

DECLARATION OF HORIZONTAL PROPERTY REGIME TOGETHER WITH COVENANTS, CONDITIONS AND RESTRICTIONS FOR "THE VILLAGE"

This Declaration is made on the 19th Day of October, 1999, by Pinetop Lakes Unit V Partners, Ltd., an Arizona limited partnership, hereinafter referred to as "Declarant."

ARTICLE I

DECLARATION OF HORIZONTAL PROPERTY REGIME

SECTION 1: DESCRIPTION. Declarant is the owner of real property in Navajo County, Arizona ("Property"), described as follows:

That part of PINETOP LAKES, Arizona, known as: Units 1 through 48, THE VILLAGE, a replat of PINETOP LAKES SPORTS VILLAGE, as recorded in Book 14, Page 14, Navajo County Records. T8N R23E, G, & S.R. M., Navajo County, Arizona.

SECTION 2: DECLARATION. Pursuant to Chapter 4.1, Article 1, Section 33-531 to 33-561, inclusive. Arizona Revised Statutes, 1962, Declarant does hereby submit said Property described above, including the improvements to be constructed thereon; and all easements, rights and appurtenances belonging thereto, all of which may hereinafter be referred to as the "Property" or "Condominium Property" to a Horizontal Property Regime (said Property being platted as a Horizontal Property Regime according the Plat recorded in the office of the County Recorder of Navajo County, Arizona in Book 20, in Plats 16, Page 17 thereof) and said Declarant does further hereby declare that all of such Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, and all of which are declared to be in furtherance of a plan for the improvement, development and sale of said Property and are established for the purpose of enhancing and perfecting the value and desirability of said Property and every part thereof.

SECTION 3: DEFINITIONS. The following words, when used in the Declaration or any Supplemental Declaration (unless the context shall prohibit), shall have the following meanings:

- A) "Apartment" shall mean a separate freehold state consisting of an airspace defined as follows:
 - 1) The lower vertical boundary is the surface of the finished floor, thereof.
 - 2) The upper vertical boundary is a horizontal plane, the elevation of which coincided with the elevation of the surface of the finished ceiling or ceiling thereof.
 - 3) The lateral boundaries are the interior surfaces of the perimeter walls, windows and doors thereof, and vertical planes coincidental with the interior surfaces of the perimeter walls thereof, extended upwards to ceiling of the Apartment of which forms the upper horizontal boundary.
 - 4) Each such Apartment included in the surfaces so described, and the portions of the building and improvements lying within said boundaries. Each such Apartment shall also include the heating and air conditioning unit; ranges, dishwasher, garbage disposal units, water heaters, and other household appliances lying within said boundaries and/or appurtenant areas.
 - 5) The airspace for patios, storage areas, balconies and stairways, if any, are where so designated, for the exclusive use of the Apartment. And shall be maintained by the Homeowners Association of said Apartment. Maintenance such as ceiling, concrete, painting upper decks and steps, shall be done annually.
The following are not part of an Apartment; bearing walls, columns, vertical supports, roofs, floors, foundations, pipes, ducts, flues, conduits, wires and other utility installations wherever located, except the outlets thereof when located within the Apartment. There are uncovered parking areas that are for the use of Owners and their guests and invitees, subject to the regulations established by The Village Homeowners Association. In interpreting deeds, plats, declarations and plans, the existing physical boundaries of an Apartment, or an Apartment reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries; rather than the description expressed in deed, plat, plan or declaration, regardless of minor variances between the boundaries as shown on the plan or in the deed and declaration of those of the building. Each of the Apartments in each building shall be deeded to be a separate and distinct Apartment.
- B) "Association" shall mean and refer to The Village Homeowners Association, an Arizona non-profit corporation, its successors and assigns, formed as an entity through which the Owners may act, in accordance with the Arizona Revised Statutes 33-551.1 to 33-561. (1962)
- C) "Common Area" shall mean, for the purposes of Association responsibility, all of the elements not subject to private Ownership, as shown on the recorded plat map and described herein.
- D) "Multiple Family Building" shall mean and refer to any building containing two or more Apartments.
- E) "Articles" shall mean and refer to the Articles of Incorporation of the Association.
- F) "Members" shall mean any person, corporation, partnership, joint venture or other legal entity who is an owner as provided for herein.

- G) "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities of equitable or beneficial title (or legal title if same has merged), of any Apartment. "Owner" shall include the purchaser under an executory contract for the sale of real property. The foregoing does not include persons or entities that hold an interest in any Apartment merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include a lessee or tenant of an Apartment.
- H) "Board" shall mean the Board of Directors of the Association.
- I) "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.
- J) "Declarant" shall mean Pinetop Lakes Unit V Partners, Ltd., an Arizona limited partnership, as Trustee, including its successors and assigns.
- K) "Declaration" shall mean this document, as it may from time to time be amended, relating to all or part of The Village subdivision.
- L) "Developer" shall mean and refer to the N. David Shaw Development Company, L.L.C., an Arizona limited liability company.

SECTION 4: DESCRIPTION OF PROJECT. The name of this Horizontal Property Regime shall be The Village subdivision. It shall be composed of eleven (11) multi-unit buildings containing a total of forty-eight (48) individual Apartments, subject to the right of Declarant to expand this Horizontal Property Regime by adding additional Apartments and Common Areas, as provided in Section 12 and 13, following:

- A) DESCRIPTION OF LAND. The land shall be described in the recorded plat referred to in Section 1 above.
- B) DESCRIPTION OF THE SPACE OF THE BUILDING. There shall be eleven (11) multi-unit buildings in the Horizontal Property Regime, five (5) of which shall contain four (4) Apartments, four (4) which shall contain six (6) Apartments and two (2) which shall contain two (2) Apartments. The cubic content space of each building, with reference to its location on the land is as more fully set forth and described in the recorded plat referred to in Section 1 above.
- C) DESCRIPTION OF SPACE OF APARTMENT. The Horizontal Property Regime shall include forty-eight (48) individual Apartments. Each Apartment shall be separately identified by number, 1 through 48, as shown on the plat referred to in Section 1 above. Each Apartment in the Horizontal Property Regime shall include an individual Apartment, patio, heating and air-conditioning unit, stairway and balcony, if any, each bearing the same alphabetical identification as shown on the plat referred to in Section 1 above. The cubic content space of each Apartment located within the building and of each patio, heating and air-conditioning unit, stairway and balcony, if any, and any other area subject to individual ownership and exclusive control, is more fully set forth and described in the recorded plat referred to in Section 1 above.
- D) DESCRIPTION OF GENERAL COMMON ELEMENTS. The general common elements shall include all of said Property referred to in Section 1 above including: the land upon which the Apartments are located; the building, all bearing walls columns, floors, roofs, slabs, landscaping, pavement, private drives; waste, water and gas pipes; ducts, chutes, conduits, wires, drainage lines, other utility and installation lines; the foundations of the Apartments, the foundations of the buildings; and all other devises and premises designed for common use or enjoyment by more than one owner(s) of a single Apartment. All as more fully set forth and described herein and in the recorded plat referred to in Section 1 above; except for: an Apartment as defined, the outlets of utilities when located with an Apartment, and those areas allocated for use of an Apartment for patios, heating and air-conditioning units, stairway and balcony purposes, as shown on said plat.

The common elements shall remain undivided; and no owner shall bring any action for partitions, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the common elements.

- E) FRACTIONAL INTEREST. Each Apartment shall bear an undivided fraction interest in the entire Horizontal Property Regime, as set forth hereinafter, of one forty-eighth (1/48).

SECTION 5: VERTICAL DIMENSION. All reference to vertical dimension made in this document, or on the recorded map referred to in Section 1 above, shall be based upon the elevations as described below:

The Bench Mark at the top aluminum cap near the SE corner marked 5047 of the Subdivision. Elevation 7,174.10'.

SECTION 6: EXCLUSIVE USE. Each Apartment unit shall have the exclusive use of an area within the common elements of a size and location adequate to install, operate and maintain refrigeration and heating units, said area to be as originally designed, designated and installed by Developer or as subsequently approved by the Board. Further, each Apartment unit shall have the exclusive use of an area within the common elements of a size and location adequate to install, operate and maintain utility meters. In addition, each Apartment unit shall have the exclusive use of the fireplace and chimney located within and adjacent to said Apartment unit.

SECTION 7: ENCROACHMENT. If any portion of the common elements, herein above described, now encroaches upon any Apartment units; or if any Apartment units now encroach upon any other Apartment unit or upon any portion of the common elements as a result of the construction of the building or Apartment unit; or if any such encroachment shall occur hereinafter as a result of repair or remodeling of the building; a valid easement for the encroachment and for the maintenance of same, as long as the building stands, shall exist. In the event the building, the Apartment unit, any adjoining Apartment unit, or any adjoining common elements

shall be partially or totally destroyed as a result of fire, other casualty, condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the common elements upon any Apartment unit or of any Apartment unit upon any other Apartment unit or upon any portion of the common elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the building shall stand.

SECTION 8: Each Apartment owner shall have an easement in common with the Owners of all other Apartments to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other Apartment units and serving his Apartment unit. Each Apartment unit shall be subject to an easement in favor of the Owners of all other Apartment units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common elements serving such other Apartment units and located in such Apartment unit. The Board of Directors of its duly appointed agents shall have a right of access to each Apartment to inspect the same, to remove violations there from and to maintain, repair or replace the common elements contained herein or elsewhere in the building.

SECTION 9: CONVENANTS RUNNING WITH THE LAND. The acceptance of a deed or conveyance, the entering into of a lease, and occupancy of an Apartment unit, shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and the Rules and Regulations, they may be amended from time to time, are accepted and ratified by such Owners, tenants or occupants. All such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Apartment unit as though such provisions were recited and stipulated at length to each and every deed of conveyance of lease thereof.

SECTION 10: ASSOCIATION OF PROPERTY OWNERS. The Horizontal Property Regime, herein created, shall be managed by the Association or by its Board of Directors in accordance with the Bylaws adopted by the Association. Whenever this Declaration sets forth a duty to be performed by the Association; or right, option or legal interest owned or held by the Association; such duty shall be performed and such right, option or legal interest shall be exercised by the Board of Directors, or the Board's duly authorized representatives; except such duties and rights as shall be specifically reserved herein to the Association without right of delegation to the Board of Directors.

SECTION 11: MEMBERSHIP. The Association shall consist exclusively of all of the co-owners in The Property Regime. Any co-owner transferring or disposing of his interest in The Property Regime shall automatically cease to be a member of the Association.

SECTION 12: RIGHT TO EXTEND OR EXPAND CONDOMINIUM PROPERTY. Declarant, at its sole discretion and at its election, shall have the exclusive right, from time to time, in the manner set forth in Section 13 following, to extend the area of the Property that is subject to this Declaration by annexing additional real property thereto. Any and all new improvements, buildings and Apartments and the Owners thereof, shall be subject to and bound by the covenants, conditions and restrictions of this Declaration.

SECTION 13: PROCEDURE FOR EXTENSION OR EXPANSION OF CONDOMINIUM PROPERTY. Should Declarant desire to erect new buildings in which Apartments are located, it shall give written notices to the Association Board of Directors of its election with respect thereto; and shall execute or cause to be executed, a supplement to this Declaration (this Declaration as so supplemented being referred to hereinafter as "Declaration") signed by Declarant and all other persons required by law as signatories hereon. Such supplement to this Declaration shall describe the buildings to be erected or which are erected, publish and declare that such land and any improvement(s) thereon or such buildings(s) to be erected or which are erected thereon. And the Owners and other having an interest therein, shall set forth the necessary adjustments in fractional interest or Ownership of the Common Elements applicable to each unit, including newly added units on the land as annexed and previously covered units. Upon recordation of such supplement to this Declaration in the Official Records of the County Recorder of Navajo County, Arizona, any such subjection of buildings or Apartments therein to covenants, conditions and restrictions of this Declaration shall be automatically effective. Any new facility shall require a building permit from Navajo County and be built to UBC, UPC, etc.

ARTICLE II

COVENANTS, CONDITIONS AND RESTRICTIONS

THE VILLAGE subdivision is composed of eleven (11) multi-family buildings containing a total of forty eight (48) Apartments, described by a Horizontal Property Regime, as indicated on the recorded plat. The following deed restrictions apply to all the Property shown on the recorded plat as being in said subdivision.

PART ONE – USE RESTRICTIONS

- 1) Said Property shall be for residential use only and construction hereon is restricted to high-class, single-family dwellings or Apartments and no business use or activities of any kind whatsoever shall be permitted or conducted upon said Property, except community recreational facilities. This restriction shall not limit the lease or rental of any Apartment for residential purposes, provided any lease is made subject to the provisions of this instrument, Association Bylaws and Rules.

- 2) No animals, livestock or poultry shall be kept on the Property other than household pets. No signs of a commercial nature shall be allowed. No unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property. The Property shall not be used in any way, for any purpose, which may endanger the health of, or unreasonably disturb, an owner of any Apartment or any resident thereof.
- 3) No noxious or offensive activity shall be carried on in any Apartment or in the Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the Owners. All equipment, garbage cans, woodpiles, or storage piles shall be kept screened and concealed from view of neighboring Apartments, streets and Common Areas. All rubbish, trash or garbage shall be regularly removed from each Apartment and shall not be allowed to accumulate thereon or on the adjacent Common Areas. No exterior clotheslines shall be erected or maintained and there shall be no outside drying or laundering of clothes on the balconies, patios, porches, or any other part of the Common Areas.
- 4) All screening areas, whether fencing, hedges or walls shall be erected or maintained upon the Property in said subdivision in accordance with the original construction of the building located on said Property, or as approved by THE VILLAGE HOMEOWNERS ASSOCIATION.
- 5) Trailers, campers, boats or other vehicles of similar nature shall not be parked on the streets of said subdivision or on any portion of said Property, except on Property on which said parking and storage is allowed, as controlled by THE VILLAGE HOMEOWNERS ASSOCIATION. Repairs shall not be performed on any vehicle in said private street or Property.
- 6) No improvement, exterior painting, decorative alterations, repairs, excavation, or other work which in any way alters the exterior appearance of any Apartment shall be commenced, erected, maintained, made or done, without the prior written approval of the Board of Directors of THE VILLAGE HOMEOWNERS ASSOCIATION, or any committee established by the Board for these purposes. Pursuant to its rule making power, the Board shall establish a procedure for the preparation, submission, and determination of applications for any alterations or improvement. The Board shall have the right to refuse to approve any plans or specifications that are not suitable or desirable, in its opinion, for aesthetic or other reasons. In reviewing such plans, specifications and grading plans, without any limitations of the foregoing, the Board shall have the right to take into consideration the suitability of the proposed improvement, the materials of which it is to be built, the site upon which it is to be located, the harmony thereof with the surroundings, and the effect thereof on the outlook from the adjacent or neighboring Apartment(s).

All subsequent additions, changes or alterations to and in any building, fence, wall or other structure, including exterior color schemes shall be subject to the prior approval of the Board.

No changes or deviations in or from such plans and specifications, once approved, shall be made without the prior written approval of the Board. All decisions of the Board shall be final and no owner or other party shall have recourse against the Board for its refusal to approve any such plans or specifications.

7) REPAIR AND MAINTENANCE.

- A) BY OWNER. Each Owner of an Apartment shall maintain, repair, replace and restore at his own expense, all portions of the Apartment. Such maintenance, repair, replacement or restoration shall be subject to control and approval of the Association. No Owner shall remove, alter, injure, or interfere with any shrubs, trees, grass or planting placed upon any Property by Declarant or the Association, without first obtaining the written consent of the Association.
- B) BY THE ASSOCIATION. The Association shall have full power to control, and it shall be its duty, to maintain, repair and make necessary improvements thereon, with the exception of the glass surfaces in the exterior portions of the Apartments and the outlets of all utility installations of the buildings when located in the Apartments. The Association shall further be empowered with the right and duty to periodically inspect all common elements in order that minimum standards of repair, design, color and landscaping shall be maintained for beauty, harmony and conservation of value with the entire project.
- C) GENERAL MAINTENANCE. In the event that the Association determines that the Common Areas are in need of improvement, repair, restoration or painting; or that the landscaping is in need of installation, repair or restoration, the Association shall undertake to remedy such condition. The Association shall have a limited right of entry in and upon all Common Areas and the exterior of all Apartments for the purpose of taking whatever corrective action may be deemed necessary or proper by the Association. When so required to enter an Apartment for the purpose of performing installation, alterations or repairs to the mechanical or electrical systems including water, sewer and other utilities, reasonable requests for entry shall be made and such entry shall be at a time reasonably convenient to the Owner whose Apartment is to be entered.

Nothing in this Article shall in any manner limit the right of the Owner to exclusive control over the interior of his Apartment provided, however, that Owners shall grant the right of entry therein to the Association or any other Owner, their authorized representatives or any other person in the case of an emergency originating in or threatening his Apartment, whether the Owner is present or not.

D) REPAIR NECESSITATED BY OWNER. In the event that the Association determines that the Common Areas are in need of improvement, repair, restoration or painting, or that the landscaping is in need of installation, repair, or restoration which has been caused by an Owner or any person designated by the Owner, the Association shall give written notice to the Owner of the conditions complained of. Unless the Board has approved in writing corrective plans proposed by the Owner to remedy the condition complained of, within such reasonable period of time after receipt of written notice as may be determined by the Board, and the approved work is completed within the time allotted by the Board, the Association shall undertake to remedy such condition or violation complained of. The cost thereof shall be deemed to be an assessment to such Owner and his Apartment and subject to levy, enforcement and collection, as provided for in the Articles or Bylaws. The Association shall have the same right of entry in and upon all Common Areas and an Apartment as defined in Subsection C) above. The Board shall have the sole right to determine whether any such costs expended by the Association were related to General Maintenance, or whether they were Repairs Necessitated by an Owner and such determination shall be binding and final as to an Owner.

PART TWO – HOMEOWNERS ASSOCIATION

- 1) THE VILLAGE HOMEOWNERS ASSOCIATION, a non-profit corporation to be formed by the Developer, under and by virtue of the laws of the State of Arizona, governing non-profit corporations, shall accept ownership of and provide such necessary and appropriate action for proper maintenance and upkeep of all street, alleys, walks, perimeter and building walls, roofs, stairways, drains, utility lines, exterior landscaping and parcels to be used as Common Areas, all as delineated in the recorded plat and Declaration of Horizontal Property Regime of THE VILLAGE subdivision. The Association shall do all other things necessary as set forth in the Articles of Incorporation and Bylaws of THE VILLAGE HOMEOWNERS ASSOCIATION for the general benefit and welfare of the Property Owners, including acceptance and maintenance of utility lines and sewage treatment facilities dedicated to the Association by the Developer during or after construction of the Apartments. The Homeowners Association shall maintain all drainage structures.
- 2) It is recognized that at the date hereof, construction of all the common elements and proposed Apartments contemplated by the recorded subdivision referred to in Article I above, have not been completed, and that the Homeowners Association is not operative. In order that said Apartments may be constructed and sold, and said Common Areas may be installed and protected, and that the said Association may become stabilized and operational in the support and promotion of the objectives of said Article I, Developer hereby reserves until itself, at its option, the sole and exclusive right to manage the affairs of the Homeowners Association. The Developer shall have the sole and exclusive right to make contracts or agreements on behalf of the Association for maintenance of Common Areas and operation of the Association, and to do all other things as authorized by the Declaration.
- 3) Until such time as forty-eight (48) of the Apartments in the above described Property have been conveyed to the purchases thereof, all right, discretion, power, and authority granted to said Association and Apartment Owners through said Association; control of the Association, including the right to collect assessments (except reserves for replacement) shall, at the option of the Developer, remain with the Developer directly or through said Association. After the sale of not less than twenty-four (24) of the Apartments, the Developer may, at its sole option and its sole discretion, deliver control of the Association to the Apartment Owners and the control together with all such rights, discretions, powers and authority shall be assumed by the Apartment Owners who are then Members of the Association, through their officers and Directors, who shall be duly elected at such time.
- 4) Until such time as control of the Association has been conveyed or transferred from the Developer, the Developer shall not be liable for any assessment referred to herein for any unoccupied Apartments. In lieu of payment of such assessment, the Developer will assume responsibility for month to month maintenance; repair and management of common elements until such time as control of the Association is assumed by Owners of occupied Apartments. For the purposes of the paragraph, assumption of control of the Association is defined as having passed conclusively to the owners collectively upon completion of the following requirements:
 - A) Developer shall notify the owner of each occupied Apartment that the Board of Directors of the Homeowners Association has resigned, effective thirty (30) days after the date of notices.
 - B) Delivery of the Homeowners Association corporate minutes and seal, if any, to any one of the Owners of record receiving such notice or committee organized for such purpose.
- 5) Every owner of any Apartment, which is subject to assessment, shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from ownership of, any Apartment, which is subject to assessment. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership to such Apartment, or by intestate succession.
- 6) All Owners shall be entitled to one vote for each Apartment owned. When more than one person holds an interest, all such persons shall be Members. The vote for such Apartment shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Apartment and fractional votes shall not be allowed. In the event more than one vote is cast for a particular Apartment, none of the votes shall be counted and said votes shall be deemed void.

PART THREE – COVENANT FOR ASSESSMENTS

- 1) Each Owner of any Apartment, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:
 - A) Annual Assessments or charges, and
 - B) Special Assessments for capital improvements to be established and collected as provided in the Articles and Bylaws. The annual and special assessments, late payment penalties, if any, together with interest, cost and reasonable attorney's fees, shall be a lien on the Apartment and the Common Areas, as created by the Article or Bylaws. Each assessment, together with interest, cost and reasonable Attorney's fees, shall also be the personal obligation of the person who was the Owner of such Apartment at the time when the assessment was levied. The personal obligations for delinquent assessments shall not pass to successors in title, unless expressly assumed by them.
- 2) The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all Owners, for the improvement and maintenance of the Common Areas, and for all purposes set forth in the Articles, including, but not limited to: management fees, insurance premiums, unless otherwise provided for, expenses for maintenance, repairs and replacements of Common Areas, reserve for contingencies and taxes.

Charges for water and other utilities for the Common Areas and Apartment, if supplied by common meters, shall be divided equally and billed annually to individual owned units.

- A) By appropriate action, the Association may establish and maintain a Reserve Fund for replacement by the allocation and payment monthly thereto, a sum to be determined, and adjusted from time to time, by the Board of Directors. Such funds shall be depository and may be in the form of cash deposits; invested in obligations of, or fully guaranteed as to principal by the United States of America. The Reserve Fund is for the purpose of affecting replacement of repairs because of damage, depreciation or obsolescence to Common Areas.
- B) By appropriate action of the Board of Directors, the Association may establish and maintain a General Operating Reserve by the allocation and payment monthly thereto a sum equivalent to not less than three percent (3%) of the Monthly Owners Assessments as provided for pursuant to the Bylaws. Upon accrual of funds in said General operating Reserve account equal to fifteen percent (15%) of the total Annual Owners Assessment for the current year, the rate of the monthly assessments may, by appropriate action of the Association, be reduced from three percent (3%) to two percent (2%). However, if the balance of said account should fall below fifteen percent (15%) of the total Annual Owners Assessment for the current year, the monthly allocation rate shall immediately be restored to three percent (3%).

Upon accrual of funds in the General Operating Reserve account equal to twenty-five percent (25%) of the total Annual Owners Assessment for the current year, said monthly deposits may, by appropriate action of the Association, be discontinued. No further deposits need be made into said General Operating Reserve account so long as the balance is maintained at or above said twenty-five percent (25%) level. However, if the balance of said account shall fall below said twenty-five percent (25%) level, monthly deposits shall forthwith be made at the three percent (3%) rate until the twenty-five percent (25%) level is restored.

This Reserve shall remain in a special account and may be in the form of cash deposits; invested in obligations of, or fully guaranteed as to principal by, the United States of America; and shall at all times be under the control of the Association.

This cumulative Reserve is intended to provide a measure of financial stability during a period of special stress and may be used to meet deficiencies, from time to time, which might result from delinquent payments of Assessments by Apartment Owners and other contingencies. Reimbursements shall be made to this Reserve Account upon receipt of payment of delinquent Assessments for which funds were withdrawn from the Reserve.

3. Both Annual and Special Assessments must be fixed at a uniform rate for all Apartments and may be collected on a monthly, quarterly or annual basis.
4. The Annual assessments shall commence as to all Apartments on the First Day of the Month following the conveyance to an owner. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the Annual Assessment against each Apartment at least thirty (30) days in advance of each Annual Assessment Period. Written notice of the Annual assessment shall be sent to every owner subject thereto. The Assessment due dates shall be established by the Board of Directors.
5. Until January 1 of the year immediately following the conveyance by Declarant of the first apartment to an Owner, the maximum, Annual Assessment shall be four hundred twenty dollars (\$420.00). The Annual Assessment shall be exclusive of charges for the actual cost of water and sewer service for the Apartments, which shall be paid monthly to the association in addition to the Annual Assessment.

- A) From and after January 1 of the year immediately following the conveyance by Declarant of the first Apartment to an Owner, the maximum Annual Assessment may be increased each year up to ten percent (10%) above the maximum Assessment for the previous year without a vote of the membership. However, this limitation shall not apply to charges for utility services provided to the Apartments.
 - B) From and after January 1 of the year immediately following the conveyance by Declarant of the first Apartment to an owner, the maximum Annual assessment may be increased by an amount greater than ten percent (10%); PROVIDED THAT: such rate shall have the ascent two-thirds (2/3) of the votes of all Members who are voting in person or by proxy at a meeting duly called for this purpose.
 - C) The Board may fix the annual assessment at an amount to in excess of the Maximum.
6. In addition to the Annual Assessments authorized above, the Association may levy (in any Assessment Year) a Special Assessment (applicable to that year only) for the purpose of defraying (in whole or part) the cost of any: construction; reconstruction; repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereon; PROVIDED THAT; such Assessment shall have the ascent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.
 7. Written notice of a meeting called for the purpose of taking an action authorized under Sections 5 and 6 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 or the proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
 8. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 9 ½ per annum. The Association may bring any action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Apartment.
 9. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Apartment shall not affect the assessment Lien. However, the sale or transfer of any Apartment pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments that became due prior to such sale or transfer. No sale or transfer shall relieve such unit from liability for any assessment thereafter becoming due or from the lien thereof.

PART FOUR – COMMON WALLS

1. The rights and duties of owners with respect to Common Walls shall be as follows:
 - A) The Owners of contiguous Apartments who have a Common Wall shall both equally have the right to use such wall, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
 - B) In the event that any Common walls damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Common Wall without cost to the other adjoining Owner or Owners.
 - C) In the event any such Common Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than the act of an adjoining Owner, his agents, guests, or family, it shall be the obligation of the Association to rebuild and repair said wall.
 - D) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Common Wall without the prior consent of the Board.
 - E) In the event of a dispute between owners with respect to the construction, repair or rebuilding of Common Wall.....the respect to the bearing of the cost thereof, the owners shall submit a dispute to the Board and the decision of the Board shall be final and binding on all Owners.

PART FIVE – INSURANCE

1. The Board, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the Common Areas; except contents of individual Apartments and against loss or damage by fire or other hazard in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from all reasonable hazards.

The Board, or its duly authorized agent, shall also obtain a broad form public liability policy covering all Common Areas, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners. Insurance on individual Apartments shall be written in the name of the individual owners as their interest may appear. In addition to the aforesaid insurance required to be carried by the Association, any owner may, if he wishes, at his own expense, carry all other insurance he deems advisable. It shall be the individual responsibility of each Owner at his own to provide, as he sees fit personal liability insurance, theft, and other insurance covering personal property, damage and loss.

PART SIX – AD VALOREM TAXATION

1. Each Apartment shall be assessed separately, for all taxes or other charges of or imposed by the State of Arizona, political subdivision, or other taxing or assessing authority. For purposes of such Assessment, the valuation of the Common Areas shall be apportioned among the Owners based upon the fractional interest assigned to each of them by the provision of Article I., Section 4 above. The Board shall furnish to the County Assessor or other responsible official of any such taxing or assessing authority all necessary information with respect to the apportionment of such Assessments and shall request that each Apartment be carried on the tax records as a separate and distinct parcel or property. No forfeiture or sale of any apartment for delinquent taxes, assessments or other government charges shall divest or in any way affect the title to any other Apartment.

PART SEVEN – MISCELLANEOUS

1. The restrictive covenants, conditions, limitations and agreements herein contained shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing or occupying any property or Apartments affected by the restrictions as delineated herein in THE VILLAGE subdivision after the date upon which this instrument has been duly recorded. The covenants, restrictions, conditions and reservations herein contained may be enforced by the Board of Directors of THE VILLAGE HOMEOWNERS ASSOCIATION, or by the Owner of any Apartment in said subdivision, or by any one or more of said individuals and/or corporations; provided, however, that the violation or breach of any covenant, restriction, reservation and/or condition, or any right or re-entry by reason thereof shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon said Apartment(s), and except as hereinafter provided, each and all of said covenants, restrictions, reservations and conditions shall be binding upon and effective against any owner of said Property whose title thereto is required by foreclosure, trustee's sale, or otherwise, and provided also that the breach of any of said covenants, restrictions, reservations and conditions shall be enjoined, abated or remedied by appropriate legal proceedings, notwithstanding the existence of any lien, deed of trust or mortgage instrument. Any and all instruments of conveyance of any interest in all or part of the Property or Apartments of this said THE VILLAGE subdivision shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein set forth as fully as though said terms and conditions of this instrument were therein set forth in full provided; however, that the restrictive covenants, terms and conditions of this instrument shall be binding upon all persons affected by the same whether express reference is made to this instrument or not.
2. Any violation of any state, municipal or local law, ordinance, or regulation pertaining to the ownership, occupation or use of any Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.
3. No private agreement of any adjoining Property owners shall modify or abrogate any of these restrictive covenants nor the obligations, rights, duties and limitations set forth upon the individual Apartment Owners by reason of the Articles of Incorporation of THE VILLAGE HOMEOWNERS ASSOCIATION or Bylaws thereof.
4. Invalidation of any of these Agreements, Covenants or Restrictions by judgment or court order shall in no way effect any other provisions, which shall remain in full force and effect.
5. The Agreements, Covenants and Restrictions herein contained shall continue in full force and effect for a period of ten (10) years from the date this instrument is recorded. Thereafter, they shall be deemed to have been renewed for successive terms of five (5) years each unless revoked or amended by an instrument in writing executed and acknowledged by the Owners of not less than seventy-five percent (75%) of the applicable Apartments of the subdivision, which said instrument shall be recorded in the office of the Recorder of Navajo County, Arizona, within ninety (90) days prior to the expiration of the initial effective period here or for any five (5) years extension thereof.

IN WITNESS WHEREOF Pinetop Lakes Unit V Partners, Ltd., an Arizona limited partnership, by Venture Capital Corporation, an Arizona corporation, its General Partner, has caused its corporate name to be signed and its corporate seal to be affixed by the undersigned officer thereunto duly authorized this 11th day of October, 1999.

DECLARANT:

Pinetop Lakes Unit V Partners, Ltd., an Arizona limited partnership,
By: Venture Capital Corporation, an Arizona corporation, its General Partner
Signed by: Sam Nocifera, President
Notarized on October 11, 1999, in Maricopa County by J. Elaine Parke

AMENDED AND RESTATED CONDOMINIUM DECLARATION

This Amended and Restated Condominium Declaration (the "Amended Declaration") is executed this 15th day of May, 2000, by Pinetop Lakes Unit V partners, Ltd., an Arizona limited partnership ("Declarant") for the purpose of amending and restating that certain Declaration of Horizontal Property Regime Together With Covenants, Conditions and Restrictions for The Village dated October 19, 1999, and recorded on October 19, 1999 as Fee Number 1999 22066, official records of Navajo County, Arizona (the "Declaration"), as provided in this Amended Declaration. Unless otherwise defined in this Amended Declaration, capitalized terms shall have the meanings given in the Declaration. Declarant hereby amends and restates the Declaration as provided in this Amended Declaration.

1. Arizona Condominium Act. Declarant hereby submits the Property to the Arizona Condominium Act, that is Arizona Revised Statutes Title 33, Chapter 9, #33-1201, et seq., as amended or recodified from time to time (the "Condominium Act"), for the purpose of creating a condominium in accordance with the provisions of the Condominium Act. In the event of any conflict or inconsistency in the provisions of the Declaration or this Amended Declaration and the provisions of the Condominium Act, the provisions of the Condominium Act shall control.
2. Submission of the Property. The Property shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Amended Declaration.
3. Condominium Declaration. All references in the Declaration to a horizontal property regime or a horizontal property regime declaration shall mean and refer to a condominium or a condominium declaration, as appropriate.
4. Controlling Declaration. In the event of any conflict or inconsistency in the provisions of the Declaration and the provisions of this Amended Declaration, the provisions of this Amended Declaration shall control.
5. Name of the Condominium. The name of the Property as made subject to the condominium declaration shall be "The Village, a Condominium".
6. Apartment or Unit Boundaries and Identifying Numbers.
 - a. As used in the Declaration and this Amended Declaration, the term "Apartment" also shall mean and refer to the term "Unit" as described and referred to in the Condominium Act and on the Plat for The Village recorded in the office of the County Recorder of Navajo County, Arizona, in Book 20, in Plats 16, Page 17, as amended in Book 20, in Plats, Page 23 & 24 (the "Plat").
 - b. The boundaries of each unit are the interior unfinished surfaces of the exterior perimeter walls and any party walls, floor, ceiling, exterior doors and windows of the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the interior finished surfaces are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements. Except as may otherwise be provided in this Section 6, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit, and all fixtures and improvements within the boundaries of any Unit, including, but not limited to, Building (as hereinafter described) exteriors, roofs, foundations, perimeter and party walls, and any common stairways, are a part of the Common Elements. For purposes of this Amended Declaration, the term "Building" means any structure containing one or more Units that have been or will hereafter be constructed on the land included in the Condominium, and designated as a building on the Plat. Each Building, or if designated by Declarant a group containing more than one Building, shall be considered a "Phase" if applicable for the purposes of the rules of any Agency.
 - c. In the event of an inconsistency or conflict between the provisions of this Section 6 and the Plat, this Section 6 shall control.
 - d. The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of settling, rising or lateral movement of any structures and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries as constructed.
 - e. Declarant reserves the right to relocate the boundaries between adjoining Units owned by Declarant and to reallocate each such Units' Common Element interest, votes in the Association and common expenses subject to and in accordance with #33-1222 of the Condominium act.
 - f. The identifying number of Each Unit shall be the number designated for each Unit on the Plat, which numbers shall be 1 through 48, inclusive.
7. Common Area, Elements and Expenses and Allocation.
 - a. As used in the Declaration and this Amended Declaration, the term "Common Area" also shall mean and refer to the term "Common Element" as described and referred to in the Condominium Act. The Common Area is as described and shown on the Plat and as described in this Amended Declaration.
 - b. The Common Elements also shall include all water and sewer lines and the fixtures and equipment related thereto, which are located on the Property, to the extent such water and sewer lines and related equipment and fixtures are not owned or maintained by a public or private utility company or an improvement, water or sewer district or a governmental instrumentality or agency.

- c. The undivided interest of each Owner in the Common Elements and the responsibility for the payment of common expenses of the Owners or the Association, shall be allocated to each Owner on the basis of one forty-eighth (1/48) for each Apartment owned by an Owner.
8. Allocation of Votes in the Association. The votes of Owners in the Association shall be allocated equally among all of the Owners, with there being one (1) vote per Unit.
9. Limited Common Areas or Elements.
- a. Those portions of the Common Areas or Common Elements designated on the Plat as “limited common areas” or “limited common elements” and allocated thereon for the exclusive use of one or more of the Owners, shall be considered as limited common elements within the meaning of #33-1218 of the Condominium Act.
 - b. The portions of the Common Elements which are Limited Common Elements and are allocated to the exclusive use of one Unit are the patio or balcony shown on the Plat as adjoining the Unit and which is designed for the exclusive use of the Unit.
 - c. A Limited Common Element may be reallocated by an amendment to this Amended Declaration made in accordance with the provisions of #33-1218(B) of the Condominium Act.
 - d. The Declarant shall have the right to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element, all in accordance with the provisions of #33-1218© of the Condominium Act.
10. Disclaimer. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Condominium can or will be carried out, or that the real property subject to the Plat is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.
11. Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Declaration and this Amended Declaration 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 Declaration and this Amended Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Property by encumbering future assessments if such action is approved by the written consent or affirmative vote of owners representing more than fifty percent (50%) of the votes in the association. Unless the Declaration and this Amended Declaration or the Condominium Act specifically require a vote of owners, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors.
12. Directors and Officers.
- a. During the Period of Declarant Control (as hereinafter defined), Declarant shall have the right to appoint and remove the members of the Board of Directors and the offices of the Association who do not have to be Owners.
 - b. Upon the termination of the Period of Declarant Control, Owners shall elect the Board of Directors which must consist of at least three members, at least a majority of whom must be Owners. The Board of Directors elected by Owners shall then elect the officers of the Association.
 - c. Declarant may voluntarily surrender its right to appoint and remove the members of the Board of directors and the officers of the Association before termination of the Period of Declarant Control, and in that event Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.
 - d. As used herein, “Period of Declarant Control” shall mean the time period commencing on the date this Amended Declaration is recorded with the County Recorder of Navajo County, Arizona, and ending on the earlier of: (i) ninety (90) days after the conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant; or (ii) four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

IN WITNESS WHEREOF, Declarant has executed this Amended Declaration as of the date set forth above.

DECLARANT: Pinetop Lakes Unit V Partners, Ltd., an Arizona limited partnership
By: Venture Capital Corporation, an Arizona corporation, its General Partner
Signed by Sam Nocifera, President
Notarized on May 15, 2000, in Maricopa County by J. Elaine Parke

**AMENDMENT TO AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR
THE VILLAGE, A CONDOMINIUM**

This amendment to Declaration recorded October 19, 1999, as 99-022066 of Official Records of Navajo County, Arizona and Amended and Restated Condominium Declaration recorded May 19, 2000 as 00-009467 of Official records of Navajo County, is made on the 6th day of December, 2000 by Pinetop Lakes Unit V Partnership, Ltd., an Arizona limited partnership, hereinafter referred to as "Declarant", as follows:

Para. 9. Limited Common Areas or Elements of the Amended and Restated Condominium Declaration recorded May 19, 2000 at Page 001- of 0005, Navajo County, Arizona, shall be amended to add the following language (the underlined portion) o clarify that each "Apartment" shall have the use of a covered parking space:

- b. The portions of the Common elements which are Limited Common Elements and are allocated to the exclusive use of one Unit are the patio or balcony shown on the Plat as adjoining the Unit and which is designed for the exclusive use of the Unit, and one (1) covered parking space within the Common Area for the exclusive use of each "Apartment". The number and location of one covered parking space shall be designated for the use of each owner by the Board of Directors of the Homeowners' Association.

IN WITNESS WHEREOF Pinetop Lakes Unit V Partners, Ltd., an Arizona limited partnership, by Venture Capital Corporation, an Arizona Corporation, its General Partner, has caused its corporate name to be signed and its corporate seal to be affixed by the undersigned officer thereunto duly authorized this 6th day of December, 2000.

DECLARANT: Pinetop Lakes Unit V Partners, Ltd., an Arizona limited partnership
By: Venture Capital Corporation, an Arizona corporation, its General Partner
Signed by Sam Nocifera, President