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~~1350 E. Southern Avenue, Suite 2~~
~~Mesa, Arizona 85204~~

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# AMENDED AND RESTATED

# DECLARATION OF COVENANTS,

# CONDITIONS AND RESTRICTIONS

# FOR

# LAKEWOOD VILLAGE

3057087
Page: 1 of 114
SR

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# DECLARATION OF COVENANTS,

# CONDITIONS AND RESTRICTIONS

# FOR

# LAKEWOOD VILLAGE

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**AMENDED AND RESTATED**
**DECLARATION**
**OF**
**COVENANTS, CONDITIONS AND RESTRICTIONS**
**FOR**
**LAKEWOOD VILLAGE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LAKEWOOD VILLAGE is made this _____day of_____ 2000, by LAKEWOOD VILLAGE HOMEOWNER'S ASSOCIATION, an Arizona corporation (the "ASSOCIATION"), acting with the consent and approval of those persons whose signatures are attached hereto, representing not less than seventy-five percent (75%) of the Lot Owners.

**RECITALS**

A Declaration of Covenants, Conditions and Restrictions - Lakewood Village dated August 1, 1979, and recorded August 3, 1979, at Docket 751, pages 267-284, records of Coconino County, Arizona, imposing certain covenants, conditions and restrictions upon the following real property located in the City of Flagstaff, County of Coconino, State of Arizona, and which is more particularly described as follows:

LOTS 1A through 1D inclusive; LOTS 2A through 2E inclusive;
LOTS 3A through 3E inclusive; LOIS 4A through 4E inclusive;
LOTS 5A through 5D inclusive; LOTS 6A through 6E inclusive;
LOTS 7A through 7E inclusive; LOTS 8A through 8E inclusive;
LOTS 9A through 9D inclusive; LOTS 10A through 10F inclusive;
LOTS 11A through 11F inclusive; LOTS 12A through 12F inclusive;
LOTS 13A through 13D inclusive; LOTS 14A through 14C inclusive;
LOTS 15A through 15C inclusive; LOTS 16A through 16D inclusive;
LOTS 17A through 17D inclusive; LOTS 18A through 18F inclusive;
LOTS 19A through 19F inclusive; LOTS 20A through 20E inclusive;
LOTS 21A through 21E inclusive, LAKEWOOD VILLAGE (hereinafter the "Property").

The Declaration of Covenants, Conditions and Restrictions was amended by the Amended Declaration of Covenants, Conditions and Restrictions Lakewood Village dated February 4, 1981, and recorded February 4, 1981, at Docket 822, pages 650-651, records of Coconino County, Arizona. The Declaration of Covenants, Conditions & Restrictions was further amended by the Notice of Amendment to the Covenants, Conditions & Restrictions of Lakewood Village dated June 24, 1987, and recorded June 25, 1987, at Docket 1164, pages 265-266, records of Coconino County, Arizona. The Declaration of Covenants, Conditions and Restrictions for Lakewood Village as

amended by the above-referenced amendments and as amended by this Amended and Restated Declaration, shall be referred to herein as the "Declaration".

A. The Declaration provides that it may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and the same must be recorded.

B. The Association and the referenced Lot Owners desire to amend and restate the Declaration in its entirety for the purpose of (i) incorporating prior amendments and providing for new changes to keep pace with current statutes and case law, (ii) clarifying and affirming that the Association has jurisdiction over all the Lots and Property at Lakewood Village and that the same are to be governed, assessed, operated and managed by the Association in accordance with the terms of this Amended and Restated Declaration (and other community documents), (iii) making those changes necessary to reflect the fact that the developer is no longer affiliated with Lakewood Village, and ( iv) to eliminate any ambiguity or confusion which exists or may be claimed to exist regarding the existing Declaration and any amendments thereto.

NOW, THEREFORE, the Declaration is amended and restated in its entirety to read as follows:

## ARTICLE 1

## DEFINITIONS

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows (defined terms should appear throughout this Declaration with the initial letter of such terms capitalized):

1.1 "Architectural Committee" means the Architectural Committee or Committees established by the Board pursuant to Article 7 of this Declaration. To the extent such Committee does not exist, fails or refuses to act, "Architectural Committee" shall mean the Board.

1.2 "Architectural Guidelines" means the rules, guidelines, standards and procedures adopted by the Architectural Committee (which may be amended from time to time), governing architectural control of the Project.

1.3 "Articles" means the Articles of Incorporation of the Association which have been filed in the Office of the Corporation Commission of the State of Arizona, as such Articles may be amended from time to time, or of any successor thereto.

1.4 "Assessments" means the charges levied and assessed pursuant to Article 5 of this Declaration.

1.5 "Association" or "LV Association" means Lakewood Village Homeowner's Association, an Arizona nonprofit corporation, its successors and assigns.

1.6 "Association Rules" means the rules and regulations which may be adopted by the Association pursuant to Section 3.4 of this Declaration, as such rules may be amended from time to time.

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

1.8 "Bylaws" means the Bylaws of the Association (or of any successor thereto), as such Bylaws may be amended from time to time.

1.9 "City" means the City of Flagstaff, Arizona.

1.10 "Club" means Continental Country Club Estates, a non-profit corporation, its successors and assigns.

1.11 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves deemed appropriate by the Board.

1.12 "Declaration" means this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as it from time to time may be amended.

1.13 "Default Rate of Interest" means ten percent (10%) per annum.

1.14 "Improvement(s)" means each and every physical improvement of any kind whatsoever to any portion of the Property including, but not limited to, any excavation, grading, fill work, residence, building, walkway, driveway, road, parking area, wall, fence, swimming pool, utility installation, drainage facility, stairway, patio, courtyard, pole, sign, or any trees, grass, plants, shrubs or other landscaping, and any and all components of any of the foregoing (including, but not limited to, exterior paint, texture, color and finish scheme) and any and all modifications, alterations of or additions to any of the foregoing.

1.15 "Lot" means a portion of the Project intended for independent ownership and use and designated as a "Lot" on the Plat and any Improvements thereon, including any building, portions of a building, garage, landscaping or other improved or unimproved areas located within the physical Lot boundaries of the Property, except in such areas as are reserved as a matter of public record or as existing under this Declaration in Article 8 regarding Easements.

1.16 "Member" means every Person who qualifies for membership in the Association pursuant to Article 4 of this Declaration.

1.17 "Mortgage" means any duly recorded mortgage or deed of trust encumbering a Lot. A First Mortgage shall refer to a Mortgage which has priority over any other Mortgage encumbering a specific Lot.

1.18 "Mortgagee" means the mortgagee or beneficiary under any Mortgage. A First Mortgagee shall mean the holder of a Mortgage that has priority over any other Mortgage encumbering a Lot.

1.19 "Owner" means one or more Persons who alone or collectively are the record owner of fee simple title to a Lot or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation. The Owner of the fee title and not the lessee of such Lot shall be deemed the Owner, regardless of the term of the lease.

1.20 "Person" means an individual, corporation, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.21 "Plat " means the plat of Lakewood Village, as recorded in the Official Records of Coconino County, Arizona, on August 3, 1979, at Case 3, Map 156-156A, as thereafter amended or supplemented.

1.22 "Project" means the Property.

1.23 "Property" means all the real property located in Coconino County, Arizona, which is described above, together with all Improvements located thereon or to be located thereon, and all easements, rights and appurtenances belonging thereto, together with all other real property and Improvements.

1.24 "Purchaser" means any Person who, by means of a voluntary transfer, becomes the Owner of a Lot.

1.25 "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or not more than two persons not both so related, together with their salaried domestic servants, who maintain a common household.

1.26 "Single Family Residence" shall mean a building, used as a residence for a Single Family.

1.27 "Single Family Residential Use" shall mean the occupation or use of a Single Family Residence in conformity with the higher standards set forth in this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.28 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE 2

## DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

2.1 Description of Project. The Project shall be composed of the Property, together with all Improvements located thereon or to be located thereon, and all easements, rights and appurtenances belonging thereto.

2.2 Name of Project. The Project shall be referred to as Lakewood Village.

## ARTICLE 3

## THE ASSOCIATION

3.1 General Duties and Powers. In addition to the duties and powers provided by law and enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

3.2 General Duties of the Association. The Association, through its Board, shall have the right, but not the duty to:

A. Maintain and otherwise manage the following:

(i) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(ii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration or hereafter agrees to repair or maintain.

B. Pay all taxes and other charges properly assessed to or payable by the Association.

C. Obtain for the benefit of the Owners, snow removal and other services.

D. Establish an Architectural Committee to govern issues set forth in this Declaration as being within the purview of the Architectural Committee, as well as other issues the Board deems suitable for the Architectural Committee.

E. Perform the maintenance obligations, obtain and maintain in force and effect the policies of insurance deemed necessary and prudent by the Board, and perform such other obligations of the Association as set forth in this Declaration.

F. Require the Association's property manager to be bonded and insured.

3.3 General Powers of the Association The Association, through its Board, shall have the power, but not the obligation to:

A. Enforce the provisions of this Declaration, the Articles, Bylaws, Association Rules and Architectural Guidelines by appropriate means and carry out the obligations of the Association hereunder.

B. Employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of residential developments similar to the Project, to perform all or any part of the duties and responsibilities of the Association which may be delegated.

C. Acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Project, the administration of the affairs of the Association or for the benefit of the Members.

D. Borrow money as may be needed in connection with the discharge by the Association of its powers and duties.

E. Provide maintenance of other items to the extent determined desirable by the Board.

F. Act as a liaison between the Association and the Club.

G. Perform such other duties and functions as are necessary or customary in the management of the Association.

3.4 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 Owners and other Persons subject to this Declaration and governing the use and/or occupancy of or any part of the Project. The Association Rules may include the establishment of a system of fines and penalties enforceable as any other Assessment herein or as provided by law, but the lack of any such established system shall not prevent the imposition of fines and penalties, if otherwise permissible by law. The Association Rules shall govern matters in furtherance of the purposes of the Association and shall not be inconsistent with this Declaration, the Articles or Bylaws. The 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 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 to each Owner upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration or the Articles or Bylaws, the provisions of this Declaration, the Articles or Bylaws shall prevail.

3.5 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association 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 attorney 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 any settlement thereof, whether or not he is a director, officer 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, or other person acted, failed to act, or refused to act in good faith and/or acted 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 other rights to which such persons may be entitled at law or otherwise.

3.6 Non-Liability of Officials. To the fullest extent permitted by law, neither the Board or any other committees of the Association, nor any member thereof, or any directors or officers of the Association, shall be liable to any Owner, tenant, 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 Board or such committees or persons reasonably believed to be within the scope of their respective duties.

3.7 Accounting. The Association, at all times and to the extent required by law, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners at reasonable times during regular business hours, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

3.8 Records. The Association shall, upon reasonable written request, during reasonable business hours, and to the extent required by law, make available for inspection by each Owner the books, records and financial statements of the Association, together with current copies of this Declaration and the Articles, Bylaws, Association Rules and Architectural Guidelines.

3.9 Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles, Bylaws, Architectural Guidelines, and Association Rules; provided, however, no such

delegation to a professional management company or otherwise shall relieve the Association of its obligation to perform any such delegated duty.

3.10 Interpretation of Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, the Articles, Bylaws, Architectural Guidelines and Association Rules. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of any such provisions shall be final, conclusive and binding as to all Persons and Property benefitted or bound by this Declaration.

## ARTICLE 4

## MEMBERSHIP IN THE ASSOCIATION

4.1 Membership. Every Owner shall be a Member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, and the Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws, Association Rules and Architectural Guidelines to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights may be regulated or suspended for failure to pay any amount due and owing the Association in a timely manner, violation of any provision of the Declaration, Articles, Bylaws, Architectural Guidelines or Association Rules. Not more than one membership shall exist based upon ownership of a single Lot.

4.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon transfer or conveyance of ownership of a Lot. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. Any recorded transfer or conveyance of ownership of a Lot shall operate to transfer the membership appurtenant to the Lot to the new Owner thereof.

4.3 Voting Rights. An Owner's right to vote shall vest immediately upon taking title to such Owner's Lot. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws, Architectural Guidelines and Association Rules. All Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one Person owns an interest in a Lot required for membership, each such Person shall be a Member and 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. (Likewise, and notwithstanding anything in the community documents to the contrary, no more than one Person with respect to any Lot is eligible to serve on the Board simultaneously with any other co-owner of a Lot.) The vote for each Lot shall be cast as a unit, and fractional votes shall not be allowed. In the event joint Owners are unable to

agree among themselves as to how their vote or votes should be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event that more than one vote is cast for a particular Lot, none of such votes shall be counted and such votes shall be deemed void.

4.4 Corporate or Trust Membership. In the event any Lot is owned by a corporation, partnership, trust, or other association, the corporation, partnership, trust or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the chief executive officer, if any, of such corporation, partnership, trust or association, shall have the power to vote the membership, and if there is no chief executive officer, then the board of directors or general partner of such corporation, partnership, trust or association shall designate who shall have the power to vote the membership.

4.5 Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Declaration, the Articles, Bylaws, Association Rules or Architectural Guidelines for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including late charges, accrued interest and attorney fees, are brought current. In the event any Owner is in default of any non-monetary obligation of this Declaration, the Articles, Bylaws, Association Rules or Architectural Guidelines, and remains in default for more than fifteen (15) days after notice from the Association to cure same, said Member's right to vote shall be suspended until said default is cured.

4.6 Club Membership. The Association is not a Member of the Club and has no obligations with respect to the Club or any Member's interests or rights with respect to the Club, except to the extent otherwise set forth herein. Members rights with respect to the Club, therefore, are governed by the Club's Articles of Incorporation, Bylaws, Rules and restrictive covenants, if any. The Association makes no representation regarding the validity of the Club's documents or Member's obligations with respect to the Club.

## ARTICLE 5

## COVENANT FOR ASSESSMENT

5.1 Creation of the Lien and Personal Obligation. Each Owner of any Lot by acceptance of a deed or other conveyance by which such Owner becomes the Owner of a Lot, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association Annual Assessments and Special Assessments. Such Assessments and/or other fees are to be fixed, established and collected from time to time as provided in this Declaration. Such Assessments and/or other fees, including fines, penalties and collection

expenses, together with interest thereon, late charges, attorney fees, court costs, and other costs of collection thereof, shall be a continuing lien upon the Lot against which each such Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time when such Assessment and/or other fees become due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner.

5.2 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively for (a) the operation and management of the Association, (b) the enforcement of the Architectural Guidelines and related guidelines, and to otherwise enforce the terms, covenants and conditions set forth in this Declaration, the Articles, the Bylaws or Association Rules, (c) payment of Common Expenses in connection with the upkeep, maintenance and improvement of such portions of the Lots and such Improvements located thereon as the Association is obligated or allowed to maintain under the provisions of the Declaration, and/or (d) promotion of the recreation, health, safety and welfare of the Owners and residents of Lots within the Property.

5.3 Annual Assessments.

A. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under this Declaration, the Board, for each fiscal year of the Association, shall assess against each Lot an Annual Assessment.

B. The Annual Assessment levied during any fiscal year shall not exceed the maximum Annual Assessment for such fiscal year, which shall be determined as follows:

(i) Until January 1, 2000 , the maximum Annual Assessment for each lot shall be $810.00, payable annually.

(ii) Commencing January 1, 2000, the Board may, without a vote of the membership of the Association, increase the maximum Annual Assessment during each fiscal year of the Association to the highest amount permitted by law, but in no event in excess of fourteen percent (14%) above the maximum Annual Assessment for the previous year.

(iii). Starting January 1, 2000, the maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to Subsection 5.3.B.(ii) above, only with the approval of a majority of the Members voting in person or by proxy at a meeting duly called for such purpose.

5.4 Special Assessments. In addition to the Annual Assessment, the Association may levy, in any year, a Special Assessment applicable only to that fiscal year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement for which it is responsible, including fixtures and personal property related thereto, the operation and management of the Association, the enforcement of the Architectural

Guidelines and related guidelines and to otherwise enforce the terms, covenants and conditions set forth in this Declaration, the Articles, the Bylaws or Association Rules, and/or for any other lawful Association purpose, provided that any such Special Assessment shall have the approval of a majority of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

5.5 Notice and Quorum Requirements. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.3 or 5.4 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent ( 51% ) of all the votes of Members shall constitute a quorum. If the required quorum is not present, and only with respect to Section 5.4, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be three fourths (3/4) of the quorum required at the previous meeting. No such subsequent meeting shall be held more than sixty (60) days following a preceding meeting.

5.6 Uniform Rate of Assessment. Except as otherwise provided herein, Annual and Special Assessments must be fixed at a uniform rate for all Lots.

5.7 Due Dates of Assessments. The Board requires that the Annual Assessment shall be paid in full on the first day of each fiscal year of the Association. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of the fiscal year, and the Annual Assessment for the current fiscal year shall remain in effect until the thirtieth (30th) day after the Board fixes the Annual Assessment for the upcoming fiscal year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto prior to the commencement of the fiscal year; provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessment as fixed by the Board. Unless otherwise specified by the Board, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Assessment is sent to each Owner, unless the notice provides otherwise; provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessment as fixed by the Board. All other amounts assessed by the Association, including fines, penalties, collection expenses, attorney fees and/or costs, are due and payable within thirty (30) days of assessment, unless the notice provides otherwise.

5.8 Effect of Nonpayment of Assessments. Any Assessment or other charge or fee, or any installment of any Assessment, not paid within thirty (30) days after the Assessment or the installment of the Assessment first became due shall be deemed delinquent. Each Owner shall pay a monthly late charge for each delinquent Assessment, installment of an Assessment or any other charge or fee due the Association, at the rate of Fifteen Dollars ($15.00) or ten percent (10%) of the amount assessed, whichever is greater. The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, late charges and lien fees charged against the Lot or payable by the Owner of the Lot; (iii) all attorney fees, court costs, title report fees, and other costs and fees charged to the Association, and any other fees and costs incurred by the

Association in collecting or attempting to collect Assessments or other amounts due to the Association by the Owner of the Lot; and (iv) any other amounts payable to the Association by the Owner of the Lot, including fines and penalties. The recording of this Declaration constitutes record notice and perfection of the lien of the Association. The Association may, at its option, also record a Notice of Claim of Lien which may set forth (a) the name of the delinquent Owner as shown on the records of the Association, (b) the legal description, street address and number of the Lot against which the claim of lien is made, (c) the amount claimed as of the date of the recording of the notice, including interest, collection costs, late charges, fines, penalties, lien recording fees and attorney fees, and (d) the name and address of the Association. The Association's lien priority shall relate back to the date of recordation of this Declaration and shall have priority over all liens or claims created subsequent, except for tax liens for real property taxes on the Lot and the liens which are specifically described in Section 5.9 of this Declaration.

The Association may present to the defaulting Owner a written demand for payment. Said demand may state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien and may include accruing amounts. The Board may assess a lien fee in such amount as may be set by the Board against the Owner of any Lot against which the Association records a Notice of Claim of Lien. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, interest, lien fees, late charges, attorney fees and all other amounts payable to the Association by the Owner of the Lot against which the Notice of Claim of Lien was recorded have been paid in full, whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, together with interest, late charges, attorney fees and any other sums due the Association, in any manner allowed by law or in equity including, but not limited to (a) bringing an action at law against the Owner personally obligated to pay the delinquent amounts (such action may be brought without waiving any lien securing any such delinquent amounts and the right to later foreclose on the lien, or vice versa) and/or (b) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage or trust deed. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sales.

5.9 Subordination of the Lien to Mortgages. The lien of the Association provided for in this Declaration shall be subordinate to the lien of any valid First Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or the Owner thereof from liability for any Assessments thereafter becoming due or from the lien thereof.

5.10 Exemption of Owner. No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association

under this Declaration, the Articles, Bylaws, Association Rules or Architectural Guidelines by waiver or by the transfer or abandonment of his Lot.

5.11 Certificate of Payment. On written request, the Association shall furnish to a lien-holder, Owner, or person designated by an Owner, a statement setting forth the amount of any unpaid assessment against a Lot. The Association shall furnish the statement within fifteen (15) days after receipt of the request, and the statement is binding on the Association, the Board, and every Owner if the statement is requested by an escrow agency that is licensed pursuant to Arizona Revised Statutes, Title 6, Chapter 7.

5.12 Maintenance of Reserve Fund. Out of the Annual Assessments, the Association may establish and maintain a reserve fund for exterior maintenance and landscaping which the Association is otherwise obligated or allowed to maintain under the provisions of this Declaration, the operation and management of the Association, and the enforcement of the Architectural Guidelines and related guidelines, and the Declaration, Articles, Bylaws or Association Rules.

5.13 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.

5.14 Club Assessments. Unless otherwise required by law, the Association has no obligation with respect to Club assessments of any kind, including the collection or enforcement of Club assessments (regular, special or otherwise). To the extent the Association is deemed to have an obligation with respect to Club assessments pursuant to law, the Association will have the same rights with respect to Club assessments as any assessment addressed in this Declaration, including this Article 5. Notwithstanding anything herein to the contrary, any Club lien for assessments shall be junior to any Association lien.

## ARTICLE 6

## USE RESTRICTIONS

6.1 Scope. Except as otherwise specified, the provisions of this Article shall apply to all of the Project.

6.2 Residential Use. All Lots shall be used, improved and devoted exclusively to residential use. Each residence constructed on the Property may be occupied only by a Single Family.

6.3 No Commercial Use. No part of a Lot shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or any nonresidential purpose, except that an Owner or other resident may conduct a business activity within a residence 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 residence; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve door-to-door or telephone solicitation of Owners or other residents in the Project; and (iv) 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 Owners or residents in the Project, as may be determined from time to time in the sole discretion of the Board. Nothing herein shall be deemed to prevent home libraries, computers, fax machines, or the leasing of a residence to a Single Family from time to time by the Owner thereof, subject to all of the provisions of this Declaration, the Articles, Bylaws, Association Rules and Architectural Guidelines.

6.4 Leases. Any agreement for the leasing or rental of a residence (hereafter in this Section referred to as a "Lease") shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws, Association Rules, Architectural Guidelines and applicable agreements between the Association and any state, local municipal or federal agency. Any Owner who shall Lease his residence shall be responsible for insuring compliance by such Owner's tenant(s) with this Declaration, the Articles, Bylaws, Association Rules and Architectural Guidelines, and shall be jointly and severally responsible for any violation thereof by his tenant (s) and any expenses incurred by the Association, including fines, penalties, attorney fees and costs. No residence shall be leased for transient or hotel purposes, which shall be defined as a lease for any limited period designated in the Association Rules, or any lease whatsoever, if the occupants of the residence are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. No residence shall be leased to more than a Single Family at any time.

6.5 New and Permanent. All construction shall be of new and permanent construction, and no structure shall be moved from any location on or off the Property onto any portion of the Property. Further, all repairs and replacements must utilize new materials.

6.6 Air Conditioners. No air conditioning units, heating units, compressors, evaporative coolers, or similar equipment shall be constructed or installed on the roof of any residence in the Project.

6.7 Solar Panels. To the extent permitted by law, no solar panels shall be installed on any residence or Lot without the prior written approval and authorization of the Architectural Committee. If such approval is granted, the Architectural Committee may specify the size and type of solar panels allowed, and the location where they may be installed, to the extent permitted by law.

6.8 Planting and Landscaping. No deviations shall be made by any Owner in construction, design, plantings or gardening from the original residence and landscaping unless specific written authorization has been obtained by the Owner from the Architectural Committee. Further, no fences, hedges or walls shall be erected or maintained upon the Property, except as originally installed or as approved in writing by the Architectural Committee.

6.9 Outside Speakers and Amplifiers. No radio, stereo or other broadcast units of any kind, and no amplifiers or loudspeakers of any kind shall be placed, allowed or maintained outside, or be directed to the outside of any residence.

6.10 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 any other Lot, except as may be expressly permitted by the Association Rules or the Architectural Guidelines.

6.11 Antennae. No television, radio, or other electronic antennae or satellite dish or device of any type shall hereafter be erected, constructed, placed or permitted to remain on a Lot or elsewhere within the Project, unless and until the same shall have been approved in writing by the Architectural Committee, or unless the same is contained within a building. Notwithstanding the foregoing, the Board or Architectural Committee may adopt reasonable rules to keep current with changing laws, including FCC regulations. Such Rules can address DBS antennas one meter or less in diameter, multipoint distribution service (MDS) antennas one meter or less in diameter and television broadcast antennas, so long as such Rules do not prevent or unreasonably delay installation, maintenance, or use of such antennas, unreasonably increase the cost of installation, maintenance, or use of such antennas, or preclude an acceptable quality signal. Such Rules can, however, require compliance with building and safety codes, manufacturer's instructions on installation, and antenna camouflaging and placement.

6.12 Utility Service. Except as approved in writing by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electronic current or power, including telephone, television, and radio signals, shall be erected, placed, or maintained anywhere in or upon the Lot, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee.

6.13 Out Buildings and Temporary Structures. No out building or structure of a temporary character, trailer, basement of an incomplete building, tent, shack, dog kennel, dog house, tank, detached garage or other out building shall hereafter be constructed, placed, or kept on a Lot.

6.14 Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other Improvement or other obstruction (a) which would interrupt the normal drainage of the

land or (b) within any area designated on the Plat (or other building document) as a drainage easement.

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

6.16 Signs. No sign of any kind which is Visible From Neighboring Property shall be installed or displayed on any Lot without the prior written approval of the Association as to size, color and design, except: (a) such signs as may be required by legal proceedings, or which by law cannot be prohibited; (b) such signs as may be required for traffic control (including, but not limited to, subdivision identification signs); and (c) one "for sale" or "for lease" sign, in front or rear yard, not to exceed seven (7) square feet. Furthermore, no object determined to be unsightly by the Board and which is Visible From Neighboring Property shall be allowed to remain on any Lot following such determination.

6.17 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within each residence.

6.18 Window Covers. Interior curtains, drapes, shutters or blinds may be installed as window covers. No aluminum foil, reflective material, newspaper or other materials not customarily made for use as window covers may be installed or placed upon the inside or outside of any residence or other structure. Exterior awnings, canopies, shutters and similar items may not be installed without prior written approval of the Architectural Committee.

6.19 Vehicles. No horse trailer, camper, bus, mobile home, motor home, trailer, truck (with a capacity in excess of 3/4 tons), inoperable vehicle, unlicensed vehicle, vehicle with expired tags, abandoned vehicle, commercial vehicle, boat or recreational vehicle shall be kept, placed, maintained, stored, constructed, reconstructed or repaired within the Project, unless the same is kept in an enclosed garage.

The provisions of this Section shall not apply to emergency vehicle repairs that are promptly completed within a forty eight (48) hour period and to the extent the same do not disturb surrounding residents, periodic social gatherings, the loading or unloading of household articles, or temporary construction facilities maintained during, and used exclusively in connection with the construction of any Improvement approved by the Architectural Committee. As with any other provision in this Article, the Board may adopt rules for the regulation of admission and parking of vehicles within the Project, including the assessment of fines against Owners who violate or whose invitees violate such rules. Any charges so assessed shall be against the applicable Owner. 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.

6.20 Animals. No animals, including horses or other domestic farm animals, fowl, or poisonous reptiles of any kind, may be kept, bred or maintained within the Project. Generally recognized household pets are allowed in accordance with the Association Rules. No animals shall be kept, bred or raised within the Project for commercial purposes. In no event shall any domestic pet be allowed to run freely outside its Owner's residence or enclosed backyard without a leash and under human control or so as to create a nuisance, regardless of the location of such pets. In addition, Owners are required to immediately clean up pet droppings when the pets are outside of the residence or enclosed backyard. No animals shall be allowed to make noise sufficient to disturb their neighbors or to become a nuisance. No exterior structure for the care, housing or confinement of any animal shall be maintained on any Lot. Upon the written request of any Owner, the Board shall determine whether, for purposes of this Section, a particular animal is a generally recognized household pet, or nuisance. Any decision rendered by the Board shall be binding and enforceable in the same manner as other restrictions contained in this Declaration. No Owner shall feed any non-domesticated animal.

6.21 Garbage, Trash, Recyclables, Debris, and Hazardous Materials. No rubbish, hazardous materials, or debris of any kind shall be placed, stored, or permitted to accumulate upon or adjacent to any Lot or other portion of the Project and no odors shall be permitted to arise therefrom so as to render any such Lot or any portion of the Project unsanitary, unsightly, offensive or detrimental to any other Lot or other portion of the Project or to its occupants. No garbage or trash shall be placed or kept on any Lot or other portion of the Project except in covered containers of a type, size, and style which are approved by the Architectural Committee. Such containers shall be maintained within the garage, except to make the same available for collection and then only for the time reasonably necessary to effect such collection. The Board shall have the right, in its sole discretion, to require all Owners to place their garbage or trash containers at a specific location for collection service. All rubbish, trash and garbage shall be removed from the Lots or other portion of the Project and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot or other portion of the Project.

6.22 Woodpiles. Firewood must be stored in designated firewood storage areas as originally built into each residence by the builder or some other area within a residence, except as approved in writing by the Board and any adjoining Lot Owners.

6.23 Fires. No open fires or burning shall be permitted on any part of the Property. The foregoing shall not be deemed to preclude the use in customary fashion of one (1) properly assembled and/or constructed outdoor barbecue, grill or fireplace upon each Lot which is in compliance with Association Rules and Architectural Guidelines, unless such use is prevented or restricted by fire protection orders, rules or regulations. All built-in outdoor barbecues, grills or fireplaces must first be approved in writing by the Architectural Committee. All other outdoor barbecues, grills, or fireplaces must be approved by Underwriters Laboratories (or other similarly accepted evaluation entity), and all outdoor barbecues, grills or fireplaces must be maintained in accordance with required warranty and/or manufacturer standards.

In addition to the foregoing, due to the large number of trees in the area of Lakewood Village and the possibility of forest fires from time to time:

A. No Lot Owner shall maintain any flammable materials or otherwise use his Lot in a manner which could create a fire danger to any of said Lots or the Property; and

B. Each Lot Owner shall be bound by all fire protection rules and regulations issued by the Association, any Forest Service, the City, or the Club (but only to the extent the Club can promulgate such rules against the Lots pursuant to law).

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

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

6.26 Encroachments. No tree, shrub, or planting of any kind on any Property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, or pedestrian way.

6.27 Slopes and Trees. Except as removed by or as requested by the Board, no native tree may be removed at any time from the Property without written approval of the Board and the City. Removal of any such tree could result in civil and criminal penalties by the City, in addition to any other rights or penalties available to the Association. Furthermore, in addition to any and all rights and remedies available to the Association in this Declaration, the Board may require that any tree removed without prior written approval of the Board or, as a condition to removal, which has a trunk diameter of three (3) inches or greater to be replaced with a living tree having a trunk diameter of not less than three (3) inches, which tree shall be planted in such place as designated by the Board or Architectural Committee.

6.28 Improvements, Alterations and Architectural Control. Except as otherwise expressly provided in this Declaration, and as more fully set forth in Article 7 hereafter or the Architectural Guidelines which have been or will be adopted, (i) no Improvements (whether temporary or permanent), alterations, repairs, excavation, grading, lighting, landscaping or other work which in any way alters the exterior appearance of any Property within Lakewood Village or Improvements thereon from their natural or improved state existing on the date the original Declaration was recorded or the original residence constructed shall be made or done, and (ii) no building, fence, exterior wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made, without the prior written approval of the Architectural Committee. All subsequent additions to, changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade, lighting or landscaping of any area in Lakewood Village, shall be subject to the prior written approval of the Architectural Committee. No changes or deviations in or from the plans and specifications once approved by the Architectural Committee shall be made without the prior written approval of the Architectural Committee. Once construction of an Improvement has been commenced on the

Property, the Owner shall diligently pursue completion of such Improvement in accordance with the approved plans. All decisions of the Architectural Committee shall be final and no Owner or other Person shall have recourse (other than by any appeal procedure of the Architectural Committee adopted by the Board and, if review is granted by the Board, the Board's decision shall be final, binding and enforceable) against the Architectural Committee or members thereof, or Board, for refusal to approve any such plans and specifications.

6.29 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot or on or about the Project which may cause the insurance to be canceled or the premiums of such insurance to be increased for any Lot or other portion of the Project, or which may obstruct or interfere with the rights of other Owners or residents, or annoy them by unreasonable noises or otherwise detract from the appearance of the Properties, nor will he commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner shall comply with the Association Rules and Architectural Guidelines, the requirements of all health authorities and other governmental authorities having jurisdiction over the Project. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

6.30 Safe Condition. Without limiting any other provision in this Article, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition, and shall repair and correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners and residents of their respective Lots. Each owner shall be responsible for ice and snow removal on all driveways and walkways on his Lot.

6.31 Variances. The Board may, at its sole option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 6 if the Board determines, in its sole discretion:

A. That either (i) enforcement of a particular restriction would create a substantial hardship or burden on an Owner or occupant, or (ii) a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete;

B. That the activity permitted under the variance will not have any substantial adverse effect on the Owners and occupants and is consistent with the high quality of life intended for residents of the Project; and

C. That the Owner requesting the variance secures the written approval of a majority of the Owners of Lots within the Properties, including the Owners of all lots adjoining the Lot in question, and the Owner secures appropriate permits and approvals from all applicable municipalities, agencies and the City.

6.32 Further Subdivision; Timeshares. No Lot shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any Lot shall be conveyed or transferred by an Owner. Neither the ownership, nor occupancy of any Lot shall be in timeshares. No Owner shall transfer, sell, assign or convey any timeshare in his Lot and any such transaction shall be void. Timeshare as used in this Section shall mean the right to occupy a residence or any one of several residences during five (5) or more separated time periods of less than thirty (30) days per

period over a period of at least five (5) years, including renewable options, whether or not coupled with an estate or interest in real property or a specific portion of a residence.

6.33 Enforcement. In addition to any other rights in this Declaration, the Association or its authorized agents may, upon reasonable written notice, 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 this Declaration, the Bylaws, Architectural Guidelines or Association Rules, shall be an Assessment secured by a lien upon such Lot , enforceable in accordance with the provisions of Article 5 hereof. All remedies available at law or equity shall be available in the event of any breach of any provision of this Article by any Owner, tenant or other Person.

## ARTICLE 7

## ARCHITECTURAL COMMITTEE

7.1 Establishment. The Architectural Committee shall consist of a minimum of three (3) members, one of which must be a member of the Board. The members shall be appointed and removed by the Board. The members of the Architectural Committee must be Owners, but need not be architects and do not need to possess any special qualifications. Architectural Committee members shall serve for a term of one (1) year and may be reappointed or re-elected; provided that such members may be removed by the Board at any time during their term of office, with or without cause. Upon removal of a member of the Architectural Committee, the Board shall appoint a replacement member of the Architectural Committee as soon as possible, such that the Architectural Committee consists of the minimum number of members designated in this Section 7.1.

7.2 Meetings. The Architectural Committee shall hold meetings as are reasonably required to address the needs of the Owners. A quorum for such meetings shall consist of a majority of the members, and the affirmative vote of a majority of the members present at any meeting at which a quorum is present shall be necessary for any decision of the Architectural Committee. The Architectural Committee shall keep and maintain a record of all actions taken at its meetings and the Board member representative on the Architectural Committee shall report actions taken by the Architectural Committee at the following regularly scheduled meeting of the Board and keep a copy of all action taken. All records of the Architectural Committee shall be the property of the Association.

7.3 Architectural Guidelines and Committee Procedures. The Board may promulgate written Architectural Guidelines to be followed by the Architectural Committee and the Owners in preparing and submitting plans and specifications and which will be used by the Architectural Committee in reviewing plans and specifications for proposed Improvements or modifications of Improvements, in rendering its decisions and otherwise performing its functions under this

Declaration. Decisions of the Architectural Committee approving plans submitted are not deemed final until ratified in writing by the Board at the next regularly scheduled meeting of the Board or, if the Board fails or refuses to act upon the Architectural Committee's approved plans at any such meeting, the Architectural Committee's approval decision will be deemed ratified by the Board following thirty (30) days thereafter. Subject to a possible appeal to the Board pursuant to Section 6.28, all other decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Guidelines shall have the same force and effect as if they were set forth in and were a part of this Declaration and shall be binding on the Owners and all other persons having any interest in, or making any use of the Property, whether or not actually received thereby. The Architectural Guidelines, as adopted, amended or repealed, shall be available to each Owner upon request. In the event of any conflict between any provision of the Architectural Guidelines and any provision of this Declaration or the Articles or Bylaws, the provisions of this Declaration, the Articles or Bylaws shall prevail. The Architectural Committee may establish reasonable processing fees to defray its costs in considering requests for approvals submitted to it, subject to prior written approval of the Board. The appropriate fee shall be paid at the time the request for approval is submitted.

7.4 Compensation Delegation. Unless authorized by the Board, the members of the Architectural Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Architectural Committee function or duty, subject to prior written approval by the Board. The Architectural Committee may delegate its plan review responsibilities, except final plan approval, to one or more of its members

7.5 Non-Liability. Neither the Association, the Board, any member of the Architectural Committee, nor any agent, employee or other party providing architectural assistance to the Architectural Committee shall be liable in damages to anyone submitting plans to it for approval or to any Owner or other Person by reasons of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans submitted to the Architectural Committee, and each Owner or other Person submitting plans agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Association, the Board members, or the members of the Architectural Committee, or their agents or employees, or parties providing architectural assistance to the Architectural Committee, to recover damages arising out of or in connection their duties hereunder. Approval by the Architectural Committee shall not be deemed to be a representation or warranty that the Owner's plans and specifications (design, construction or otherwise) are free from hazards, such as flooding, natural disaster or adverse soil conditions, or that the same comply with applicable governmental ordinances or regulations, including, but not limited to, re-zoning ordinances and local building codes. It shall be the sole responsibility of the Owner, or other person submitting plans to the Architectural Committee or performing any construction, to comply with all such ordinances, regulations and codes. Each Owner understands that, due to the location and conditions of the Owner's Lot, there may be certain inherent risks including, but not limited to, those related to flooding, soil conditions or natural disaster and agrees for himself, his family,

guests and invitees (the "Releasing Parties") to release the Association, the Board members, the members of the Architectural Committee and their agents, employees and parties providing architectural assistance to the Architectural Committee from any and all liability arising from any damage or injury to the person or property of the Releasing Parties arising out of or in connection with such hazards.

## ARTICLE 8

## EASEMENTS

8.1 Utility/Access Easements. There is hereby created a blanket easement upon, across, over and under the Property and any Lot for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, electricity or a master cable television system. By virtue of this easement, it shall be expressly permissible for the providing utilities to erect and maintain the necessary equipment on the Property and to affix and maintain electrical and/or telephone wires, circuits and conduits, on, above, across and under the roofs and exterior walls of the residences. Notwithstanding anything to the contrary contained herein, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property or any Lot, except as initially programmed and approved by the developer or thereafter approved by the Board. This easement in no way affects any other recorded easements on the Property or any Lot.

8.2 Easement for Encroachments. Each Lot shall be subject to an easement for encroachments created by construction, settling, overhangs, and discrepancies between the Plat and construction, as originally designed or as constructed by the developer or its agents or contractors. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event a building containing an encroachment is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent residence or other building due to construction shall be permitted and that a valid easement for said encroachments and maintenance thereof shall exist. Notwithstanding any provisions in this Section to the contrary, any encroachments permitted by this Section shall not be intentional and shall not exceed one (1) foot.

8.3 Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Owners, and their families, guests, tenants, and invitees for pedestrian traffic over, through and across designated sidewalks, paths, walks and lanes as the same from time to time may exist and which are intended for public use; and for vehicular traffic over, through and across such portions of the Property as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of Lots.

8.4 Association's Right of Entry. During reasonable hours, the Association, any member of the Board or any authorized representative of them, shall have the right to enter upon and inspect any land surrounding any structure on the Property, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules and the Architectural Guidelines are being complied with by each Owner.

8.5 Association's Easement for Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Lots for the purpose of repairing, maintaining and replacing the Property ( including the exterior of a residence) which the Association is otherwise obligated to maintain. Each Owner agrees to allow the Association the use of any exterior water hydrant or exterior electrical outlet as required by the Association to maintain that Lot, with a reasonable charge for such use .

## ARTICLE 9

## MAINTENANCE

9.1 Mandatory Maintenance by Association. The Association shall do the following:

A. Maintain the landscaping and water sprinkler systems (to the extent the same are already installed) in the front and side yards.

B. Repair, replace or refinish the exterior portions of all residences, including painting and repair of exterior building surfaces, but excluding rear yards, glass surfaces, window screens, fixtures, decks, railings, roofs, garage doors, driveways, walkways, additions or modifications made by an Owner, and all water, sewer and other utility lines servicing the residence.

9.2 Discretionary Maintenance by Association. The Association may, without any approval by the owners, do any of the following:

A. Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any Property (to the extent such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

B. Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent the Board deems necessary for the conservation of water and soil, for aesthetic purposes and/or to maintain the landscaping in the front and side yards of Lots;

C. Place and maintain upon any area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

D. 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 purpose specified in this Declaration; and

E. All exterior maintenance upon Lots shall comply in all respects with the Declaration, Articles, Bylaws, Association Rules and Architectural Guidelines, and any Owner shall lose his access to Association exterior maintenance as otherwise allowed by this Declaration should he deviate from the original construction of the residence or landscaped area in any manner whatsoever, except as previously approved in writing by the Architectural Committee.

The Board shall be the sole judge as to the appropriate maintenance of the Property.

9.3 Maintenance of Lots by Owners. Except with respect to those portions of the Lots which are maintained by the Association, each Owner of a Lot shall be solely responsible for the maintenance of all other portions of his Lot including, but not limited to rear yards, glass surfaces, window screens, fixtures, decks, railings, roofs, garage doors, driveways, walkways, additions or modifications made by an Owner, and all water, sewer and other utility lines servicing the residence. The Owner of each Lot shall at all times perform his obligations under this Section so that the land and Improvements comprising his Lot shall be in good condition and repair. Such obligations of the Owner shall include keeping all shrubs, trees, grass, plantings and landscaping of every kind properly cultivated, trimmed and free of trash, weeds and other unsightly material.

9.4 Damage or Destruction by Owners. No Owner shall in any way (a) damage or destroy any Property (including the exterior of any residence) or (b) interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner to the Association upon its demand to the extent that the Owner is liable therefor under Arizona law, and such amounts shall be a lien upon the Owner' s Lot, and the Association may enforce collection of any such amounts in the same manner as provided in Article 5 of this Declaration for the collection and enforcement of Assessments.

9.5 Nonperformance by Owners. If any Owner fails to maintain any portion of the Lot and Improvements located thereon which he is obligated to maintain under the provisions of this Declaration, the Articles, Bylaws, Association Rules or Architectural Guidelines, then the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by such Owner upon demand from the Association, and such amounts shall be a lien upon the Owner' s Lot and the Association may enforce collection of such amounts in the same manner and to the same extent as provided in Article 5 of this Declaration for the collection and enforcement of Assessments.

9.6 Total or Partial Destruction. If any residence is totally or partially destroyed, the Owner shall rebuild the structure in a timely manner and in strict conformance with the design, elevations, materials and colors as properly existed prior to the damage, and remove the debris from the Project in a timely manner. Unless otherwise approved by the Architectural Committee in writing, reconstruction must commence within three (3) months of the date of the damage, and all reconstruction must be diligently pursued. If the Owner fails to comply with this Section, the Association may undertake the work on the Owner's behalf and charge the Owner therefor. The Association may enforce collection of such amounts in the same manner and to the same extent as provided in Article 5 of this Declaration for the collection and enforcement of Assessments.

9.7 Payment of Utility Charges. Each Lot shall be separately metered for water, sewer, cable television, telephone, gas, and electrical service, and all charges for such service to the Lot shall be the sole obligation and responsibility of the Owner of each Lot.

9.8 Party Walls. The rights and duties of Owners of Lots with respect to Party Walls shall be governed by the following provisions:

A. Each wall which is located between two (2) or more residences or Lots, including fences, shall constitute a "Party Wall", and to the extent not inconsistent with this Declaration, the general rules of law regarding Party Walls shall be applied;

B. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the adjoining Owners of such Party Wall in proportion to the use thereof, without prejudice, however, to the right of any Owner to require a larger contribution from the adjoining Owner under any rule of law regarding liability for negligent or willful acts or omissions;

C. In the event any Party Wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

D. The right of any owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owners and their successors in title;

E. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to, or rebuild a Party Wall shall first obtain the written consent of the adjoining Owner(s);

F. In the event of a dispute between Owners with respect to the repair or the rebuilding of a Party Wall or with respect to sharing of the cost thereof, then, upon written request of both of such Owners addressed to the Board, the matter shall be submitted for

arbitration by the Board under such rules as made from time to time to be adopted by the Board. The decision of the Board shall be final and conclusive;

G. The provisions of this Section shall be binding upon the heirs and assigns of any Owners; and

H. In the event any Party Wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the Party Wall shall and does exist in favor of the Owners of the Lots which share such Party Wall, unless the encroachment was intentional.

## ARTICLE 10

## INSURANCE

10.1 Scope of Coverage. The Association shall make a good faith effort to obtain and maintain, to the extent reasonably available and deemed necessary by the Board, the following insurance coverage:

A. Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board. 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 all portions of the Project which the Association is obligated to maintain under this Declaration, and may also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

B. Workmen's compensation insurance to the extent required by the laws of the State of Arizona;

C. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association and/or the Owners; and

D. 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 households; (ii) that no act or omission of 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 proration with any insurance which may be purchased by the Owners or their Mortgagees; (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; (vi) for policies of hazard insurance, a standard mortgage



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clause providing that the insurance carrier shall notify the First Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy; and (vii) Agreed Amount and Inflation Guard endorsements.

10.2 Insurance on Lots. The Association shall not be obligated to obtain property insurance, liability insurance, flood insurance or any other type of insurance covering the individual Lots, the residences or any other Improvements located thereon. The procurement and maintenance of insurance on each Lot, including all Improvements on such Lot, shall be the sole obligation of the Owner thereof. Each Owner shall also be responsible for obtaining all liability insurance, personal property insurance and any other type of insurance to the extent desired by such Owner.

Notwithstanding anything herein to the contrary, each Owner shall be obligated to secure and keep in full force and effect a blanket policy of fire and casualty insurance.

10.3 Payment of Premiums. Unless determined otherwise by the Board with respect to the property manager, the premiums for any insurance obtained by the Association pursuant to Section 10.1 of this Article shall be included in the budget of the Association and shall be paid by the Association.

10.4 Payment of Insurance Proceeds. With respect to any loss covered by insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall by payable to the Association.

10.5 Annual Insurance Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage. If the Board determines that increased coverage or additional insurance is appropriate, it may obtain the same.

## ARTICLE 11

## GENERAL PROVISIONS

11.1 Enforcement. The Association, the Club or any Owner shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration, the Articles, Bylaws, Association Rules and Architectural Guidelines, or any amendments thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations by injunction or otherwise, and the right to recover the damages, fines, penalties, attorney fees, costs and other charges incurred as a result of such violations or arising from the enforcement thereof. With respect to Association liens, however, the Association shall have the exclusive right to enforcement thereof.

Notwithstanding and in addition to the foregoing rights, in the event of any violation or breach of, or default under the provisions of this Declaration regarding fire restrictions or any other hazard or danger to any other Owners of Lots or the Property, the Association or the Club shall have the right to go upon such Lot without notice and take such action as may be necessary to alleviate to such dangerous or hazardous conditions, and any expenses thereby incurred by the Association shall be collectible and enforceable as any other assessment identified in this Declaration, including being secured by a lien upon such Lot. Further, with respect to any other violation, breach or default of this Declaration, the Articles, Bylaws, Association Rules or Architectural Guidelines, the Association shall have the right upon ten (10) days notice in writing to the defaulting Owner (unless an emergency situation exists, in which event the 10-day notice period is waived) to go upon such Lot and take such action as may be necessary to correct such violation, breach or default, including, without limitation, removal of any unauthorized Improvements or fixtures and unauthorized restorations, removal of any unauthorized personal property and placing the same in storage at the expense of the defaulting Owner, repainting the exterior of any building which has been painted in an unapproved manner or color, replacement of any trees removed without approval, and cleaning up any unsightly material or debris upon any Lot. Again, any such expenses thereby incurred by the Association shall be collected as any other Assessment herein and shall be secured by a lien upon such Lot.

11.2 No Waiver. Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws, Architectural Guidelines or Association Rules in any certain instance or any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

11.3 Cumulative Remedies. All rights, options and remedies of the Association or the Owners under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association or the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

11.4 Severability. Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

11.5 Violations and Nuisance. Every act or omission whereby any provision of the Declaration is violated in whole or in part, is hereby declared to be nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or any Owner.

11.6 Violation of Law. Any violation of any federal, state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the

Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

11.7 Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

11.8 Attorney Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with this Declaration, the Articles, Bylaws, Architectural Guidelines and/or Association Rules, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorney fees incurred in any such action.

11.9 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any of the Property subject to this Declaration, each Person, 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, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration, and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Project and hereby evidences his interest that all the restrictions, conditions, covenants, 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, prohibitive and enforceable by the various subsequent and future Owners.

11.10 Notices. Any notice to be given under the provisions of this Declaration shall be in writing and may be delivered as follows:

A. Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners;

B. Notice to the Association shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, addressed as follows: LAKEWOOD VILLAGE HOMEOWNER'S ASSOCIATION

c/o_____

_____

Flagstaff, Arizona 86004

or to such other address(es) as the Association may hereafter identify by written notice, without the requirement to amend this Declaration, which address will always be the Association's current property management company.

C. Any of the above notices so deposited in the mail shall be deemed delivered forty-eight (48) hours after such deposit.

11.11 Non-Liability of Officials. To the fullest extent permitted by law, neither the Board, any committees of the Association, nor any member of such Board or committee, shall be liable to any Member or the Association 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, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

11.12 Term. The covenants and restrictions of this Declaration shall run with and bind the Project for a term of ten (10) years from the date this Declaration is recorded. Thereafter they shall be automatically extended for successive periods of ten (10) years each, unless the Owners of at least seventy-five percent (75%) of the Lots provide written and acknowledged consent to terminate this Declaration within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. Any such termination of this Declaration shall be executed by the President and Secretary of the Association, accompanied by the signed and acknowledged consents, and recorded in the official records of Coconino County, Arizona. No such termination of these provisions shall be a bar to any subsequent commitment of the Project to certain covenants, conditions and restrictions acceptable to the then Owners.

11.13 Amendments. Subject to the other provisions of this Declaration, this Declaration may be amended at any time as follows:

A. Any amendments shall require the affirmative written assent or vote of not less than fifty-one percent (51%) of the voting power of the Members; and

B. An amendment or modification that requires the vote and written assent of the Members as herein above provided shall be effective when executed by the President and Secretary of the Association, who shall certify that the amendment or modification has been approved as herein above provided, and recorded in the official records of Coconino County, Arizona.

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

11.15 Section Headings. The marginal or topical headings of the Articles and Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Articles or Sections of this Declaration.

11.16 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incident thereto.

11.17 Statutory Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Guidelines, the provisions of the Declaration shall prevail.

IN WITNESS WHEREOF, the President and Secretary of the Association hereby affirm that the amendment requirements of Article X, Section 4 of the original Declaration have been satisfied and that the signatures attached hereto represent not less than seventy-five percent (75%) of the Lot Owners and that this Amended and Restated Declaration will be effective and binding upon all such Lot Owners upon recordation hereof. Copies of the recorded written approvals of Lot Owners are on file with the Association's managing agent and can also be reviewed at the Coconino County Recorder's Office.

By _____
Its President

By Rhonda Cashman
Its Secretary

STATE OF ARIZONA )
)ss
County of Coconino )

The foregoing instrument was acknowledged before me on the 17 day of July, 2000, by Jurat, the President of the Lakewood Village Homeowner's Association.

Tommie L. Gold
Notary Public

My Commission Expires:
2/19/2004

OFFICIAL SEAL
TOMME L. GOLD
NOTARY PUBLIC - STATE OF ARIZONA
COCONINO COUNTY
My commission expires Feb. 19, 2004.

STATE OF ARIZONA )
)ss
County of Coconino )

The foregoing instrument was acknowledged before me on the 17 day of July, 2000, by Jurat, the Secretary of the Lakewood Village Homeowner's Association.

Tommie L. Gold
Notary Public

My Commission Expires:
2/19/2004

OFFICIAL SEAL
TOMME L. GOLD
NOTARY PUBLIC - STATE OF ARIZONA
COCONINO COUNTY
My commission expires Feb. 19, 2004.