

**FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND
RESTRICTIONS OF
VISTA DEL CERRO ESTATES**

THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS OF VISTA DEL CERRO ESTATES (hereinafter referred to in these preambles as the “First Amended and Restated Declaration”) is made this 15th day of November, 2007 by the Vista Del Cerro Lot Owners Association, Inc., an Arizona non-profit corporation (the “Association”).

WITNESSETH

WHEREAS, that certain Declaration of Covenants, Conditions, Reservations and Restrictions of Vista Del Cerro Estates was recorded at Book 1711, Page 378, Official Records of Yavapai County, Arizona (the “Declaration”); and

WHEREAS, the Declaration was amended by the Amendment to Declaration of Covenants, Conditions, Reservations and Restrictions of Vista Del Cerro Estates which was recorded at Book 1952, Page 539, Official Records of Yavapai County, Arizona (the “First Amendment”), and

WHEREAS, the Declaration was further amended by the Annexation to and Amendment to Declaration of Covenants, Conditions, Reservations and Restrictions of Vista Del Cerro Estates and Consent to Annexation which was recorded at Book 2068, Page 252, Official Records of Yavapai County, Arizona (the “Second Amendment”), and

WHEREAS, the Declaration was further amended by the Amendment to Declaration and Annexation of Property which was recorded at Book 2182, Page 619, Official Records of Yavapai County, Arizona (the “Third Amendment”), and

WHEREAS, pursuant to the Declaration as amended by the First Amendment, the Second Amendment and the Third Amendment, the Declaration may be amended by the assent of at least two-thirds (2/3) of the members; and

WHEREAS, the members that are the holders of in excess of two-thirds of the votes of the Association have voted to approve and adopt the First Amended and Restated Declaration as set forth hereinafter, and

NOW, THEREFORE, the Declaration is hereby amended and restated in its entirety, and the provisions of this First Amended and Restated Declaration are hereby adopted and declared as the Covenants, Conditions, Reservations and Restrictions of Vista Del Cerro Estates:

ARTICLE I

DEFINITIONS

Section 1.1. "Annual Assessment" means the Assessments levied against each Lot, and the Owner thereof, pursuant to Section 5.2 of this Declaration.

Section 1.2. "Architectural Committee" shall mean the committee, which may be created pursuant to Article VI hereof. If no such committee is created, "Architectural Committee" shall mean and refer to the Board of Directors of the Vista del Cerro Lot Owners Association.

Section 1.3. "Architectural Committee Rules" shall mean the rules adopted and amended from time to time by the Board of Directors for the Architectural Committee.

Section 1.4. "Articles" shall mean the Articles of Incorporation of the Association, which are filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 1.5. "Areas of Association Responsibility" means (i) all Common Area, including the Improvements and landscaping situated thereon, (ii) any portion of a Lot or the Improvements or easements situated on a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration, the Plat or the terms of another recorded document executed by the Association, and (iii) all real property, and the improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona, Yavapai County or the City of Prescott has not accepted responsibility for the maintenance.

Section 1.6. "Assessment" means an Annual Assessment, Special Assessment or Lot Specific Assessment.

Section 1.7. "Association" shall mean and refer to the Vista Del Cerro Lot Owners Association, Inc. as described in Article II hereof.

Section 1.8. "Association Lien" means the lien created and imposed by Section 5.4 of this Declaration.

Section 1.9. "Association Rules" means the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 2.5 of this Declaration, as they may from time to time be amended.

Section 1.10. "Board" shall mean the Board of Directors of the Association.

Section 1.11. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.12. "Common Area" means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. "Common Area" shall not include any real property, improvements or personal property acquired

by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action.

Section 1.13. "Declaration" shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as may be amended from time to time.

Section 1.14. "Eligible Mortgage Holder" shall mean a holder of a First Mortgage on a Lot and any improvements thereon who has informed the Association of its name and address and has given the Association a written request for notice of any material matter.

Section 1.15. "Exterior Alteration" means any construction, installation, addition, alteration, repair, change, change of color, landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon.

Section 1.16. "First Mortgage" shall mean a first agreement of sale and/or first deed of trust as well as a first mortgage, and "mortgage" shall mean an agreement of sale and/or a deed of trust as well as a mortgage. "First Mortgagee" shall mean and refer to any party servicing a first mortgage (including the first mortgagee, if applicable), its successors and assigns.

Section 1.17. "Improvement" means any building, fence, wall or other structure or any swimming pool, tennis court, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

Section 1.18. "Lessee" means a third-party lessee, sub lessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein a "third party" is any Person who is not an Owner.

Section 1.19. "Lot" shall mean and refer to (i) each of the lots set forth in the Plat, with the exception of the Common Area, (ii) the property situated in Yavapai County, Arizona, described on Exhibit A hereto and hereafter referred to as Lot A, and (iii) the property situated in Yavapai County, Arizona, described on Exhibit B hereto and hereafter referred to as Lot B.

Section 1.20. "Member" means any Person who is a Member of the Association.

Section 1.21. "Owner" means the record owner, whether one or more Persons, of legal, beneficial or equitable title to the fee simple interest of a Lot. "Owner" shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, *et seq.*, the Trustor shall be deemed to be the "Owner." "Owner" shall also include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. Section 33-741, *et seq.* "Owner" shall not include purchasers under purchase contracts and receipts, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to such executory contracts pending the closing of a sale or purchase transaction.

Section 1.22. "Person" means a natural person, corporation, business trust, estate, trust, living trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

Section 1.23. "Plat" shall collectively mean that plat of Lots 1-36, VISTA DEL CERRO ESTATES, inclusive, according to Book 24 of Maps, Page 94, Records of Yavapai County Recorder and the plat of Lots 37-60 as well as Lot A and Lot B, VISTA DEL CERRO ESTATES II, inclusive, according to Book 27 of Maps, Page 91, Records of Yavapai County Recorder.

Section 1.24. "Project" shall mean and refer to the Properties, all buildings and Improvements located thereon, as subject to and controlled by this Declaration.

Section 1.25. "Project Documents" shall include this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Committee Rules and other documents pertaining to the Project.

Section 1.26. "Property" or "Properties" means the real property described on (i) the Plat as Lots 1-36 and all roads and easements, VISTA DEL CERRO ESTATES, inclusive according to Book 24 of Maps, Page 94, Records of Yavapai County Recorder, (ii) Lots 37-60, Tract A and all roads and easements VISTA DEL CERRO ESTATES II, inclusive, according to Book 27 of Maps, Page 91, Records of Yavapai County Recorder (iii) Lot A as described on Exhibit A attached hereto and incorporated herein by this reference and (iv) Lot B as described on Exhibit B attached hereto and incorporated herein by this reference, together with all Improvements located thereon and such additions thereto as may hereafter be brought within the jurisdiction of the Association and subject to this Declaration.

Section 1.27. "Purchaser" shall mean any Person or other legal entity who voluntarily becomes an Owner of a Lot .

Section 1.28. "Residential Unit" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

Section 1.29. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

Section 1.30. "Special Assessment" means any Assessment levied and assessed pursuant to Section 5.3 of this Declaration.

Section 1.31. "Visible From Neighboring Property" means, with respect to any given object, that the object is or would be visible to a person six feet tall, standing at ground level on any part of the neighboring property or adjacent street.

ARTICLE II

VISTA DEL CERRO LOT OWNERS ASSOCIATION

Section 2.1. The Association. There is hereby created the VISTA DEL CERRO LOT OWNERS ASSOCIATION. The Association shall be a nonprofit Arizona corporation charged

with the duties and invested with the powers prescribed by law and set forth in the Project Documents. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

Section 2.2. Membership. Membership in the Association shall be limited to the Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until he ceases to be an Owner at which time his membership shall automatically cease. There shall be no more than one (1) membership with respect to each Lot. Owners shall be entitled to one (1) membership for each Lot owned.

Section 2.3. Management of Association Affairs. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws, as the same may be amended from time to time.

Section 2.4. Bylaws. From time to time the Association may adopt, amend and repeal Bylaws provided such adoption, amendment or repeal has been approved by a majority of the votes entitled to be cast by the Members present in person or represented by proxy, at a meeting at which a quorum is present duly called for this purpose and the terms of which are not in contravention of this Declaration.

Section 2.5. Rules and Regulations. By a majority vote of the Board of Directors, the Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of the Common Property and any other area within the Properties, except as to the interior of any Residential Unit of any Owner. The Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such mailing or delivery, said Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 2.6. Limitation of Liability of Board Member. No member of the Board, of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the manager, any representative or employees of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

ARTICLE III

USE RESTRICTIONS

Section 3.1. Property Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project and in order to protect and

enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his or its intent that all the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive and enforceable by the Association and all Owners. The Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 3.2. Permitted Uses and Restrictions. The permitted uses, easements and restrictions for the Property except for the Common Area, shall be as follows:

3.2.1. Architectural Control. Unless previously approved in writing by the Architectural Committee as provided for in Article VI, no Improvement shall be erected, placed or permitted to remain on any Lot. Nothing herein shall be deemed to prevent the leasing of a Lot to a Single Family from time to time by the Owner thereof, subject to all of the provisions of this Declaration.

3.2.2 Exterior Colors. All roofs of Improvements must be of materials and colors which blend in with the natural surroundings, such as dark shades of green or brown. No white, grey or aluminum roofing or coating or rolled mineral surface paper shall be permitted unless prior written approval is given by the Architectural Committee. All Improvements must be painted or stained a color compatible with the natural surroundings, unless otherwise approved in writing by the Architectural Committee.

3.2.3. Animals. No animals, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot within the Properties and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. Dogs shall be kept within household structures or approved fences or on secured leashes. Dogs must be kept on leashes when walked in the Property. No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance. The Board in its sole discretion shall determine the existence of an unreasonable amount of noise or a nuisance. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section 3.2.3, a particular animal, or the number of animals on any such Lot is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained in this Declaration.

3.2.4. Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances of Yavapai County and (iii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof for periods of not less than thirty (30) consecutive days and with the consent of the Association shall not be considered a trade or business within the meaning of this Section.

3.2.5. Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere upon Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in or on buildings or other structures approved by the Architectural Committee. No provisions hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

3.2.6. Temporary Occupancy. No trailer, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time as a Residential Unit on any Lot either temporary or permanent. Temporary buildings or structures used during the construction of a Residential Unit on any Lot shall be removed immediately after the completion of construction.

3.2.7. Motor Vehicles. The Owner or Owners of each Residential Unit shall not be permitted to have or maintain more vehicles than can be stored in the Owner's garage, improved driveway or improved parking area. Garages shall be used only for parking vehicles and storage purposes, shall not be converted for living or recreational activities, and garage doors shall be kept closed except when used for ingress and egress. The term "Motor Vehicle" as used in this Declaration shall include, without limitation, automobiles, pick-up trucks, vans, trucks, recreational vehicles, buses, motor homes, boats, trailers, motorcycles and similar apparatus. All inoperative Motor Vehicles must be kept in owner's garage.

3.2.8. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot within the Properties, and no odors shall be permitted to arise there from, so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or to any Member. No Motor Vehicle shall be operated on the Property, except by a licensed operator. No Motor Vehicle shall be operated on the Property so as to create a loud or annoying noise, which is hereby deemed a nuisance. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot or to any Member. Without limiting the generality of any of the foregoing provisions, no exterior horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot within the Properties. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. No Motor Vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Properties.

3.2.9. Repair of Buildings. No building or structure upon any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

3.2.10. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless erected, placed and maintained exclusively within the approved fenced rear yard of the Lot or otherwise concealed and shall not be Visible From Neighboring Property or streets.

3.2.11. Mineral Exploration. No property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

3.2.12. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, or maintenance of a Residential Unit, appurtenant structures, or other Improvements, and except that which the Association may require for the construction, operation and maintenance of the Properties.

3.2.13. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot, which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.2.14. Restrictions on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board of Directors of the Association. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for

rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.2.15. Restrictions on Leasing. No Owner may lease or sublease his or her Lot to a Lessee for any period whatsoever or modify, alter or extend the term of an existing or previously approved lease or sublease without the prior written consent of the Association. The requirements and guidelines for the approval of leases and subleases shall be set by the Board of Directors of the Association. All Owners of Lots that are leased or subleased, including those that may be leased without the consent of the Association, hereby grant to the Association a power of attorney to enforce against the Lessee the provisions of the Project Documents and to enforce against the Lessee those provisions of such leases or subleases that relate to violations by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors of the Project Documents or the lease agreement (except those provisions that relate to the payment of rent). The power of attorney granted hereby authorizes the Association to take any lawful action to enforce the Project Documents and the lease agreement, including, without limitation, bringing actions at law or in equity and to recover, from the Owner and/or the Lessee against whom any enforcement effort or action is brought, the costs of enforcing the terms of the Project Documents and the lease or sublease with respect to violations thereof by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors. The "costs of enforcing" shall include properly levied fines and penalties, penalty late fees and interest, costs of collection (including legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action), attorneys' fees, court costs, property damage, etc.

3.2.16. Security. The Property has been designed for restricted access including, without limitation, an entry gate. Accordingly, access to the Property shall be restricted to, and subject to, the following:

- (i) Owners and their Lessees, if any.
- (ii) Adult guests age eighteen (18) and over for whom an Owner or an Owner's Lessee gives authorization at the time of the entry of such adult guest.
- (iii) Guests under age eighteen (18) for whom an adult Owner or an Owner's adult Lessee gives authorization at the time of entry.
- (iv) Agents and employees of public utilities for the installation and maintenance of public utility facilities including but not limited to cable, television, gas, sewer, electricity, telephone and water.
- (v) Agents and employees of appropriate governmental authorities for ingress and egress for fire protection, sanitation, law enforcement or any other official governmental service.
- (vi) Owners of pre-existing easements.

In no event shall any guests be admitted except for the express purpose of such guests going immediately and directly to the Lot whose Owner or Lessee has authorized entry onto the Property. Owners shall be liable to any and all damages caused or created by his or her guests and additionally shall be liable for any violation of this Declaration or any Association Rules promulgated hereunder by his or her guests. Any Owner holding a social function shall be responsible for any and all damage caused by those guests admitted pursuant to such Owner's (or an Owner's Lessee's) request. Any such costs incurred shall be paid by such requesting Owner (or Lessee) immediately upon demand by the Association. The collection of such costs shall be enforceable as an Assessment pursuant to this Declaration. The Association shall have the power, at its discretion, to require reasonable security deposits be paid prior to the social function.

3.2.17. Signs. No signs whatsoever (including, but not limited to "For Sale," "For Rent," security and other commercial, political or similar signs) which are Visible From Neighboring property shall be erected or maintained on any Lot or the Common Area within the Properties except:

- (i) Such signs as may be required by legal proceedings;
- (ii) Such signs, the nature, number and location of which have been approved in advance by the Architectural Committee;
- (iii) Such signs of the type authorized by the Architectural Committee or the Association Rules.

3.2.18. Rubbish, Trash and Garbage. Rubbish, trash or garbage containment and collection shall be regulated by the Board through the Association Rules.

3.2.19. Time of Completion. All Lots must be left in their natural state, and nothing may be stored or parked thereon, until construction of the Residential Unit on the Lot is commenced. Once commenced, construction of the Residential Unit must be completed within six (6) months, unless the period is extended in writing by the Architectural Committee. Within thirty (30) days after substantial completion of the Residential Unit, all portions of the Lot which have been disturbed by construction must be restored to their natural condition or landscaped except as permitted in writing by the Architectural Committee.

3.2.20. Landscaping. Landscaping of an informal type compatible with the natural surroundings is encouraged. Any cutting of native trees or shrubs, except at locations of structures or Improvements for which plans have first been approved by the Architectural Committee, shall require prior written approval of the Architectural Committee. .

3.2.21. Exterior Lights. All exterior light fixtures and lights shall be subject to the approval of the Architectural Committee and shall not have an obtrusive appearance or glare visible from neighboring property or street and must comply with Yavapai County Low Light emission restrictions. .

3.2.22. Mailboxes. Mailboxes shall be of the type, color and location approved by the Architectural Committee and installed in accordance with United States Postal Service regulations.

ARTICLE IV

MEMBERSHIP AND VOTING

Section 4.1. Membership. Every Owner shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2. Voting Rights. Each Member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 4.3. Number of Votes Per Lot. The vote for each such Lot must be cast as a unit and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted as said votes shall be deemed void.

Section 4.4. Voting By Mail. Unless the Project Documents require otherwise, when Directors are to be elected or any other matter is submitted to a vote of the Members, such vote may be conducted by mail as provided in the Bylaws or as determined by the Board.

Section 4.5. Suspension of Voting Rights. If an Owner otherwise entitled to vote is delinquent in the payment of Annual or Special Assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Project Documents, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

Section 4.6. Other Rights, Duties and Obligations. Each Member shall have such other rights, duties and obligations, as set forth in the Articles of Incorporation and the Bylaws of the Association, as same may be amended from time to time.

Section 4.7. Assignment of Membership Rights. The Association membership of each Owner of a Lot shall be appurtenant to such Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership to the Owner's Lot, and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under a deed of trust, or such other legal process as is now in effect or as may hereinafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the entire ownership to a Lot shall operate to transfer said membership to the new owner thereof.

ARTICLE V

ASSESSMENTS

Section 5.1. Assessments. The Assessments provided for herein shall be used for the purpose of maintaining, repairing and replacing the Common Areas, ad valorem taxes and governmental Assessments on the Common Areas, insurance, administration of the Association and such other expenses of the Association as are necessary to promote the health, safety and welfare of the Owners of the Lots. Amounts of Assessments and each Owner's share of such Assessments for a Lot, unless expressly stated otherwise, shall be determined in accordance with this Article.

Section 5.2. Annual Assessments. There shall be Annual Assessments due each year in an amount to be determined by the Board of Directors. The Assessments may be increased each year by the Board by an amount not more than ten percent (10%) of the amount assessed each Lot the previous year, unless a greater amount is approved by a majority vote of the voting Member(s), voting in person or by proxy, at a meeting duly called for this purpose. All regular Assessments shall at all times be allocated in equal amounts to all Lots except as otherwise provided in this Declaration.

Section 5.3. Special Assessments. At any time the Board of Directors determines the need for a Special Assessment for maintenance or improvement of the Common Areas or for any other purpose, the Association may levy a Special Assessment, allocated equally to all Lots, provided such Special Assessment has first been approved by a majority vote of the voting Member(s), voting in person or by proxy, at a meeting duly called for this purpose.

Section 5.4. Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties. Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration subject to applicable statutes. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in enforcing the Project Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

5.4.1. Each Owner does hereby waive, to the extent of any lien created pursuant hereto, the benefit of any homestead or exemption laws of the state of Arizona in effect at the

time any such lien is created. No Owner may exempt himself from liability for Assessments or charges of any kind by waiver of the use or enjoyment of the Common Areas. The sale or conveyance of the Lot out of which the Assessment or charge arose shall not relieve the selling or conveying Owner of his personal liability for such Assessment or charge.

5.4.2. Each Owner expressly vests in the Association, or its agent, the right and power to bring all actions against such Owner personally for the collection of such Assessments and charges as a debt under any remedy available at law or equity and/or to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage of real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The Association may elect to make payments on any prior lien, and such payments shall thereupon become the obligations of the Owner to the Association, bearing interest as aforesaid and secured by the lien herein created. The Association or its agent shall have the power to bid on an interest so foreclosed and to acquire and hold, lease, mortgage, sell or convey the same.

Section 5.5. Lot Specific Assessments. Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Project Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

Section 5.6. No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or other area of Association responsibility, or that the Association is not enforcing the Project Documents.

Section 5.7. Transfer, Refinance and Disclosure Fees. Each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association Lien established pursuant to Section 5.4.

Section 5.8. Fines and Penalties. In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other residents of the Owner's Lot or any of the Owner's family, Lessees, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

Section 5.9. Notice of Violation, Appeal and Payment of Fines and Penalties.

5.9.1. The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner, his family, Lessees or guests. A Notice of Violation shall contain, without limitation, (i) a description of the violation, (ii) the approximate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or Lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or lessee can offer any defenses or mitigating circumstances.

5.9.2. A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Residential Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

5.9.3. The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

5.9.4. Any fines or penalty levied pursuant hereto shall be secured by the Association Lien established pursuant to Section 5.4.

Section 5.10. Costs of Enforcement. Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. Subject to applicable statutes the obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 5.4.

Section 5.11. Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association.

5.11.1. Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within fifteen (15) days after the

Assessment, fee, charge, fine or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the Board of Directors may establish a late fee and interest to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty, or any installment thereof, within fifteen (15) days after such payment was due.

5.11.2. As set forth in Section 5.4, subject to applicable statutes, the Association shall have a lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees levied against or charged to such Lot or the Owner thereof. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including late charges, interest, costs of collection, lien recording fees, lien release fees, reasonable attorneys' fees and the costs of preparing the Notice of Lien.

5.11.3. Subject to applicable statutes, the lien created by Section 5.4 shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.

5.11.4. The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

5.11.5. The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right, if any, to the use of the recreational facilities that are part of the Common Area.

5.11.6. The Board may, without notice or demand, enforce the lien established pursuant to Section 5.4.

5.11.7. The Board may, without notice or demand, institute an action at law for a money judgment to recover the amount of the delinquent Assessment together with all fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees.

Section 5.12. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 6.1. Delegation. All rights and power granted to the Board in this Declaration regarding architectural control may, in the discretion of the Board, be delegated to an Architectural Committee. All decisions of the Board or Architectural Committee, if one is established, shall be final, and no Owner or other party shall have recourse against the Board or the Architectural Committee for its refusal to approve any proposed improvement or alteration.

Section 6.2. Membership. The Architectural Committee, if established by the Board of Directors of the Association, shall consist of such regular members and alternate members as may be determined by the Board. No member of the Architectural Committee shall be required to be an architect or to meet any other particular qualifications for membership on the committee. A member of the Architectural Committee need not be, but may be, a member of the Board of Directors or an officer of the Association. The Board of Directors shall have the right to establish such rules and regulations governing the activities and procedures of the Architectural Committee as the Board deems appropriate, including, but not limited to, determining the requirements for a quorum and the required vote for approval or disapproval of any item. The Board shall have the right to appoint and remove all regular and alternate members of the Architectural Committee at any time for any reason, and to fill vacancies on the Architectural Committee however caused. Members of the Architectural Committee shall not be entitled to compensation for their services.

Section 6.3. Approval of Plans. All plans for an Exterior Alteration upon any Lot, and the proposed location thereof upon any Lot shall require the prior approval in writing of the Architectural Committee. Before beginning the construction of any Exterior Alteration upon any Lot, the person or persons desiring to make such Exterior Alteration shall submit to the Architectural Committee plans and specifications for the Exterior Alteration so desired to be erected, constructed, or modified. No Exterior Alteration of any kind, the plans, elevations, and specifications of which have not received the prior written approval of the Architectural Committee, and which does not comply fully with such approved plans and specifications, shall be erected, constructed, placed or maintained upon any Lot. No changes or deviations in or from such plans and specifications as approved shall be made without the prior written consent of the Architectural Committee.

Section 6.4. Approval of Solar Energy and Air Conditioning Equipment Plans. All plans for the external placement of solar energy and air conditioning equipment shall require the prior approval in writing of the Architectural Committee.

Section 6.5. Declared Purpose. The declared purpose of this Article is to assure that the character, design, exterior colors, landscaping, proportions, elevation and siting of each Exterior Alteration on any Lot shall be in harmony with its surroundings and shall not be offensive or aesthetically detrimental to neighboring property. In addition to all other standards, the Architectural Committee may deny any application if it determines in its sole and uncontrolled

discretion that the quality, materials, amount of floor space, cost of construction, or probable fair market value are not in keeping with the majority of residences in the Properties at the time of application.

Section 6.6. Procedures. The Board shall establish a procedure for the preparation, submission and determination of applications for any Exterior Alteration. The Board may, from time to time and in its sole and absolute discretion, adopt, amend and repeal by majority vote or written consent, rules and regulations which shall interpret and implement the declared purpose of this Article VI and set forth the standards and procedures for architectural control review and the guidelines for architectural design, placement of building, landscaping, color schemes, exterior finishes, use of materials, and similar features and items in accordance with this Declaration. The Board, or the Architectural Committee, as the case may be, shall keep and maintain a written record of all actions taken in connection with architectural control.

Section 6.7. Committee Action. Any Owner desiring approval of the Architectural Committee for any Exterior Alteration shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the Exterior Alteration that the Owner desires to make or perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove, in writing, an application for approval within forty-five (45) days after receipt of the application and any supporting information, plans and specifications requested by the Architectural Committee (the application shall not be deemed received until all supporting information, plans and specifications have been received), approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans.

Section 6.8. Limited Effect of Approval. The approval by the Board of Directors of the Association, or the Architectural Committee, as the case may be, of any plans, drawings or specifications, for any work done or proposed, or for any other matter requiring prior to written approval by virtue of this Declaration, shall not be deemed to constitute a waiver of any requirement or restriction imposed by Yavapai County or of any other law, or of any requirement or restriction imposed by this Declaration, or of any right of the Board or Committee to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 6.9. Non-Liability. None of the Association's Board of Directors, nor the Architectural Committee, nor any member, officer or employee thereof shall be liable to the Association, to any Owner or to any other party for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective or deficient, (b) the construction or performance of any work whether or not pursuant to the approved plans, drawings and specifications, (c) the development of any portion of the Property, or (d) any structural defect in any plans or specifications approved by the Committee or in any building or structure erected according to such plans and specifications.

Section 6.10. Diligent Construction. Upon receipt of approval from the Architectural Committee for any Exterior Alteration, the Owner who requested such approval shall proceed to perform,

construct or make the Exterior Alteration approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee. Architectural Review Committee approval period is 180-days. In the event construction of the Exterior Alteration is not completed within the period described by the Architectural Committee, the Owner must apply to the Architectural Committee for an extension of the initial approval period, which approval may be granted or withheld by the Architectural Committee within its sole discretion. The Architectural Committee may charge an additional fee in connection with its review of any such application for an extension.

Section 6.11. Plan Changes. Any change, deletion or addition to the plans and specifications approved by the Architectural Committee, including plans deemed approved as a result of the Architectural Committee's failure to act, must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

Section 6.12. Fee. The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any Exterior Alteration pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

Section 6.13. Governmental Approvals. The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

Section 6.14. Additional Restrictions. The Architectural Committee Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation.

Section 6.15. Construction Deposit. The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay to the Association a deposit in an amount determined by the Architectural Committee to be used by the Association to remove any construction debris from a Lot that is allowed to accumulate in violation of Section 3.2.8 of this Declaration, to pay fines or to repair any damage to the Common Area or other Owners' Lots. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit will be nonrefundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements, the removal of all construction debris from the Lot, and the repair of any damage to the Common Area occasioned by such construction.

ARTICLE VII

MAINTENANCE

Section 7.1. Maintenance by the Association. The Association shall maintain the Common

Areas and any Improvements thereon and the easements the Association is required to maintain pursuant to the Plat (the "Easements") and may, at any time, in the discretion of the Board, without any approval of the Owner being required:

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

7.1.2. Replace injured and diseased trees or other vegetation in the Common Area and Easements, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes.

7.1.3. Place and maintain upon the Common Area and Easements such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

7.1.4. Do all such other and further acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

7.1.5. The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area and Easements.

7.1.6. No Improvement, excavation or work which in any way alters any Common Area or Easement from natural or existing state or landscaping shall be made or done by any person other than the Association or its duly authorized agents.

Section 7.2. Lots. Each Owner shall be responsible for maintaining his or her Lot. Each Owner shall be responsible for maintaining, repairing or replacing any and all buildings, Residential Units, landscaping or other Improvements situated on his or her Lot. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, woodpiles or storage area may be maintained so as to be Visible from Neighboring Property or streets.

Section 7.3. Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such

Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

Section 7.4. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Association Lien.

ARTICLE VIII

INSURANCE

Section 8.1. Scope of Coverage. The Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1. Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Area of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cross liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.2. Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Area of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.3. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4. Directors and officers liability insurance in an amount to be determined by the Board;

8.1.5. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

8.1.6. The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

- (i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;
- (ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;
- (iii) That the coverage afforded by such policy shall not be brought into contribution or pro-ration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;
- (iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;
- (v) Statement of the name of the insured as the Association; and
- (vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

Section 8.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 8.3. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

Section 8.4. Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance

proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

Section 8.5. Repair and Replacement of Damaged or Destroyed Common Area. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE IX

PRIVATE ROADS AND ROAD EASEMENTS

Section 9.1. The Association is the owner of the private roads and road easement of VISTA DEL CERRO ESTATES and Tract A of VISTA DEL CERRO ESTATES II. The Association shall be responsible for paying the ad valorem taxes, Assessments and other levies made upon the private roads and road easements by law.

ARTICLE X

RESERVATION OF EASEMENTS

Section 10.1. Reservation of Easements. There is reserved to the Association an easement under the first ten feet within all the boundaries of any Lot for future utilities including, but not limited to, water, electricity, gas, sewer, telephone, and cable television.

ARTICLE XI

MORTGAGEE RIGHTS

Section 11.1. Mortgagee Rights. Notwithstanding and prevailing over any other provision of the Project Documents, as any of the same may be duly adopted and amended from time to time, the following provisions shall apply to and benefit each holder of a First Mortgage, first beneficiary under a deed of trust, or Seller under an agreement of sale upon a Lot (a "First Mortgagee"):

11.1.1. During the pendency of any proceeding to foreclose a First Mortgage, deed of trust or agreement of sale on a Lot, or equivalent proceedings, including any period of

redemption, the First Mortgagee (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of such Lot upon written notice to the Association, including but not limited to the right to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

11.1.2. The First Mortgagee or any other party acquiring title to a Lot through foreclosure suit, trustee's sale, forfeiture or any equivalent proceeding (including the taking of a deed in lieu of foreclosure) and their successors in interest shall acquire title to such Lot free and clear of any lien pursuant to this Declaration which secures the payment of any Assessment for charges accrued prior to the final conclusion of any such foreclosure suit, trustee's sale, forfeiture or equivalent proceeding (including the expiration date of any period of redemption), except as follows: any such unpaid Assessment against such Lot may be treated as an expense common to all the Lots and as such may be collected by Assessment of the total amount thereof against all the Lots, including the Lot so foreclosed against as a Special Assessment pursuant to Section 5.3 hereof; such Assessments being enforceable as a lien against each Lot in the manner provided for other Assessments authorized in this Declaration.

Section 11.2. No Amendment without Consent. No provision of Section 11.1 hereof shall be amended nor shall any such amendment affect the rights of any First Mortgagee who does not join in the execution thereof.

ARTICLE XII

AMENDMENTS

Section 12.1. Amendments. Amendment of this Declaration shall require the assent of at least two-thirds of the Members. Any amendment approved pursuant to this Section 12.1 shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Yavapai County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

ARTICLE XIII

PRIVATE DEED RESTRICTIONS

Section 13.1. Private Deed Restrictions. Any private deed restrictions entered into and created by the Yavapai Title Company as the Declarant under the Declaration shall be superior to and shall supercede any contravening provisions of this Declaration. Any amendments to any such private deed restrictions shall be pursuant to Article XII, Section 12.1, except for the provision that no such amendment shall be made without the consent of the Owner of any such Lot or parcel affected by such private deed restriction.

ARTICLE XIV

GENERAL PROVISIONS

Section 14.1. Enforcement. The Association or any Owner shall have the right to enforce Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, Assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the non-prevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

Section 14.2. Method of Termination. This Declaration shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes of in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Yavapai County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 14.3. Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

Section 14.4. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 14.5. Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those

which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 14.6. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 14.7. Laws, Ordinances and Regulations.

14.7.1. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

14.7.2. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 14.8. References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, successors and assignees.

Section 14.9. Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 14.10. Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 14.11. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Yavapai County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 14.12. Condemnations of Common Area. If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed to each Lot or retained by the Association as additional operating or capital reserves.

This First Amended and Restated Declaration of Covenants, Conditions, Reservations and Restrictions of Vista Del Cerro Estates shall be effective upon the recordation hereof in the Official Records of Yavapai County, Arizona.

IN WITNESS WHEREOF, Vista Del Cerro Lot Owners Association, Inc., an Arizona nonprofit corporation, has executed this FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS OF VISTA DEL CERRO ESTATES as of the day and year first above written.

Vista Del Cerro Lot Owners Association, Inc., an Arizona non-profit corporation

By: _____
Roy Breitenbach
Its: President

State of Arizona)
) ss.
County of Yavapai)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this ____ day of ____ 2007, by Roy Breitenbach, the President of Vista Del Cerro Lot Owners Association, Inc., an Arizona nonprofit corporation, for and on behalf of the corporation.

Notary Public

My Commission Expires: _____

STATUTORY AGENT’S ATTESTATION

I, _____, being the duly elected Statutory Agent of Vista Del Cerro Lot Owners Association, Inc. hereby attest that the foregoing FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS OF VISTA DEL CERRO ESTATES WAS APPROVED by the members of the Association that are the holders of in excess of two-thirds (2/3rds) of the total votes of the Association.

By: _____
Werner Klein

Statutory Agent of Vista Del Cerro Lot Owners Association, Inc.

State of Arizona)
) ss.
County of Yavapai)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this ____ day of ____ 2007, by Werner Klein, the Statutory Agent of Vista Del Cerro Lot Owners Association, Inc., an Arizona nonprofit corporation, for and on behalf of the corporation.

Notary Public

My Commission Expires: _____

EXHIBIT A
TO THE
FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, RESERVATIONS
AND RESTRICTIONS
OF
VISTA DEL CERRO ESTATES

PARCEL KNOWN AS LOT A

The North 145 feet of the South 390 feet of East 175 feet of the Northeast quarter of the Southwest quarter of Section 19, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian.

EXHIBIT B
TO THE
FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, RESERVATIONS
AND RESTRICTIONS
OF
VISTA DEL CERRO ESTATES

PARCEL KNOWN AS LOT B

The South 145 feet of the North 290 feet of South 390 feet of the East 175 feet of the Northeast quarter of the Southwest quarter of Section 19, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian.