

When Recorded, Place in  
Town of Prescott Valley Folder

**RESOLUTION NO. 1719**

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN, AND VIEW POINT/PRESCOTT VALLEY LP TO FACILITATE THE DEVELOPMENT OF PHASES I AND II OF THE VIEW POINT SENIOR COMMUNITY COMPRISING ONE HUNDRED AND TWO (102) UNITS PRIMARILY FUNDED BY THE FEDERAL HOUSING TAX CREDIT PROGRAM; AUTHORIZING THE MAYOR (OR IN HIS ABSENCE, THE VICE MAYOR) TO SIGN SAID DEVELOPMENT AGREEMENT AND ANY RELATED DOCUMENTS; AND DECLARING THIS RESOLUTION TO BE AN EMERGENCY MEASURE PURSUANT TO ARS §19-142(B) AND §2-05-060 OF THE PRESCOTT VALLEY TOWN CODE.

WHEREAS, ARS §9-500.05 provides for development agreements between municipalities and others for the purpose of providing for development on property and the financing of public infrastructure; and

WHEREAS, such development agreements are to be entered into by ordinance or resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA:

1. That that certain Development Agreement dated October 14, 2010, by and between the Town of Prescott Valley, a municipal corporation of Arizona ("Town"), and View Point/Prescott Valley LP, an Arizona limited partnership ("View Point"), by WESCAP Investments, Inc. attached hereto and expressly made a part hereof, be hereby entered into, and that the Mayor (or, in his absence, the Vice Mayor) be hereby authorized to sign said Agreement on behalf of the Town.

2. That the Mayor (or in his absence, the Vice Mayor) be hereby authorized to sign on behalf of the Town all other documents reasonably necessary to further the purposes of this Development Agreement.

3. That this Resolution adopting the Development Agreement be effective thirty (30) days after its passage and approval according to law.

RESOLVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 14th day of October, 2010.

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Harvey C. Skoog  
Mayor

ATTEST:

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Diane Russell, Town Clerk

APPROVED AS TO FORM:

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Ivan Legler, Town Attorney

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Town of Prescott Valley Folder

**DEVELOPMENT AGREEMENT  
COMMERCIAL/INDUSTRIAL COMPLEX**

THIS DEVELOPMENT AGREEMENT (“Agreement”), entered into this 14<sup>th</sup> day of October, 2010, by and between the Town of Prescott Valley, a municipal corporation of Arizona (“Town”) and View Point/Prescott Valley LP an Arizona limited partnership (“View Point”) by WESCAP Investments, Inc. ;

WITNESSETH:

WHEREAS, View Point/Prescott Valley LP by WESCAP Investments, Inc owns the land on which the proposed View Point Senior Community Phases I and II will be located; and

WHEREAS, WESCAP has previously developed the Valley View Apartments in three (3) phases comprising two hundred twenty-four (224) units along the east side of Windsong Drive, north of Lakeshore Drive which have all been constructed and occupied; and

WHEREAS, all three phases of these Valley View Apartments developed by WESCAP were made possible by utilizing the Low Income Housing Tax Credit (“LIHTC”) Program as administered by the Arizona Department of Housing (“ADOH”); and

WHEREAS, on February 9, 2006, the Council adopted Resolution No. 1404 approving FDP 06-005 for development of a sixty four (64) unit apartment known as Sungate Villas Senior Community Phase I located on the west side of Civic Drive which has also since been constructed and occupied; and

WHEREAS, on September 4, 2008, the Council adopted Resolution No. 1606 approving FDP 08-018 for development of fifty four (54) additional multi-family units known as Sungate Villas Senior Community, Phase II which has received a Temporary Certificate of Occupancy at this time but is not yet occupied; and

WHEREAS, the Sungate Senior Communities by WESCAP were also made possible by utilizing the Low Income Housing Tax Credit (“LIHTC”) Program as administered by the Arizona Department of Housing (“ADOH”); and

WHEREAS, as Sungate Villas II was being planned WESCAP indicated that the international financing debacle made financing difficult for any real estate development regardless of merit; and

WHEREAS, WESCAP proposed to make the Sungate Villas II project more appealing to lenders and equity investors by asking the Town to enter into an agreement to defer payment of

Town development impact fees and utility system connection charges until the time of building occupancy in order to put less strain up-front on the development budget; and

WHEREAS, Town staff presented such an agreement to the Council based on the 2003 Affordable Housing Strategy which complements the Prescott Valley *General Plan 2020*; and

WHEREAS, the Affordable Housing Strategy was prompted from General Plan Land Use Goal #A7 which says the Town shall provide for a fully-balanced residential mix; and

WHEREAS, the Affordable Housing Strategy was subsequently revised to add a one-year action plan to prepare the Town for short, mid and long range goals; and

WHEREAS, said one-year plan encourages an organizational structure and delivery system that encourages development of home ownership and rental opportunities for targeted households, and addresses revitalization of maturing neighborhoods; and

WHEREAS, on December 14, 2006, the Council approved funding to update the Affordable Housing Strategy and document current demographic information and housing trends; and

WHEREAS, the updated Affordable Housing Strategy includes best practices to ensure that investment in housing and related infrastructure benefits both current and future residents, businesses, and cultural institutions; and

WHEREAS, one best practice is to stimulate private investment; and

WHEREAS, the Town is authorized by ARS §9-500.11 to appropriate public monies for and in connection with economic development activities, including any project, assistance, undertaking, program or study involving acquisition, improvement, leasing or conveyance of real or personal property or other activity, that the Town finds and determines will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants; and

WHEREAS, the Town is further authorized by ARS §9-500.05 to enter into development agreements with community facilities districts, landowners, or any other persons having an interest in real property that specify or otherwise relate to (among other things) conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure and subsequent reimbursements over time, and any other matters relating to the development of property; and

WHEREAS, one of the ways to enhance the financial viability of the Sungate Villa II Senior Community project was to defer the payment of the Town's impact and capacity fees; and

WHEREAS, the delayed payment puts less strain on the development budget up-front, which was more appealing to lenders and equity investors (the purchasers of the tax credits); and

WHEREAS, the Community Development Department proposed adoption of a Development Agreement to achieve this objective in that it is consistent with the goals of *General Plan 2020* and the Affordable Housing Strategy and the Town Council adopted Resolution No. 1643 approving the Development Agreement for Sungate Villas II on April 23, 2009; and

WHEREAS, at the time of approving the Development Agreement for Sungate II, Town staff also worked with the Northern Arizona Council of Governments (“NACOG”) and ADOH to obtain Community Development Block Grant (“CDBG”) funding for 2009 eligible projects; and

WHEREAS, one such identified project was the development of Viewpoint Drive between Long Look Drive and Civic Circle for the purpose of providing access to Sungate Villas Phases I and II and also, planned View Point Senior Communities Phases I and II; and

WHEREAS, WESCAP has now completed the planning process for the new affordable/work-force housing development called the View Point Senior Community Phases I and II comprising one hundred and two (102) units which will be located immediately west of the Sungate Senior projects and adjacent to the new Viewpoint Drive extension from Long Look Drive to Civic Circle; and

WHEREAS, the primary source of funding for the View Point project is also the highly successful federal housing tax credit program.

WHEREAS, rezoning for the View Point Senior Community was approved by Ordinance No/ 733 on June 25, 2009; and

WHEREAS, in September of 2010 WESCAP Investments Inc. submitted a Final Development Plan (FDP10-008) for development of the View Point Senior Community Phases I & II (Exhibit “C”) comprising a total of one hundred and two (102) apartment units on approximately five (5) acres located east of Viewpoint Drive, five hundred (500) feet south of Long Look Drive; and

WHEREAS, as with the Sungate Villas Phase II, WESCAP has proposed to make the View Point Senior Community (the “Project”) as appealing as possible to lenders (the purchasers of the tax credits) and is again requesting the Town to defer the payment of the Town’s impact and capacity fees for both phases through a Development Agreement between WESCAP and the Town; and

WHEREAS, the Community Development Department has provided calculations of the Town’s fees for permits and, impact, capacity and resource fees (the “Fees”) for development of the View Point Senior Community Phases I and II (Attachment “B”); and

WHEREAS, approval of the Development Agreement will defer the fees until the issuance of a Certificate of Occupancy in that it is consistent with the goals of *General Plan 2020* and the Affordable Housing Strategy.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

SECTION ONE. Recitals. That each of the recitals set forth above are hereby incorporated into and made a part of this Agreement and the parties acknowledge the accuracy and correctness of said recitals.

SECTION TWO. Property. That this Agreement shall apply to the real property described in Exhibit "A" attached hereto and expressly made a part hereof ("Property").

SECTION THREE. Effective Date and Term. That this Agreement shall become effective upon recording in the Office of the Yavapai County Recorder, and the term of this Agreement, pertaining to "Phase I" shall be from the date first-above written to and including ONE YEAR FROM RECORDING ("Term") and, the term of the Agreement pertaining to "Phase II" shall be ONE YEAR, from the date that "Phase I" receives a Certificate of Occupancy.

SECTION FOUR. View Point/Prescott Valley LP Performances. View Point/Prescott Valley LP agrees to do the following:

- A. Finance, design, construct, arrange for occupancy, and maintain the Project during the Term, except as provided hereinafter.
- B. Pay all applicable fees and charges of the Town from permit issuance, through occupancy and permit final (except those set out in SECTION FIVE herein below), which will be paid prior to issuance of a Certificate of Occupancy ("CO") for the Project.
- C. Approval of Final Development Plans for Phases I and II of the View Point Senior Communities prior to issuance of Building Permits.
- D. Provide access approved by the Town and Central Yavapai Fire District to the new Viewpoint Drive between Long Look Drive and Civic Circle, prior to occupancy of Phase I.

The parties hereto expressly acknowledge that these covenants touch and concern the Property, and that there is privity of estate between the Town and View Point/Prescott Valley LP. However, notwithstanding anything to the contrary herein, upon written notice from View Point/Prescott Valley LP to the View Point Senior Community is unable to close its purchase of the Property or close on its financing to construct the Project, this Agreement shall be terminated and no party hereto shall have any further obligation to the other under any provision of this Agreement

SECTION FIVE. Town's Performances. That the Town hereby agrees to do the following:

- A. Defer the payment of certain calculated Town development impact fees and utility system connection charges applicable to the Project as set forth in Exhibit "A" (attached hereto and expressly made a part hereof), so that necessary building permits may be issued without prior payment of all applicable fees and charges but that a CO shall not be issued for the Project until full payment of all applicable development impact fees, utility system connection charges, and other fees and charges.

SECTION SIX. Lender Provisions. That, inasmuch as the Town and View Point/Prescott Valley LP are aware that financing for Property acquisition and construction of the Project may be necessary, in whole or in part, from time to time, by 1 or more third parties (collectively "Lender"): in the event of an Event of Default by View Point/Prescott Valley LP, the Town shall provide any required notice of such Event of Default, at the same time notice is provided to View Point/Prescott Valley LP, to any Lender previously identified to the party claiming the Default. If a Lender is permitted, under the terms of its agreement with View Point/Prescott Valley LP, to cure the Event of Default and/or to assume the position of View Point/Prescott Valley LP with respect to this Agreement, the Town hereby agrees to permit said Lender to cure the Event of Default and/or to assume all of the rights and obligations of View Point/Prescott Valley LP under this Agreement. The Town shall, at any time upon reasonable request by View Point/Prescott Valley LP, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no Event of Default by View Point/Prescott Valley LP exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Lender, the Town will enter into a separate assumption or similar agreement with such Lender, consistent with the provisions of this SECTION SIX. Notwithstanding the foregoing, any party's failure to provide notice to a Lender of any such Event of Default shall not relieve View Point/Prescott Valley LP of its own responsibilities for the Default or otherwise prejudice or adversely affect any such party's rights with regard to View Point/Prescott Valley LP in any such matter.

SECTION SEVEN. Default. That failure or unreasonable delay of any party to act in accord with any provision of this Agreement for thirty (30) calendar days ("Cure Period") following written notice from any other party given in accordance with SECTION TEN hereinafter shall constitute an "Event Of Default". The notice shall specify the nature of the alleged Event of Default and the manner in which said Event of Default may be satisfactorily cured, if possible. [Note, however, that if an action under this Agreement would normally require more than 30 calendar days to complete, the responsible party shall have reasonable additional time beyond 30 days in which to comply.]

In the event of an Event Of Default where a party fails to act in accord with any substantial provision of this Agreement and such Event of Default is not cured within the Cure Period, the non-defaulting party may exercise all rights and remedies available to each of them at law or in equity including, without limitation, the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages (but expressly excluding the right to unilaterally terminate this Agreement).

Any dispute arising under this Agreement may be subject to arbitration in accordance with ARS §12-1501 et seq., but only if mutually agreed to by the parties directly involved in the dispute. All disputes shall be governed by Arizona law.

SECTION EIGHT. Mutual Indemnification and Hold Harmless. That, to the fullest extent permitted by law, the Town agrees to defend, indemnify and hold View Point/Prescott Valley LP and its officers, directors, members, managers, officials, employees, agents, successors, and assigns from and against any and all claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, and liabilities of every kind and description (including, without limitation, attorneys' fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Town, its officers, directors, members, managers, officials, employees, agents, and assigns, in the performance or non-performance of this Agreement. The Town's duty to defend, hold harmless and indemnify View Point/Prescott Valley LP, its officers, directors, members, managers, officials, employees, agents, successors, and assigns shall arise in connection with any claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, or liabilities that are attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property (including loss of use resulting therefrom), caused by the acts, errors, mistakes, omissions, work or services of the Town, its officers, directors, members, managers, officials, employees, agents, and assigns, or any other person for whose acts, errors, mistakes, omissions, work or services the Town may be legally liable, in the performance or non-performance of this Agreement.

To the fullest extent permitted by law, View Point/Prescott Valley LP agrees to defend, indemnify and hold harmless the Town and its officers, directors, members, managers, officials, employees, agents, successors, and assigns from and against any and all claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, and liabilities of every kind and description (including, without limitation, attorneys' fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of View Point/Prescott Valley LP, its officers, directors, members, managers, officials, employees, agents, and assigns, in the performance or non-performance of this Agreement. Sungate Villas II's duty to defend, hold harmless and indemnify the Town and its officers, directors, members, managers, officials, employees, agents, successors, and assigns shall arise in connection with any claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, or liabilities that are attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property (including loss of use resulting therefrom), caused by the acts, errors, mistakes, omissions, work or services of Sungate Villas II, its officers, directors, members, managers, officials, employees, agents, and assigns, or any other person for whose acts, errors, mistakes, omissions, work or services Sungate Villas II may be legally liable, in the performance or non-performance of this Agreement.

Notwithstanding any other provision of this Agreement, this SECTION EIGHT shall continue in full force and effect beyond any termination of the Agreement. The amount and type of insurance coverages required hereinafter shall not be construed as limiting the scope of the indemnity in this SECTION EIGHT.

SECTION NINE. Insurance. That, without limiting any liabilities or other obligations of the parties hereunder, each party shall, prior to commencing its performances under this Agreement, secure and continuously carry with insurers authorized to do business in Arizona and possessing a current A.M. Best, Inc. Rating of B++6 or better, the following insurance coverages:

- A. Commercial General Liability insurance with a limit of not less than \$1,000,000.00 for each occurrence, with a \$2,000,000.00 Products/Completed Operations Aggregate and a \$2,000,000.00 General Aggregate Limit. The policy shall include coverage for:
1. Bodily Injury
  2. Broad Form Property Damage
  3. Personal Injury
  4. Products and Completed Operations, and
  5. Blanket Contractual (including, but not limited to, the liability assumed under the indemnification provisions of this Agreement).

The coverage shall be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof. The coverage shall not exclude X,C,U. The additional insured endorsement required hereinafter shall be at least as broad as the Insurance Office, Inc's Additional Insured, Form B, CG20101185, and shall include coverage for the party's operations and products and completed operations.

This insurance policy shall name the Town and its officers, officials, employees, agents, successors, and assigns, as Additional Insureds.

The insurance policy required herein shall be maintained in full force and effect throughout the Term of this Agreement. Failure to do so may, at the sole discretion of the Town, constitute a default under SECTION SEVEN of this Agreement. The insurance policy required herein shall be primary insurance, and any insurance or self-insurance maintained by the Town shall not contribute to it. The insurance policy required herein shall contain a waiver of transfer rights of recovery (subrogation) against a party, its officers, officials, employees, agents, successors, and assigns, for any claims arising out of the other party's performances under this Agreement. The insurance policy may provide coverage which contains deductibles or self-insured retentions. However, such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Town under such policy. Each party shall be solely responsible for deductibles and/or self-insured retentions and the Town, at its option, may require Sungate Villas II to secure the payment of more than \$50,000.00 of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

Each party reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein-required insurance certificates and/or endorsements of the other party. Prior to commencing its performances under this Agreement, each party shall furnish the others with Certificates of Insurance, or formal endorsements as required by this Agreement, issued by each party's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. Insurance evidenced by the Certificates of Insurance shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the other party. If a policy does expire during the term of this Agreement, a renewal certificate must be sent to the other party 30 days prior to the expiration date and/or at the time of renewal of said policy.

In the event the insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of any work or services contemplated hereunder, as evidenced by annual Certificates of Insurance.

SECTION TEN. Notices. That, unless otherwise specifically provided herein, all notices, demands or other communications relating to this Agreement shall be in writing, and given to the other party as follows: (i) personal delivery; or (ii) established overnight commercial courier with delivery charges prepaid or duly charged; or (iii) registered or certified mail, return receipt requested, first class postage prepaid. All notices shall be addressed to the addresses set forth below, or to such addresses or addressee as any party entitled to receive notices under this Agreement shall designate, from time to time, by notice given to the parties in the manner provided in this SECTION TEN.

Town:                   Town of Prescott Valley  
                              c/o Town Manager  
                              7501 East Civic Circle  
                              Prescott Valley, AZ 86314

View Point/Prescott Valley LP: c/o WESCAP Investments Inc.  
                              4745 North 7<sup>th</sup> Street, Suite 110  
                              Phoenix, AZ 85014

Notices given by personal delivery shall be presumed to have been received upon tender to the applicable party at the address set forth above. Notices given by overnight courier shall be presumed to have been received upon the date of delivery as shown by the receipt from the courier. Notices given by mail shall be presumed to have been received on the third (3<sup>rd</sup>) day after deposit into the United States Postal System.

SECTION ELEVEN. Amendments. That this Agreement may be amended only by a written agreement fully executed by each of the parties hereto.

SECTION TWELVE. Successors-In-Interest/Assignment. That this Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest of each of the parties hereto, pursuant to ARS §9-500.05(D). Either of the parties to this Agreement may assign all or any portion of its rights hereunder to any one (1) or more persons or entities, on such terms and conditions as that party may deem appropriate. Provided, however, that no party may convey all or any portion of its rights hereunder unless either (a) the corresponding obligations of that party are completely assumed by the assignee of the party's rights, the assignee accepts such obligations and demonstrates its ability to perform them, and the obligations are specifically listed in the assignment, or (b) the party remains personally obligated to perform said corresponding obligations after such assignment. Otherwise, any such assignment shall be void.

SECTION THIRTEEN. Waiver of Breach. That no waiver by any party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained.

SECTION FOURTEEN. Attorneys' Fees. That, in the event any action shall be instituted between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its taxable and nontaxable costs, including reasonable attorneys' fees and expert witness fees.

SECTION FIFTEEN. Savings Clause. That, in the event any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

SECTION SIXTEEN. Governing Law and Venue. That this Agreement shall be governed by and construed under the laws of the State of Arizona, and shall be deemed made and entered into in Yavapai County.

SECTION SEVENTEEN. Town's Warranties. That the Town represents and warrants that (a) it is a validly existing and incorporated municipal corporation of the State of Arizona, (b) its execution, delivery and performance of this Agreement has been duly authorized and entered into in compliance with its Town Code and applicable Arizona statutes, and (c) no further action needs to be taken in connection with such execution.

SECTION EIGHTEEN. View Point/Prescott Valley LP Warranties and Obligations. That Sungate Villas II warrants that (a) it is a limited partnership of the State of Arizona, fully organized, validly existing and in good standing under the laws of the State of Arizona, (b) the execution, delivery and performance of this Agreement has been duly authorized by the managing partner thereof, and (c) it has or anticipates that it will have a sufficient unencumbered interest in the Property upon which the Project will be located to permit it to carry out the obligations of this Agreement.

SECTION NINETEEN. Force Majeure. That the obligations of the parties hereunder to perform under this Agreement are subject to prevention by sickness, accident, Act of God, fire, riot, epidemic, interruption or delay of transportation, strikes, labor difficulties, any acts or orders of any public authority having jurisdiction (other than the Town), or any similar cause beyond the parties' control. To the extent that a party's non-performance is based upon one of the above-listed reasons, the same shall not be an Event of Default under SECTION SEVEN hereinabove.

SECTION TWENTY. Further Performances. That each of the parties hereto shall execute and deliver all such documents and perform all such acts as are reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

SECTION TWENTY-ONE. No Partnership or Third-Party Beneficiary. That it is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar arrangement between or among the parties. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

SECTION TWENTY-TWO. Integration. That this Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

SECTION TWENTY-THREE. Multiple Counterparts. That this Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

SECTION TWENTY-FOUR. Recording. That this Agreement shall be recorded in the Office of the County Recorder of Yavapai County, pursuant to ARS §9-500.05(D).

SECTION TWENTY-FIVE. Conflict-of-Interest. That this Agreement may be canceled without penalty pursuant to ARS §38-511 in the event of a conflict-of-interest as described therein by any person significantly involved in negotiating this Agreement on behalf of the Town or the District.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representatives the day and year first-above written.

TOWN OF PRESCOTT VALLEY, a municipal  
corporation of Arizona, ("Town")

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Harvey C. Skoog  
Mayor

ATTEST:

\_\_\_\_\_  
Diane Russell, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ivan Legler, Town Attorney

View Point/Prescott Valley LP, a limited partnership of Arizona (“Sungate Villa II”)

By: WESCAP Investments, Inc., its General Partner

By: \_\_\_\_\_  
William E. Spreitzer, President

STATE OF ARIZONA        )  
  ) ss:  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010, by Harvey C. Skoog, Mayor of the Town of Prescott Valley, a municipal corporation of Arizona, on behalf of said municipal corporation.

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

My Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA        )

County of Yavapai                    ) ss:  
  )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by William E. Spreitzer, President, WESCAP Investments Inc. a corporation of Arizona, as general partner of Sungate Villas II, a limited partnership of Arizona, on behalf of said limited partnership.

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

My Commission Expires:  
\_\_\_\_\_

EXHIBIT "A"

Legal Description

EXHIBIT "B"