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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

PREScott HIGHLANDS EAST

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**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
PRESCOTT HIGHLANDS EAST**

THIS DECLARATION of Covenants, Conditions, and Restrictions is made this 27 day of August, 2004, by HERITAGE WEST, LLC, an Arizona limited liability company, as Developer and Declarant (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant desires to develop the real property described herein and any additional properties to be acquired or annexed hereafter by it into a planned residential subdivision; and

WHEREAS, for the development of the lands now owned or hereafter acquired, Declarant intends, without obligation, to develop a subdivision upon the above-described real property, which, as of the date of recordation of this Declaration, is owned by Declarant and shall comprise the "Property;" and it is intended, without obligation, that other lands may, from time to time, be added to the Property to expand and more fully develop the subdivision; and

WHEREAS, in order to enable Declarant to accomplish the purposes outlined above, all of the Property is hereby subjected to and shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, which are for the purpose of protecting the value and desirability of and which shall run with the Property and be binding on all parties having any right, title, or interest in the described properties or any part thereof.

NOW, THEREFORE, Declarant hereby declares, covenants, and agrees that the premises described on Exhibit A hereto shall be subject to the following:

1. **DEFINITIONS.** Terms used in this Declaration shall have the meanings specified for such terms in the zoning code or subdivision ordinances for the City of Prescott, Arizona, unless otherwise specifically defined or illustrated on the plat of record for the subdivision or in this Declaration or unless the context hereof otherwise dictates. All references to the plat, lots, easements, etc., mean those in Prescott Highlands East, Prescott, Arizona. Unless the content clearly indicates a different meaning, the following terms as used in this Declaration are defined as follows:

- 1.1 **"Additional Properties"** shall mean properties added in accordance with Article 5 hereof.
- 1.2 **"Committee"** shall mean Prescott Highlands East Architectural Control Committee as described herein.

- 1.3 **“Declarant”** shall mean Heritage West, LLC, an Arizona limited liability company, its successors and assigns, if such successors or assigns would acquire more than one undeveloped Lot from the Declarant for the purpose of development.
- 1.4 **“Declaration”** shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as it may from time to time be amended or supplemented.
- 1.5 **“Developer”** shall mean and refer to Heritage West, LLC, an Arizona limited liability company.
- 1.6 **“Lot”** shall mean and refer to any lot shown upon any recorded subdivision map of the Property, including any Additional Properties.
- 1.7 **“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 Lot. Owner shall include the purchaser of a Lot under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot merely as a security for the performance of an obligation.
- 1.8 **“Plat”** shall mean the Final Plat of Prescott Highlands East, as recorded in Book 50 of Maps, pages 93-94, in the office of the County Recorder of Yavapai County, Arizona, as the same be amended, supplemented, or modified from time to time.
- 1.9 **“Property”** shall mean and refer to that certain real property described on Exhibit A hereto and any Additional Properties as have been added to the subdivision.

2. **PLAN OF DEVELOPMENT.**

- 2.1 **Property Subject to the Declaration.** Developer declares that all of the Property shall be held, sold, and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any Lot subject to this Declaration, each Owner, for himself or itself, his or its heirs, personal representatives, successors, transferees, and assigns, binds himself, his heirs, personal representatives, successors, transfers, and assigns to all of the provisions, restrictions, covenants, easements, charges, conditions, rules, and regulations now or hereafter imposed by this Declaration. In addition, each Owner, by so doing, thereby acknowledges that all restrictions, conditions, covenants, easements, charges, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees, occupants, and transferees thereof. Furthermore, each such Owner fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by all Owners. The Lots and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot, even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.
- 2.2 **Disclaimer of Representation.** While the Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are, or may be, invalid or

unenforceable, the Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks as to the validity and enforceability thereof, and by accepting a deed to a Lot, agrees that the Declarant shall have no liability with respect thereto.

3. **PERMITTED USES AND RESTRICTIONS.**

- 3.1 **Residential Use.** The Lots in Prescott Highlands East shall be single-family residential Lots only, and there may be erected on any one Lot not more than one single family residence in accordance with applicable zoning, and such accessory and auxiliary guest house and garage as are incidental to single-family residential use. No other buildings shall be erected on any of said Lots.
- 3.2 **Subdividing.** No Lot shall be re-subdivided into smaller Lots nor conveyed or encumbered in less than the full original dimensions of such Lot as shown by the recorded Plat. Nothing herein contained shall prevent the dedication or conveyance of portions of Lots for public utility purposes, in which event the remaining portion of such Lots shall, for the purpose of this provision, be treated as a whole Lot.
- 3.3 **Parking.** Automobiles of the private passenger class and pickup trucks not exceeding three-quarter ton may be parked on the side of any Lot; provided that such parking area shall comply with the same setback requirements as the residential dwellings and be subject to required approval by the Committee. Campers, trailers, motor homes, and boats may be parked on the back of any Lot, provided that any such parking shall be attractively screened or concealed from neighboring Lots, roads, or streets, and then only with the prior approval of the Committee. All other trucks, vehicles, and equipment shall not be kept on any Lot or street except in a private garage unless otherwise allowed by Arizona statute. No motor vehicle that is under repair or not in operating condition shall be placed or permitted to remain on any street or streets, or any portion of any Lot, or Lots, unless it is within an enclosed garage or structure.
- 3.4 **Off-street Parking.** Lot Owners shall be responsible for providing adequate off-street parking space and seeing that, insofar as possible, the moving traffic street lanes adjacent to their Lots are kept free of parked vehicles except as otherwise may be permitted by Arizona statutes.
- 3.5 **General Upkeep.** All clotheslines, yard equipment, garbage cans, and service yards shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring parcels and streets. All rubbish, trash, or garbage shall be removed from the premises of all Lots and shall not be allowed to accumulate thereon. No antenna or broadcasting tower shall be erected on any of the said Lots, except that a television antenna may be constructed and maintained within the attic of any approved building and a satellite dish may be installed if (a) it is screened so

as not to be visible from the street or any neighboring property, and (b) such installation has been specifically approved by the Committee.

- 3.6 **Sewage.** All bathrooms, toilets, or sanitary conveniences shall be connected to sewer lines. There shall not be allowed any outside portable lavatories, outside toilets, or open plumbing.
- 3.7 **Tanks.** No elevated tanks of any kind shall be erected, placed, or permitted on any Lots. No tank shall be installed without the prior approval of the Committee.
- 3.8 **Animals.** No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained on any Lot. No animals shall be allowed to make an unreasonable amount of noise or become a nuisance. Any structure for the care, housing, or confinement of any animal shall be constructed or maintained only with the prior written approval of the Committee. Pets shall be leashed when not confined within a fenced area or residence. Persons walking any pets within the Property shall remove promptly from the Property the excrement of the pet. At no time will swine, peacocks, or geese be allowed.
- 3.9 **Construction Permitted.** All structures erected must be of new construction, and no buildings or structures may be moved from any other location, other than a point of distribution or manufacture, onto any of said Lots or tracts. All roofs must be of a material that is acceptable to the Committee.
- 3.10 **Minimum Livable Area.** All single-family residences constructed shall contain a minimum livable area of 1,800 square feet on grade level with or without basement. All square footage requirements shall be exclusive of open porches, pergolas, or attached garages.
- 3.11 **Setbacks.**
 - 3.11.1 **Front.** The minimum front setback is twenty (20) feet measured from the front Lot line. Where the slope of the front half of a Lot is more than one (1) foot rise or fall in seven (7) feet, the front yard may be reduced to ten (10) feet. Where common driveway easements are provided for single family Lots, all relevant front, side, or rear yard setbacks shall be measured from the driveway easement nearest the building site instead of from the Lot line.
 - 3.11.2 **Side.** Along each side Lot line, the minimum width of each side yard shall be ten (10) feet or ten percent (10%) of the total Lot width, whichever is less. The minimum width shall be seven (7) feet. On Lots bordering on two (2) or more streets or on private roadways, the setback for the Lot lines bordering on the street or private roadway shall be the same as for the front yard.
 - 3.11.3 **Rear.** The rear yard setback shall be twenty-five percent (25%) of the Lot depth, but need not be more than thirty (30) feet, and shall not be less than fifteen (15) feet, unless, because of unique Lot characteristics, the Committee agrees to a lesser amount.

3.11.4 **Variance.** The Committee may, in its sole discretion, grant a variance from setback restrictions when deemed appropriate due to unique lot conditions. No setback shall be less than the setback allowed by the City of Prescott.

3.12 **Height Limitations.** Building heights shall be no greater than thirty-five (35) feet as calculated by the City of Prescott zoning code. The Committee may reduce the height limit based on unique Lot characteristics. The minimum distance between buildings on the same Lot shall be eight (8) feet.

3.13 **Lot Coverage.** All buildings shall not cover more than thirty-five percent (35%) of a Lot.

3.14 **Driveways.** All driveways will be solid surfaced a minimum of twenty-five (25) feet from roadway.

3.15 **Plan Approval.** No leveling, excavation, grading, planting, landscaping, residence, outbuilding, fence, or wall, or other improvement or installation, shall be commenced, erected, placed, or altered on any Lot, until the plans and specifications therefor, shall have been submitted to and approved by the Committee, as provided for in Article 4 hereof, and a copy thereof is finally approved and lodged with the Committee. The Committee shall have the right to refuse to approve any such plans or specifications that are not suitable or desirable in its opinion for aesthetic reasons, or not in accordance with the overall quality of the Property, or any other reason, and in so passing upon such plans and specifications, the Committee shall have the right to take into consideration the suitability of the proposed building or other structure, and the material that is to be used, the site upon which it is proposed to be erected, the harmony with the surroundings, and the effect of the proposed structure on the outlook from adjacent or neighboring property.

3.16 **Commencement and Completion of Construction.** No garage or similar structure shall be erected on any Lot until construction of the primary single-family residence (complying with this Declaration) shall have been commenced on said Lot, and no garage or shed shall be occupied or used until construction of said single-family residence is finished and ready for occupancy. Any garage or similar structure erected on any Lot shall be of the same design and constructed of the same materials as the permanent residence of said Lot. All construction must be completed within twelve (12) months after commencement. All front-yard and side-yard (if on a corner Lot) landscaping must be installed within one hundred twenty (120) days after completion of said single-family residence.

3.17 **Permanent Structure.** No garage, trailer, mobile home, motor home, motor vehicle, or any temporary structure of any nature may be used temporarily or permanently as a residence of any Lot, except as may be otherwise permitted by the Committee under the authority granted in Article 4 hereof.

3.18 **Mail Box.** Each Owner shall obtain the approval of the Committee of the location, design, and construction of the mail box.

- 3.19 **Commercial Activities.** No hotel, store, multi-family dwelling, boarding house, guest ranch, children's day care, nursing-type facilities, or any other place of business of any kind other than home office activities, and no hospital, sanitarium, or other place for the care or treatment of the physically or mentally sick or for the treatment of disabled animals shall be erected or permitted upon the premises of any Lot, or any part thereof.
- 3.20 **Signs.** Except as otherwise provided by law, no advertising signs, billboards, or unsightly objects shall be erected, placed or permitted to remain on any of said Lots; provided, however, that a sign or signs as may be required by legal proceedings and a single "For Sale" sign containing not more than four (4) square feet of surface area are allowed; and further provided, however, that a builder, while a home is under construction or is completed and is for sale by said builder, or his agent, may have his sign on the home site in conformity with size stated.
- 3.21 **Street Lighting.** All Owners are required to construct and maintain one (1) functioning automatic post light of a suitable design and approximately three (3) to six (6) feet in height in an appropriate location on the street boundary of their Lots. Such provision will be made that the lights will be on at all hours of darkness and will have bulbs of such wattage as may be specified by the Committee. Gas lights may be installed in lieu of electric lights.
- 3.22 **Lot Maintenance.** The Owners of all Lots shall keep the same reasonably clean and clear of weeds and trash, and properly maintain same, so as not to cause unsightly or dangerous condition. Each Owner shall maintain all landscaping on the Lot, and any landscaping within the road right-of-way adjoining the Lot.
- 3.23 **Drainage.** No Owner shall divert or cause diversion of the surface water from the street adjacent to his Property onto any other Property. No Owner shall interfere with the flow of water in drainage areas or otherwise interfere with natural water flow.
- 3.24 **Utility Easements.** All Lots are subject to a public utilities easement for the purpose of permitting installation and maintenance of public utilities, and no excavation, planting, fence, building, structure, or other barrier or impediment may be placed or permitted to remain at any point of any public utility easements that would restrict the free use and enjoyment of said easements by the Owner of any Lot.
- 3.25 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Property, except in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and, then, only for the shortest time reasonably necessary to effect such collection.
- 3.26 **Diseases and Insects.** No Owner shall permit any thing or condition to exist upon any Lot that shall induce, breed, or harbor infectious plant diseases or noxious insects.

- 3.27 **Air-Conditioning Equipment.** No heating, air conditioning, or refrigeration equipment shall be placed, allowed, or maintained anywhere other than on the ground unless screened or concealed (subject to required approvals by the Committee) in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece or pieces of machinery, fixtures or equipment.
- 3.28 **Satellite Dishes.** Satellite dishes for the reception of television signals shall be subject to approval of the Committee as to location and size.
- 3.29 **Utility and Service Lines.** No gas, electric, power, telephone, water, sewer, cable television, or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Lot, except to the extent, if any underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above-ground switch cabinets and transformers where required.
- 3.30 **Burning and Incinerators.** No open fires or burning shall be permitted on any Lot at any time, and no incinerators or like equipment shall be placed, allowed, or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

4. **ARCHITECTURAL CONTROL COMMITTEE.**

- 4.1 **Organization.** The Committee shall initially be the Declarant or shall consist of three (3) regular members appointed by the Declarant. None of the members shall be required to be an architect or to meet any other particular qualifications for membership.
- 4.2 **Terms of Office.** Unless the initial members of the Committee have resigned or been removed by the Declarant, their terms of office shall expire at the time all Lots are developed, sold, and recorded, but shall continue thereafter until the appointment of their respective successors. Thereafter, the term of each member of the Committee shall be for a period of three (3) years and until the appointment of his or her successor.
- 4.3 **Appointment and Removal.** The right to appoint and remove all members of the Committee is vested in the Declarant until such time as the Declarant has sold one hundred percent (100%) of the Lots in the subdivision and appointed a successor Committee or has earlier relinquished control of the Committee by appointment of a successor Committee. In either case, the Declarant shall relinquish control of the Committee by recording with the office of the Yavapai County Recorder a Notice of Relinquishment of Control that sets forth the name, address, and telephone number of each of the three (3) successor members of the Committee. Thereafter, vacancies on the Committee shall be filled by appointment by the remaining Committee members, or, should no Committee members remain, by vote or written consent of fifty-one percent (51%) of the then Lot owners. Annually, no later than January 7 of

each year, the Committee shall record with the office of the Yavapai County Recorder a Notice of Committee Members setting forth the name, address, and telephone number of each Committee member.

- 4.4 **Application and Approval.** Two (2) copies of the complete plans and specifications of any proposed structure or alteration to a structure must be submitted to the Committee, together with such fee or fees as the Committee determines in its sole discretion to be reasonable or necessary to defray the cost of its review and the professional evaluation of such plans and specifications. At least one (1) copy of said plans and specifications shall be retained by the Committee. All plans shall include a landscape plan for the front yard area. In the event that a written request for such approval is not acted upon within thirty (30) days after the receipt by the Committee of said request, then such approval will not be required; provided, however, that no structure may be constructed pursuant to this paragraph that conflicts with any specifically delineated restriction contained herein or with any applicable zoning or use law.
- 4.5 **Waiver.** The approval by the Committee of any plans, drawings, or specification for any work done or proposed, or for any other matter requiring the approval of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.
- 4.6 **Meetings and Compensation.** The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two (2) regular members at a meeting, or otherwise, shall constitute the act of the Committee. Members of the Committee shall not be entitled to compensation for their services.
- 4.7 **Committee Rules.** The Committee may, from time to time, and in its sole discretion, adopt, amend, and repeal by unanimous vote or written consent, rules and regulations, to be known as the Architectural Control Committee Guidelines. The Guidelines may set forth the standards and procedures for the Committee review and guidelines for architectural design, placement of buildings, landscaping, color scheme, exterior finishes, and materials and similar features which are recommended for use within Prescott Highlands East.
- 4.8 **Liability.** Neither the Committee, nor any member thereof who has acted in good faith on the basis of such information possessed by that member, shall be liable to any Owner or to any other party for any damage, loss or prejudice suffered or claimed on account of:
 - 4.8.1 Approval or disapproval of any plans, drawings, or specifications, whether or not defective;
 - 4.8.2 The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

- 4.8.3 The development of any Property within Prescott Highlands East.; or
- 4.8.4 The execution and filing of any estoppel certificate, whether or not the facts therein are correct.

Without any way limiting the generality of any of the foregoing provisions of this section, neither the Committee or any member thereof, may, but is not required to, consult with or hear the views of any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Committee for review.

- 4.9 **Insurance.** The Committee is authorized to and shall acquire directors and officers insurance or a form of insurance similar thereto, insuring the Committee and its members from claims arising from or relating to Committee conduct authorized herein.
5. **RIGHT TO ADD ADDITIONAL PROPERTIES.** The Declarant, at its election, shall have the exclusive right from time to time to add to or extend the areas governed by this Declaration. Such Additional Properties, when added, shall become part of the Property as defined herein. Any new land subject to this Declaration shall be added as follows:

The Declarant, its successor, or assigns, shall record in the office of the Yavapai County Recorder a supplement to this Declaration signed by the Declarant, which Supplemental Declaration shall (a) describe the new land being subjected to these covenants, and (b) state what additions, deletions, or other changes or modifications have been made in the provisions hereof with respect to such new land.

6. **GENERAL PROVISIONS.**
- 6.1 **Enforcement.** The Declarant or any Owner shall have the right, but not the duty, to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now or hereinafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.
- 6.2 **Severability.** Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall be in full force and effect.
- 6.3 **Rule Against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the perpetuities start to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those that could be used in determining the validity of the challenged interest, plus (b) those of the issue of the original Committee who are living at the time the period of perpetuities starts to run on the challenged interest.

6.4 **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land until August 31, 2024, after which they shall be automatically extended for successive periods of ten (10) years. The Declarant, at any time prior to sale of one hundred percent (100%) of the Lots in the subdivision, may amend this Declaration. After sale of one hundred percent (100%) of the Lots by Declarant, the Owners, by a vote of sixty-seven percent (67%), may amend this Declaration. No amendment to the Declaration shall affect the rights, exclusions, or exemptions granted to the Declarant without the Declarant's prior written consent, which consent shall be granted or withheld at the sole discretion of the Declarant. No successor Declarant may make any material amendment to this Declaration during the initial term of this Declaration without the written consent of the original Declarant, provided that the original Declarant is still a legal entity in good standing the Arizona Corporation Commission.

6.5 **Reference to Covenants in Deeds.** Deeds to and instruments affecting any Lot or any part of the Property may contain the covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and the all heirs, executors, administrators, successors, and assigns.

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

6.7 **Captions and Titles.** All captions, title, or headings of the sections in this Declaration are of the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

IN WITNESS WHEREOF, the Declarant/Developer has executed this Amended Declaration as of the 27 day of August, 2004.

HERITAGE WEST, LLC

By: WEST FORK INVESTMENTS, INC.,
an Arizona corporation,
Manager of HERITAGE WEST, LLC


By: Thomas R. Devereaux
Thomas R. Devereaux, President

STATE OF ARIZONA)
) ss.
County of Yavapai)

On this 27 day of August, 2004, before me, the undersigned Notary Public, personally appeared Thomas R. Devereaux, who acknowledged himself to be the President of WEST FORK INVESTMENTS, INC., an Arizona corporation, which is the Manager of HERITAGE WEST, LLC, an Arizona limited liability company, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

Dianne L. Delnicki

Notary Public



Notary Public State of Arizona
Yavapai County
Dianne L. Delnicki
Expires June 10, 2006

My Commission Expires:

6/10/2006

EXHIBIT "A"

LOTS 1 THROUGH 23, PRESCOTT HIGHLANDS EAST, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF YAVAPAI COUNTY, ARIZONA, RECORDED IN BOOK 50 OF MAPS, PAGE 93-94