigns, terminates.

IN WITNESS WHEREOF, The Sanctuary at Lake Mary Crossing, LLC, an Arizona LLC, has caused its name to be signed by the undersigned member thereunto duly authorized on the date first above set forth.

The Sanctuary at Lake Mary Crossing, LLC  
an Arizona LLC



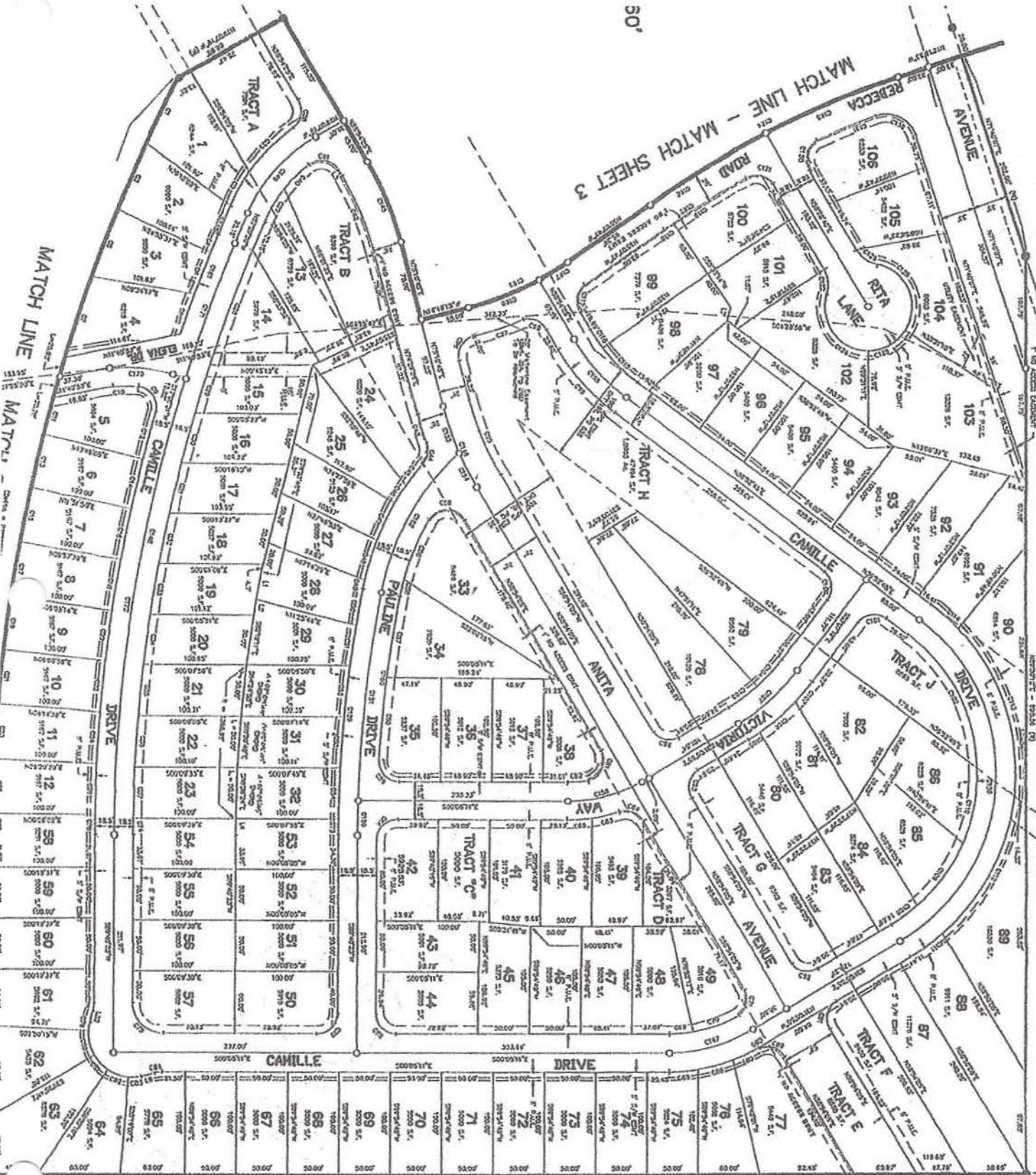
By: J. Richard Smail, Member



ADOT R.O.W.  
COCONINO COUNTY

MATCH LINE - MATCH SHEET 3

30'



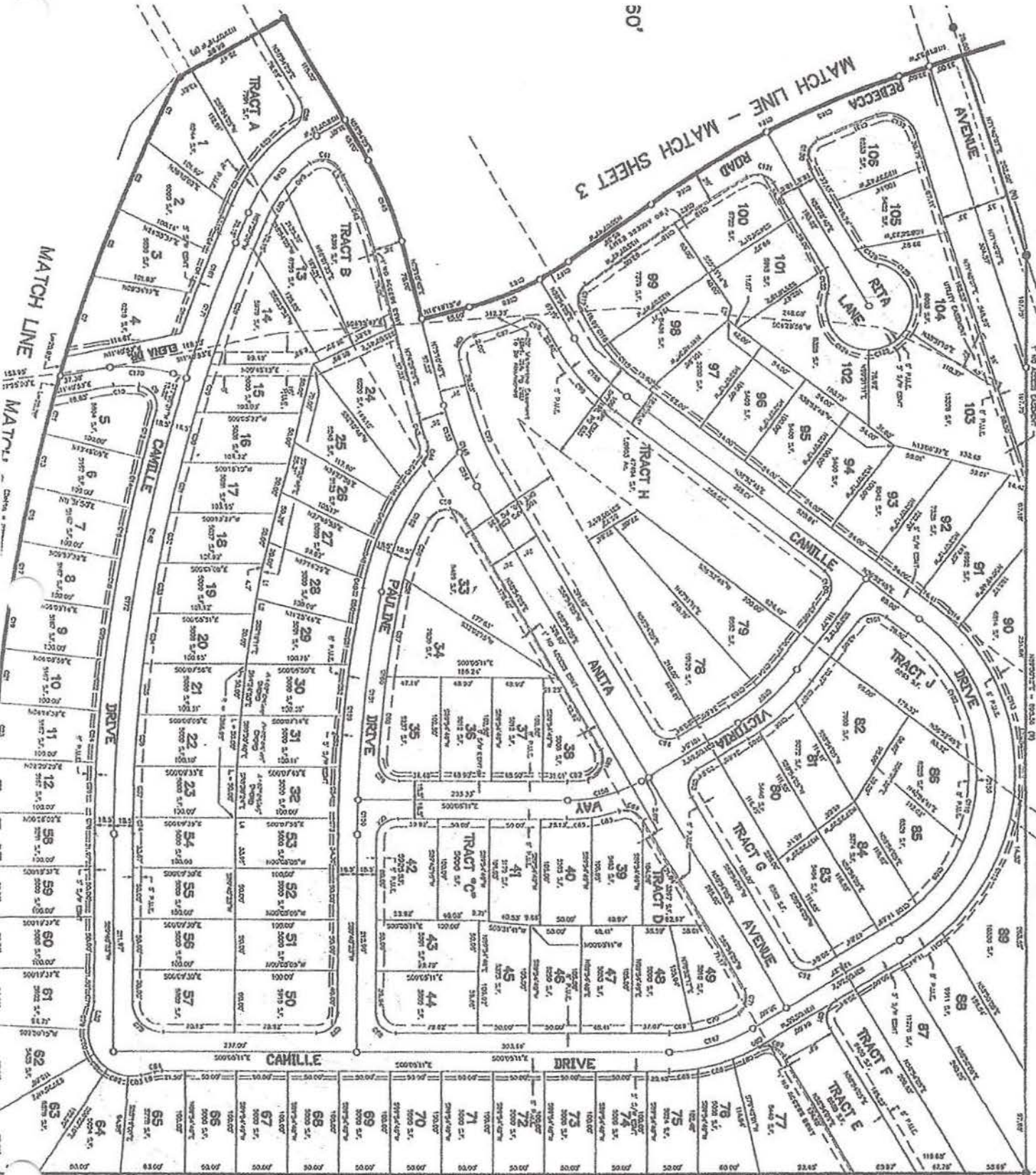
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ADOT R.O.W.  
COCONINO COUNTY

MATCH LINE - MATCH SHEET 3

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