



When Recorded Return to:

West Village Estates, LLC
Attn: F. Wayne Thompson
P.O. Box 756
Flagstaff, AZ 86002

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WEST VILLAGE ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into as of the 12th day of March, 2001 by WEST VILLAGE ESTATES, L.L.C., an Arizona limited liability company (hereinafter the "Declarant").

RECITALS

WHEREAS, Declarant is the owner of that parcel of real property situated in the City of Flagstaff, Coconino County, Arizona, described on **Exhibit A** hereto (the "Parcel"); and

WHEREAS, Declarant desires that the Property be developed in accordance with a master plan and general scheme of development into a residential community, to be known as "West Village Estates" (the "Estates"); and

WHEREAS, Declarant desires to submit and subject the Parcel, for its own benefit and for the mutual benefit of all future owners, together with all buildings, improvements and other fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which comprise a part of the "Property" as hereinafter defined), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein; and

WHEREAS, the Declarant deems it desirable to establish covenants, conditions and restrictions upon the Property, and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Estates; and

WHEREAS, it is desirable for the efficient management of the Estates to create an owners association to which should be delegated and assigned the powers of managing, maintaining and administering the common areas within the Estates and administering and enforcing these covenants, conditions, restrictions, liens, assessments, easements, privileges and rights, and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and to perform such other acts as are herein provided of which generally benefit its members, the Estates, the Property and the owners of any interests therein; and

WHEREAS, West Village Estates Homeowners Association, Inc., an Arizona non-profit corporation (the "Association"), has been or will be incorporated by the Declarant under the laws of the State of Arizona for the purpose of exercising such powers and functions; and

WHEREAS, the Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a common plan to promote and protect the Estates and the Property. Notwithstanding the above, in accordance with paragraph 6.14 below, any lien established herein relevant to an Owner's failure to pay assessments is subordinate and junior to the lien of a recorded mortgage on a lot.

NOW THEREFORE, the Declarant, for the purposes above set forth, declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the West Village Estates Homeowners Association, Inc., and each member thereof.

1. DEFINITIONS.

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows:

1.1. "Articles" means the Articles of Incorporation of the Association, as such may be amended from time to time, or of any successor thereto.

1.2. "Assessments" shall include the following:

1.2.1. "Regular Assessment" means that amount which is to be paid by each Owner as such Owner's Proportionate Share of the Common Expenses of the Association, as provided in Section 5.3.

1.2.2. "Special Assessments" means a charge against a particular Owner, directly attributable to such Owner, to reimburse the Association for costs incurred in bringing the Owner into compliance with the provisions of this Declaration or the Articles, Bylaws, Association Rules or Development Standards, or any other charge designated as a Special Assessment in the Declaration or the Articles, Bylaws, Association Rules or Development Standards, together with attorneys' fees and other charges payable pursuant to the provisions of this Declaration, as provided in Section 5.5.

1.2.3. "Reconstruction Assessment" means the amount of which is to be paid by each Owner representing such Owner's Proportionate Share of the cost to the Association for



reconstruction of any portion of the Common Area, as provided in Section 7, entitled "Damage and Destruction of Common Areas."

1.2.4. "Capital Improvement Assessment" means the amount which is to be paid by each Owner representing such Owner's Proportionate Share of the cost to the Association for the installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of Section 5.6.

1.3. "Association" means the West Village Estates Homeowners Association, Inc., an Arizona non-profit corporation, its successors and assigns, formed or to be formed by the Declarant, and unless otherwise provided, shall mean and include its board of directors, officers and other authorized agents.

1.4. "Association Rules" means the rules and regulations adopted by the Association pursuant to Section 3.8.

1.5. "Board" means the Board of Directors of the Association.

1.6. "Bylaws" means the Bylaws of the Association in accordance with the Articles, as such Bylaws may be amended from time to time.

1.7. "City" means the City of Flagstaff, Arizona, a municipal corporation.

1.8. "Common Area" means all roads and the real property and the improvements or amenities thereon designated as Tracts A, C, D, E and F on the Plat and any other real property which may from time to time be owned or leased by the Association or made available to the Association by the Declarant, expressly for the common use and enjoyment of the Owners. Any real property and improvements thereon, which are described as "Common Areas" in a Supplemental Declaration shall be deemed to be "Common Areas" as that term is defined herein for the common use and enjoyment of the Owners, as may be provided in the Supplemental Declaration, and shall for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration.

1.9. "Common Expenses" means any and all actual costs incurred or estimated by the Association in administering, maintaining and operating the Estates, or Common Areas or Estates including, but not limited to, the following:

(a) maintenance, management, operation, repair and replacement of the Common Areas, and all other areas on the Estates which are maintained by the Association;

(b) unpaid Assessments;

(c) costs of management and administration of the Association, including but not limited to, compensation paid by the Association to managers, accountants, attorneys, independent contractors and employees;



(d) the costs of utilities for any Common Area which are not individually metered or assessed, and fire protection services, taxes and insurance costs which are provided to the Association, landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Estates and which are provided by, or on behalf of, the Association. Utilities provided to each separate Lot, including, but not limited to, electricity, gas, water, sewer, cable television, trash pickup and disposal (monthly costs) shall be the responsibility of the Owner.

(e) the costs of fire, casualty, liability, workman's compensation and other insurance covering the Common Areas or the Association;

(f) the costs of any other insurance obtained by the Association;

(g) reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Association, which reserve funds shall be adequate to meet the costs and expenses of maintenance, repair and replacement of those Common Areas which must be maintained, repaired, or replaced on a periodic basis;

(h) the costs of bonding the members of the Board, the officers of the Association, any professional managing agent or any other person handling the funds of the Association;

(i) taxes paid by the Association;

(j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

(k) costs incurred by the Design Review Committee;

(l) costs incurred by committees established by the Board or the President;

(m) any and all other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas (excepting reconstruction costs and capital improvements as otherwise provided herein), or the costs of any other item or items designated by, or to be provided or performed by, the Association pursuant to this Declaration, the Articles, Bylaws, Association Rules or Development Standards, or in furtherance of the purpose of the Association or in the discharge of any duties or powers of the Association.

1.10 "County" shall refer to Coconino County, Arizona.

1.11. "Declarant" means West Village Estates, L.L.C., an Arizona limited liability company, its successors and assigns, or any person to whom the Declarant's rights hereunder are hereinafter assigned, or any Mortgagee of the Declarant which acquires title to or succeeds to the interest of the Declarant in substantially all of the Lots or other portions of the Property then owned by the Declarant by reason of the foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under the Mortgage of said Mortgagee.



1.12. "Declaration" means this instrument, as from time to time amended.

1.13. "Default Rate of Interest" means an annual rate of interest equal to the rate announced by National Bank of Arizona (or its successor) as its "prime rate" from time to time while interest is accruing (with interest hereunder adjusted as and when said prime rate is adjusted), plus 2.00% per annum, but never less than 10.00% (so that if during any periods while interest is accruing said prime rate plus 2.00% per annum is less than 10.00%, interest shall accrue during said periods at 10.00% per annum). Notwithstanding anything herein to the contrary, if, during any period, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said periods shall be the highest lawful rate. If National Bank of Arizona should cease doing business or no longer announces its prime rate as described above, the Association may compute interest hereunder upon the announced prime rate of any other bank doing business in Arizona.

1.14. [Reserved]

1.15. "Design Review Committee" means the committee appointed by the Board of the Association provided for in Section 10, entitled "Architectural and Landscape Control".

1.16. "Development Standards" means the rules, regulations, restrictions, architectural standards, design guidelines and development standards from time to time adopted by the Design Review Committee pursuant to Section 10.2.

1.17. "Estates" means the master planned development of the Property, as described in the recitals hereof, to be called West Village Estates.

1.18. "Lot" means a subdivided and numbered parcel, as shown on the Plat, together with all improvements, constructed or to be constructed thereon and all appurtenances thereto.

1.19. "Majority of Owners" means the Owners (including the Declarant) holding more than 50% of the total votes entitled to be cast with respect to a given matter, whether or not present at a particular meeting, and any specified fraction or percentage of the Owners means the Owners (including the Declarant) holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter.

1.20. "Mortgage" means any recorded, filed or otherwise perfected instrument given as security for the performance of an obligation, including without limitation, a mortgage, a deed of trust or a recorded agreement of sale or contract for the sale of real property under the terms of which the purchaser is entitled to possession of a Lot, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means the mortgagee under a Mortgage, including the trustee and beneficiary under any deed of trust, or the vendor under a recorded agreement of sale or contract for the sale of real property. "Mortgagor" means the mortgagor executing a mortgage, the trustor under a deed of



trust, the maker of any similar instrument constituting a Mortgage, or the purchaser entitled to possession under a recorded agreement of sale or contract for sale of real property.

1.21. "Occupant" means any Person, other than Owner, in rightful possession of a Lot with the express or implied consent of the Owner.

1.22. "Owner" means the record owner, whether one or more Persons or entities, of fee simple title, whether or not subject to any Mortgage, to any Lot which is part of the Property, but excluding those having such interest merely as security for the performance of an obligation. A contract purchaser under a recorded agreement of sale or contract for the sale of real property within the meaning of A.R.S. §§ 33-741 *et seq.* wherein legal title to the property remains in the vendor shall be deemed to be an Owner and the vendor thereunder shall be deemed to be a Mortgagee. If title to a Lot is vested of record in a trustee under a deed of trust pursuant to A.R.S. §§ 33-801 *et seq.*, then, for purposes hereof, such title shall be deemed to be in the trustor, who shall be deemed to be an Owner. The term Member used herein shall have the same meaning as Owner.

1.23. "Parcel" means that parcel of real property referred to in the recitals hereof and described in **Exhibit A** hereto.

1.24. "Person" means any individual, corporation, partnership, joint venture, organization, association, trustee, governmental or political unit or agency, or other entity capable of holding title to real property.

1.25. "Plat" means the subdivision plat of the Property as first recorded in the official records of Coconino County in Case 8, Maps 43, 43A, 43B and 43C, on or about January 22, 2001, and as therefore from time to time amended or supplemented, together with all subsequent plats or subdivision for real property annexed to the Property.

1.26. "President" means the duly elected or appointed president of the Association.

1.27. "Property" means the Parcel, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges, belonging or in any way pertaining thereto.

1.28. "Proportionate Share" means that fraction wherein the numerator is one (1) and the denominator is the total number of Lots as shown on the Plat.

1.29. "Record" or "Recording" means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Coconino County, Arizona.

1.30. "Supplemental Declaration" means a declaration of covenants, conditions and restrictions, or similar instrument, annexing additional real property to the Property and subjecting such real property to this Declaration as provided in Section 13, entitled "Annexation of Additional Property".



2. RIGHTS OF USE.

2.1. Establishment of Declaration. Declarant hereby declares that all of the Property is and shall be held, owned, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or part, subject to this Declaration. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, and enhancing the value, desirability and attractiveness of the Property and every part thereof. It is the intent of these Covenants to provide conditions, restrictions, and servitudes that ensure the Lots will always be improved and maintained as an attractive, quality-oriented, comfortable and efficient residential environment. The Covenants are designed to (a) protect the Owners of the Lots against improper and/or undesirable uses of other Lots; (b) encourage and ensure the erection of attractively designed manufactured homes and garages appropriately located to be in harmony with the terrain and surrounding uses; and (c) provide a framework for ensuring quality of design and maintenance of property values. Each grantee of Declarant, by the acceptance of a deed of conveyance and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale and each person at any time hereafter owning or acquiring any interest in any part of the Property, accepts the interest subject to all Covenants and the jurisdiction, rights and powers created or reserved by this Declaration. All of this Declaration shall run with all Lots for all purposes and shall be equitable servitude, binding upon and inuring to the benefit of the Declarant, the Association, and all Owners and their respective interest. This Declaration may be amended or terminated in any manner provided for in this Declaration without the joinder or consent of any Occupant (other than the Owners or Mortgagees as hereinafter provided for) or any Person claiming any interest in the Property through any Occupant.

2.2. Owners' Right of Enjoyment. Every Owner shall have a non-exclusive easement for use and enjoyment of the Common Areas, which right shall be appurtenant to and shall pass with such Owner's ownership as herein provided, and which shall be subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, without limitation, the following provisions:

2.2.1. The right of the Association to establish reasonable rules and regulations pertaining to or restricting the use of the Common Areas by Owners or other Persons.

2.2.2. The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas as permitted in this Declaration and, in aid thereof, to mortgage said Property, provided that the rights of the lender thereunder shall be subordinated to the rights of the Owners as set forth in this Declaration.

2.2.3. The right of the Association to suspend the right of a Owner or any Person (including without limitation, an Owner or an Occupant, or a member of the family of a Owner or Occupant) to use the Common Areas or any designated portion thereof during any time in which any Assessment respecting such Owner or Person remains unpaid and delinquent, or for a period of not to exceed sixty (60) days for any other violation of any Association Rules or regulations or breach of this Declaration, and up to one year for any subsequent violation of the



same or similar provision of the Association Rules or regulations or this Declaration, provided that any suspension of such right to use the Common Areas, except for failure to pay Assessments, shall be made only by the Board or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws.

2.3. Waiver of Use. No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments or release any Lot owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, Association Rules or Development Standards, by voluntary waiver of, or suspension or restriction of such Owner's right to the use and enjoyment of the Common Areas, or the abandonment of such Owner's Lot or ownership interest therein.

2.4 Specific Tracts. The Declarant hereby declares that the following Tracts depicted on the Plat are subject to the provisions contained herein as follows:

(a) Tract A shall be maintained as an open space/resource protection area wherein a public easement for the Flagstaff Urban Trail System (F.U.T.S.) shall exist as set forth in the Plat.

(b) Tract C shall be a public drainage easement.

(c) Tract D shall be maintained as a drainage detention area.

(d) Tract E shall be maintained as a storage area.

(e) Tract F shall be maintained as a postal receptacle area.

The Owners and Occupants are hereby prohibited from placing, constructing, or in any way altering or installing any type of encroachment or other use within the aforementioned Tracts, including, but not limited to, walls, fences, boulders, landscaping or other barriers or obstructions of any type. The authority of management, administration, supervision and control of any Tract subject to this Declaration shall be vested in the Association and shall be maintained in accordance with this Declaration, the Articles of Incorporation, Bylaws, or Association Rules. Assessments may be made against Owners for the purposes of adequate care, maintenance, repairs and upkeep of these Tracts and their designated purposes.

Any Common Area designated by applicable Tract described herein shall remain undivided as set forth on the Plat and no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Property. The Association shall have full and absolute power to adopt rules and regulations as it deems appropriate in connection with the use and operation of said Tracts.

3. ASSOCIATION.



3.1. Purpose of Association. The Association has been or will be incorporated by the Declarant as an Arizona non-profit corporation, to serve as the governing body for all of the Owners and Occupants, for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Areas and Estates, and assessment of expenses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, Bylaws, Association Rules or Development Standards.

3.2. Classes of Membership; Voting Rights of Classes. The Association shall have two classes of voting membership:

CLASS A: Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. Such membership shall automatically terminate when he ceases to be an Owner. When more than one person holds an interest in any Lot, the voting for such Lot shall be exercised as such persons among themselves determine, or, in the absence of such determination, as determined by the Board; but in no event shall more than one vote per Class A Lot be cast or counted. The Owner of the Lot shall designate in writing to the Association an individual who shall be the Member with respect to that Lot and entitled to use of the Membership. Any attempt to make a prohibited transfer of a membership in the Association is void and will not be recognized by or reflected upon the books and records of the Association. In the event any Member fails or refuses to transfer or surrender the membership registered in his name as herein required, the Association shall have the right to record a transfer upon the books of the Association and issue a new membership as appropriate, and thereupon the old membership outstanding in the name of said Member shall be null and void as though the same had been surrendered. The Class A membership shall be deemed transferred to the Lot purchaser upon sale of each Lot. If any Owner shall be in arrears in the payment of any amounts due hereunder or shall otherwise be in default in the performance of any obligation hereunder for a period of fifteen (15) days, the Board shall have the right to suspend voting rights of said Owner. The Association may charge the Lot purchaser or transferee a reasonable transfer fee to alleviate the costs of providing Association documents to such purchaser or transferee.

CLASS B: The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The total votes which the Declarant shall be entitled to cast may be cast in such proportion on any matter as Declarant may determine. Each Class B membership shall cease and be converted to Class A membership, without further action, upon happening of any of the following events:

(a) Upon the conveyance by Declarant of any particular Lot to an Owner, other than in connection with an assignment by Declarant of all or any of its rights under this Declaration (including a pledge or assignment by Declarant to any lender as security), with respect to the particular Lot or Lots so sold or otherwise disposed of; or

(b) with respect to all remaining Class B memberships, upon the first to occur of the following events (sometimes referred to as the "Transition Date"):



(i) Within ninety (90) days after the number of Class A votes exceeds the number of Class B votes; or

(ii) When the Declarant notifies the Association in writing that it relinquishes its Class B membership; or

(iii) December 31, 2011

If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration succeeds to the interest of Declarant by virtue of said assignment, the Class B memberships shall not be terminated thereby, and such lender shall hold the Class B memberships on the same terms as such were held by the Declarant pursuant hereto.

3.3. Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to the membership with respect to his Lot to a Mortgagee as additional security, the vote of such Mortgagee will be recognized in regard to such special matters only if a copy of such proxy or other instrument pledging such vote has been filed with the Association. In the event that more than one such instrument has been filed, the Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

3.4. Board of Directors.

3.4.1. The affairs of the Association shall be conducted by the Board as herein provided and in accordance with the Articles and Bylaws. Except for directors elected by the Declarant, each director shall be an Owner or the spouse of an Owner. If a director ceases to meet such qualifications during his/her term, he/she will thereupon cease to be a director and his/her place on the Board shall be deemed vacant.

3.4.2. The Declarant shall have the absolute power and right to appoint and remove the members of the Board until the Transition Date. After that date, the Members of the Association shall have the power and right to appoint and remove the members of the Board as provided in the Articles and Bylaws.

3.5. Board's Determination Binding. In the event of any dispute or disagreement between any Owners, Members, or any other Persons subject to this Declaration, relating to the Estates, or any question of interpretation or application of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Development Standards, the determination thereof by the Board shall be final and binding on each and all such Owners, Members or Persons. The Board may, at its election, delegate the resolution of such dispute or disagreement to a committee appointed by the Board or the President.

3.6. Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, the Articles or Bylaws (for example, where a Majority of Members or a specified



fraction or percentage of all of the Members is required), any provision of this Declaration, the Articles or Bylaws which requires the vote or written assent of the Members of the Association or any class or classes of membership shall be deemed satisfied by the following:

(a) The vote in person or by proxy of the specified percentage of Members at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings of the Members.

(b) Written consents signed by the specified percentage of Members as provided in the Bylaws.

(c) If no percentage of Members is otherwise specified, then the vote or written assent of a Majority of Owners shall be required.

3.7. Additional Provisions in Articles and Bylaws. The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and Members not inconsistent with law or this Declaration.

3.8. Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Lots, the Common Areas or any other part of the Estates. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among the Owners and Members except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles, Bylaws or Development Standards. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner and Member in the same manner established in this Declaration for the delivery of notice. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and Members, and all other Persons having any interest in, or making any use of the Property, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner, Member or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration, or the Articles, Bylaws or Development Standards, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, Bylaws or Development Standards to the extent of any such conflict.

3.9. Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and the members of the Design Review Committee, and the Declarant shall be indemnified by the Association, and every other person serving as an employee or direct



agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of the Declarant by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee), or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, member of the Design Review Committee or other Person, or the Declarant, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all rights to which such Persons may be entitled at law or otherwise.

3.10. Non-Liability of Officials. To the fullest extent permitted by law, neither the Declarant, the Board, the Design Review Committee or any other committee of the Association nor any member thereof, nor any directors or officers of the Association, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which the Declarant, the Board, or such committee of Persons reasonably believed to be within the scope of their respective duties.

3.11. Easements. In addition to the easements granted in the Plat and Section 4, the Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and right-of-way for:

3.11.1. electricity, natural gas, telephone, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes;

3.11.2. roadways, or;

3.11.3. other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for preservation of the health, safety, convenience and welfare of the Owners and Members;

3.11.4. provided, however, that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

3.12. Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with accepted accounting principles.

3.13. Records. The Association, upon reasonable written request and during reasonable business hours, shall make available for inspection by each Owner and Member the books, records and financial statements of the Association together with current copies, as amended



from time to time, of this Declaration and the Articles, Bylaws, Association Rules and Development Standards. The Declarant shall be under no obligation to make its books or financial records available for inspection by any Member, Owner or other person.

3.14. Managing Agent. All powers, duties and rights of the Association, or the Board, as provided by law or herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services of the Declarant or any other party, shall not exceed a term of one (1) year, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days' written notice.

4. EASEMENTS.

4.1 Use of Common Areas. Except for the use limitations provided herein, which by becoming an Owner each Owner accepts, the non-exclusive right to use the Common Areas in common with all other Owners as required for the purposes of access, ingress and egress to (and use, occupancy and enjoyment of) any Lot owned by such Owner to the other Common Areas is available for the use of said Owner or Occupant. The rights of the Owners, Members or Association are subject to said Declarant's reservation, and any use by any Owner or Member may not unreasonably compromise the Declarant's sales or marketing facilities. Such right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to each Owner, Member, Occupant and the agents, servants, tenants, family members and invitees of each Owner or Member. Such right to use the Common Areas shall be perpetual and appurtenant to each respective Lot, subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Association Rules and such reasonable limitations and restrictions as may from time to time be contained herein or therein.

4.2. Exclusive Use Rights. Certain areas of the Common Areas may be reserved by the Board for the exclusive control, possession and use of the Owner of a Lot. If such an area serves as access to and from two Lots, the Owners of the two Lots shall have joint control, possession and use of such portion of said area as reasonably serves both Lots. The exclusive use rights created herein are subject to the maintenance, and architectural and landscape control provisions contained in this Declaration and to such reasonable rules and regulations with respect to possession, control, use and maintenance as the Association may from time to time promulgate. Easements are hereby created in favor of and running with each Lot having such an area for the exclusive control and use of each such area. Each Owner, by accepting title to a Lot shall be deemed to have further ratified the easements and rights to exclusive use created herein.

4.3. Perimeter Fence Easement. There is hereby created an affirmative easement in favor of the Declarant and the Association, its employees and agents, upon, over and across each Lot, or tract shown on the Plat adjacent to the perimeter boundaries of the Estates for reasonable access, installation, replacement, maintenance and repair of any perimeter fence, which the Declarant may install at its sole discretion, along such boundaries. The easement shall be of



sufficient reasonable width to accommodate the initial installation of the perimeter fence by Declarant.

4.4. Declarant's Easement. There is hereby created an affirmative, non-exclusive easement in favor of the Declarant, its agents, owners, members, shareholders, employees, successors and assigns, and appurtenant to the property described on Exhibit A hereto, for ingress and egress over all Common Areas, and for the right to go over, under and across, and to enter and remain upon, all Common Areas for all purposes, including, without limitation to access adjacent property to that described in Exhibit A.

5. ASSESSMENTS.

5.1. Creation of Lien and Personal Obligation. Each Owner hereby covenants and agrees to pay to the Association all assessments identified herein, including without limitation Regular Assessments, Special Assessments, Capital Improvement Assessments, and Reconstruction Assessments, if applicable, such Assessments to be established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner's Lot against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such assessment relates. The personal obligation of an Owner for delinquent Assessments shall become the Obligation of the Owner's or Member's successor, even if not expressly assumed by him, unless such successor has obtained from the Association a certificate of payment stating that there are no unpaid Assessments due. The lien against a Lot as provided in this Section shall be continuing and shall not be extinguished by the sale, conveyance or other transfer of the Lot. The obligation of an Owner of the Lot to which such membership appertains for the payment of Assessments, and related charges as herein provided, shall be joint and several. An Owner shall be jointly and severally liable with any Occupant of his Lot for any unpaid Assessments, and other charges, occasioned by the actions of, or failure of action by, the Occupant and/or Owner, as the case may be.

5.2. Purpose of Assessments. The Assessments levied by the Association shall be used to promote the safety and welfare of the Owners, to enhance the quality of life within the Estates, to preserve the value of the Property, to pay the costs of administration of the Association and all other Common Expenses, or to otherwise further the interest of the Association. The costs of gas, electricity, water, sewer, trash pick-up, cable, telephone or other similar utility services shall be the personal obligation of each Owner.

5.3. Regular Assessments.

5.3.1. Except as otherwise specifically provided in this Declaration, each Owner other than Declarant shall pay as his Regular Assessment such Owner's Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Association.



5.3.2. Prior to the beginning of each fiscal year of the Association, the Association shall make available for review by each Owner at the Association's office during reasonable times a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. Subject to the provisions of Section 5.3.4, the Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owners thereof. Each Owner other than Declarant shall thereafter pay to the Association his Regular Assessment as deemed appropriate by the Board in their judgement. Each such installment shall be due and payable on the date set forth in the written notice sent to the Owners. Notwithstanding the foregoing to the contrary, until the Transition Date, neither the Association nor the Declarant shall be required to prepare or distribute to the Owners or Members, any operating statement or budget.

5.3.3. If, after the Transition Date, the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Board shall then promptly determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Member for the balance of the year, and the date or dates when due. If the estimated total Regular Assessments for the current year proves to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus shall be grounds for the Association to diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

5.3.4. Notwithstanding anything in this Declaration to the contrary, the provisions of this Section shall be controlling until the Transition Date. For the period prior to the Transition Date, Regular Assessments for each fiscal year of the Association shall be payable by the Class A Owners in equal monthly installments of no less than twenty five dollars (\$25.00) per month. The Declarant (Class B) Owner) shall be responsible for paying twenty-five percent (25%) of the Regular Assessment for each Lot owned by it; provided, however, that prior to the Transition Date, the Declarant shall reimburse the Association for any deficit resulting from operating expenses of the Common Areas. Under no circumstances shall Declarant be responsible for any deficit resulting from capital improvements or reconstruction. Declarant shall similarly not be responsible for any Special Assessment, Capital Improvement Assessment, or reserve.

5.4. Proration of Assessments. In order to equitably assess Owners of Lots, the following shall apply:

5.4.1. On any Lot for which a building permit application has been submitted to Coconino County, an additional one-time fee shall be due to the Association. The one-time fee



shall be payable by the Lot Owner upon submittal of its building plans to the Architectural Control Committee. Thereafter, the Regular Assessment for Lots for which a building permit is issued shall be payable in monthly installments.

5.4.2. Each and every Lot Owner shall pay the Regular Assessment due for his Lot for any month or partial month within five (5) days of becoming an Owner, and thereafter on the first of every month.

5.5. Special Assessments. Special Assessments shall be levied by the Association against an Owner and his Lot to reimburse the Association for:

5.5.1. Costs incurred in bringing an Owner and his Lot, or an Occupant of the Lot, into compliance with the provisions of this Declaration, of the Articles, Bylaws, Association Rules or Development Standards;

5.5.2. Any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules;

5.5.3. Fines levied or fixed by the Board or as otherwise provided herein or in any Association document; and

5.5.4. Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Articles, Bylaws, Association Rules of Development Standards.

In the event the Association undertakes to provide materials or services which benefit individual Members, Owners, Occupants or Lots and which can be accepted or not by individual Members, Owners or Occupants, such Members, Owners or Occupants, in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

5.6. Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, any actions or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, to the extent the same is not covered by the provisions affecting Reconstruction Assessments in Section 7, entitled "Damage and Destruction of Common Areas". Without the vote of a Majority of Members, the Association shall not impose a Capital Improvement Assessment in an amount which in any one year exceeds ten percent (10%) of the estimated annual Common Expenses as set forth in the pro forma operating statement or budget prepared by the Association pursuant to Section 5.3.2; provided, however, that any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in determining the foregoing limitation on any annual Capital Improvement Assessment. All amounts collected as Capital Improvement Assessments shall be used only for the described capital improvements, shall be deposited by the Association in a separate bank account to be held in trust for such purposes and not be commingled with any



other funds of the Association, and shall be deemed a non-refundable contribution to the capital of the Association by the Members.

5.7. Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority, other than Lots, shall be exempt from Assessments created herein.

5.8. Time and Manner of Payment; Late Charges and Interest. Assessments shall be due and payable by the members in such manner and at such times as the Association shall designate. If not paid within ten days after its due date, each such Assessment shall have added to it a late charge equal to 10.00% of the amount of the Assessment and shall thereafter bear interest at the Default Rate of Interest until paid. The Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Member shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency, and if any suit, action or arbitration proceeding is brought to collect any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

5.9. No Offsets. All Assessments shall be payable in the amount specified and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the Association, the Board, the Design Review Committee, or Declarant is not properly exercising its duties or powers as provided in this Declaration, the Articles, Bylaws, Association Rules or Development Standards; (b) Assessments for any period exceed Common Expenses; or (c) an Owner, Member or Occupant has made, and elects to make, no use of the Common Areas.

5.10. Homestead Waiver. Each Owner and Member, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

5.11. Reserves. The reserve included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Association in its operating bank account to be held in trust for the purposes for which they are collected and need not be segregated from any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of accepted accounting principals in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to non-profit corporations or Homeowners Associations. Such reserves shall be deemed a non-refundable contribution to the capital of the Association by the Members. The responsibility of the Board (whether while controlled by the Declarant or the Members) shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither the Declarant, the Board or any member thereof shall have any liability to any Owner or Member or to the Association if such reserves prove to be inadequate.



5.12. Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner, Member or Occupant to make timely payment of any Assessment shall be subordinate to the lien of a Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto), and if any lien for unpaid Assessments prior to the date the Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such Mortgagee came into possession of or acquired title to the Lot, such Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and, upon written request to the Association by such Mortgagee, such lien shall be released in writing by the Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner and Member and may also be re-allocated by the Association among all Members as part of Common Expenses.

5.13. Certificate of Payment. Any person acquiring an interest in any Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to such Lot, if any, and such person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such unpaid Assessments.

5.14. Enforcement of Lien. The lien provided for in this Section may be foreclosed by the Association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section relating to the enforcement of the lien provided for herein shall apply with equal force in each other instance provided for in this Declaration, the Association Rules or Development Standards wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by the lien provided for in this Declaration. Nothing herein shall be construed as requiring that the Association take any action required hereunder in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

5.15. Pledge of Assessment Rights as Security. The Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in this Declaration as security for any obligation of the Association, including expressly, but not limited to, the obligations of the Association. The Association's power to pledge its assessment powers shall include, but not to be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Association; which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Association and used by the Association as set forth in this Declaration, unless and until the Association shall default on its obligations secured by said assignment.

6. INSURANCE.



6.1 Authority to Purchase. The Association shall purchase and maintain certain insurance upon the Common Areas including but not limited to the insurance described in this Section. Such policies, and endorsements thereon, or copies thereof shall be deposited with the Association. The Association shall, upon written request, generally advise the Owners and Members of the coverage of said policies in order to permit the Owners and Members to determine which particular items are included within the coverage so that the Owners and Members may insure themselves as they see fit if certain items are not insured by the Association.

6.2. Member's Responsibility. It shall be each Owner's or Member's responsibility to provide for himself insurance on his own Lot, his additions and improvements thereto, furnishings and personal property therein, his personal property stored elsewhere within the Estates, his personal liability and such other insurance which is not carried by the Association as the Owner or Member desires. No Owner or Member shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. In the event of any fire damage or property damage caused to any residence located on a Lot, the Owner shall be required to restore or repair said damage, or in the alternative, restore and revegetate said Lot to its original, natural condition. The Association may, but shall not be required to, restore, reconstruct or revegetate any such Lot if the Owner or Member fails to effect the required repairs within six (6) months after the occurrence of damage. The Association may recover any costs incurred in said restoration or repair by recording and enforcing a lien upon the subject Lot.

6.3. Coverage. The Association shall maintain and pay for policies of insurance as follows:

6.3.1. A multi-peril type of policy covering all of the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including without limitation, perils normally covered by an "all-risk" policy, in an amount determined by the Association.

6.3.2. A policy of comprehensive public liability insurance covering all of the Common Areas in an amount determined by the Association but not less than one million dollars (\$1,000,000.00) per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, without limitation, liability for non-owned and hired automobiles, liability for property of others, liability arising in connection with the operation, maintenance or use of the Common Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Association.

6.3.3. The Association may, at its election, obtain fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. If



funds of the Association are handled by a management agent, then fidelity bond coverage may also be obtained for the officers, employees or agents thereof handling or responsible for Association funds. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection in an amount not less than the greater of (a) the Association's estimated annual operating expenses and reserves, (b) a sum equal to three months' aggregate Regular Assessments plus reserves, or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

6.3.4. A workmen's compensation policy, if necessary to meet the requirements of law.

6.3.5. A policy of "directors and officers" liability insurance to the extent reasonable and available, at the Board's discretion.

6.3.6. Such other insurance, and in such amounts, as the Association shall determine from time to time to be desirable.

6.4. Required Provisions. The insurance policies purchased by the Association shall, to the extent reasonable and available, contain the following provisions:

6.4.1. The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by any Owner, Member or Mortgagee.

6.4.2. The conduct of any one or more Owners or Members shall not constitute grounds for avoiding liability on any such policies.

6.4.3. There shall be no subrogation with respect to the Association, its agents or employees, Owners, Members, or members of their households or families and employees, and each Mortgagee of all or any part of the Property or of any Lot, or the policy(ies) should name said persons as additional insureds; and, each policy must contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

6.4.4. A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner or Member because of the conduct or negligent acts of the Association and its agents or other Owners or Members.

6.4.5. Any "no other insurance" clause shall exclude insurance purchased by Owners, Members or Mortgagees.

6.4.6. Coverage must not be prejudiced by (a) any act or neglect of Owners or Members when such act or neglect is not within the control of the Association or (b) any failure



of the Association to comply with any warranty or condition regarding any portion of the Estates over which the Association has no control.

6.4.7. Coverage may not be canceled or substantially modified without at least 30 days (or such lesser period as the Association may reasonably deem appropriate) prior written notice to the Association.

6.4.8. Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

6.4.9. A recognition of any insurance trust agreement entered into by the Association.

6.4.10. Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating as designated in Best's Key Rating Guide of Class VI or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

6.4.11. Policies shall not be utilized where, under the terms of the carrier's character, bylaws or policy, contributions or assessments may be made against the Owners, Members or the Association or loss payments are contingent upon action by the carrier's board of directors, policyholders, or members.

6.5. Non-Liability of Association and/or its Board. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member nor the Declarant shall be liable to any Owner, Member, Mortgagee or other Person if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Member to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Member may desire.

6.6. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas, by an Owner or Member, may, at the Board's election, be assessed against that particular Owner or Member.

6.7. Insurance Claims. The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its



discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

6.8. Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for, the Association, the Owners or the Members, as their interests may appear.

7. DAMAGE AND DESTRUCTION OF COMMON AREAS.

7.1. Duty of Association. In the event of partial or total destruction of the Common Areas, or any improvements thereon, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this Section. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purposes, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

7.2. Automatic Reconstruction. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be at least 75% of the estimated cost of restoration and repair, a Reconstruction Assessment against each Member in his Proportionate Share may be levied by the Association to provide the necessary funds for such reconstruction in excess of the amount of funds available for such purpose. The Association shall thereupon cause the damaged or destroyed Common Areas to be restored to substantially the condition the Common Areas were prior to the destruction or damage.

7.3. Vote of Members. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be less than 75% of the estimated cost of restoration and repair, the Common Areas shall be replaced or restored unless two-thirds of the Members, at a special meeting held for such purpose, disapprove of such replacement or restoration. If the Members do not disapprove of the proposed replacement or restoration, the Association shall levy a Reconstruction Assessment against each Member in its Proportionate Share and cause the damaged or destroyed Common Areas to be restored as closely as practical to the condition the Common Areas were in prior to the destruction or damage.

7.4. Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section, the Association, in its sole discretion, may retain such sums in the general funds of the Association or may distribute all or a portion of such excess to the Members in their Proportionate Shares, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Association. The rights of an Owner or the Mortgagee of a Lot as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

7.5. Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall be used for the purposes set forth in this Section, shall be deposited by the



Association in a separate bank account to be held in trust for such purposes and not to be commingled with any other funds of the Association, and shall be deemed a non-refundable contribution to the capital of the Association by the Members. Any Reconstruction Assessment shall be secured by the lien provided for in Section 5.

7.6. Contract for Reconstruction. In the event the Association undertakes the repair and restoration of the Common Areas, the Association shall contract with a licensed contractor or contractors who may be required to post a suitable performance or completion bond, in the sole and absolute discretion of the Board. The contract with such contractor or contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Association.

7.7. Insurance Proceeds Trust. Upon receipt by the Association of any insurance proceeds, the Association may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Coconino County, as designated by the Association as trustee (the "Insurance Trustee"). Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Association. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in the County.

8. EMINENT DOMAIN.

8.1. Definition of Taking. The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

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

8.3. Award for Common Areas. Any awards received by the Association on account of the taking of Common Areas shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Owners or Members as their interests may appear. The rights of an Owner and the Mortgagees of a Lot as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

9. MAINTENANCE OF COMMON AREAS.



9.1. Owner's Responsibility. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacement within his own Lot.

9.2. Maintenance of Common Areas. Except as otherwise provided herein, maintenance, repairs and replacements of the Common Areas shall be furnished by the Association as part of the Common Expenses, subject to the Bylaws and Association Rules. If, due to the act or neglect of an Owner, Member or Occupant, or the invitee, guest or other authorized visitor thereof, damage shall be caused to the Common Areas or to a Lot or Lots owned by others, or maintenance, repairs or replacement shall be required which would otherwise be a Common Expense, then such Owner, Member or Occupant shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the Association, to the extent not covered by the Association's insurance. Such obligation shall be a Special Assessment secured by the lien provided for in Section 5.

9.3. Right of Access. An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas, or to perform any of the Association's duties or responsibilities hereunder.

10. ARCHITECTURAL AND LANDSCAPE CONTROL.

10.1. Appointment of Design Review Committee. The Association shall have a Design Review Committee consisting of not less than two nor more than five persons, as specified from time to time by resolution of the Board. The Declarant shall initially appoint the members of the Design Review Committee and may, if it desires in its sole discretion prior to Transition Date, appoint one person only or hire an architect or other person deemed qualified by the Declarant, in its sole and absolute discretion, to act as the Design Review Board. Any reasonable fee paid to such person shall be paid by the Association and billed directly to each person desiring approval of plans to place a manufactured home on their Lot. The Declarant shall retain the absolute right to appoint, augment or replace all members of the Design Review Committee until the Transition Date. Thereafter, members of the Design and Review Committee shall be appointed by the Board. Persons appointed to the Design and Review Committee, other than those persons appointed by the Declarant, must be Owners or Members or satisfy such other requirements as may be set forth in the Development Standards. The Declarant voluntarily may (but shall not be required to) permit the Members to appoint one or more of the Design Review Committee at any time.

10.2. Development Standards. The Design Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards, design guidelines and development standards (collectively the "Development Standards"), which the Design Review Committee may, from time to time in its sole discretion, amend, repeal or augment. The Development Standards are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners, Members or other Persons as if expressly set forth herein. A copy of the current Development Standards shall at all times be a part of the



Association's records. The Development Standards may include, among other things, those restrictions set forth below:

10.2.1. Time limitations for the completion, within specified periods after approval, of the home set up and other improvements for which approval is required pursuant to the Development Standards.

10.2.2. Conformity of completed improvements to plans and specifications approved by the Design Review Committee; provided, however, as to purchasers and encumbrancers of a Lot in good faith and for value, unless notice of noncompletion or nonconformance identifying the violating Lot and specifying the reason for the Notice, executed by the Design Review Committee, shall be recorded with the County Recorder of the County, and given to the Owner of such Lot within one year of the expiration of the time limitation described in Section 10.2.1 above, or, if later, within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review Committee and in compliance with the architectural standards of the Association and this Declaration.

10.2.3. Such other limitations and restrictions as the Board or Design Review Committee in its reasonable discretion shall adopt, including, without limitation, the regulation of all landscaping (including without limitation absolute prohibition of certain types of landscaping, trees and plants) and or removal of same, prohibition or removal of any landscaping or alteration of any land, construction, reconstruction, exterior additions, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, architectural style, height, materials, exterior color, surface texture, and location of any such improvement.

10.3. General Provisions

10.3.1. The Design Review Committee may assess reasonable fees in connection with its review of plans and specifications.

10.3.2. The Design Review Committee may delegate its plan review responsibilities, except final review and approval as may be required by the Development Standards, to one or more of its members or architectural consultants retained by the Design Review Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

10.3.3. The address of the Design Review Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Development Standards. Such address shall be the place for the submittal of plans and specifications and the place where the current Development Standards shall be kept.



10.3.4. The establishment of the Design Review Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in the Declaration, Bylaws or Association Rules.

10.3.5. The Design Review Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Development Standards.

10.4. Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property (except for construction on the Common Areas by the Declarant), nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefore which have been submitted to and approved by the Design Review Committee in accordance with the Development Standards as to harmony of external design and location in relation to surrounding structures and topography.

10.5. Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, the Association, any Member, the Board nor the Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Association, the Board nor the Declarant shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of, without limitation, (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings and specifications, (c) the development, or manner of development of any property within the Estates, or (d) the execution and filing of an estoppel certificate pursuant to the Development Standards, whether or not the facts therein are correct. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

10.6. Inspection and Approval. Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with the Development Standards and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within 30 days of a request therefor from any Owner as to his Lot, and if such inspection reveals that the improvements located on such Lot have been completed in compliance with this Section and the Development Standards,



the Design Review Committee shall provide to such Owner a notice of such approval which shall be conclusive evidence of compliance with the provisions of this Section and the Development Standards as to the improvements described in such notice, but as to such improvements only.

10.7. Reconstruction of Common Areas. The reconstruction by the Association or the Declarant after destruction by casualty or otherwise of any Common Areas which is accomplished in substantial compliance with "as Built" plans for such Common Areas shall not require compliance with the provisions of this Section or the Development Standards.

10.8. Additional Powers of the Board. The Board may promulgate as a part of the Development Standards such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE BOARD MAY FIX A FINE OF UP TO \$1,000.00 FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE. The Association may, but shall not be required, to remove any nonconforming structures or improvements and may recover the cost of said removal from the Member or Owner.

11. USE AND OCCUPANCY RESTRICTIONS.

11.1. Land Use and Building Type. No Lot within the Property, except for Common Areas, shall be used except for the placement of a manufactured home for residential purposes in accordance with the Development Standards. No building shall be erected, altered, placed or permitted to remain on any Lot other than an approved manufactured home, detached private garage, or approved storage shed. The building material and architectural style of the manufactured home and ancillary structures shall be substantially similar. No metal storage buildings of any size or carports shall be permitted within West Village Estates Subdivision. All Lots shall have, upon the first placement of an approved manufactured home thereon, an enclosed garage for vehicle parking and storage constructed by an approved licensed contractor. No structure of any nature, including without limitation, manufactured homes, garages, storage sheds, antennae, satellite dishes, recreational amenities, or any other accessory use shall be constructed or installed on a Lot without compliance with Design Review Committee Standards and prior, written approval of the Association. No buildings or structures shall be erected or maintained on any Lot within the Property for any business or commercial purpose whatsoever, including, without limitation, provision of private day care services. The West Village Estates Plat shall identify tracts of real property which serve as common areas.

11.2. Home Location. All manufactured homes and structures within the West Village Estates Subdivision shall occur within the setbacks as depicted on the final Plat, or as otherwise provided in the Development Standards. For the purpose of this covenant, steps and unsupported eaves shall not be considered a part of any building or structure, but decks, patios, and support structures shall be considered a part of a structure or building.

11.3. Minimum Living and Garage Area. A limited number of single-wide homes, not to exceed thirty (30), will be allowed throughout the community in designated lots. These homes shall not be less than 890 square feet in minimum living area. Double-wide homes must not be



smaller than 23 feet in width and shall not be less than 1100 square feet in minimum living area. Garages shall be a minimum of 400 square feet.

11.4. Business and Related Uses. No Lot shall ever be used, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, retail, storage, vending or other similar uses or purposes; however, Declarant and its agents, successors and assigns may use the Property or Lots for any of the foregoing uses as may be required or convenient, including, without limitation, a business office, management office, storage area, construction yard, signage, model sites, and display or model home and sales office. The foregoing restriction shall not prevent an Owner from conducting his or her personal affairs within the home and shall not be deemed to prevent an Owner from using his manufactured home for business purposes which (i) utilize a minimal portion of the home (not to exceed one room); (ii) do not result in the use of the home for business meetings, appointments or gatherings with clients or customers or day care services; (iii) do not result in shipping or receiving from or to the home; and (iv) do not otherwise violate City zoning laws regarding residential uses.

11.5. Plant Unit Requirement. Prior to occupancy, each Owner shall install one (1) Plant Unit (as defined in the City of Flagstaff Land Development Code) on his Lot. The Owner will be responsible for maintenance of said Plant Unit and shall replace any portion thereof in need of replacement within twenty (20) days of written notice from the Association or City. Thereafter, the Association may arrange and contract for the maintenance or replacement of the Plant Unit and the cost thereof shall become a Special Assessment to that Owner.

11.6. Address Numbers. Address numbers are required to be posted at each residence. They shall be at least four (4) inches in height and visible from the street.

11.7. Reserved.

11.8. Animals. No animals, livestock, horses, birds, or poultry of any kind shall be raised, bred or kept on or within any Lot or structure on a Lot except that an Owner may keep one dog and/or one cat or other household pet, up to a combination not to exceed two (2) pets, in the home or within the enclosed area of the Lot. Additional pet are prohibited. The foregoing restriction does not apply to fish kept in an indoor aquarium or to assistive animals (confirmed as necessary by a medical professional). No domestic fowl, hogs, pigs or domestic farm animals shall be kept on any of the Lots. Any permitted animal shall be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose and for so long as they do not result in an annoyance or nuisance to other Owners. No permitted pets shall be permitted to move about unrestrained in any public yard of the Owner's Lot or any other Lot, Common Area, or any public or private street within the Property. Each Owner shall be responsible for the immediate removal and disposal of waste or excrement of all the Owner's pets from any area within the Property (including within Owner's enclosed yard). Owners shall be liable for any and all damage or injury caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board shall be the sole judge for determining whether a pet is a common household pet or whether any pet is an annoyance or nuisance or whether any rule has been broken by an Owner with a pet.



11.9. Driveway and Walkway Requirements. An approved concrete driveway and walkway shall be installed by Owner on every Lot in accordance with the specifications set forth in the Development Standards.

11.10. Fence Requirement. An approved fence shall be installed by Owner on the perimeter of every Lot in accordance with the specifications set forth in the Development Standards.

11.11. Violation of Law or Insurance. No Owner or Occupant shall permit anything to be done or kept in his Lot or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

11.12. Nuisances. No Owner or Occupant shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Estates, which will obstruct or interfere with the rights of other Owners, Members, Occupants or other authorized Persons to the use and enjoyment of the Common Areas, or annoy them by unreasonable noises or otherwise, nor commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner and Occupant shall comply with the Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.

11.13. Air Conditioners. No window or portable air conditioning units shall be installed on a Lot so as to be visible from neighboring property. No heating, cooling, ventilating or air conditioning units or solar panels or equipment shall be placed on any Lot so as to be visible from neighboring property unless approved by the Board.

11.14. Boats and Motor Vehicles. Except as specifically permitted by the Association Rules, (a) no boats, trailers, buses, motor homes, campers or other recreational vehicles of whatever type (herein collectively called a "Recreational Vehicle") shall be parked or stored in or upon the Common Areas, including the Public Roads or upon a Lot except within an enclosed garage as permitted by the Development Standards; (b) no Recreational Vehicle shall be repaired or rebuilt in any Lot or upon the Common Areas; and (c) no Recreational Vehicle shall be parked on the Public Roads except in such parking areas as may be designated by the Association. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law. Snowmobiles, off-road motorcycles and all-terrain-vehicles or similar vehicles are prohibited and may not be used or operated within West Village Estates, except that any such vehicle lawfully licensed for use on public roadways may be used for the strictly limited purpose of ingress and egress to a Lot; provided, however, that any such vehicle may be trailered to or from a Lot, or parked or stored in or upon a Lot within an enclosed area, in accordance with the Association Rules or the Development Standards. No disabled motor vehicle or any motor vehicle which is under repair or not in operating condition shall be placed or permitted to remain on the street or any portion of any Lot.

11.15. Horse Trailers. Horse trailers are not permitted within the Estates.

11.16. Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot which, in any manner, will allow light to be directed or reflected on the



Common Areas, Public Roads, or any part thereof, or any other Lot, except as may be expressly permitted by the Association Rules or the Development Standards. Reflective material of solar devices or other items need to be properly screened from adjoining properties. No aluminum foil shall be used in windows.

11.17. Sight and Distance at Intersections. No fence, wall, hedge or shrub planting shall be installed or maintained by any Lot Owner which unreasonably obstructs sight distances on any corner Lot or at the driveway serving any Lot.

11.18. Antennas. No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, including without limitation, satellite dishes, shall be placed or maintained upon any Lot except as may be permitted by the Association Rules or in accordance with the Development Standards.

11.19. Garbage. No garbage, rubbish, trash or debris shall be kept, maintained or contained in any Lot so as to be visible from another Lot or the Common Areas. All garbage shall be kept in closed containers. No incinerators shall be kept or maintained on any Lot. In the case of an Owner who allows trash, garbage, rubbish or debris to accumulate on any Lot, the Association may arrange and contract for the removal and cleanup of the trash, and the cost thereof shall become a Special Assessment to that Owner.

11.20. Mining. No portion of the Property shall be used in any manner to explore for or remove any oil or other hydrocarbons, minerals of any kind, or earth substance of any kind.

11.21. Safe Conditions. Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners, Members or other Persons of their respective Lots or the Common Areas.

11.22. Fires. Other than barbecues in properly constructed barbecue pits or grills in strict compliance with the Association Rules and the Development Standards, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots or the Common Areas, nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Areas or for other Owners.

11.23. Construction Access. The approved access drive will be the only construction access to any Lot. Construction crews will not park on, or otherwise use, underdeveloped portions of Lots. All construction vehicles shall be placed on the access drive.

11.24. Clothes Drying Area. No unenclosed portion of any Lot shall be used as a drying or hanging area for laundry of any kind.

11.25. No Further Subdivision; Compounds. No Lot shall be divided or subdivided. An Owner may own more than one Lot which, if contiguous, may be combined into a single homesite with the consent of the City and the Design Review Committee; provided, however,



that any such combination of Lots shall not reduce or alter the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount which would have been assessed against the Owner of such Lots pursuant to the terms hereof in the absence of combination. The Assessments attributable to each Lot shall be a lien, as provided herein, upon the entire combination of Lots held by the Owner. Notwithstanding anything herein to the contrary, the Owners of two or more contiguous Lots may, with the consent of the City and the Design Review Committee, replat such Lots in accordance with the Development Standards. The lien provided in Section 5 as to each replatted Lot shall also extend to the interest of the Owner in any such common facilities. Any such Lots combined pursuant to the above may only thereafter be divided in the specific location and dimensions originally established in the Plat, unless specifically otherwise approved by the City and Association.

11.26. Party Walls and other Structures. Any wall, fence, column or other structure constructed upon the boundary line between two Lots and specifically benefiting the Owners of such adjacent Lots shall be a party structure. The rights and duties of Owners with respect to any party structure shall be as follows:

11.26.1. The Owners of contiguous Lots upon which a party structure has been constructed shall have the right to use such party structure equally, provided, that such use by one Owner does not interfere with the use and enjoyment of such by the other Owner.

11.26.2. In the event that any party structure is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such amount is negligent or otherwise culpable), it shall be the obligation of such owner to rebuild and repair such party structure without cost to the other adjoining Lot Owner or Owners.

11.26.3. In the event any such party structure is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining owner, his agents, guest or family, it shall be the obligation of both Owners whose Lots adjoin such structure to rebuild and repair such structure at their joint and equal expense.

11.26.4. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party structure without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

11.26.5. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party structure, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.

11.26.6. Each Owner shall permit adjacent Owners and the Association of their representatives, when so required, to enter his Lot for the purpose of repairing or maintaining a party structure, and there is hereby created an easement for such purposes over each Lot; provided, that request for entry to a Lot shall be made in advance and such entry shall be at a time reasonably convenient to the Owner of such Lot. In case of an emergency, such right of entry shall be immediate.



11.27. Combined Lots on Plat. Notwithstanding anything contained in this Declaration to the contrary, Lots 17, 18, 47, 133-138, and 141-144, inclusive (hereinafter the "Combined Lots"), shall be allowed to have two units on each lot per the City of Flagstaff Planning Department. In the event these Lots are divided, the common wall between the garages shall be modified to meet City of Flagstaff Building Code requirements for a one-hour fire wall separation. All other Lots shall only be allowed on dwelling unit per Lot. Each Owner on a Combined Lot shall be entitled to one vote and shall be responsible for all Assessments as though the Combined Lots were two individual Lots.

11.28. No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on a Plat, or other duly recorded instrument, as a "drainage easement," except that, with the prior written consent of the County and the Design Review Committee, certain structures may, in accordance with the Development Standards, be erected or constructed within the drainage easements so long as such structures do not interfere with the intended purpose or function of such areas.

11.29. Short Term Rental Prohibited. An Owner shall not lease a home constructed on his Lot to any Person for less than twelve (12) consecutive months and shall first obtain consent from the Association. The Association may promulgate rules regarding review and approval of rental as provided herein.

11.30. Enforcement. The Association or its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to the Bylaws, Association Rules or Development Standards, shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Section 5 hereof. All remedies described herein and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Member, Occupant or other Person of any provision of this Section.

11.31. Modification. In those instances expressly provided herein, the Board may modify or waive the foregoing restrictions, or otherwise restrict and regulate the use and occupancy of the Property and the Lots, by reasonable rules and regulations of general application adopted by the Board from time to time which shall be incorporated into the Association Rules.

12. RIGHTS OF MORTGAGEES.

12.1. General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, Association Rules or Development Standards, the following provisions shall apply to and benefit each holder of a Mortgage upon a Lot.

12.2. Liability for Assessments. A Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of the Mortgage, or through any



equivalent proceedings, such as but not limited to the taking of a deed or assignment in lieu of foreclosure or acquiring title at a trustee's sale, will not be liable for such Lot's unpaid dues, charges or Assessments which may accrue prior to the time such Mortgagee or third-party purchaser comes into possession of such Lot or becomes record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any dues, charges or Assessments accrued prior to the time such Mortgagee or third-party purchaser either comes into possession of such Lot or becomes record Owner of the Lot. Any such unpaid dues, charges or Assessments against the Lot foreclosed shall be deemed to be a Common Expense charged proratably against all of the Members. Nevertheless, in the event the Owner or Member against whom the original Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceeding. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Member and the defaulting Owner of the respective Lot to the Association, and the Association may use responsible efforts to collect the same from said Member and/or Owner even after he is no longer a Member of the Association or the Owner of the Lot.

12.3. No Personal Liability. A Mortgagee shall not be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, and requiring the payment of money, except as specifically provided in this Section.

12.4. Enforcement After Foreclosure Sale. An action to abate the breach of any provision of this Declaration, or the Articles, Bylaws, Association Rules or Development Standards may be brought against the purchasers who have acquired title through foreclosure or trustee's sale of a Mortgage (or through any equivalent proceeding), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

12.5. Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the first Mortgagee, or receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member in the place and stead of the defaulting Owner; provided, however, that the First Mortgagee shall first have given written notice to the Association of its intention and authority to do so.

12.6. Subject to Declaration. At such time as a Mortgagee, or any third-party purchaser at a foreclosure sale or trustee's sale, shall come into possession of or become record Owner of a Lot, such Person shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all Assessments and charges accruing thereafter, in the same manner as any other Owner.



13. ANNEXATION OF ADDITIONAL PROPERTY.

Notwithstanding common ownership, no Owner shall be permitted to join land outside the Estates to a parcel within the Estates. This restriction does not apply to Declarant.

14. EXEMPTION OF THE DECLARANT FROM RESTRICTIONS.

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of the Declarant, its employees, agents and contractors, or parties designed by it in connection with the construction, completion, sale or leasing of the Lots, the Common Areas or the Property.

15. REMEDIES.

15.1. General Remedies. In the event of any default by any Owner, Member, Occupant or other Person under the provisions of this Declaration, the Articles, Bylaws, Association Rules or Development Standards, the Association, or its successors or assigns, or its agents, or the Declarant, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws, Association Rules or Development Standards, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Member, Occupant or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest accrued therein, and to sell the same as hereinafter in this Section 15.1 provided, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner, Member, Occupant or other Person. The proceedings of any such rental or sale of a Lot shall first be paid to discharge court costs, other litigation costs, including without limitation reasonable attorneys' fees, and all other expenses of the proceeding sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments hereunder or any liens shall be paid to Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

15.2. Expenses of Enforcement. All expenses of the Association or the Declarant, or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Section 15, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner, Member, Occupant or other Person and the Association shall



have a lien therefor. In the event of any such default by any Owner, Member, Occupant or other Person, the Association and the Declarant, and the manager or managing agent of the Association, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner, Member, Occupant or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Section 5. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively, in the alternative or otherwise, by the Association or the Declarant.

15.3. Legal Action. In addition to any other remedies available under this Section 15, if any Owner, Member or Occupant (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Development Standards, as then in effect, then the Association, the Declarant, or any affected or aggrieved Owner or Member, shall have the power to file an action against the defaulting Owner, Member or Occupant for a judgement or injunction against the Owner, Member, Occupant or such other Person requiring the defaulting Owner, Member, Occupant or other Person to comply with the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Development Standards, and granting other appropriate relief, including money damages.

15.4. Effect of Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot, but except as herein specifically provided, each and all of said covenants, conditions, restrictions, reservations and servitudes shall be binding upon the effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

15.5. Limitation on the Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Declarant (including without limitation any assignee of the interest of the Declarant hereunder) nor any member or manager of the Declarant, if any, (or in any such assignee) shall have any personal liability to the Association, or any Owner, Member or other Person, nor any other liability except as to Declarant's interest in the property, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration, the Articles, Bylaws, Association Rules or Development Standards. No execution or other action shall be sought or brought against any other assets, nor be a lien upon such other assets, of the Declarant, or any shareholder, member, officer or director (or spouses thereof). The Association shall indemnify and hold Declarant, its members, managers, shareholders, officers, directors and their spouses harmless from any claim, obligation, or liability arising out of the Association's failure to fulfill any contractual, regulatory, or legal obligation or duty.

16. AMENDMENT.



16.1. Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Amendments may be adopted at a meeting of the Members upon the approval of two-thirds vote of all the members (including the Declarant) or without any meeting if all Members have been duly notified and if a two-thirds vote of all of the Members (including the Declarant) consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President, and shall be attested by the secretary of the Association, who shall state that the amendment was properly adopted, shall be acknowledged by them before a notary public as officers of the Association, and shall be promptly recorded with the County Recorder for the County. Amendments, once properly adopted, shall be effective upon recording of the Amendment to Declaration.

16.2. Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions, liens, assessments, easements, privileges and rights contained herein which may be affected and any or all clauses of this Declaration of the Plat, unless otherwise specifically provided in the Section being amended or the amendment itself.

16.3. Amendment of Plat. Except as otherwise provided herein, the Plat may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Plat shall be made available for the examination of every Member at the offices of the Association during reasonable times. Such amendment to the Plat shall be effective, once properly adopted, upon recording with the County Recorder for the County in conjunction with the Declaration amendment.

16.4. Required Approvals. Notwithstanding the provisions of the foregoing Sections of this Section 16:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all of the Members and/or all lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by said law.

(b) Until the Transition Date, this Declaration may not be amended by the Members pursuant to Section 16.1 without the written consent of the Declarant. Such written consent may be withheld for any reason.

(c) The following provisions of this Declaration may not be amended without the consent of the Declarant: Sections 14, 15.5, 16.4(c) and 16.5.



16.5. Declarant's Rights to Amend. Notwithstanding any other provision of this Declaration to the contrary, the Declarant reserves the right to amend this Declaration without the approval of the Board or the Members; provided, however, that no such amendment shall have the effect of changing the plat of an Owner's Lot without the consent of the Owner.

17. GENERAL PROVISIONS.

17.1. Notices. Notices provided for in this Declaration, or the Articles, Bylaws or Association Rules, shall be in writing and shall be addressed to the Association at the Address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Owners and Members at such time. All notices to Owners and Members shall be to their respective Lots or to the last address shown on the records of the Association. Any Owner or Member may designate a different address for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of receipt thereof.

17.2. Captions and Exhibits; Construction. Captions given to various Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth and so as to give effect to the specific intent of the Declarant.

17.3. Severability. If any provision of this Declaration, the Articles, Bylaws, Association Rules or Development Standards, or any Section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, Association Rules or Development Standards, and of the application of any such provision, Section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, Association Rules or Development Standards shall be construed as if such invalid part were never included therein.

17.4. Rules Against Perpetuities. If any of the privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 21 years after the death of the survivor of the now living descendants of the managing member of the Declarant.

17.5. Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to make separate mortgages for his respective Lot. No member shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.



17.6. Power of Attorney. Whenever the Association is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do any act, including but not limited to action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of the Association or by the acceptance of a deed for a Lot or by signing a contract for the purchase of a Lot or by succeeding in any other manner to the Ownership of a Lot, or any interest therein, or a membership in the Association, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

18. RIGHTS AND OBLIGATIONS.

Each grantee of the Declarant, by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed of conveyance, and each purchaser, under any agreement of sale, and each Person acquiring a membership in the Association, and each Person acquiring any other interest in the Property, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all covenants, conditions, restrictions, liens, assessments, easements, privileges and rights herein contained; and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time interest or estate in said land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.



IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed as of the date first above written.

West Village Estates, L.L.C., an Arizona limited liability company

By Floyd Wayne Thompson
Floyd Wayne Thompson, its Managing Member

STATE OF ARIZONA

ss.

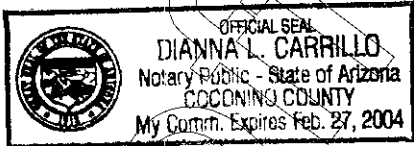
County of Coconino

On this 12 day of March, 2001, before me, the undersigned officer, personally appeared F. Wayne Thompson, known to me (or proved to me on the basis of satisfactory evidence) to be the person described and whose name is subscribed to the foregoing instrument, who acknowledged before me that he is the Managing Member of West Village Estates, L.L.C., an Arizona limited liability company, and that he, in such capacity, being authorized so to do, executed the foregoing instrument, for the purposes therein stated, on behalf of the company, and that the instrument is the act of the company for the purposes therein stated.

IN WITNESS THEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

Notary Seal:



CC&R 02-20-01



EXHIBIT A

LEGAL DESCRIPTION

Lots 1 through 161, inclusive, and Tracts A, C, D, E and F, WEST VILLAGE ESTATES, according to Case 8, Maps 43-43C, inclusive, records of Coconino County, Arizona;

EXCEPT the entire mineral estate, as reserved in Deed recorded in Docket 977, page 240, records of Coconino County, Arizona.

(those lots and tracts lying within the North half of the Northeast quarter of Section 20);

EXCEPT all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in Patent from United States of America.

(those lots and tracts lying within the South half of the Northeast quarter of Section 20)

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