

DECLARATION AND BY-LAWS OF  
ARIZONA PLACE HOMEOWNERS ASSOCIATION

THIS DECLARATION is made and entered into this 2nd day of May, 1994, by Terry L. Wehrer and Arlyss M. Wehrer, hereinafter called "Wehrer".

WHEREAS, Wehrer is the Owner of a certain parcel of real estate, located in Cody, County of Park, State of Wyoming, legally described as follows:

A parcel of land in Tract 62, Township 52 North, Range 101 West of the 6th P.M., within the City of Cody, Park County, Wyoming; according to the Government Resurvey, said parcel of land is a part of the land conveyed from the City of Cody to Leo J. Kenney recorded in Book 193 at page 764 in the Park County Clerk's office, and is described more particularly as follows:

COMMENCING at a point that is on the south line of the Glendale Addition to the City of Cody and is 19.6 feet westerly of the said Glendale Addition; thence S.  $4^{\circ}45'39''$  E. along the west line of a tract of land conveyed from Reuben L. Bullock and Margaret Ruth Bullock to Nielson Enterprises, Inc., recorded in Book 43 at page 611 in the Deed Records of Park County, for a distance of 310.86 feet; thence S.  $45^{\circ}50'50''$  E. along said Nielson Enterprises, Inc. tract for a distance of 200.32 feet to the POINT OF BEGINNING of the land being herein described; thence, continuing along the Nielson Enterprises Inc. tract, S.  $45^{\circ}50'50''$  E. for a distance of 165.00 feet; thence leaving the 165.93 feet to the east line of 14th Street; thence S.  $41^{\circ}03'26''$  W. for a distance of 66.50 feet to the west line of said 14th Street; thence S.  $28^{\circ}05'30''$  W. for a distance of 139.85 feet; thence N.  $75^{\circ}01'30''$  W. for a distance of 275.20 feet; thence N.  $42^{\circ}49'$  E. for a distance of 494.94 feet, more or less, to the POINT OF BEGINNING.

EXCEPTING THEREFROM a parcel of land deeded to the City of Cody, recorded in MF Book 230, page 77, more particularly described as follows:

COMMENCING at a point that is on the south line of the Glendale Addition to the City of Cody and is 19.6 feet westerly of the centerline of 14th Street according to the revised plat of Block 14 of said Glendale Addition; thence S.  $04^{\circ}45'39''$  E. along the west line of a tract of land conveyed from Reuben L. Bullock to Nielson Enterprises,

Inc., recorded in Book 43 at page 611 in the Deed Records of Park County for 310.86 feet; thence S. 45°50'50" E. along said Nielson Enterprises, Inc. tract for 200.32 feet to the most northerly corner of said Kenney Parcel and the POINT OF BEGINNING of the parcel herein described; thence continuing S. 45°50'50" for 165.00 feet to the most easterly corner of said Kenney Parcel; thence along the southeasterly boundary of said Kenney Parcel S. 28°35'08" W. for 165.93 feet; thence S. 41°03'26" W. for 66.50 feet to the southwesterly corner of an existing easement; thence leaving the boundary of said Kenney Parcel N. 23°25' W. along the westerly line of said easement for 181.5 feet; thence N. 50°47' W. for 41.79 feet to the northerly line of said Kenney Parcel; thence N. 42°49'35" E. for 160.63 feet, more or less, to the POINT OF BEGINNING.

WHEREAS, Wehrer is desirous of establishing for their own benefit and the mutual benefit of all future owners or occupants of the Property, or any part thereof; certain easements and right in, over, and upon said premises and certain mutually beneficial restrictions; and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Wehrer desires and intends that the several owners, mortgagees, occupants, and other persons hereafter acquiring any interest in said development shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of such development and are established for the purposes of enhancing and perfecting the value, desirability and attractiveness of the Property.

NOW, THEREFORE, Wehrer as the Owner of the real estate hereinbefore described, and for the purposes above set forth, declare as follows:

ARTICLE I  
GENERAL PROVISIONS

All of the Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, reservations, liens and charges, all of which are hereby declared and established and agreed to be in furtherance of a general plan and scheme for the development, improvement, management and maintenance of the Property, and all of which are declared, established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part and portion thereof. All of such limitations, covenants, conditions, reservations, liens, charges and restrictions are hereby established and imposed upon all portions of the Property and upon the whole of the Property, for the benefit of the Property and each and every portion thereof, and upon each "Owner" as that term is hereinafter defined, and the owners of an interest of any kind or character in the Property of any portion thereof.

All of said limitations, covenants, conditions, reservations, otherwise liens, charges, and restrictions shall run with the land and shall be binding on all persons having or acquiring any right, title or interest in the Property or any part thereof, whether as sole owners, joint owners, lessees, tenants, occupants, or otherwise. Each and all of said limitations, covenants, conditions, restrictions, reservations, liens and charges shall be deemed to be, and shall be construed as equitable servitudes, enforceable by any of the owners against any person bound thereby or subject thereto, and shall be enforceable by the "Board", as that term is hereinafter defined, or its duly appointed representative against any such person.

ARTICLE II  
DEFINITIONS

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

**Board:** The Board of Directors of the Arizona Place Homeowners Association.

**Common Elements:** All portions of the Property except the Units. For example, without limitation, the interior street and common area on the plat.

**Eligible Mortgage Holders:** Those holders of a first mortgage on a Unit estate who have requested the Board notify them on any proposed action that requires the consent of a percentage of eligible mortgage holders.

**Occupant:** Person or persons, other than Owner, in possession of a Unit.

**Owner:** The person or persons whose estate of interests, individually or collectively, aggregate for fee simple absolute ownership of a Unit.

**Parcel:** The entire tract of real estate above described.

**Person:** A natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real Property.

**Plat:** A plat, a series of plats of Arizona Place which have been recorded in the books and records of the office of the Clerk and Recorder in and for Park County, Wyoming.

**Property:** (Also known as "Arizona Place") All the land, Property, and space comprising the parcel, all improvements and structures erected, constructed or contained therein or thereon, including the buildings and all easements, rights, and appurtenances belonging thereto, and all fixtures and Property intended for the mutual use, benefit, or enjoyment of the Unit owners.

**Unit:** A part of the Property within a building including one or more rooms, occupying one or more floors or a part of parts thereof, designed and intended for any type of independent use and having lawful access to a public way, and more specifically described hereafter in Article III.

Unit Ownership: A part of the Property consisting of one Unit and the undivided interest in the common elements appurtenant thereto.

Article III  
UNITS

DESCRIPTION OF OWNERSHIP: All units in the buildings located on the Parcel delineated on a plat, or series of plats of Arizona Place which has been recorded in the books and records of the office of the Clerk and Recorder in and for the Park County, Wyoming, and by this reference said plats are incorporated herein and made a part of this Declaration. The Units shall be legally described as follows:

Lot "1"	Lot "2"
Lot "3"	Lot "4"
Lot "5"	Lot "6"
Lot "7"	

It is understood that each Unit consists of the real Property as delineated on the plat together with all improvements thereon and subject to all easements, rights of way and reservations, zoning restrictions and covenants of record or otherwise established, all assessments and subsequently assessed taxes. Every deed, lease, mortgage, or other instrument may legally describe a lot by its identifying number or symbol as shown on the plat, and every such description shall be deemed good and sufficient for all purposes. No lot Owner shall, by deed, plat or otherwise, subdivide or in any other manner cause his lot to be separated into any tracts or parcels smaller than the whole Unit as shown on the plat.

ARTICLE IV  
OWNERSHIP OF COMMON ELEMENTS

Each Owner shall own an undivided one-seventh (1/7) interest in the Common Elements as a tenant in common with all the other Owners of the Property, and, except otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as a place of residence, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with his Unit.

ARTICLE V  
GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

1. NO SEVERANCE OF OWNERSHIP. No Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit ownership without including therein both his interest in the Unit and his corresponding percentage of ownership in the Common Elements, it being the intention hereof

to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described herein.

2. EASEMENTS.

A. Easements for Certain Utilities. The Board, as hereinafter provided, may hereafter grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair, and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits; and each Owner hereby grants the Board an irrevocable power of attorney to execute, acknowledge, and record, for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing.

B. Easements for Underground Sprinkler System, Lawn and Landscaping Care and Snow Removal. Easements are hereby declared and granted for any pipes, sprinklers, wires, utility lines or other structural components necessary to install, lay, maintain, operate, repair, and replace an underground sprinkler system throughout the Property. Further easements are hereby declared and granted through the exteriors of all Units for the ingress and egress of agents of the Board engaged in the lawn and landscaping care and snow removal and all related activities.

C. Easements Through Walls Within Units. Easements are hereby declared and granted to install, lay, maintain, repair, and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the Unit boundaries.

D. Easements to Run With Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any Owner, purchaser, mortgagee, and other person having an interest in the Property, or any part or portion thereof. Reference in the deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees, of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

3. USE OF COMMON ELEMENTS.

A. Regulation by Board. No person shall use the Common Elements or any part thereof in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time may be adopted by the Board. Without in any manner intending to limit the generality of the foregoing, the Board shall have the right but not the obligation, to promulgate rules and regulations limiting the use of the Common Elements to Owners and their respective families, guests, invitees, and servants, as well as to provide for the exclusive use by an Owner and his guests, for specific

occasions. Such use may be conditioned upon, among other things, the payment by the Owner of such assessment as may be established by the Board for the purpose of defraying costs thereof.

B. Management, Maintenance, Repairs, Alterations, and Improvements. Except as otherwise provided herein, management, repair, alteration and improvement of the Common Elements shall be the responsibility of the Board.

4. MAINTENANCE OF UNITS.

A. By Each Owner. The responsibility of each Owner shall be as follows:

1. To maintain, repair and replace as his expense, all interior and exterior portions of his Unit, and all internal installations of such Unit, such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries as specified in Article III;

2. To maintain, repair, and replace at his expense, items appurtenant to his Unit. Each Owner shall be responsible for the repair, maintenance, and appearance of all patios, windows, doors, vestibules and entryways, and of all associated structures and fixtures therein, which are appurtenant to his Unit. The foregoing includes without limitation, responsibility for all breakage, damage, malfunctions, and ordinary wear and tear of such appurtenances;

3. To perform his responsibilities in such manner as not to unreasonably disturb other persons residing within the building;

4. Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of the Unit, unless the written consent of the Board is obtained;

5. To promptly report to the Board or its agent any defect of need for repairs, the responsibility for the remedying of which is with the Board; and,

6. Not to make any alterations in the portions of the Unit or the building or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the directors of the Board, nor shall any Owner impair any easement without first obtaining the written consents of the Board and of the Owner or Owners for whose benefit such easements exist.

C. No Contractual Liability of Board. Nothing herein contained, however, shall be construed so as to impose a contractual liability upon the Board for maintenance, repair and replacement, but the Board's liability shall be limited to damages resulting from negligence.

5. LEASES. Any lease or rental agreement between Unit owners and their tenants must be in writing, subject to the requirements as provided herein and be for a term of at least thirty (30) days.

6. REPAIRS TO COMMON ELEMENTS OR Unit Property FOR WHICH THE Board IS RESPONSIBLY NECESSITATED BY OWNER'S ACTS. Each Owner agrees to maintain, repair, and replace at his expense, all portions of the Common Elements and/or Unit Property for which the Board is responsible which may be damaged or destroyed by reason of his own or his occupant's act or neglect, or by the act or neglect of any invitee, licensee, or guest of such Owner or occupant.

7. CONSTRUCTION DEFECTS. The obligation of the Board and of owners to repair, maintain, and replace the portions of the Property for which they are respectively responsible under Paragraphs 3,4, and 5 of this Article V shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair, or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the Property.

8. EFFECT OF INSURANCE OR CONSTRUCTION GUARANTEES. Notwithstanding the fact that the Board and/or any Owner may be entitled to the benefit of any guarantees of material and workmanship furnished by any construction trade responsible for any construction defects, or the benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantees for insurance coverage shall not excuse any delay by the Board or any Owner in performing his obligation hereunder.

**ARTICLE VI  
UNIT OWNERS**

1. VOTING RIGHTS. There shall be one person with respect to each Unit ownership who shall be entitled to vote at any meeting of the Unit owners. Such person shall be known (and hereinafter referred to) as a "voting member". Such voting member may be the Owner of one of the group composed of all the owners of a Unit ownership, or may be some person designated by such Owner or owners to act as proxy on his or their behalf and who need not be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Owner or Owners. Any or all of such owners may be present at any meeting of the voting members. The total number of votes of all voting members shall be seven (7), and each Owner shall be entitled to one (1) vote per Unit. Wehrer shall be the voting member with respect to any Unit ownership owned by Wehrer.

2. CUMULATIVE VOTING. There shall be no cumulative voting.

3. ANNUAL MEETINGS. The initial meeting of the voting members shall be held upon ten (10) days written notice given by Wehrer when the sale of at least four (4) of the units have been consummated. Thereafter, there shall be an annual meeting of the voting members on the first Tuesday of May of each succeeding year thereafter at 7:30 P.M., or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the voting members not

less than ten (10) days prior to the date fixed for said meeting.

4. SPECIAL MEETINGS. Special meetings of the voting members may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the voting members, or for any other reasonable purpose. Said meeting shall be called by written notice, authorized by a majority of the Board, or by the voting members having one-fourth of the total votes, and delivered not less than ten (10) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

5. NOTICE OF MEETING. The notice of meeting required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of serving of such notice.

6. PLACE OF MEETING. Meetings of the voting members shall be held at the Property or at such other place in Park County, Wyoming, as may be designated in the notice of meeting.

7. QUORUM. MAJORITY VOTE. The presence in person or by proxy at any meeting of the voting members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting.

8. ADJOURNMENT OF MEETING. If any meeting of the voting members cannot be held because a quorum has not attended, a majority of the voting members who are present at such meeting, either in person or by proxy, may adjourn the meeting from time to time for a period not exceeding seven days in any one case.

**ARTICLE VII  
BOARD OF DIRECTORS**

1. NUMBER. QUALIFICATIONS. The direction and administration of the Property shall be vested in a Board consisting of three (3) persons who shall be elected in the manner hereinafter provided. Each member of the Board shall be one of the Owners or a spouse of an Owner; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer or director of such corporation, partner of such partnership, beneficiary of such trust, or manager of such other legal entity, shall be eligible to serve as a member of the Board.

2. ELECTION. TERM OR OFFICE. The voting members at their initial meeting shall elect three (3) members of the Board of Directors, each to serve a term of one (1) year. The voting members having at least three-fourths of the total votes may from time to time increase or decrease such number of persons on the Board or may increase the term of office of Board members at any annual or special meeting, provided that such number shall not be less than three (3).



3. REMOVALS. Any Board member may be removed from office by affirmative vote of the voting members having at least three-fourths of the total votes, at any special meeting called for that purpose. A successor to fill the unexpired term of any Board member removed may be elected by the voting members at the same meeting or any subsequent meeting called for that purpose.

4. VACANCIES. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by election by the voting members present at the next annual meeting or at a special meeting of the voting members called for such purpose.

5. ORGANIZATION MEETING. The organization meeting of a newly elected Board shall be held within ten days of its election at such place and time as shall be fixed by the Board at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary providing a quorum shall be present.

6. REGULAR MEETINGS. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board. Notice of regular meetings shall be given to each Board member, personally or by mail, telephone, or telegraph at least three days prior to the day named for such meeting.

7. SPECIAL MEETINGS. Special meetings of the Board may be called by the President and must be called by the Secretary at the written request of one-fourth of the members. Notice of the meeting shall be given personally or by mail, telephone, or telegraph at least three days prior to the day named for such meeting, which notice shall state the time, place and purpose of the meeting.

8. WAIVER OF NOTICE. Any member of the Board may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

9. QUORUM. MAJORITY VOTE. A quorum at meetings of the Board shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board, except where approval by a greater number is required.

10. MINUTES. The Board shall keep minutes of its proceedings.

11. COMPENSATION OF BOARD. Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the voting members having three-fourths (3/4) of the total votes.

12. LIABILITY OF THE BOARD. The members of the Board shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit contractual liability to others arising out of contracts made by the Board on behalf of the Planned Unit Development unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. It is intended that the members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Planned Unit Development.

It is also intended that the liability of any Unit Owner arising out of any contract made by the Board or out of the indemnity in favor of the members of the Board shall be limited to such proportion of the total liability thereunder as his interest in the common elements bears to the interests of all the Unit owners in the Common Elements. Every agreement made by the Board or by the managing agent or by the manager on behalf of the Planned Unit Development shall provide that the members of the Board, or the managing agent, or the manager on behalf of the Planned Unit Development shall provide that the members of the Board, or the managing agent, or the manager, as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements.

**13. MANAGING AGENT.**

**A. Authority to Delegate.** The Board may delegate all or any portions of its authority to discharge such responsibility to a manager or managing agent. Such delegation may be evidenced by a management contract (which shall not exceed one year in duration) which shall provide for reasonable compensation of said manager or managing agent to be paid out of the maintenance fund hereinafter provided.

**B. Initial Agent.** The initial managing agent for said two year period shall be Wehrer (or any entity designated by Wehrer to act in such capacity), and the rights of the Board to designate a different manager as above provided shall be subject to Wehrer's contractual rights during said one year period.

**C. Renewal.** Upon the expiration of said one year period, the Board may renew said management contract for an additional one year period, or with the approval of voting members holding seventy-five percent (75%) of the total votes, designate a different manager for the Property.

**14. POWERS AND DUTIES OF THE Board.**

**A. Expenses.** The Board, for the benefit of all the Owners, shall acquire and shall pay for out of the maintenance fund hereinafter provided for, the following:

**i. Services.** Electricity and other necessary utility service to meet the Board's maintenance obligations as provided herein.

**ii. Property Insurance.** A policy or policies of insurance insuring the Common Elements against loss or damage by the perils of fires, lightning and those contained in the extended coverage, vandalism and malicious mischief endorsements, for the full insurable replacement value of the Common Elements written in the name of, and the proceeds thereof shall be payable to, the members of the Board, as trustees for each of the Owners as their interest may appear.

**iii. Liability Insurance.** Comprehensive public liability insurance in such limits as the Board shall deem desirable insuring the members of the Board, the managing agent, if any, their agents and employees and the Owners,