

# DRAFT # 1

WHEN RECORDED RETURN TO:

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR  
MONTANA ESTATES**

# DRAFT # 1

## AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MONTANA ESTATES

### TABLE OF CONTENTS

<b>ARTICLE 1</b>	<b>DEFINITIONS</b>	<b>PAGE</b>
	Section 1.1	Architectural Review Committee or "ARC" 7
	Section 1.2	ARC Rules 7
	Section 1.3	Articles 7
	Section 1.4	Association 7
	Section 1.5	Association Rules 7
	Section 1.6	Board 7
	Section 1.7	Bylaws 7
	Section 1.8	Common Area 7
	Section 1.9	Declaration 7
	Section 1.10	First Mortgage 7
	Section 1.11	First Mortgagee 8
	Section 1.12	Improvement 8
	Section 1.13	Lot 8
	Section 1.14	Member 8
	Section 1.15	Montana Estates 8
	Section 1.16	Owner 8
	Section 1.17	Plat 8
	Section 1.18	Project Documents 8
	Section 1.19	Purchaser 8
	Section 1.20	Single Family 9
	Section 1.21	Single Family Residence 9
	Section 1.22	Single Family Residential Use 9
	Section 1.23	Subsidiary Declaration 9
	Section 1.24	Visible from Neighboring Property 9
<b>ARTICLE 2</b>	<b>THE ASSOCIATION</b>	
	Section 2.1	Rights, Powers and Duties of the Association 9

# DRAFT # 1

Section 2.2	Board of Directors and Officers	9
Section 2.3	Association Rules	9
Section 2.4	Subsidiary Associations	10
Section 2.5	Architectural Committee	10
Section 2.6	Views	10
<b>ARTICLE 3</b>	<b>MEMBERSHIP</b>	
Section 3.1	Identity of Members	11
Section 3.2	Transfer of Membership	11
<b>ARTICLE 4</b>	<b>VOTING RIGHTS</b>	
Section 4.1	Voting Rights of Members	11
Section 4.2	Joint Ownership	11
Section 4.3	Corporate Ownership	12
Section 4.4	Suspension of Voting Rights	12
<b>ARTICLE 5</b>	<b>COVENANT FOR MAINTENANCE ASSESSMENTS</b>	
Section 5.1	Creation of the Lien and Personal Obligation of Assessments	12
Section 5.2	Purpose of the Assessments	12
Section 5.3	Annual Assessments	13
Section 5.4	Special Assessments	13
Section 5.5	Supplemental Assessments	14
Section 5.6	Notice and Quorum of any Action Authorized under Sections 5.3, 5.4, 5.5	14
Section 5.7	Uniform Rate of Assessment	14
Section 5.8	Rules Regarding Billing and Collection Procedures	14
Section 5.9	Effect of Nonpayment of Assessments: Remedies of the Association	15
Section 5.10	Subordination of the Lien to Mortgages	17
Section 5.11	Exemption of Owner	17
Section 5.12	Maintenance of Reserve Fund	17
Section 5.13	No Offsets	17
Section 5.14	Transfer and Disclosure Fees	17
<b>ARTICLE 6</b>	<b>PERMITTED USES AND RESTRICTIONS</b>	
Section 6.1	Scope	17
Section 6.2	Residential Use	18
Section 6.3	Animals	18

# DRAFT # 1

Section 6.4	Antennas	19
Section 6.5	Improvements and Alterations	19
Section 6.6	Temporary Occupancy	20
Section 6.7	Trailers and Motor Vehicles	20
Section 6.8	Nuisances	20
Section 6.9	Repair of Buildings	20
Section 6.10	Trash Containers and Collection	20
Section 6.11	Clothes Drying Facility	21
Section 6.12	Encroachments	21
Section 6.13	Machinery and Equipment	21
Section 6.14	Restriction on Further Subdivision	21
Section 6.15	Signs	21
Section 6.16	Mineral Exploration	22
Section 6.17	Diseases and Insects	22
Section 6.18	Drainage	22
Section 6.19	Leasing Restrictions	23
Section 6.20	Variances	23
<b>ARTICLE 7 EASEMENTS</b>		
Section 7.1	Utility Easement	24
Section 7.2	Easements for Ingress and Egress	24
Section 7.3	Association's Right of Entry	24
<b>ARTICLE 8 PROPERTY RIGHTS</b>		
Section 8.1	Owner's Easement of Enjoyment	24
Section 8.2	Delegation of Use	25
Section 8.3	Limitations	25
<b>ARTICLE 9 MAINTENANCE OF COMMON AREAS</b>		
Section 9.1	Maintenance by Association	26
Section 9.2	Damage or Destruction of Common Areas	26
Section 9.3	Nonperformance by Owners	27
<b>ARTICLE 10 PARTY WALLS</b>		
Section 10.1	Rights and Duties of Adjoining Owners	27
<b>ARTICLE 11 INSURANCE</b>		
Section 11.1	Scope of Coverage	28
Section 11.2	Certificates of Insurance	30
Section 11.3	Payment of Premiums	30

# DRAFT # 1

Section 11.4	Payment of Insurance Proceeds	30
Section 11.5	Insurance Obtained by Owners	30

## **ARTICLE 12 GENERAL PROVISIONS**

Section 12.1	Enforcement	30
Section 12.2	Severability	31
Section 12.3	Amendment	31
Section 12.4	Termination	31
Section 12.5	Violations and Nuisances	31
Section 12.6	Violation of Law	31
Section 12.7	Remedies Cumulative	31
Section 12.8	Deliveries of Notices and Documents	32
Section 12.9	Binding Effect	32
Section 12.10	Management Agreements	32
Section 12.11	Gender	33
Section 12.12	Topic Headings	33
Section 12.13	Survival of Liability	33
Section 12.14	Construction	33
Section 12.15	Joint and Several Liability	33
Section 12.16	Attorney's fees	33

# DRAFT # 1

## **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MONTANA ESTATES**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MONTANA ESTATES (“DECLARATION”) is made on the date hereinafter set forth by the Montana Estates Community Association, Inc., an Arizona non-profit corporation (“ASSOCIATION”).

WITNESSETH

WHEREAS, a Declaration of Covenants, Conditions and Restrictions for Montana Estates was recorded on December 1, 1982 at 1301, page 399, Official Records of the Yavapai County Recorder, and a First Amendment to Declaration of Covenants, Conditions and Restrictions was recorded on October 4, 1983 at book 1574, page 533, Official Records of the Yavapai County Recorder (collectively the “ORIGINAL DECLARATION”), and govern the real property located in Yavapai County, Arizona, which is described on Exhibit A and B attached hereto, and incorporated herein by this reference (“MONTANA ESTATES”);

WHEREAS, the ASSOCIATION, by and through its MEMBERS, wishes to amend and restate the ORIGINAL DECLARATION in its entirety as set forth herein;

NOW THEREFORE, the ASSOCIATION hereby declares that all of MONTANA ESTATES is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this DECLARATION, as amended or modified from time to time. This DECLARATION is declared and agreed to be in furtherance of a general plan for the MONTANA ESTATES improvements and is established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of said real property. All of this DECLARATION with subsequent amendments shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of the ASSOCIATION, all OWNERS and their heirs, successors in interest, and assigns.

# DRAFT # 1

## ARTICLE 1 DEFINITIONS

Section 1.1 "**ARCHITECTURAL REVIEW COMMITTEE**" or "**ARC**" shall mean the committee established pursuant to Section 2.5 of this DECLARATION.

Section 1.2 "**ARC RULES**" shall mean the rules adopted by the ARC, as said rules may be amended from time to time.

Section 1.3 "**ARTICLES**" shall mean the Articles of Incorporation of the ASSOCIATION which are, or shall be, filed in the Office of the Corporation Commission of the State of Arizona, as said ARTICLES may be amended from time to time.

Section 1.4 "**ASSOCIATION**" shall mean Montana Estates Community Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

Section 1.5 "**ASSOCIATION RULES**" shall mean the rules and regulations adopted by the BOARD, as said rules and regulations may be amended from time to time.

Section 1.6 "**BOARD**" shall mean the Board of Directors of the ASSOCIATION.

Section 1.7 "**BYLAWS**" shall mean the Bylaws of the ASSOCIATION, as such Bylaws may be amended from time to time.

Section 1.8 "**COMMON AREA**" shall mean the real property, and all improvements located thereon, described in Exhibit B attached hereto and all other real property, and any improvements located thereon, owned by the ASSOCIATION for the common use and enjoyment of the OWNERS.

Section 1.9 "**DECLARATION**" shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 1.10 "**FIRST MORTGAGE**" shall mean any mortgage or deed of trust on a LOT with first priority over any other mortgage or deed of trust.

Section 1.11 "**FIRST MORTGAGEE**" shall mean the holder of or the beneficiary under any FIRST MORTGAGE.

# DRAFT # 1

Section 1.12 "**IMPROVEMENT**" shall mean buildings, garages, carports, roads, driveways, parking areas, fences, walls, decks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 1.13 "**LOT**" shall mean any parcel of real property designated as a Lot on any recorded plat, subdivision map, or condominium map recorded against all or any part of MONTANA ESTATES COMMUNITY ASSOCIATION. The term "LOT" shall include a condominium unit as defined by the Arizona Condominium Act, Arizona Revised Statutes, Sections 33-1201 et seq.

Section 1.14 "**MEMBER**" shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the ASSOCIATION.

Section 1.15 "**MONTANA ESTATES**" shall mean all real property described in Exhibits A and B attached hereto.

Section 1.16 "**OWNER**" shall mean the record owner, whether one or more persons or entities, of equitable or beneficial title to the fee simple interest (or legal title to the fee simple interest if the same has merged) of a LOT. "OWNER" shall not include the purchaser of a LOT under an executory contract for the sale of real property. "OWNER" shall not include persons or entities who hold an interest in any LOT merely as security for the performance of an obligation. "OWNER" shall not include a lessee or tenant of a LOT. In the case of LOTS the fee simple title to which is vested of record in a trustee under a deed of trust pursuant to Arizona Revised Statutes, Sections 33-801, et seq., the trustor shall be deemed the OWNER.

Section 1.17 "**PLAT**" shall mean any subdivision map or plat, including a condominium map, recorded with the County Recorder of Yavapai County, Arizona, against any and all of the real property within MONTANA ESTATES.

Section 1.18 "**PROJECT DOCUMENTS**" shall mean the DECLARATION, ARTICLES OF INCORPORATION, BYLAWS, ASSOCIATION RULES and REGULATIONS, and the ARCHITECTURAL REVIEW COMMITTEE RULES.

Section 1.19 "**PURCHASER**" shall mean any person, who by means of a voluntary transfer acquires a legal or equitable interest in a LOT other than (a) a leasehold interest (including renewable options) of less than five (5) years, or (b) as security for an obligation.



# DRAFT # 1

Section 1.20 "**SINGLE FAMILY**" shall mean a family of one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, who maintain a common household in a dwelling.

Section 1.21 "**SINGLE FAMILY RESIDENCE**" shall mean a building, house, or condominium unit used as a residence of a SINGLE FAMILY, including any attached garage, carport or similar outbuilding.

Section 1.22 "**SINGLE FAMILY RESIDENTIAL USE**" shall mean the occupation or use of a SINGLE FAMILY RESIDENCE in conformity with this DECLARATION and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 1.23 "**SUBSIDIARY DECLARATION**" shall mean any Declaration of Covenants, Conditions and Restrictions, other than this DECLARATION or any declaration of horizontal property regime or condominium declaration which may be recorded against all or any part of MONTANA ESTATES COMMUNITY ASSOCIATION.

Section 1.24 "**VISIBLE FROM NEIGHBORING PROPERTY**" shall mean, 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 THE ASSOCIATION**

Section 2.1 Rights, Powers and Duties of the Association-The ASSOCIATION shall be an Arizona nonprofit corporation and shall have such rights, powers and duties as set forth in the PROJECT DOCUMENTS, together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the ASSOCIATION as set forth in the PROJECT DOCUMENTS.

Section 2.2 Board of Directors and Officers-The affairs of the ASSOCIATION shall be conducted by a board of directors and such officers and committees as the BOARD may elect to appoint in accordance with the ARTICLES and the BYLAWS.

Section 2.3 Association Rules-The BOARD may, from time to time and subject to the provisions of this DECLARATION, adopt, amend and repeal rules and regulations. The ASSOCIATION RULES AND REGULATIONS may restrict and govern the use of any

# DRAFT # 1

area by the OWNER, by the family of such OWNER, or by the guest, license or lessee of such OWNER; provided, however, that the ASSOCIATION RULES AND REGULATIONS shall not be inconsistent with this DECLARATION, the ARTICLES or BYLAWS. A copy of the ASSOCIATION RULES AND REGULATIONS, as they may from time to time be adopted, amended or repealed, shall be available for inspection by MEMBERS of the ASSOCIATION at reasonable times. Upon adoption, the ASSOCIATION RULES AND REGULATIONS shall have the same force and effect as if they were set forth in and were a part of this DECLARATION.

Section 2.4 Subsidiary Associations-SUBSIDIARY ASSOCIATIONS have been formed within MONTANA ESTATES for the following purposes: (a) owning, maintaining, improving or otherwise dealing with any common areas conveyed to such SUBSIDIARY ASSOCIATION, (b) imposing rules, regulations and standards upon the real property and improvements subject to the powers of such SUBSIDIARY ASSOCIATION, and (c) providing for assessments and collection of money from such owners for the purposes of such SUBSIDIARY ASSOCIATION, and (d) for such other similar purposes as are not in conflict with the provisions of the PROJECT DOCUMENTS. In the event of any conflict between this DECLARATION and any provision of a SUBSIDIARY ASSOCIATION declaration of covenants, conditions and restrictions, this DECLARATION shall in all cases control.

Section 2.5 Architectural Review Committee- The BOARD shall establish an architectural committee consisting of not less than three (3) nor more than five (5) members appointed by the BOARD, with a member of the BOARD as the chair of the committee, to regulate the external design, appearance and use of property within MONTANA ESTATES COMMUNITY ASSOCIATION and to perform such other functions and duties as may be imposed upon it by this DECLARATION, the BYLAWS and the BOARD.

Section 2.6 Views- Although certain Lots in MONTANA ESTATES currently may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any LOT. The ASSOCIATION makes no representation or warranty whatsoever, express or implied, concerning the view which any LOT will have whether as of the date this DECLARATION is recorded or thereafter. Any view which currently exists for a LOT may be impaired or obstructed by further construction within or outside MONTANA ESTATES, including, without limitation, construction by third parties and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind the ASSOCIATION with

# DRAFT # 1

respect to the preservation of any view from any LOT or any view of a LOT from any other property.

## **ARTICLE 3 MEMBERSHIP**

Section 3.1 Identity of MEMBERS-Membership in the ASSOCIATION shall be limited to 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 such time as his ownership ceases for any reason, at which time his membership in the ASSOCIATION shall automatically cease.

Section 3.2 Transfer of Membership-Membership in the ASSOCIATION shall be attached to each LOT and a membership in the ASSOCIATION shall not be transferred, pledged or alienated in any way, except upon the sale of a LOT and then only to such PURCHASER, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the ASSOCIATION. Any transfer of ownership of a LOT shall operate to transfer said membership to the new OWNER thereof.

## **ARTICLE 4 VOTING RIGHTS**

Section 4.1 Voting Rights of Members. The Association shall have members, who shall be all OWNERS of LOTS. Each MEMBER shall be entitled to one (1) vote for each LOT owned.

Section 4.2 Joint Ownership-When more than one person is the OWNER of any LOT, all such persons shall be MEMBERS of the ASSOCIATION. The vote or votes for such LOT shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any LOT. The vote or votes 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 casts a ballot 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 more than one ballot is cast for a particular LOT, none of said votes shall be counted and said votes shall be deemed void.

# DRAFT # 1

Section 4.3 Corporate Ownership-In the event any LOT is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a MEMBER of the ASSOCIATION 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 or association shall have the power to vote the membership, and if there is no chief executive officer, then the BOARD shall designate who shall have the power to vote the membership.

Section 4.4 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 PROJECT DOCUMENTS for a period of thirty (30) days, such OWNER'S right to vote as a MEMBER of the ASSOCIATION shall be automatically suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current. In the event any OWNER is in violation of the PROJECT DOCUMENTS said OWNER'S right to vote as a MEMBER of the ASSOCIATION may be suspended by the BOARD for each infraction of the PROJECT DOCUMENTS, and shall remain suspended until such violation has been cured.

## **ARTICLE 5 COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 5.1 Creation of the Lien and Personal Obligation of Assessments- Each OWNER of any LOT, by becoming the OWNER thereof, is deemed to covenant and agree to pay to the ASSOCIATION: (1) annual assessments, (2) special assessments and (3) supplemental assessments. The annual, special and supplemental assessments, together with interest, costs and all attorney's fees, shall be a continuing lien upon the LOT against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the OWNER of such LOT at the time when the assessment becomes due. The personal obligation for delinquent assessments shall not pass to the OWNER'S successors in title unless expressly assumed by them.

Section 5.2 Purpose of the Assessments-The assessments levied by the ASSOCIATION shall be used exclusively for the upkeep, maintenance, repair and replacement of the COMMON AREA, for promoting the recreation, health, safety and welfare of the OWNERS and occupants of LOTS within MONTANA ESTATES and for any other property ASSOCIATION purpose.

# DRAFT # 1

Section 5.3 Annual Assessments- The BOARD shall fix the amount of the annual assessment against each LOT at least thirty (30) days in advance of each fiscal year. Written notice of the annual assessment shall be sent to every OWNER subject thereto; however, failure to send written notice shall not eliminate an OWNER'S obligation to pay assessments. In the event BOARD fails to fix the amount of the annual assessment for a new fiscal year or fails to notify the OWNERS of such amount, the OWNERS shall pay to the ASSOCIATION the amount of the previous year's annual assessment until receipt of thirty (30) days' written notice of the current fiscal year's annual assessment. Notwithstanding anything contained herein to the contrary, the BOARD shall not increase the annual assessment in any fiscal year by more than twenty percent (20%) over the immediately preceding fiscal year's annual assessment without the approval of the majority of the MEMBERS.

Section 5.4 Special Assessments-In addition to the annual assessments authorized above, the ASSOCIATION may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the COMMON AREA, including fixtures and personal property related thereto or for any other lawful Association purpose; provided that any such special assessment must first be approved by MEMBERS having at least two-thirds (2/3) of the total authorized votes who are voting in person or by absentee ballot at a meeting duly called for such purpose.

Section 5.5 Supplemental Assessments-In the event the BOARD shall determine that its funds budgeted or available in any fiscal year are, or will, become inadequate to meet all expenses of the ASSOCIATION for any reason, including nonpayment of assessments by any OWNER or OWNERS, it shall immediately determine the approximate amount of such inadequacies for such fiscal year and issue a supplemental budget and levy a supplemental assessment against the OWNERS of each LOT for the amount required to pay all such expenses: provided, however, that any such supplemental assessment must first be approved by MEMBERS having at least two-thirds (2/3) of the total authorized votes who are voting in person or by absentee ballot at a meeting duly called for such purpose.

Section 5.6 Notice and Quorum for any Action Authorized Under Section 5.4 and 5.5-Written notice of any meeting called for the purpose of taking any action authorized under Section 5.4 and 5.5 shall be sent to all MEMBERS not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of MEMBERS (in person or by absentee ballot) entitled to cast sixty

# DRAFT # 1

percent (60%) of the total authorized votes of shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 5.7 Uniform Rate of Assessment-Annual, special and supplemental assessments must be fixed at a uniform rate for all LOTS.

Section 5.8 Rules Regarding Billing and Collection Procedures-Annual assessments may be collected on an annual basis or such other basis as may be selected by the BOARD. Special or supplemental assessments may be collected as specified by the BOARD. The BOARD shall have the right to adopt rules and regulations setting forth procedures for the purpose of making assessments and for the billing and collection of the assessments provided that the procedures are not inconsistent with the provisions of this DECLARATION.

Section 5.9 Effect of Nonpayment of Assessments: Remedies of the Association-

(a) Any assessment, or any installment of an assessment, which is not paid within thirty (30) days after it first became due shall be deemed delinquent and shall bear interest from the date of delinquency, at the rate of twelve percent (12%) per annum. In addition, the BOARD may establish a late fee, not to exceed the greater of \$15.00 or ten percent (10%) of the amount of the unpaid assessment, to be charged to any OWNER who has not paid any assessment within thirty (30) days after such payment was due.

(b) Any assessment, or any installment of an assessment, which is delinquent shall become a continuing lien on the LOT against which such assessment was made. Recording of this DECLARATION perfects the ASSOCIATION'S assessment lien. Nevertheless, the ASSOCIATION may record a "Notice of Claim of Lien" which shall set forth (a) the name of the delinquent OWNER, as shown on the records of the ASSOCIATION, (b) the legal description or street address 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, lien recording fees and all attorneys' fees, (d) the name and address of the ASSOCIATION. The ASSOCIATION shall not be obligated to release the assessment lien until all delinquent assessments, interest, lien fees and all attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

# DRAFT # 1

(c) Before recording a Notice of Claim of Lien against any LOT the ASSOCIATION shall make a written demand to the defaulting OWNER for payment of the delinquent assessments together with late charges, interest, collection costs, and attorneys' fees, if any. The demand shall 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. If the delinquency is not paid within ten (10) days after delivery of the demand, the ASSOCIATION may proceed with recording a Notice of Claim of Lien against the LOT of the defaulting OWNER.

(d) The ASSOCIATION'S lien shall have priority over all liens or claims except for tax liens for real property taxes on the LOT, assessments on any LOT in favor of any municipal or other governmental body and the liens which are specifically described in Section 5.10 of this DECLARATION.

(e) The ASSOCIATION shall have the right, at its option, to enforce collection of any delinquent assessments together with late charges, interest, collection costs, attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, the following procedures (and the exercise of one remedy shall not prevent the ASSOCIATION from thereafter exercising any other remedy available): (i) bringing an action at law against the OWNER personally obligated to pay the delinquent assessments and such action may be brought without waiving any lien securing any such delinquent assessments or (ii) bringing an action to foreclose its lien against the LOT in the manner provided by law for the foreclosure of a realty mortgage or deed of trust. The ASSOCIATION shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any and all LOTS purchased at such sale.

Section 5.10 Subordination of the Lien to Mortgages-The lien of the assessments provided for in this DECLARATION shall be subordinate to the lien of any 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 nonjudicial foreclosure 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 from liability for any assessments thereafter becoming due or from the lien thereof.

# DRAFT # 1

Section 5.11 Exemption of Owner-No OWNER of a LOT may exempt himself from liability for assessments or other amounts due under the PROJECT DOCUMENTS by waiver or non-use of any of the COMMON AREA or by the abandonment of his LOT.

Section 5.12 Maintenance of Reserve Fund- Out of the annual assessments, the ASSOCIATION shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of the COMMON AREA.

Section 5.13 No Offsets. All assessments shall be payable in accordance with the provisions of this DECLARATION, and no offsets against such assessments shall be permitted for any reason, including, without limitation, an OWNER'S abandonment of his or her LOT, non-use of the COMMON AREA, or a claim that the ASSOCIATION is not properly exercising its duties and powers as provided in the PROJECT DOCUMENTS.

Section 5.14 Transfer and Disclosure Fees. Each OWNER of a LOT, at the time he or she becomes the OWNER of his or her LOT, shall pay to the ASSOCIATION 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 disclosure fee in such amount as is established from time to time by the BOARD. Fees charged pursuant hereto shall be secured by the Assessment lien established herein.

## **ARTICLE 6 PERMITTED USES AND RESTRICTIONS**

Section 6.1 Scope-Except as otherwise specified, the provisions of this Article shall apply to all property within MONTANA ESTATES.

Section 6.2 Residential Use- Except as otherwise provided herein, all LOTS shall be improved and used only for SINGLE FAMILY RESIDENTIAL USE. No trade or business may be conducted on any LOT, except that an OWNER or other resident of a LOT may conduct a business activity upon the LOT so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the LOT; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the LOT; (iii) the business activity does not involve persons coming onto the LOT or the door-to-door solicitation of OWNERS or other residents in MONTANA ESTATES; and (iv) the business activity is consistent with the residential character of MONTANA ESTATES and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in MONTANA ESTATES, as



# DRAFT # 1

may be determined from time to time in the sole discretion of the BOARD. Furthermore, no advertising or directional signs may be placed upon the LOT or any portion of the COMMON AREAS regarding the business activity. 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 or does generate a profit; or (c) a license is required for such activity. No additional or different uses may be allowed by any SUBSIDIARY DECLARATION.

Section 6.3 Animals-No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no animal is permitted anywhere in MONTANA ESTATES unless such animal is on a leash and accompanied by its owner. No structure for the care, housing or confinement of any animal shall be maintained so as to be VISIBLE FROM NEIGHBORING PROPERTY. Upon the written request of any OWNER, the BOARD shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or nuisance, or whether the number of animals on any such property is reasonable. Any decision by the BOARD shall be enforceable as other restrictions contained herein.

Section 6.4 Antennas- Unless governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors within MONTANA ESTATES, whether attached to a building or structure or otherwise, unless approved by the BOARD. Any device covered by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, shall comply with the applicable antenna installation rules of the ASSOCIATION and shall be mounted, to the extent reasonably possible, so as to not be VISIBLE FROM NEIGHBORING PROPERTY or the street. The devices governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule) as of the date of the recording of this DECLARATION are as follows: (i) Direct Broadcast Satellite ("DBS") antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite; (ii) Multi-point Distribution

# DRAFT # 1

Service ("MDS") antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; (iii) Antennas designed to receive local television broadcast signals ("TVBS"); and (iv) Antennas designed to receive and/or transmit data services, including Internet access. If the FCC expands the types of antennas that fall under the FCC Rule, this Section 6.4 shall encompass those antennas as well.

Section 6.5 Improvements and Alterations- No improvements, alterations, repairs, excavations, landscaping or other work which in any way alters the exterior appearance of any property or the IMPROVEMENTS located thereon from its natural or improved state existing on the date such property was first conveyed in fee to a PURCHASER shall be made or done without the prior written approval of the ARC, except as otherwise expressly provided in this DECLARATION. No building, fence, wall, landscaping, residence or other structure shall be commenced, erected, maintain, improved, altered, made or done without the prior written approval of the ARC. All additions to or changes or alterations in any landscaping, building, fence, wall or other structure, including exterior color scheme, shall be subject to the prior approval of the ARC. No change or deviations in or from such plans or specifications once approved shall be made without the prior written approval of the ARC. Notwithstanding any other provision of this DECLARATION requiring approval of certain matters by the ARC, no approval of the ARC shall be required with respect to any property which is subject to a SUBSIDIARY DECLARATION.

Section 6.6 Temporary Occupancy-No trailer, tent, shack, garage and no temporary buildings or structure of any kind shall be used at any time for a residence on any property either temporary or permanent.

Section 6.7 Trailers and Motor Vehicles-Except with the prior written approval of the ARC, no mobile home, motor home, trailer, truck of any kind which is classified by the manufacturer as exceeding three quarters of a ton, camper, boat, pickup truck with camper shell or permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed, or repaired, upon any property or street (public or private); provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any IMPROVEMENT approved by the ARC. The BOARD has designated certain portions of the COMMON AREA for the parking of recreational vehicles. The BOARD may charge a reasonable fee to OWNERS or other users for the use of such area.

# DRAFT # 1

Section 6.8 Nuisances-No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property.

Section 6.9 Repair of Buildings-No building or structure upon any property shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

Section 6.10 Trash Containers and Collection-No garbage or trash shall be placed or kept on any property except in covered containers of a type, size and style which are approved by the ARCHITECTURAL COMMITTEE. In no event shall such containers be maintained so as to be VISIBLE FROM NEIGHBORING PROPERTY except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. The BOARD shall have the right to require all OWNERS to subscribe to a trash collection service. All rubbish, trash, garbage shall be removed from the property and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any property.

Section 6.11 Clothes Drying Facility-Outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any property.

Section 6.12 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, pedestrian way, or other area from ground level to a height of twelve (12) feet, without the prior written approval of the ARC.

Section 6.13 Machinery and Equipment-No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property which is restricted to residential use except such machinery or equipment as is usual and customary in connection with the use or maintenance of a residence, attached

# DRAFT # 1

structures, or other improvements, and the ASSOCIATION may require for the operation and maintenance of MONTANA ESTATES.

Section 6.14 Restriction of Further Subdivision-No LOT shall be further subdivided or separated into smaller parcels by any OWNER, and no portion less than all or any such LOT, shall be conveyed or transferred by any OWNER without the prior written approval of the BOARD.

Section 6.15 Signs-No signs shall be displayed on any LOT except the following:

(a) a "For Sale" sign no larger than eighteen by twenty-four inches (18" x 24") and a sign rider no larger than six by twenty-four inches (6" x 24"), while the LOT is for sale;

(b) a "For Lease" sign no larger than eighteen by twenty-four inches (18" x 24") and a sign rider no larger than six by twenty-four inches (6" x 24"), while the LOT is for lease;

(c) temporary open house signs displayed as permitted by A.R.S. §33-1808, as amended, and by any successor statute thereto;

(d) cautionary signs regarding children displayed as permitted by A.R.S. §33-1808, as amended, and by any successor statute thereto;

(e) up to seventy-one (71) days before an election and up to three (3) days after an election, political signs as permitted by the City of Prescott and Yavapai County may be placed on the LOT (or, if no such laws exist, the maximum aggregate total dimensions of all political signs placed on a LOT shall not exceed nine (9) square feet);

(f) such signs as may be required by law;

(g) one residential identification sign with a total face area of eighty square inches or less; and

(h) signs approved by the ARC.

Section 6.16 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,

# DRAFT # 1

gravel, earth, or any earth substance of any kind and no derrick or other equipment deigned or intended for any such activity shall be erected, placed, constructed or maintained on any LOT.

Section 6.17 Diseases and Insects-No OWNER or occupant of any LOT shall permit anything or condition to exist upon any property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 6.18 Drainage-No one shall interfere with the established drainage pattern over any LOT or COMMON AREA within MONTANA ESTATES without the prior written approval of the ARCHITECTURAL COMMITTEE. For purposes this section, "established drainage" shall mean the drainage which exists at the time the overall grading of the LOT or COMMON AREA is completed or the drainage which is shown on plans approved by the ARCHITECTURAL COMMITTEE.

Section 6.19 Leasing Restrictions- Any license, lease or rental agreement for a residence and LOT must be in writing and shall be subject to the DECLARATION. All licenses, leases or rental agreements must be for an entire residence and LOT and must be for a minimum term of six (6) months. No subleases are allowed. Before the commencement of each licenses or lease term, the OWNER of the LOT shall provide the BOARD with written notice to the BOARD of the names and contact information of the adult occupants of the LOT, the term of the lease and a description and the license plate numbers of the tenants' vehicles. In addition, if the BOARD creates and/or adopts a "tenant information form", the OWNER shall submit such form to the ASSOCIATION for every licenses or lease. Any agreement for the license or lease of a residence and LOT must be expressly subject to the PROJECT DOCUMENTS, and any other documents governing the ASSOCIATION. The licenses or lease must contain a provision that any violation of the PROJECT DOCUMENTS, or any other documents governing the ASSOCIATION shall be a default under the license or lease and is grounds for eviction.

If an OWNER enters into a license or lease for less than six (6) months, enters into a license or lease that does not comply with this Section, or fails to provide the required forms and/or information to the ASSOCIATION in a timely manner as determined by the BOARD, the ASSOCIATION may impose reasonable monetary penalties as determined by the BOARD, and any other remedies available under the DECLARATION and Arizona law. Any continuing violation or repeated violations of the DECLARATION shall be a default under the license or lease. The OWNER shall remain liable for compliance with the PROJECT DOCUMENTS, and any other documents governing the ASSOCIATION, and shall be responsible for any violations thereof by his or her tenant or the tenant's family and

# DRAFT # 1

guests. All notices shall be sent to the OWNER or the OWNER'S agent if the OWNER has designated such an agent in writing to the ASSOCIATION. Each OWNER shall provide a copy of the PROJECT DOCUMENTS, and any other documents governing the ASSOCIATION to each tenant of the LOT. By becoming a tenant, each tenant agrees to be bound by the PROJECT DOCUMENTS, and any other documents governing the ASSOCIATION and recognizes that any continuing violation or repeated violations of the DECLARATION is grounds for eviction from the LOT. If a tenant commits violations that are grounds for eviction, the ASSOCIATION may provide notice to the OWNER of the tenant's violations, and require that the OWNER evict the tenant for the violations. If the OWNER fails to make a good faith effort to evict the tenant, the ASSOCIATION may impose reasonable monetary penalties against the OWNER as determined by the BOARD, and may exercise any other remedies available under the DECLARATION and Arizona law.

Section 6.20 Variances- The BOARD may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article 6, the ASSOCIATION RULES or the ARC RULES if the BOARD determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an OWNER or lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other OWNERS or lessees and is consistent with the high quality of life intended for residents of MONTANA ESTATES.

## **ARTICLES 7 EASEMENTS**

Section 7.1 Utility Easement-There is hereby created a blanket easement upon, across, over and under the COMMON AREA for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, electricity and cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the COMMON AREA with the reasonable approval of the ASSOCIATION. This easement shall in no way affect any other recorded easements on the COMMON AREA.

Section 7.2 Easements for Ingress and Egress-Easements for ingress and egress are hereby reserved to all OWNERS and occupants of LOTS for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the COMMON AREA, and for vehicular traffic over, through and across

# DRAFT # 1

such portions of the COMMON AREA as from time to time may be paved and intended for such purposes.

Section 7.3 Association's Right of Entry- During reasonable hours, the ASSOCIATION, any member of the ARC, any member of the BOARD, or any authorized representative of them, shall have the right to enter upon and inspect any LOT, excluding the interior of any residence located thereon, for the purpose of making inspections to determine whether the provisions of the PROJECT DOCUMENTS are being complied with by the OWNER of said LOT.

## **ARTICLE 8 PROPERTY RIGHTS**

Section 8.1 Owner's Easement of Enjoyment. Every OWNER shall have a right and easement of enjoyment in and to the COMMON AREA. Said easement shall be appurtenant to and shall pass with the title to every LOT subject to the following provisions:

(a) the right of the ASSOCIATION to adopt reasonable rules and regulations governing the use of the COMMON AREA;

(b) the right of the ASSOCIATION to charge reasonable admission and other fees for the use of any amenity or recreational facility, if any, situated upon the COMMON AREA;

(c) the right of the ASSOCIATION to suspend the voting rights of an OWNER for any period during which any assessment against his LOT remains unpaid, and for a period not to exceed sixty (60) days for any infraction of published ASSOCIATION RULES;

(d) the right of the ASSOCIATION to dedicate or transfer all or any part of the COMMON AREA to any person or entity for such purposes and subject to such conditions as may be agreed to by the MEMBERS; provided, however, that no such dedication or transfer shall be effective unless approved by MEMBERS having at least two-thirds (2/3) of the votes in the ASSOCIATION; and

(e) the right to the ASSOCIATION to grant easements, leases or licenses to any person or entity for use of the COMMON AREA. No such easement, lease or license shall require MEMBER approval.

# DRAFT # 1

Section 8.2 Delegation of Use-Any OWNER may delegate, in accordance with this DECLARATION, his right of enjoyment to the COMMON AREA and facilities to the members of his family, his tenants, his guests or invitees, provided such delegation is for a reasonable number of persons and at reasonable times. An OWNER may not delegate his right to use a recreational vehicle parking space located on COMMON AREA without prior BOARD approval.

Section 8.3 Limitations-An OWNER'S right and easement of enjoyment in and to the COMMON AREA shall not be conveyed, transferred, alienated or encumbered separate and apart from an OWNER'S LOT. Such right and easement of enjoyment in and to the COMMON AREA shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any OWNER'S LOT, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the COMMON AREA.

## **ARTICLE 9 MAINTENANCE OF COMMON AREAS**

Section 9.1 Maintenance by Association-The ASSOCIATION may, at any time, as to any COMMON AREAS conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the BOARD, without any approval of the OWNERS being required:

(a) Reconstruct, repair, replace or refinish any IMPROVEMENT or portion thereof upon any such 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);

(b) Construct, reconstruct, repair, replace or refinish any portion of the COMMON AREA used as a road, street, walk, driveway and parking area;

(c) Replace injured and diseased trees or other vegetation in any such area, 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;

(d) Place and maintain signs as the BOARD may deem appropriate for the proper identification, use and regulation thereof;



# DRAFT # 1

(e) Do all such other and further acts which the BOARD deems necessary to preserve and protect the COMMON AREA and the appearance thereof, in accordance with the general purposes specified in this DECLARATION;

(f) The BOARD shall be the sole judge as to the appropriate maintenance of all COMMON AREA.

Section 9.2 Damage or Destruction of Common Areas- No OWNER shall in any way damage or destroy any COMMON AREA or any area or IMPROVEMENTS maintained by the ASSOCIATION. No OWNER shall 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, or the OWNER'S family, guests, tenants, invitees, agents, or animals shall be paid by said OWNER, upon demand to the ASSOCIATION, and such amounts shall be a lien on any LOTS owned by said OWNER and the ASSOCIATION may enforce collection of any such amounts in the same matter as provided elsewhere in this DECLARATION for the collection and enforcement of assessments.

Section 9.3 Nonperformance by Owners. If any OWNER fails to maintain or repair any portion of his LOT and the IMPROVEMENTS located thereon, 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 the OWNER of the LOT, 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 this DECLARATION for the collection and enforcement of assessments.

## **ARTICLE 10 PARTY WALLS**

Section 10.1 Rights and Duties of Adjoining Owners-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 placed on the dividing line between separate LOTS, including a wall dividing separate townhouses, shall constitute a party wall. With respect to any such wall, each of the adjoining OWNERS shall assume the burden and be entitled to the benefit of the restrictive covenants contained in this DECLARATION, and to the extent not inconsistent with this DECLARATION, the general rules of law regarding party walls shall be applied;

# DRAFT # 1

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the adjoining OWNERS of such wall in proportion to the use thereof, without prejudice, however, to the right of any OWNER to call for 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 such party wall is damaged or destroyed by some cause other than the act of one 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) Notwithstanding any other provision of this Article, an OWNER who, by his negligent or willful act, causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

(e) The right of any OWNER to contribution from any other OWNER under this Article shall be attached to the land and shall pass to such OWNERS and their successors in title;

(f) In addition to meeting the other requirements of this DECLARATION and to 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;

(g) 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 one of such OWNERS addressed to the ASSOCIATION, the matter shall be resolved between the respective OWNERS.

(h) The provisions of this ARTICLE shall be binding upon the heirs and assigns of any OWNERS, but no person shall be liable for any act or omission respecting the party wall except such as took place while he was an OWNER.

# DRAFT # 1

## ARTICLE 11 INSURANCE

11.1 Scope of Coverage. The ASSOCIATION shall maintain, to the extent reasonably available, the following insurance coverage:

11.1.1 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 COMMON AREA and all other portions of MONTANA ESTATES which the ASSOCIATION is obligated to maintain under this DECLARATION, and shall 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 and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the ASSOCIATION is a party;

11.1.2 Property insurance on all COMMON AREA insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the COMMON AREA, 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;

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

11.1.4 Directors and officers liability insurance in an amount to be determined by the BOARD;

11.1.5 Such other insurance as the ASSOCIATION shall determine from time to time to be appropriate to protect the ASSOCIATION or the OWNERS.

11.1.6 The insurance policies purchased by the ASSOCIATION shall, to the extent reasonably available, contain the following provisions:

# DRAFT # 1

(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 proration 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.

11.2 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.

11.3 Payment of Premiums. The premiums for any insurance obtained by the ASSOCIATION pursuant to Section 11.1 of this Declaration shall be included in the budget of the ASSOCIATION and shall be paid by the ASSOCIATION.

11.4 Payment of Insurance Proceeds. With respect to any loss to any COMMON AREA covered by property insurance obtained by the ASSOCIATION in accordance with this Article, the loss shall be adjusted with the ASSOCIATION, and the

# DRAFT # 1

insurance proceeds shall be payable to the ASSOCIATION and not to any mortgagee or beneficiary under a deed of trust.

11.5 Insurance Obtained by Owners. Each OWNER shall be responsible for obtaining property insurance for his own benefit and at his own expense covering his LOT, and all IMPROVEMENTS and personal property located therein and thereon. Each OWNER shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his LOT.

## ARTICLE 12 GENERAL PROVISIONS

Section 12.1 Enforcement-The ASSOCIATION, or any OWNER, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this DECLARATION. Failure by the ASSOCIATION or by any OWNER to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 12.2 Severability-Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 12.3 Amendment-This DECLARATION may be amended at any time by the affirmative vote or written consent, or any combination thereof, of OWNERS of not less than sixty-seven percent (67%) of the LOTS. Any amendment 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.

Section 12.4 Termination- This DECLARATION shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of OWNERS of not less than ninety percent (90%) of the LOTS. 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 of the Association, with their signatures acknowledged. Thereupon this DECLARATION shall have no further force and

# DRAFT # 1

effect, and the ASSOCIATION shall be dissolved pursuant to the terms set forth in its ARTICLES.

Section 12.5 Violations and Nuisance-Every act or omission whereby any provision of this DECLARATION is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the ASSOCIATION.

Section 12.6 Violation of Law-Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use any property within MONTANA ESTATES is hereby declared to be a violation of this DECLARATION and subject to any or all of the enforcement procedures set forth herein.

Section 12.7 Remedies Cumulative-Each remedy provided herein is cumulative and not exclusive.

Section 12.8 Delivery of Notices and Documents- Any written notice or other document relating to or required by this DECLARATION may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association or the ARC at the address of the ASSOCIATION on file with the Arizona Corporation Commission; if to an OWNER, to the address of his LOT or to any other address last furnished by the OWNER. Each OWNER of a LOT shall file the correct mailing address of such OWNER with the ASSOCIATION, and shall promptly notify the ASSOCIATION in writing of any subsequent change of address.

Section 12.9 Binding Effect-By acceptance of a deed or by acquiring any ownership interest in any of the property subject to this DECLARATION, each person 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, 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 MONTANA ESTATES 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

# DRAFT # 1

fully understands and acknowledges that this DECLARATION shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future OWNERS.

Section 12.10 Management Agreements-Any agreement for the professional management of the ASSOCIATION shall not exceed one (1) year. Any such agreement must provide for termination by the either party without cause and without payment of a termination fee upon thirty (30) days or less written notice thereof.

Section 12.11 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.

Section 12.12 Topic Headings-The marginal or topical headings of the sections contained in this DECLARATION are for convenience only and do not define, limit or construe the contents of the sections or this DECLARATION.

Section 12.13 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 thereof.

Section 12.14 Construction-In the event of any discrepancies, inconsistencies or conflicts between the provisions of this DECLARATION and the ARTICLES, BYLAWS, ASSOCIATION RULES or ARC RULES, the provisions of this DECLARATION shall prevail.

Section 12.15 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.

Section 12.16 Attorney's 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 violations or noncompliance with the PROJECT DOCUMENTS, the prevailing party in any such action shall be entitled to recover from the other party all its attorney's fees incurred in any such action.

# DRAFT # 1

IN WITNESS WHEREOF, the President of the ASSOCIATION hereby certifies that the provisions contained with this DECLARATION have been approved by the required percentage of OWNERS.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MONTANA ESTATES COMMUNITY ASSOCIATION, INC.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

President

STATE OF ARIZONA     )  
                                          ) ss.  
County of Yavapai     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

\_\_\_\_\_  
Notary Public



# DRAFT # 1

## EXHIBIT A

### Parcel One

All real property located within the Horizontal Property Regime known as Montana Villas, as recorded in Book 22 of Maps and Plats, Pages 77, 78 and 79, and amended by Amended Map of Montana Villas, as recorded in Book 23 of Maps and Plats, Page 22, Yavapai County Recorder's Office.

### Parcel Two

Lots 8 through 15, inclusive, 92-100, inclusive, and 133 and 134 of Montana Estates, as recorded in Book 22 of Maps and Plats, Page 4, Yavapai County Recorder's Office.

### Parcel Three

Lots 301 through 324, inclusive, Montana Estates Unit III, as recorded in Book 23 of Maps and Plat, Page 15, and amended by Amended Map of Montana Estates Unit III, as recorded in Book 23 of Maps and Plats, Page 23, Yavapai County Recorder's Office.

### Parcel Four

Tract "B", Montana Terrace, P.A.D., as recorded in Book 23 of Maps and Plats, Pages 78-82, Yavapai County Recorder's Office.

### Parcel Five

Lots 201 through 209, inclusive, Montana Terrace P.A.D., as recorded in Book 23 of Maps and Plats, Page 78-82, Yavapai County Recorder's Office.

# DRAFT # 1

## EXHIBIT B

### Parcel One

Tract "A", Montana Terrace, P.A.D., as recorded in Book 23 of Maps and Plats, Pages 78-82, Yavapai County Recorder's Office.

### Parcel Two

Tract "C", Montana Terrace P.A.D., as recorded in Book 23 of Maps and Plats, Pages 78-82, Yavapai County Recorder's Office.