

WHEN RECORDED, RETURN TO:



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RES 3910532

Eastridge Investments, L.L.C.
35 French Drive
Prescott, AZ 86303

EASTRIDGE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the EASTRIDGE (hereinafter sometimes referred to as the CC&R's) is made this 7th day of September, 2005, by Eastridge Investments, L.L.C., an Arizona limited liability company (herein referred to as "Declarant") with its principal place of business at 35 French Drive, Prescott, AZ 86303.

A. DECLARANT.

Declarant is the owner of certain real property in the Town of Prescott Valley, in the County of Yavapai, State of Arizona, described in Exhibit "A", which is attached hereto and by reference made a part hereof (hereinafter the "Property"). "Declarant" shall mean the undersigned, its successors and assigns.

B. ESTABLISHMENT OF RESTRICTIONS.

Declarant hereby declares that the Property is now held, and shall hereinafter be held, transferred, sold, leased, conveyed and occupied, subject to the restrictions herein set forth, each and all of which is and are for, and shall inure to the benefit of and pass with each and every parcel of the Property and shall apply to and bind the personal representatives, heirs, assigns and successors in interest of any owner ("Owner") hereof.

C. CREATION OF ECOLOGICAL ENVIRONMENT.

1. The purpose of these CC&R's is to ensure the proper development and use of the Property (the "Development") to protect the Owners of parcels contained within the bounds of the Property against improper development and use.
2. The preservation of long-term property value is the key principle of the EASTRIDGE concept of planned business development. The protective regulations of these CC&R's govern all EASTRIDGE Property in the interest of providing each client optimum return on real estate investment.
3. These CC&R's are an extension of the Town of Prescott Valley (the "Town") Zoning Ordinance and are intended to sustain an environment of quality development, integrity of the Town's master plan, and preservation of the tangible qualities of property value. Except as set forth at Section V below, or as may be set forth at Section V in the future, in the event there is a



discrepancy between these CC&R's and the Town Zoning Ordinance, the most restrictive shall apply.

4. The Property shall be used only for commercial purposes (general sales and services) including, but not limited to, professional and business offices, retail sales, restaurants, service business, wholesale/retail trade, streets and utilities incident thereto, provided that all specific uses must be in compliance with applicable Town zoning regulations for C2 designation.
5. No activity shall be conducted on the Property which shall emit smoke or any other noxious fumes into the atmosphere. No mining nor drilling shall be conducted on the Property which emits a noise or sound for a period or periods aggregating more than three (3) minutes in any one hour and which is objectionable due to loudness, intermittence, beat, frequency or shrillness. Exception to this would be during construction of buildings and infrastructure, including remodeling.

D. PLAN APPROVAL

All plans pertaining to building design, construction, landscaping, signs and subsequent exterior alterations are subject to prior approval by EASTRIDGE Architectural Control Committee, (the "Committee"). The purpose of the Committee is to maintain control of the Development and to interpret this Agreement. Committee decisions will not serve to establish precedents. Plans must meet all building code, permit requirements and other applicable rules and regulations of the Town and shall include, but not be limited to, plot layout, all exterior elevations with materials and colors therefore, structural design, signs, landscaping and detail for screening exteriorly exposed mechanical equipment, and shall be submitted to and approved in writing by the Committee prior to commencement of any construction. The Committee shall either approve or disapprove or make recommendations in writing within forty-five (45) days after receipt of the plans. The failure of the Committee to approve, disapprove or make recommendations within this 45-day period will constitute disapproval. Any disapproval or recommendation by the Committee regarding the plan shall specify the particular reason therefor. Upon such disapproval or recommendation, the Committee and the affected Owner shall mutually consult to establish a final plan for approval. No party shall arbitrarily or unreasonably withhold approval of the plans. Neither Declarant, the Committee, members of the Committee, their agents, employees, officers, directors, successors or assigns shall be liable in damages to anyone submitting plans to them for approval, nor to any Owner or lessee of land affected by these CC&R's by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve such plans. Every person, Owner or lessee agrees, by submission of such plans, that he will not bring any action or suit against Declarant, the Committee, any members of the Committee or their employees, agents, officers, directors, successors, or assigns, to recover any damages. Whenever in these CC&R's the consent of the Committee is required, such consent shall only be effective if it is in writing.



In addition to any other requirements of the Committee, any building constructed on the Property shall be decorative masonry construction, the equivalent or better, but no building therein shall be covered with asbestos siding. No building over ten thousand (10,000) sq. ft. shall be constructed with a wooden frame. The exterior finish of the front wall, or any wall facing a street, and the side walls to a minimum depth of twenty feet must be face brick, painted masonry, stucco, or the equivalent. Buildings located on corner lot sites must comply with the immediately foregoing regulation on the entire street facing sides.

The exterior finish of the remainder of the side and back walls shall be brick, concrete blocks, tile blocks or architectural enameled metal siding, an equivalent or better. No exposed galvanized sheet metal will be permitted. When the walls are constructed of concrete or concrete blocks, unless the exterior finish is stucco, gunnite or an equivalent, the joints shall be tooled or painted and such exterior walls shall be rubbed down and covered sufficiently with standard waterproofing paint. All exposed walls must be properly maintained and/or repainted on a regularly scheduled basis. All other types of construction not covered in the above must be first submitted to and have a written approval of the Committee.

All buildings and structures shall be painted by or on behalf of the Owner thereof at its sole cost and expense as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such buildings or structure and must be specifically approved in writing by the Committee.

The Committee shall consist of at least three members who shall initially be appointed by the Declarant. A member of the Committee need not be an Owner. Members of the Committee may be removed by the person(s) or entity having the power and authority to appoint them, at any time and without cause. The Declarant shall have the sole right to appoint and remove members of the Committee for so long as the Declarant owns any part or portion of the Property.

When the Declarant no longer owns any portion or part of the Property, the members of the Committee shall be appointed and/or removed by the affirmative vote of the owner or owners of two-thirds of the total square footage of land area in the EASTRIDGE. The Declarant has the right, in Declarant's sole discretion, at any time, to advise the owners of parcels in the EASTRIDGE, by giving written notice at least thirty (30) days prior to the stated effective date, that the Declarant is turning over the appointment and administration of the Committee to the owners in the EASTRIDGE. The notice shall be recorded with the Yavapai County Recorder and include reference to the recorded CC&R's.

The Committee shall meet from time to time as may be necessary to perform its duties under these CC&Rs. The vote of the majority of the Committee, or the written consent of the majority of the Committee, shall control the acts of the Committee.

The Committee may establish rules and/or guidelines setting forth the procedures for and the required content of applications that are submitted to the Committee for approval.



The Committee may authorize minor variances from compliance with these CC&Rs, provided that such minor variances are not detrimental to the EASTRIDGE, nor which could significantly defeat or adversely affect the purpose or benefit of Property ownership within the EASTRIDGE.

E. COMMENCEMENT AND COMPLETION OF CONSTRUCTION.

Property Owners in the EASTRIDGE shall be obligated to begin, or cause to begin, construction of a facility within two (2) years of the date of acquisition of their Property. After commencement of construction of any structure, the Owner shall diligently prosecute the work thereon, or cause the diligent prosecution of the construction to occur, to the end that the structure shall not remain in a partially finished condition any longer than reasonably necessary for completion thereof.

F. FENCING AND SCREENING REQUIREMENTS.

1. All operations and storage on the Property shall be conducted within a completely enclosed building or within an area on the side or back of the Property enclosed by a solid wall, fence and/or landscape screen (collectively "Fencing") at least six (6) feet in height and no taller than eight (8) feet in height, provided, however, that no object stored or located on the Property shall extend above or be stacked higher than the Fencing so erected.
2. Plans for all Fencing will be submitted to the Committee for approval prior to installation. Fences shall be properly maintained and free of rust, decay and unapproved vegetation. No Fence shall obstruct the clear sight distance along any street or road, and shall not extend any closer to any street or road than the minimum building setback line, in accordance with the Town Zoning Ordinance.
3. No outside storage or display of goods or materials will be permitted in the front setback area of any parcel.
4. Any loading docks or service areas should be well maintained and kept free of any shipping materials, clutter, debris and the like, and should not be allowed to create an unsightly condition which would be visible from Highway 69 or the main frontage road.

G. LANDSCAPING AND SITE STANDARDS.

Every parcel on which a building shall be placed shall be developed according to plans approved by the Committee, and shall be, except as set forth below at Section V, developed, landscaped and maintained in accordance with the Town Zoning Ordinance. In addition thereto, there shall be a 5' landscape strip along any parking lot, which is adjacent to a side lot line that is located between a building and the roadway. Any bulk liquid storage tanks shall be located in accordance with the Town Zoning Ordinance and government regulations, and shall be approved in writing by the Committee.



H. PARKING/SERVICE AREAS.

1. Parking, loading and maneuvering areas shall developed in accordance with the Town Zoning Ordinance and approved in writing by the Committee.
2. All parking and service areas are non-exclusive easement areas for the purpose of providing utilities and maintenance of utilities, landscaping and maintenance of landscaping, ingress, egress and access to utilities and landscaping. This easement shall cover the entire property with the exception of the building footprint, and any other easements which were recorded prior to this document.
3. In lieu of 2 above, the owner may establish defined non-exclusive easements across said property which are consistent with utility company standards, and provide the Town with access to SR 69 landscaping areas.
4. The Committee shall review all individual development plans to insure that the development is consistent with the intent of this paragraph.

I. UNIFORM SIGN STANDARDS.

1. Each occupant shall be allowed one (1) sign on each public right-of-way frontage of a parcel. Each sign shall be attached to a building and extend parallel or substantially parallel thereto and not more than one (1) foot from, but not above, the building. The area of the sign shall be limited to one (1) square foot for each lineal foot of frontage on the public right-of-way on which the sign faces. Flashing or intermittently illuminated signs shall be prohibited and any lighting of signs must be accomplished in such a way that the lighting is restricted to the signs. Ground signs shall be permitted with the approval in writing of the Committee, and in accordance with the Town Zoning Ordinance.
 - a. Total attached signage shall not exceed one hundred sixty (160) square feet per occupant. Attached signage shall not extend horizontally a distance greater than fifty (50) percent of the width of the building wall on which it is displayed;
 - b. The contents of the sign shall be limited to identifying the name, business, products or services sold or produced by the firm occupying the premises;
 - c. One temporary sign offering the premises for sale, resale or lease, not exceeding thirty two (32) square feet in area, may be located on the front parcel area when specifically approved in writing by the Committee.
2. Each approved parcel shall be permitted one (1) detached monument type sign not to exceed fifty (50) square feet or ten (10) feet in height, the base of any such sign being at least fifty (50) percent of the total aggregate width, and shall be located a minimum seven (7) feet from any Property line.



3. Sign identifications on buildings or building sites shall only be of such size, design and color as is specifically approved by the Committee, and are to conform, but not exceed Town Zoning Ordinance requirements.

J. LIGHTING.

1. The design and type of exterior light standards for illumination shall be in accordance with Town Zoning Ordinance and approved in writing by the Committee. The Committee shall have the authority to set a uniform standard for lighting. Metal halide lighting is prohibited as an outdoor lighting source.
2. On-site exterior area lighting standards, once established by the Committee, shall be adhered to through out the Eastridge Development and shall be consistent in height, pole type, luminair head and bulb type, spacing, candle power, and color.
3. Placement of light pole standards shall be consistent with ground features so as to protect said light pole standards from vehicular damage.
4. Maintenance of on-site exterior area lighting shall be the sole responsibility of the property owner. If bulbs are not replaced or repaired within seven (7) days of notification that they are not functional, or if damaged light standards are not repaired or replaced within twenty (20) days of notification, the Committee shall be authorized to repair or replace said light bulb or standard and assess owner for costs incurred, as stated in paragraph P, Enforcement.

K. DAMAGED OR DESTROYED BUILDINGS.

If any building or other improvement in the EASTRIDGE is damaged or destroyed by fire, storm, explosion or otherwise, then, and in that event, all debris resulting from such damage or destruction shall be cleaned up and removed from said property by the Owner, and all necessary demolition and removal thereof arising from such damage or destruction shall be completed by Owner within forty-five days of the said damage or destruction. Restoration and/or reconstruction shall begin within nine (9) months of the date of such damage or destruction. In the event such construction is not begun within the nine (9) month period, then, and in that event, the Owner shall demolish all damaged or destroyed improvements on the said Property and leave the Property in a broom-swept condition.

L. SURFACE WATERS.

No land owner shall, in using his own land, divert or cause diffused surface and drainage waters from their natural course to such an extent that such diverted waters shall back up, accumulate or flow unnaturally onto the property of another.



M. WASTE DISPOSAL.

The disposal of all liquid and solid waste shall comply strictly with all local, State and Federal laws and regulations applicable thereto. Any and all waste disposal into the Town's central sewer system must be such as is in compliance with the Town of Prescott Valley Rules and Regulations. The protection of surface and ground water quality, and clean air quality controls are under the jurisdiction of the United States Environmental Protection Agency, Arizona Department of Environmental Quality, and other governmental entities and their rules and regulations governing disposal of any waste materials will be strictly adhered to and enforced.

N. UTILITIES.

1. All facilities for utilities serving the Property and any structures located thereon including, but not limited to, electricity, water, sewer, gas and telephone, shall be located underground in either dedicated rights-of-way or easements and shall comply with all applicable governmental rules and regulations. In addition to those rights-of-way and/or easements currently of record, if any, the Declarant reserves to itself the right to grant and locate appropriate rights-of-way and/or easements as may be necessary to ensure proper utility service, as well as ingress and egress, to the EASTRIDGE properties and public right of way.
2. All property fronting Town public right of way has a 10' Public Utility Easement and is subject to construction and maintenance of said utilities within the easement. Owners and tenants are prohibited from erecting any signs, structures, irrigation or private utilities within said easement without the written consent of all utility companies servicing Prescott Valley. Any improvements by owners or tenants within said public utility easement are subject to removal without any recompense to the owner or tenant.

O. OBJECTIONABLE USES AND PROHIBITED OPERATIONS.

Care is taken to select commercial/business neighbors whose businesses are compatible to the overall development of the Property. No open storage is permitted unless protected by Fencing, in accordance with these CC&R's and, if applicable, the Town Zoning Ordinance. Uses which are prohibited under any applicable Town nuisance ordinance or which are considered objectionable to such an extent as to constitute a nuisance and violate public policy by reason of, without limitation, noise, glare, odor, dust, vibration, radiation, smoke, toxic fumes or the hazardous nature of the operation are prohibited.

Mining and drilling operations for the removal of minerals, oil, gas, or other hydrocarbon substances and water on the Property subject to these CC&R's shall not be permitted without the prior written consent of the Committee. Any consent of the Committee to allow mining and/or drilling activities shall, at a minimum, prohibit the interference in the use of the surface of any property within the EASTRIDGE provided, however, that neither the Committee nor the Declarants shall be liable, in any way, and for any



damages, claims, injuries, decrease in value, or the like should mining and/or drilling activities occur without Declarant's or the Committee's approval and which interfere with the use of the Owners property and which activities are conducted by a governmental entity or by a person or entity enjoying oil and gas, water, hydrocarbon or other mineral rights superior to Declarants as of the date hereof.

The following operations and uses shall not be permitted on the Property:

1. Residential
2. Trailer courts
3. Labor camps
4. Junk, wrecking yards or salvage yards
5. Distillation of bones
6. Dumping, disposal, incineration or reduction of garbage, sewage, offal, dead animals or refuse.
7. Fat rendering
8. Stockyards or slaughter of animals.
9. Cemeteries or crematoriums for human or animal interment
10. Refining of petroleum or of its products
11. Raising of any animals for husbandry, domestic, or other purposes
12. Mobile home sales.
13. Flea market operations
14. Adult oriented businesses as defined in the Town Zoning Ordinance.
15. Discharge of smoke, dust, dirt, fly ash, or noxious, toxic or corrosive fumes or gases into the atmosphere, or activities which produce obnoxious odors.
16. Used car sales not in direct connection with an existing new car sales facility on the same or contiguous parcel unless such parcel was not originally platted contiguous to State Highway 69.
17. Such other operations or uses as may be prohibited by the Committee.

P. ENFORCEMENT.

1. In the event that an Owner has failed to observe or perform any of its obligations or duties under these CC&Rs, (a "non-complying Owner") the Declarant or any other Owner shall give such non-complying Owner written notice of such violation and such non-compliant Owner shall observe or perform the obligation or duty required in the written notice within ten (10) days after receipt; provided, however, that if such non-performed or non-observed obligation or duty is one which cannot be performed or observed within ten days, then so long as such non-compliant Owner commences such performance or observance within the ten day period and thereafter diligently prosecutes such performance or written observance until completion to the satisfaction of the objecting party, then the objecting party shall not be entitled to exercise the remedy provided for in the immediately following sentence. Should the non-compliant Owner fail to fulfill its obligation or duty as set forth in the notice and within such period, then the objecting party shall have the right and power to enter upon the non-compliant Owner's parcel and



perform such obligation or duty without liability to any person for damages or wrongful entry or trespass. Such non-compliant Owner shall be liable for the costs of such work and shall promptly reimburse the objecting party for such costs. In addition to the foregoing, the Declarant or other non-defaulting Owner shall be entitled to initiate and prosecute a proceeding at law or in equity against the non-complying Owner who has violated or which is attempting to violate any of the restrictions set forth in these CC&Rs to enjoin or prevent it from doing so, to cause the violation to be remedied or to recover damages for the violation. The condition of providing written notice prior to any entry upon a non-complying Owner's property shall not be required in the event that the condition or violation which requires remediation is of a nature so as to constitute an emergency.

2. The result of every action or omission, whereby any restriction herein contained is violated in whole or in part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner or lessee, either public or private, shall be applicable against every such nuisance and may be exercised by Declarant, the Committee or by any Owner of Property subject to these restrictions.
3. In any legal or equitable proceeding for the enforcement of, or to restrain the violation of these CC&R's, or any provision hereof, the losing party or parties shall pay the costs, expenses and attorneys' fees of the prevailing party or parties in such amount as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.
4. Declarant or the Committee, or members of the Committee may, from time to time, at any reasonable hour or hours, and with reasonable advance notice, enter and inspect any Property subject to these restrictions to ascertain compliance therewith.
5. The failure of Declarant, the Committee or any property Owner to enforce any restriction herein contained shall, in no event, be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other provision or restriction of these CC&R's.

Q. TERM.

These CC&R's, every provision hereof, and every Covenant, Condition and Restriction contained herein, shall continue in full force and effect for a period commencing on the date hereof and expiring forty (40) years from said date.

U. ASSIGNMENTS OF DECLARANT'S RIGHTS AND DUTIES.

Any and all of the rights, powers and reservations of Declarant herein contained may be assigned to any person, corporation or association which will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon



any such person, corporation or association's evidencing its consent, in writing, to accept such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term "Declarant," as used herein, includes all such assigns and their personal representatives, heirs, successors and assigns. If at any time Declarant ceases to exist and has not made such an assignment, a successor Declarant may be appointed in the same manner as these Restrictions may be terminated, extended, modified or amended under Section V of this Declaration.

V. FUTURE ADJUSTMENTS.

For so long as the Declarant is an Owner of a parcel within the EASTRIDGE, these CC&R's may be amended, modified or terminated, in whole or in part, only by the Declarant. In exercising its rights under this Section V, Declarant may modify or amend these CC&R's in non-uniform ways such that amendments, modifications or partial terminations may apply to some of, but not all of, the Property or parcels. The Declarant further has the right, in the Declarant's sole discretion, and at any time Declarant chooses, to turn over administration of the Property and of these CC&R's to the Owners of the parcels in the property by giving written notice to the Owners and by recording the notice with the County Recorder of Yavapai County, Arizona. After the Declarant is no longer an Owner of a parcel within the EASTRIDGE, or after Declarant has turned over administration of the Property as set forth herein, these CC&R's may not be amended or modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners of the parcels containing sixty percent (60%) of the total square footage of land area in the EASTRIDGE at the time of such modification or termination. Any amendment or modification of these CC&R's, whether by Declarant or other Owner(s), shall be effective only by written instrument duly executed and acknowledged by the Declarant or the required Owner(s) and recorded in the office of the Recorder of Yavapai County, Arizona. No amendment or modification or termination of these CC&R's shall adversely affect or impact existing, valid uses of property within the EASTRIDGE or affect the rights of any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any parcel or affect the rights and responsibilities of Declarant unless approved in writing by Declarant.

Provided that an amendment or modification otherwise complies with all applicable governmental laws, rules or regulations, these CC&R's may be amended or modified in such a way as to vary from the Town's Zoning Code.



W. CONSTRUCTIVE NOTICE AND ACCEPTANCE.

Every person who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to these CC&R's is contained in the instrument by which such person acquired an interest in the Property.

X. MUTUALITY, RECIPROCITY; RUNS WITH LAND.

All restrictions, conditions, covenants, reservations, easements, and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel of the Property; shall create reciprocal rights and obligations between the respective Owners of all parcels and privity of contract and estate between all grantees of said parcels, their personal representatives, heirs, successors and assigns; and shall, as to the Owner of each parcel, his personal representatives, heirs, successors and assigns operate as covenants running with the land, for the benefit of all other parcels.


Y. EFFECT OF INVALIDATION.

If any provision(s) of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

This Declaration of Covenants, Conditions and Restrictions shall be recorded in the office of the Recorder of Yavapai County, Arizona.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Covenants, Conditions and Restrictions on the date first hereinabove written.


EASTRIDGE INVESTMENTS, L.L.C., an
Arizona limited liability company
By RUTHERFORD INVESTMENTS, INC., an
Arizona Corporation, Manager

By: 
Stephen M. Rutherford
President of Rutherford Investments, Inc.

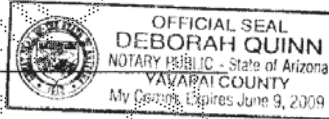


STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 7th day of September 2005, by Stephen M. Rutherford, who acknowledged that he is the President of Rutherford Investments, Inc., an Arizona corporation, which is the Manager of Eastridge Investments, L.L.C., an Arizona limited liability company, and that he as such officer, executed the foregoing instrument for the purpose contained therein.


Notary Public

My Commission Expires:



UNOFFICIAL COPY



EXHIBIT "A"

Tracts A and B of EASTRIDGE AT PRESCOTT VALLEY, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, recorded in Book 46 of Maps, Page 90.

UNOFFICIAL
COPY