

STATE OF ARIZONA  
DEPARTMENT OF REAL ESTATE

**SUBDIVISION PUBLIC REPORT**

FOR  
**SCHULTZ PASS MEADOWS SUBDIVISION**

Registration No.

DM07-053487

**SUBDIVIDER**

Big Corner, L.L.C.  
10 East Dale Avenue  
Flagstaff, AZ 86001

June 1, 2007

Effective Date

**PROPERTY REPORT DISCLAIMER**

This report is NOT A RECOMMENDATION NOR AN ENDORSEMENT by the State of Arizona of this land but is provided for informational purposes ONLY. The report reflects information provided by the subdivider and obtained by the Department in its review process in accordance with the provisions of Title 32, Chapter 20, Article 4, of the Arizona Revised Statutes, as amended. NOTE that not all of the information in this report has been verified by the Department; certain information has been accepted by the Department as true and accurate based on attestation of the subdivider and/or the subdivider's agents. You should verify all facts before signing any documents. The Department has not passed upon the quality or quantity of any improvement or structure and does not assume responsibility in either event.

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**THE ARIZONA DEPARTMENT OF REAL ESTATE**

**REQUIRES THAT:**

1. You BE GIVEN this public report;
2. YOU SIGN A RECEIPT indicating that you received this report;

**RECOMMENDS:**

1. You DO NOT SIGN ANY AGREEMENT before you have read this report;
2. You see the EXACT PROPERTY you are interested in BEFORE SIGNING any document for lease or purchase.

**ARIZONA LAW STATES:**

1. THE SALE OR LEASE OF SUBDIVIDED LANDS PRIOR TO ISSUANCE OF THIS REPORT OR FAILURE TO DELIVER THIS REPORT TO YOU SHALL RENDER THE SALE OR LEASE RESCINDABLE BY YOU. ACTION TO RESCIND MUST BE BROUGHT WITHIN 3 YEARS FROM DATE OF EXECUTION OF PURCHASE AGREEMENT.
2. CONTRACTS OR AGREEMENTS FOR THE PURCHASE OF AN UNIMPROVED LOT (WITHOUT A BUILDING)\* MAY BE RESCINDED BY YOU WITHOUT CAUSE BY SENDING OR DELIVERING WRITTEN NOTICE OF RESCISSION BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE SIGNING.
3. IF YOU HAVE SIGNED A PURCHASE AGREEMENT FOR THE PURCHASE OF AN UNIMPROVED LOT (WITHOUT A BUILDING)\* PRIOR TO INSPECTING THE LOT, YOU HAVE SIX MONTHS TO INSPECT AND UPON INSPECTION MAY RESCIND THE PURCHASE AGREEMENT.

\*A contract or agreement for purchase of a lot which includes a building or obligates the seller to complete construction of a building within two years from the contract date does not constitute the purchase of an unimproved lot. Therefore, if your purchase includes a lot and a building or a building to be built, you are not entitled to the rescission rights described in paragraphs 2 and 3.

**GENERAL**

**This report includes:** Lots 1 through 22 of the Schultz Pass Meadows subdivision in Flagstaff, Arizona.

**The map of this subdivision** is recorded at Instrument 3418522 records of Coconino County, Arizona.

The subdivision is approximately seven (7) acres in size. It has been divided into 22 lots and three common area tracts. Lot boundaries will be evidenced by staking when road construction is complete.

**YOU ARE ADVISED TO OBTAIN A COPY OF THE RECORDED MAP AND CORRECTION DOCUMENTS, IF ANY, AND NOTE ALL EASEMENTS, RESTRICTIONS AND STATEMENTS CONTAINED THEREIN.**

**SUBDIVISION LOCATION**

**Location:** This subdivision is in the northwest part of the City of Flagstaff at the northeast corner of the intersection of U. S. Highway 180 (aka Fort Valley Road) and Schultz Pass Road.

**SUBDIVISION CHARACTERISTICS**

**Topography:** The area is level.

**Flooding and Drainage:** The area is in a zone "D" federally designated flood zone and, therefore, is not subject to flood insurance requirements. The on-site drainage system will be built by the subdivider and drains into the City system. The on-site drainage system includes a detention basin which will be owned and maintained by the homeowners association.

**Soils:** The area has an approximate 1-3 foot layer of silty sand/clay soil over basalt rock. In some areas there is an additional layer of clay. Any house foundation should be designed by an engineer using on-site soil sampling.

**Adjacent Lands and Vicinity:** Immediately to the east is a single family residential subdivision. Generally to the south is single family residential and a townhouse subdivision also to the south. Immediately to the south, across highway 180, is a presently vacant commercial parcel. Immediately to the west is a planned City work-force housing townhouse project. To the north is developed and undeveloped residential land, with two acre minimum lot sizes outside the city limits.

**Highways:** The subdivision is adjacent to U. S. Highway 180 and there is highway noise throughout the subdivision. The access to the subdivision is from Schultz Pass Road.

**Pipeline Easement:** There is a 60 foot wide underground natural gas pipeline easement across the north portion of the subdivision. No lot is within such easement. The entire easement is on common area owned by the homeowners association. Within the easement is an underground high pressure natural gas pipeline operated by El Paso Natural Gas - telephone (928)-527-0137.

### AIRPORTS

**Military Airport:** None.

**Public Airport:** Flagstaff Pulliam Airport is about eight (8) miles from this project at 6200 South Pulliam Drive, Flagstaff, Arizona.

### UTILITIES

**Electricity:** Is provided by Arizona Public Service. 800-253-9405 – [www.aps.com](http://www.aps.com) - Each home must extend the line from the edge of the lot to the home at a cost of approximately \$1,000.00 for trenching, materials and initiation of service. Service will be installed by the developer, at the developer's expense, to each lot line no later than August 31, 2007.

**Street Lights:** Will be installed by the subdivider no later than August 31, 2007 and thereafter maintained by the City.

**Telephone:** Wired service is available from Qwest – 800-244-1111 – [www.qwest.com](http://www.qwest.com). Each home must extend the line from the edge of the lot to the home at a cost of approximately \$1,000.00 for trenching, materials and initiation of service. Cell phone service is available from several providers. Service will be installed by the developer, at the developer's expense, to each lot line no later than August 31, 2007.

**Natural Gas:** Natural gas is provided by Unisource Energy – 877-837-4968 – [www.uns.com](http://www.uns.com). Each home must extend the line from the edge of the lot to the home at a cost of approximately \$1,000.00 for trenching, materials and initiation of service. Service will be installed by the developer, at the developer's expense, to each lot line no later than August 31, 2007.

**Water:** Is provided by the City of Flagstaff – 928-779-7637 – [www.flagstaff.az.gov](http://www.flagstaff.az.gov). Each home must extend the line from the edge of the lot to the home at a cost of approximately \$1,000.00 for trenching, materials and initiation of service. The City meter installation fee is \$4,984. Service will be installed by the developer, at the developer's expense, to each lot line no later than August 31, 2007.

**Sewage Disposal:** Sanitary sewer service is provided by the City of Flagstaff. Each home must extend the line from the edge of the lot to the home at a cost of approximately \$1,000.00 for trenching, materials and initiation of service. Service will be installed by the developer, at the developer's expense, to each lot line no later than August 31, 2007.

**Cable Television:** Cable television is provided through Cablevision of Flagstaff (NPG Cable) – 928-214-0974 – [www.npgcable.net](http://www.npgcable.net). Each home must extend the line from the edge of the lot to the home at a cost of approximately \$1,000.00 for trenching, materials and initiation of service.

Service will be installed by the developer, at the developer's expense, to each lot line no later than August 31, 2007.

**THE ABOVE COSTS ARE SUBJECT TO CHANGE BY SERVICE PROVIDERS. YOU SHOULD CONTACT THE ABOVE PROVIDERS REGARDING EXTENSION RULES AND REGULATIONS, SERVICE CONNECTIONS AND COSTS INVOLVED.**

### **STREETS, ROADS AND DRAINAGE**

**Access to the Subdivision:** Paved public roads lead to the subdivision.

**Access within the Subdivision:** There is one paved public road within the subdivision which serves all lots. Developer, at its cost, will complete this road by August 31, 2007, and convey it to the City of Flagstaff.

**Flood and Drainage:** The area is in a zone "D" federally designated flood zone and, therefore, is not subject to flood insurance requirements. The on-site drainage system will be built by the subdivider and drains into the City system. The on-site drainage system includes a detention basin which will be owned and maintained by the homeowners association. Developer, at its cost, will have the drainage and detention system within the subdivision completed by August 31, 2007. The City system is complete.

### **COMMON, COMMUNITY AND RECREATIONAL FACILITIES**

**Within the Subdivision:** The homeowners association owns two open space tracts and a tract containing a drainage detention basin. There are no improvements planned for the open spaces. The homeowners association also will own the concrete block wall on the south edge of the subdivision and will have the responsibility to maintain such wall. The expense of such maintenance is expected to be no more than \$25 per lot per year.

**Within the Master Planned Community:** Not applicable.

### **ASSURANCES FOR COMPLETION**

**Assurances for Completion of Subdivision Facilities:** A letter of credit from Stockmen's Bank (National Bank of Arizona) has been provided by the subdivider to the City of Flagstaff to assure the completion of the roads, water lines and sewer lines. Subdivider has contracts with Arizona Public Service and Unisource Energy to provide electric and gas. Subdivider has a letter of assurance of service from Qwest.

**Assurances for Maintenance of Subdivision Facilities:** The subdivision homeowners association has the authority to assess the owners for the maintenance of the common areas.

### **LOCAL SERVICES AND FACILITIES**

**Schools:** Sechrist Elementary School – one mile – bus stop is within ¼ mile of the subdivision

Flagstaff Middle School - two miles - bus stop is within ¼ mile of the subdivision

Flagstaff High School – two miles - bus stop is within ¼ mile of the subdivision

**SCHOOL FACILITIES AND BUS SERVICE MAY CHANGE. YOU SHOULD CONTACT THE LOCAL SCHOOL BOARD REGARDING THE CURRENT LOCATION OF SCHOOLS AND BUS SERVICE.**

**Shopping Facilities:** There is a grocery store, pharmacy and other retail areas within two miles of the subdivision.

**Public Transportation:** A public bus service (Mountain Line) is available. The nearest stop is 500 feet from the subdivision.

**Medical Facilities:** The Flagstaff Medical Center is within two miles as well as numerous medical offices.

**Fire Protection:** Is provided by the City of Flagstaff. A fire station is one-fourth mile from the subdivision.

**Ambulance Service:** Is available from Guardian Medical Transport located two miles from the subdivision.

**Police Service:** Is provided by the City of Flagstaff.

**Garbage Services:** Is provided weekly by the City of Flagstaff. The cost is \$15.00 per month and is billed with the water and sewer bill.

**LOCATIONS AND COSTS OF THE ABOVE SERVICES AND FACILITIES MAY CHANGE. YOU SHOULD VERIFY THEIR CURRENT LOCATIONS AND COSTS PRIOR TO PURCHASE.**

**SUBDIVISION USE AND RESTRICTIONS**

**Use:** This offering is for vacant lots to be used for detached single family residences only.

**Conditions, Reservations and Restrictions:** There are recorded conditions, reservations and restrictions that limit the use of these dwellings and impose certain requirements on the owners.

**One Story Restrictions:** There is a recorded restriction limiting houses built on lots 7 through 15 to one story in height.

**Restrictions and Other Matters of Record:** Conditions, reservations and restrictions that may run with the land including City or County zoning restrictions should be investigated by you. Copies of those items which are recorded may be inspected at the Office of the Coconino County Recorder. Information about zoning may be obtained at the Office of the City of Flagstaff Community Development Department. Restrictions are recorded as cited in the following title exceptions and per the subdivision plat.

**TITLE**

**Title to this subdivision is vested in the subdivider.**

**Subdivider's interest in this subdivision is evidenced by warranty deed.**

**Title is subject**, among other things, to all taxes, assessments, covenants, conditions, restrictions, limitations, reservations, rights, obligations, powers, easements, rights of way, liens, and charges of record. **YOU SHOULD INVESTIGATE THE TITLE AND SATISFY YOURSELF AS TO WHAT EFFECT, IF ANY, THESE MATTERS MAY HAVE ON THE USE OF THE LAND.** Title exceptions affecting the condition of title are listed in the Preliminary Title Report dated March 6, 2007 issued by Transnation Title/LandAmerica. **You should obtain a title report and determine the effect of the listed exceptions.**

**EXCEPTIONS: SEE EXHIBIT "A" ATTACHED**

**METHOD OF SALE OR LEASE**

**Sales:** All sales are for cash, Seller will not provide or finance any of the purchase price.

**Release of Liens and Encumbrances:** At close of escrow all financial liens and encumbrances will be released except those created by the buyer.

**Release Provisions:** Developer has advised that arrangements have been made with Stockmen's Bank (now National Bank of Arizona) for the release of individual lots from the Bank's blanket deed of trust.

**Use and Occupancy:** At close of escrow the buyer will possess the vacant lot and, if desired, proceed to the City for a building permit. Building permits will only be issued when all road, drainage and utility improvements have been completed and accepted.

**Leasehold Offering:** None.

**THE PURCHASE CONTRACT IS A BINDING AGREEMENT. CONTRARY TO THE TERMS AND PROVISIONS OF THE CONTRACT, YOU MAY HAVE ADDITIONAL RIGHTS, REMEDIES AND WARRANTIES PROVIDED BY LAW. READ THOROUGHLY BEFORE SIGNING. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE PRIOR TO COMMITMENT TO PURCHASE.**

**TAXES AND ASSESSMENTS**

**Real Property Taxes:** The combined primary and secondary property tax rate for this subdivision for the year 2007 is \$9.70 per \$100.00 assessed valuation. The estimated property tax

for an unimproved lot (lot without dwelling), based on the above tax rate and average sales price of \$200,000, is \$1,900.

**Special District Tax or Assessments:** None

**AMOUNT OF TAXES AND ASSESSMENTS SET FORTH ABOVE ARE APPROXIMATE ONLY AND SUBJECT TO CHANGE.**

**PROPERTY OWNERS ASSOCIATIONS**

**Name and Assessments:** Schultz Pass Meadows Owners Association is an unincorporated association as allowed by Arizona statute A.R.S. § 33-1802. The controlling documents are the recorded Covenants, Conditions and Restrictions of the subdivision and the procedural by-laws adopted by the Board of Directors, which has been appointed by the developer. The assessments to each lot are currently \$50 per year per lot.

**Control of Association:** The homeowners association is controlled by a board of directors. Until 18 of the lots have been sold, the developer has the authority to appoint the board of directors. Thereafter, the board is elected by the lot owners.

**Title to Common Areas:** The three common areas are owned by the Association.

**Membership:** All lot owners are mandatory members of the Association and subject to the assessment whether residing on their lot or not.

**PAYMENTS TO PROPERTY OWNERS ASSOCIATIONS ARE SUBJECT TO CHANGE IN ACCORDANCE WITH RECORDED RESTRICTIONS. SAID ASSOCIATION MAY ALSO IMPOSE SPECIAL ASSESSMENTS.**

**YOU ARE ADVISED TO READ THE RECORDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THIS SUBDIVISION TO DETERMINE THE RIGHTS OF LOT OWNERS TO PARTICIPATE IN THE CONTROL OF THE PROPERTY OWNERS' ASSOCIATION AND TO DETERMINE THE RIGHTS, DUTIES AND LIMITATIONS OF OWNERS IN AND TO USE OF THEIR LOT. FURTHER, YOU SHOULD DETERMINE FOR YOURSELF IF SUBDIVIDER'S ARRANGEMENTS AND PLANS FOR THE PAYMENT OF ASSESSMENTS ON UNSOLD LOTS WILL BE SUFFICIENT TO FULFILL THE NEEDS, DEMANDS AND FINANCIAL OBLIGATIONS OF THE ASSOCIATION, AS SET FORTH IN THE DECLARATION.**

**ARCHITECTURAL CONTROL COMMITTEE:** YOU ARE ADVISED THAT THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THIS SUBDIVISION PROVIDES FOR AN ARCHITECTURAL CONTROL COMMITTEE. NO HOUSE MAY BE CONSTRUCTED ON A LOT UNTIL APPROVED BY THE COMMITTEE.

**EXHIBIT A**

- 1. TAXES AND ASSESSMENTS collectible by the County Treasurer, a lien not yet due and payable for the following year:

2007

- 2. WATER RIGHTS, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.  
This exception is not limited by reason of the disclosure of any matter relating to Water Rights as may be set forth elsewhere in Schedule B.

- 3. OBLIGATIONS imposed upon said land by its inclusion within any district formed pursuant to Title 48, Arizona Revised Statutes, excluding however Municipal or County Improvement Districts.

- 4. RESERVATIONS, exceptions, covenants, conditions and rights reserved or imposed in Deed:

Recorded in Book 8 of Deeds  
Page 407

- 5. EASEMENT and rights incident thereto, as set forth in instrument:

Recorded in Book	63 of Deeds
Page	118
Purpose	power line

- 6. EASEMENT and rights incident thereto, as set forth in instrument:

Recorded in Book	10 of Promiscuous Records
Page	533
Purpose	Fort Valley Highway right-of-way

- 7. EASEMENT and rights incident thereto, as set forth in instrument:

Recorded in Book	21 of Official Records
Page	119
Recorded in Book	89 of Official Records
Page	352
Purpose	gas pipeline

- 8. EASEMENT and rights incident thereto, as set forth in instrument:

Recorded in Docket	724
Page	659
Purpose	electric lines

9. EASEMENT and rights incident thereto, as set forth in instrument:

Recorded in Docket	1056
Page	952
Purpose	gas pipeline

10. AGREEMENT according to the terms and conditions contained therein:

Purpose	Pre-Annexation and Development Agreement
Dated	January 17, 2006
Recorded	January 20, 2006
Document No.	2006-3365663

11. EASEMENTS as shown on the recorded plat of said subdivision.

12. RESTRICTIONS, CONDITIONS, COVENANTS, RESERVATIONS, including but not limited to any recitals creating easements, liabilities, obligations or party walls, omitting, if any, from the above, any restrictions based on race, color, religion sex, handicap, familial status or national origin contained in instrument:

Recorded in Document No.	06-3418524, and
Recorded in Document No.	06-3418525

and as shown on the recorded plat of said subdivision.

13. AGREEMENT according to the terms and conditions contained therein:

Purpose	Development of offsites
Recorded	December 28, 2006
Document No.	3418523

NOTE: This exception may be deleted upon conveyance of any lot to a purchaser.

14. DEED OF TRUST given to secure the original amount shown below, and any other amount payable under the terms thereof:

Amount	\$1,000,000.00
Dated	August 07, 2006
Recorded	August 15, 2006
Instrument No.	3398171
Trustor	Big Corner, L.L.C., an Arizona limited liability company
Trustee	The Stockmen's Bank, an Arizona Corporation
Beneficiary	The Stockmen's Bank

5. DEED OF TRUST given to secure the original amount shown below, and any other amount payable under the terms thereof:

Amount	\$535,364.30
Dated	November 27, 2006
Recorded	December 11, 2006
Document No.	3415995
Trustor	Big Corner, LLC, an Arizona limited liability company
Trustee	The Stockmen's Bank, an Arizona corporation
Beneficiary	The Stockmen's Bank, an Arizona corporation

Permanent access to this Development as required by A.R.S. 32-2101 (Paragraph 19) and A.R.S. 32-2185.02 is by way of Schultz Pass Road, as dedicated to Coconino County by instrument recorded in Instrument No. 00-3064688.

NOTE: There are no further matters of record concerning this subdivision through the date of this report.

WHEN RECORDED, RETURN TO:

Gerald W. Nabours  
pick up

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR THE  
SCHULTZ PASS MEADOWS SUBDIVISION**

This Declaration of Covenants, Conditions, and Restrictions for Schultz Pass Meadows subdivision is made as of December 1, 2006, by Big Corner, L.L.C. ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property located in the City of Flagstaff, County of Coconino, State of Arizona, which is legally described as follows:

Lots 1 through 22, inclusive, and Tracts A, B and C, Schultz Pass Meadows Subdivision according to the plat of record recorded as Instrument 3418522, Official Records of Coconino County, Arizona.

B. Declarant desires to provide for the sale of the Lots which comprise the Property and for the subsequent construction of single-family residences on those Lots. The Declarant desires to establish covenants, conditions and restrictions upon the Property, and each and every portion thereof, and certain mutually-beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment of the Property, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property. Declarant intends that this Declaration will facilitate a general plan for development for the Property.

## DECLARATION

Now, therefore, Declarant declares that the Property and all Lots which comprise the Property shall be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, and conditions (collectively, the "covenants and restrictions"). The covenants and restrictions are intended to be real covenants which touch and concern the Property and all Lots and which affect the physical use and enjoyment of the Property and all Lots. The covenants and restrictions are established for the purpose of protecting the value, attractiveness, and desirability of the Property and all of the Lots. The covenants and restrictions shall benefit, burden, and run with the title to the Property and each Lot and shall be binding upon and, subject to Section 6.1 below, shall be enforceable by all parties having or acquiring any right, title, or interest in all or any part of the Property, and their heirs, successors, and assigns. The Declarant further declares as follows:

### SECTION 1. DEFINITIONS

1.1 "Architectural Committee" shall mean (I) the Declarant or its designees through the Declarant Control Period, and (ii) following the expiration of the Declarant Control Period, the architectural committee established pursuant to Section 4.

1.2 "Building Envelope" shall mean the Development Envelope for each such Lot as generally depicted and described on the Plat.

1.3 "Declarant" shall mean Big Corner, L.L.C. and its successors and assigns.

1.4 "Declarant Control Period" shall mean that period of time commencing on the date hereof and expiring on the date when 18 of the Lots have been conveyed to Owners other than Declarant.

1.5 "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for Schultz Pass Meadows Subdivision and the

covenants and restrictions set forth in this document, as may be amended from time to time.

1.6 "Detached Dwelling Unit" shall mean all buildings which are located on a Lot and which are used or are intended to be used for Single Family Residential Use.

1.7 "Common Area" shall mean Tracts A, B and C as depicted and designated on the Plat.

1.8 "Lots" shall mean each of the 22 Lots which is subject to this Declaration.

1.9 "Majority" shall mean those Owners whose Lots constitute more than 11 of all Lots within the Property.

1.10 "Mortgage" and "mortgage" shall mean the conveyance or assignment of any Lot, or the creation of a lien on any Lot, to secure the performance of an obligation, and shall mean the instrument evidencing the obligation. All references to a "Mortgage" or "mortgage" shall include deeds of trust, mortgages, assignments, or any other agreements for the purpose of creating a lien to secure an obligation or duty.

1.11 "Open Space" shall mean the tracts indicated on the plat as Open Space and owned by the Homeowners Association.

1.12 "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple legal title to any Lot. An "Owner" shall not include those persons having an interest merely as security for the performance of an obligation or duty (e.g., mortgagee). In the case of a Lot in which fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, §§ 33-801, *et seq.*, the "Owner" of the Lot shall be deemed to be the trustor. In the case of a Lot covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, *et seq.*, the buyer of the Lot shall be deemed to be the "Owner". Unless the context otherwise requires, the term "Owner" shall include the Declarant.

1.13 "Person" and "person" shall mean a natural person, a corporation, a limited liability company, a partnership, a trust, or other legal entity.

1.14 "Plat" refers to the subdivision plat for " Schultz Pass Meadows " recorded in Official Records of Coconino County, Arizona, as it may be amended from time to time by Declarant.

1.15 "Property" shall mean the real property described in Recital A of this Declaration, together with all buildings, improvements, and other fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way appurtenant thereto (or any part thereof). All references to the term "Property" will be deemed to refer to all of the Lots.

1.16 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) adult persons not all so related who maintain a common household in a Detached Dwelling Unit located on a Lot.

1.17 "Single Family Residential Use" shall mean the occupation or use of a Detached Dwelling Unit and Lot by a Single Family in conformity with the requirements imposed by applicable zoning laws or other state, county, or municipal rules, ordinances, codes, and regulations.

1.18 "Visible From Neighboring Property" shall mean, with respect to any given object on a Lot, that the object is or would be visible to a person six (6) feet tall, standing on any part of the neighboring Lot at an elevation no greater than the elevation of the base of the object being viewed.

## **SECTION 2. GENERAL COVENANTS**

2.1 Personal Obligation. Each Owner of a Lot, by acceptance of a deed for that Lot (whether or not it is expressed in the deed or conveying instrument) or by otherwise becoming an "Owner", will be deemed to have personally covenanted and agreed to be bound by all covenants and restrictions contained in this Declaration. This personal covenant of each Owner shall be in addition to the real covenants created by this Declaration, and this personal covenant shall not limit or

restrict the intent that this Declaration benefit and burden the Property and all Lots and run with title to the Property and all Lots.

2.2 Landscaping. Each Owner of a Lot and their respective tenants, if applicable, must maintain all landscaping located on the Lot in a clean, safe, neat, and attractive manner. Each Owner of a Lot shall keep all shrubs, trees, grass, plantings, and landscaping located on that Owner's Lot (including those located in easement or setback areas, if any) neatly trimmed, properly cultivated, and free from trash and other unsightly material, taking into consideration the natural vegetation located on a Lot.

2.3 General Standards. Each respective Owner of any one of the Lots shall maintain the Detached Dwelling Unit and all other areas located on that Owner's Lot at a level of general maintenance at least equal to the prevailing levels of maintenance in areas of a similar nature located in residential communities commonly and generally deemed to be of highly-desirable quality.

2.4 General Plan. All covenants and restrictions contained in this Declaration are intended to be in furtherance of a general scheme or plan of development. This Declaration has been executed by Declarant for the benefit of all subsequent purchasers of any one of the Lots and not merely for the benefit of Declarant and the initial Owners of the Lots.

2.5 Leasing. Whether or not expressly set forth in this Declaration, each covenant and restriction shall be binding not only on the Owner of a Lot but on that Owner's tenant, and no Owner shall be relieved of responsibility for compliance with this Declaration by reason of the rental of the Lot or Detached Dwelling Unit. Any lease of a Lot or any part thereof (including a Detached Dwelling Unit) must be in writing, must be for a term of not less than six (6) months in duration, and must provide that the lease is subject in all respects to the provision of this Declaration, and that any failure by the tenant to comply with the terms of this Declaration shall be a default under the lease, which default shall be enforceable in accordance with Section 6.1.

2.6 Homeowners Association.

(a) There is hereby established a homeowners association, which shall be an incorporated association, known as "Schultz Pass Meadows Homeowners' Association" and whose members shall consist of each Owner of a Lot ("the Association"). The Association is created for the limited purpose of maintaining Tracts A, B and C and maintaining, repairing and replacing any improvements thereon to insure the proper functions for which such Tracts were established. The Association shall be governed by a board of directors (the "Governing Body") consisting of three persons, all of whom shall be Owners of Lots or members of the Single Family residing thereon. However, until January 1, 2008, the Declarant alone shall appoint the members of the Governing Body (who need not be Lot Owners). Thereafter the members of the Governing Body shall be elected annually from among the Lot Owners. Every Owner, by accepting a deed for a Lot or otherwise becoming an "Owner," shall be a member of the Association and shall be bound by the provisions hereof, and there shall be only one membership per Lot.

(b) After January 1, 2008, the Owners shall elect from among themselves a Board of Directors, which shall consist of three (3) persons, all of whom shall be elected annually and all of whom shall be Owners of Lots, or members of the Single Family residing thereon. Each Lot shall have one vote for each Board of Directors position to be filled, and a system of cumulative voting shall be used. Election for Board of Directors members shall be held during the month of January on such day as a Majority of the then-serving Board of Directors shall agree; provided that notice of such meeting to elect Board of Directors members shall be provided in writing by the then-serving Board of Directors to each Lot Owner not less than fourteen (14) days nor more than sixty (60) days prior to the proposed date of such meeting. Owners representing a majority of the Lots shall constitute a quorum at such a meeting. Following election of the Board of Directors members, the Board of Directors shall give written notice to each Lot Owner of the name and address of each member of such Board then elected.

(c) The Association shall properly and promptly maintain and repair the Common Area Tracts and all improvements thereon, and shall have the power to assess the Owners the actual costs and expenses of doing so.

With respect to the matters set forth in this section, the Association shall have the powers of enforcement to the same extent as an Owner pursuant to Section 6.1. The Governing Body may act in accordance with this Section 2.6 by a majority vote of its directors/members, and any action by the Governing Body in accordance with this Section 2.6 shall be binding upon the Owners of the Lots, as members of the Association. For the purposes of this Section 2.6, the term "assessment" includes the actual costs and expenses of maintaining the Common Area Tracts, and maintaining, repairing and replacing any improvements thereon, as well as the costs of insurance, if any, and court costs and attorneys' fees incurred in connection with enforcing the collection of such assessments against any delinquent Owner. The assessment shall be a charge and a consensual and continuing lien upon the Lot against which the assessment is properly made, and the recordation of this Declaration shall constitute record notice and perfection of any assessment or assessment lien. Except for assessments payable by reason of the delinquency of an Owner (including interest, attorneys' fees and other collection costs), assessments shall be fixed at a uniform rate for all Lots (except to the extent the cost or expense is incurred by the Association on account of the misconduct or gross negligence of any Owner or its permittees, in which case the Association may specially assess the expense against the offending Owner and/or Lot). Assessments may be enforced against the Owner personally, or enforced by all methods available for the enforcement of liens, including foreclosure by an action brought in the name of the Association in the same manner as a mortgage, deed of trust and/or mechanic's lien. Without affecting the priority and perfection of any assessment that has been perfected as of the date of the recordation of this Declaration, the Association may record a "Notice and Claim of Lien" against a delinquent Owner's Lot. Regardless of whether a Notice and Claim of Lien has been recorded, the lien described herein shall be superior to all liens, charges, homestead exemptions and encumbrances that are imposed on any Lot after the date of recordation of this Declaration, except such lien shall be automatically subordinate to the lien held by an institutional lender which is the first and most senior of all mortgages and deeds of trust on a Lot, to the extent acquired in good faith and for value.

(d) If the Association shall fail to properly maintain and repair the Common Area Tracts in accordance with this Section 2.6, the City of Flagstaff is expressly granted the right to enter upon the Common Area Tracts

(and to enter upon any Lot as is necessary for access to the Common Area Tracts) and to perform such maintenance and repair, but only after written notice to the Lot Owners and the failure of the Association and/or such Lot Owners within thirty (30) days (or such lesser period of time as is reasonable under the circumstances) to perform such maintenance and repair functions. If the City of Flagstaff properly performs such maintenance and repairs and incurs any costs in connection therewith, the reasonable costs of such maintenance and repairs shall be paid to the City by the Association within thirty (30) days after presentation of a written invoice to the Lot Owners, and, if payment is not timely made, the City may enforce payment in accordance with the provisions of Section 2.6(b), above.

### **SECTION 3. USE RESTRICTIONS**

In addition to all other covenants and restrictions contained in this Declaration, the use of Lots and the use of the Detached Dwelling Unit and all other improvements located (either temporarily or permanently) on a Lot, are subject to the following:

3.1 Restricted Use. Except as expressly provided in Section 3.2 of this Declaration, a Lot shall be used only by a Single Family and only for Single Family Residential Use. All construction on any Lot shall be restricted to Single Family houses and related improvements utilized in connection therewith. All construction must be completed and a final certificate of occupancy obtained from the City of Flagstaff within one year from the start of construction. **The residences constructed on Lots 7 through 15 (including any garage or ancillary building) are limited to one-story (one habitable level above ground) in height.**

3.2 Business and Related Uses. No Lot or Detached Dwelling Unit shall be used, allowed to be used, or authorized to be used in any way, directly or indirectly, for any business, commercial use, manufacturing, industrial use, vending, or other similar purposes; however, Declarant, and/or its agents, successors, or assigns, may use the Property for any of the foregoing uses as may be required, convenient, or incidental to the sale of Lots and construction of any improvements thereon. The foregoing restriction shall not be deemed to prevent an Owner from conducting his or her personal affairs on the Lot or in the Detached Dwelling Unit

and shall not be deemed to prevent an Owner from using the Detached Dwelling Unit for business purposes which: (I) utilize a minimal portion of the Detached Dwelling Unit; (ii) do not result in the use of the Detached Dwelling Unit for business meetings or appointments; (iii) do not result in shipping or receiving from or to the Detached Dwelling Unit; and (iv) do not otherwise violate local zoning and use laws.

3.3 Signs. No emblem, logo, sign, or billboard of any kind shall be displayed to the public view on any Lot, except for: (I) one sign not more than thirty-six (36) inches by twenty-four (24) inches in size, advertising the Lot for sale, placed in a reasonable location on the Lot; and (ii) any signs as may be required by legal proceedings.

3.4 Noxious or Offensive Activities. No noxious or offensive activity shall be engaged in (or permitted to be engaged in) on any Lot. No act or use may be done (or omitted to be done) on any Lot which may be currently, or may become, an annoyance or nuisance to the Property generally or to the other Owners of Lots specifically, or which, in any way, interferes with the use and quiet enjoyment of any Lot by any Owner, or which increases insurance rates on policies maintained by any Owner with respect to any Lot.

3.5 Restricted Residences. No temporary structure, mobile home, manufactured home, tent, shack, garage, barn, or other similar item or building (excluding temporary construction trailers utilized in the construction of a Detached Dwelling Unit) shall be temporarily or permanently placed, maintained, or used on any Lot at any time, unless (i) in conformity with Section 3.6, or (ii) the item or building is permanently affixed to the Lot and is located behind the front line of the Single Family Residence and is located within the Building Envelope. No buildings or structures shall be moved from other locations onto any Lot, and all improvements erected on any Lot shall be of new construction.

3.6 Vehicles and Recreational Equipment. No commercial truck, wagon, recreational vehicle, trailer, camper, mobile home, motor home, boat, or similar equipment or vehicle shall be kept, placed, maintained, constructed, reconstructed, or repaired on any street (public or private) or on any Lot (including any driveway thereon) unless: (i) the equipment or vehicle is not Visible From Neighboring Property; or (ii) the equipment or vehicle is kept, placed, etc. on a non-recurring and temporary basis (i.e., not overnight and for less than 12 hours). No

vehicle shall be repaired or rebuilt in any Lot, and no inoperable vehicle shall be stored or parked on any Lot, driveway or street so as to be Visible From Neighboring Property, except for emergency vehicle repairs. No vehicle shall be parked on the roadways or streets adjacent to any Lot. Snowmobiles, motorcycles, trailbikes, minibikes, all-terrain-vehicles, mopeds or similar vehicles may not be used or operated within the Property, except that any such vehicle lawfully licensed for use on public roadways may be used for the limited purpose of ingress or egress to a Lot; provided, however, that any such vehicle may be trailered to or from a Lot, or parked or stored in or upon a Lot within an enclosed area.

3.7 Animals. No animals, livestock, or fowl of any kind shall be raised, bred, or kept on any Lot or within any structure located on a Lot; however, an Owner may keep a reasonable number of dogs, cats and other commonly-accepted household pets on or within an enclosed portion of the rear yard of any Lot or in the Detached Dwelling Unit. Each Owner of a Lot and the Owner's tenant, if applicable, shall be responsible for the removal and disposal of the waste or excrement of all pets permitted to be kept on the Lot and shall be responsible for ensuring that the pets do not cause an annoyance or nuisance to other Owners. Each Owner of a Lot also shall be liable for all damage caused by that Owner's pets or the pets of their tenants to any other Owner or any other Owner's Lot or Detached Dwelling Unit, or property.

3.8 Drilling and Mining. No oil or well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon any Lot. No oil wells, tanks, tunnels, or mineral excavations or shafts shall be permitted over or under the surface of any Lot. No derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, maintained, or permitted upon any Lot.

3.9 Trash. All rubbish, trash, and garbage shall be regularly removed from all Lots by their respective Owners and their tenants, if applicable, and shall not be allowed to accumulate on any Lot. No incinerators shall be kept or maintained on any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

3.10 Screening and Fencing. Woodpiles, storage sheds, and storage areas may not be maintained upon any Lot, unless located in the rear yard and within the Building Envelope for such Lot. Sheets, newspapers, foil, and similar items may

not be used as window coverings on any Lot. Refuse containers may be placed on a Lot so as to be Visible From Neighboring Property only on trash collection days and then only for 12 hours before and 12 hours after trash collection. Except as permitted in the previous sentence, refuse containers may not be maintained on a Lot, unless they are properly screened from view of neighboring Lots and located within the Building Envelope.

3.11 Antennas. No external radio or television antenna or satellite dish larger than thirty (30) inches in diameter may be installed or constructed on any Lot in a manner that will make the external radio or television antenna or satellite dish Visible From Neighboring Property.

3.12 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot other than machinery or equipment which is usual and customary in connection with the use, maintenance, or construction of a Single Family residence and only then for the minimum time necessary to maintain, construct, or repair the Single Family residence or other related improvements.

3.13 Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of the Lot shall be conveyed or transferred. No Owner shall transfer, sell, assign, or convey any time share (as defined under Arizona law) in any Lot and any such transaction shall be void.

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

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

3.16 Safe Condition. Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any

activity which might interfere with the reasonable enjoyment by other Owners (including their tenants, guests, family members and invitees).

3.17 Fires; Fire Protection Standards. Other than barbecues in properly constructed barbecue pits or grills, no open fires shall be permitted on the Lots, nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for other Owners.

3.18 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit or allow any fence, landscaping, or other improvement or other obstruction that would interrupt the normal drainage of the land or within any area designated on a Plat, or other duly recorded instrument, as a "drainage easement", or that may damage or unreasonably interfere with the installation and/or maintenance of utilities in any other area designated on a Plat or other recorded instrument or a public utilities easement.

3.19 Hazardous Wastes. Except as may be necessary for normal household, landscaping, or automotive uses, no Owner shall permit any hazardous wastes (as defined under all applicable federal and state laws) or any petroleum products or by-products to be kept, maintained, stored, or used in, on, or over any Lot.

3.20 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any Lot unless they are erected, placed, or maintained in such a manner as to not be visible from the street.

3.21 Fuel Tanks. No fuel tanks of any kind shall be erected, placed, or maintained on any Lot except for propane or similar fuel tanks permitted under the ordinances of the county or municipality having jurisdiction over the Property.

3.22 Fences and Walls. No side or rear fence and no side or rear wall, other than the wall of the Detached Dwelling Unit constructed on a Lot, if any, shall be more than six (6) feet in height. For purposes of this Declaration, a side or rear fence or wall shall be called a "Fence" or "Fences". Notwithstanding the foregoing, any prevailing governmental regulations shall take precedent over these restrictions if the governmental regulations are more restrictive. All Fences and any materials used for Fences dividing or defining any Lot must be made or repaired with new

materials, and must be erected in a good and workmanlike manner. All Fences shall be maintained in good condition and repair, and Fences, upon being started, must be completed within a reasonable time not exceeding three (3) months from commencement of construction. No chain link, field fencing or other wire fencing shall be allowed. The screen wall built by the Developer along the portion of the subdivision adjacent to highway 180 shall be owned by the Association and the Association shall have the obligation to maintain such screen wall except that **the Owners of lots 16 - 22 are each obligated to maintain the side of the screen wall facing their Lot.**

3.23 Underground Service. No wires, lines, or other devices for the communication or transmission of electric current or power, including telephone, television, cable television, and radio signals, shall be erected, placed, or maintained anywhere in or upon any Detached Dwelling Unit or Lot on the Property unless the lines, wire, or other devices are contained in conduits or cables installed and maintained underground or concealed in or on buildings or structures.

3.24 Parking. Each Lot shall have at least one garage which shall be used by the Owner of the Lot for parking purposes only. Such garage may not be used for storage or any other use which restricts or prevents the garage from being used for parking at least two (2) automobiles.

3.25 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the construction, development, identification, or sale of Lots or other property within the Property.

#### **SECTION 4. ARCHITECTURAL CONTROL**

##### **4.1 Architectural Approval.**

(a) The Architectural Committee shall be the same as the Board of Directors of the Association.

(b) No building (including a Detached Dwelling Unit), window screen, screen door, conduit, wire, fence (including any Fence described in Section 3.22), solar collector, awning, ramada, outbuilding, or other improvement or structure shall be commenced, erected, constructed or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made, until plans and specifications showing the nature, kind, color, shape, height, materials, floor plan, approximate cost, location, and other material attributes shall have been submitted to the Architectural Committee and approved in writing as to harmony and compatibility of external design and location in relation to surrounding structures and topography. If the Architectural Committee fails to approve or disapprove in writing such design and location within thirty (30) days after complete and legible copies of the plans and specifications have been submitted to it, the application shall be deemed to be disapproved, and this Section shall be deemed to be not fully complied with; provided that, if following such deemed disapproval the Owner submitting such plans and specifications delivers notice of appeal pursuant to this Section 4.1 and full copies of such plans and specifications to each other Owner (and to Declarant, during the Declarant Control Period) within ten (10) days after the expiration of such thirty (30) day period, and the Architectural Committee fails to approve or disapprove in writing such plans and specifications within thirty (30) days thereafter, such plans and specifications shall be deemed approved, so long as consistent with the Declaration and any Architectural Committee Rules (as defined below). All decisions of the Architectural Committee shall be final. All structures and improvements must also be in conformity with city and county building codes and may only be commenced if a proper building permit, if applicable, is issued by the appropriate authority. Any such item installed by the Owner without written consent of the Architectural Committee shall be removed immediately by the Owner, at its sole cost and expense, upon receipt of notice from the Architectural Committee.

4.2 Architectural Committee Rules. The Architectural Committee, by unanimous vote or unanimous written consent, may adopt, amend, and repeal rules and regulations regarding the architectural style, nature, kind, shape, height, materials, exterior colors, surface texture, and location of any improvement on a Lot, which such rules and regulations shall be called the Architectural Committee Rules. The Architectural Committee Rules shall not be inconsistent with this Declaration.

4.3 Limited Effect of Approval. The approval by the Architectural Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring prior written approval by virtue of this Declaration shall not be deemed to constitute a waiver of any requirement or restriction imposed by the City of Flagstaff or any other law or requirement or restriction imposed by this Declaration and shall not be deemed an approval of the workmanship or quality or integrity of the work or the plans and specifications.

## **SECTION 5. RESERVATION OF AND LIMITATIONS ON EASEMENTS**

5.1 Utility and Other Easements. By executing and recording this Declaration, Declarant reserves and creates a blanket easement upon, across, over, and under that portion of each Lot which may be necessary or desirable for the installation and maintenance of electric, telephone, water, gas, cable television, drainage facilities, sanitary sewer, or similar utility lines. This blanket easement shall be for the benefit of Declarant (and its assigns) and any providing utility or service company. This blanket easement shall in no way affect any other recorded easements and shall not interfere with or prevent Detached Dwelling Units from being constructed on a Lot.

5.2 Limitations on Access. Except for Declarant during the Declarant Control Period (to whom this section shall not apply), no Owner may grant any easement or other rights of ingress, egress and/or access to or from any street or roadway described on the Plat on, over or through his or her Lot to any property not a part of the Property without the prior written and recordable consent of a Majority of the Owners, and any such grant without such consent shall be null and void.

## **SECTION 6. GENERAL PROVISIONS**

6.1 Enforcement. Until such time as all Lots owned by Declarant are sold to third-party purchasers, the Declarant shall have the right to enforce, as provided in this Section 6, all covenants and restrictions now or in the future imposed by the provisions of this Declaration, as the Declaration may be amended from time to time. A failure or refusal by the Declarant to enforce the covenants and restrictions shall not act as a waiver of the rights of any other Owner to enforce this Declaration.

No act or omission by Declarant shall act as a waiver or defense to the enforcement of this Declaration by any other Owner. If Declarant refuses or fails to enforce the Declaration during the period of time that it owns at least one (1) of the Lots, any Owner of a Lot or group of Owners of Lots may enforce any covenant and restriction of this Declaration. After such time as Declarant has sold all of the Lots to third-party purchasers or has voluntarily relinquished, by a written and recorded instrument, Declarant's right of first enforcement of this Declaration, any Owner of a Lot or group of Owners of Lots may enforce at any time all covenants and restrictions contained in this Declaration. As used in this Section 6.1, the term "Enforcing Party" shall mean the party entitled to enforce this Declaration, as established in the preceding sentences of this Section 6.1. Failure of Declarant or any Owner of a Lot to enforce any covenant and restriction in this Declaration shall not be deemed a waiver of the right of Declarant or any other Owner from doing so in the future. Deeds of conveyance of any Lot may incorporate the covenants and restrictions by reference to this Declaration, but, whether or not such reference is made in such deeds, each and every covenant and restriction shall be valid and binding upon all Owners of a Lot and all subsequent grantees. In the event of a breach by any Owner (or the tenant, family, guest, licensee, agent, or invitee of any Owner) of any covenant and restriction contained in this Declaration, the Enforcing Party shall deliver written notice ("Notice") of the violation to the offending Lot Owner ("Offending Lot Owner"). The Offending Lot Owner then shall have five (5) business days within which to remedy or otherwise cure the breach of this Declaration which is the subject of the Notice. If the breach complained of in the Notice cannot be reasonably expected to be cured within the five-day period, the Offending Lot Owner, within this five-day period, shall commence to cure the breach complained of and shall provide notice of such cure to the Enforcing Party, and shall pursue the cure to completion in a diligent manner and within a reasonable time (no longer than 60 days). The failure of any Offending Lot Owner to timely cure any breach of this Declaration which is the subject of a Notice shall give rise to the right of any Enforcing Party to institute a civil action in any court of competent jurisdiction and seek any remedy available under Arizona law including injunctive relief, specific performance, and damages against the Offending Lot Owner; however, a violation of these covenants and restrictions (or any one or more of them) shall not affect the lien of any Mortgage now of record or which in the future may be placed of record upon any of the Lots. The remedies established in this Declaration may be exercised jointly, severally, cumulatively, successively, and in any order.

6.2 Severability. Invalidation of all or any part of this Declaration by judgment or court order shall not affect the validity of any other provisions of this Declaration, which shall remain in full force and effect.

6.3 Term. The covenants and restrictions in this Declaration shall run with and bind the Property and all Owners from the date upon which this Declaration is recorded until terminated or amended by the written and recorded declaration of the Owners of 75% of the Lots. However, the provisions regarding the City of Flagstaff cannot be amended or deleted without the consent of the City of Flagstaff and the height limitation on lots 7 - 15 cannot be changed.

6.4 Construction. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of the Lots, including Detached Dwelling Units constructed thereon. Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms), regardless of the number and gender in which they are used, shall be deemed and construed to include any other number and any other gender as the context or sense of this Declaration may require, with the same effect as if such number and words had been fully and properly written in the required number and gender. Any reference to this Declaration shall automatically be deemed to include all amendments to this Declaration.

6.5 Notices. Any notice permitted or required to be delivered under this Declaration must be in writing and must be delivered either personally, by certified mail, or by express delivery service. Notices delivered in this manner will be deemed effective even though never actually claimed or received by the Owner, provided they are delivered to the occupant of the Detached Dwelling Unit located on the Lot or mailed by Certified Mail or sent by express delivery service to the street address for the Lot.

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

6.7 Attorneys' Fees. If an action is instituted to enforce any of the covenants and restrictions contained in this Declaration by either the Declarant or any

Owner or any group of Owners, as the case may be, the party prevailing in the action shall be entitled to recover from the other party all attorney fees (in a reasonable amount) and court costs.

6.8 Waiver. The waiver of, or failure to enforce any breach or violation of this Declaration shall not be deemed a waiver or abandonment of any provision of this Declaration or a waiver of the right to enforce any subsequent breach or violation of this Declaration. The foregoing shall apply regardless of whether any person affected by this Declaration (or having the right to enforce this Declaration) has or had knowledge of the breach or violation.

6.9 Amendment. Until the termination of the Declarant Control Period, Declarant may unilaterally amend this Declaration, and any of the covenants and restrictions contained in this Declaration, for any purpose. Except as set forth in the preceding sentence, this Declaration and any of the covenants and restrictions contained in this Declaration may be amended only by a written and recorded instrument which is actually signed and acknowledged by the Owners (including the Declarant) of 75% of the Lots. To be effective, any proposed amendment must have a uniform effect on all Lots or, if the amendment is not intended to have a uniform effect, must be approved by all Owners upon whom the amendment has an adverse effect. Within thirty (30) days after the recordation of any amendment, the amendment shall be delivered by the recording party to all Owners in the manner prescribed in Section 6.5. However, the provisions regarding the City of Flagstaff cannot be amended or deleted without the consent of the City of Flagstaff and the height limitations on lots 7-15 cannot be changed.

"Declarant"

BIG CORNER, L.L.C.

By: 

Gerald W. Nabours, authorized member

STATE OF ARIZONA )  
 ) ss.  
County of Coconino )

The foregoing instrument was acknowledged before me this 1st day of December, 2006, by Gerald W. Nabours, who executed the foregoing for the purposes therein contained.



*[Signature]*  
\_\_\_\_\_  
Notary Public

Unofficial Copy