

85 188182

When recorded mail to:  
UDALL, SHUMWAY, BLACKHURST,  
ALLEN, LYONS "&-DAVIS, P.C.  
20 West First Street  
Mesa, Arizona 85201

RECORDED IN OFFICIAL RECORDS  
OF MARICOPA COUNTY, ARIZONA  
**APR 26 1985 -415**  
KEITH POLETIS. (County Recorder)  
FEE 16.00 FGS 16 T.S.

**PMP RSTR (FR)**

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date hereinafter set forth by ARTISTIC CONSTRUCTION & DEVELOPMENT, INC., an Arizona corporation, and WESTERN TREND DEVELOPMENT, INC., an Arizona corporation, hereinafter referred to jointly as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Gilbert, County of Maricopa, State of Arizona, which is more particularly described as:

LOTS 1-98 and TRACT "A", SUMMERFIELD PLACE, as recorded in Maricopa County Recorder's office in Book 281 of Maps, page 33, a subdivision located in a part of the Northeast quarter of the Northeast quarter of Section 18, Township 1 South, Range 5 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to SUMMERFIELD PLACE HOMEOWNERS ASSOCIATION, INC., an Arizona nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Where the legal title is vested of record in a Trustee pursuant to Arizona Revised Statutes, Section 38-801, et seq., legal title shall be deemed to be in the Trustor.

Section 3. "properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Tract "A" (Park Area and Retention), of SUMMERFIELD PLACE as recorded in the Maricopa County Recorder's Office in Book 281 of Maps, page 33, a subdivision located in a part of the Northeast quarter of the Northeast quarter of Section 18, Township 1 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Section 5. "Plat" shall refer to that plat recorded in Book 281 of Maps, page 33, in the office of the Maricopa County Recorder.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Declarant" shall mean and refer to ARTISTIC CONSTRUCTION & DEVELOPMENT, INC., an Arizona corporation, and WESTERN TREND DEVELOPMENT, INC., an Arizona corporation, their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Mortgage" shall include Deeds of Trust and similar security instruments' under valid Agreements of Sale.

Section 9. "Bylaws" shall mean the Bylaw\$ adopted by the Board of Directors of the Association, as amended.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations.
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.
- (d) the right of the Association to establish uniform rules

and regulations pertaining to the use of the Common Area and the recreational facilities thereon; and

(e) the right of the Association to amend this Declaration, the Association's Articles and Bylaws or its published rules and regulations after due notice and hearing as provided in the Bylaws.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges discussed herein, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot. Each individual who signs a purchase contract for a Lot on behalf of a corporation, partnership or other entity shall be personally liable for the assessments on said Lot notwithstanding any principle or rule of law to the contrary.

Section 4. Leasing Restrictions. All leases or rental agreements for Lots shall be in writing and specifically subject to the requirements of the Association's Articles of Incorporation, Bylaws, Management Agreement, and these Restrictions, as now in effect or duly adopted or amended. No Lot may be leased or rented for less than a minimum initial term of six months unless otherwise agreed to by the Association's Board of Directors.

Section 5. Restrictions on Mortgaging Lots.

Notwithstanding anything to the contrary stated herein, no Owner shall be restricted in his or her right to mortgage or otherwise encumber the Lot or Lots which he or she owns.

Section 6. Notice. Upon the sale or lease of a Lot by an Owner, Owner shall deliver to the Association, within 10 days of the signing of any lease or deed transferring title, a copy of said instrument setting forth the name, address and telephone number of the lessee or vendee as the case may be.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest

in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted" to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) within two (2) years from conveyance of the first Lot in the project to a Class A member.

Section 3. In the event any Owner is in arrears in the payment of any amount due pursuant to any provision of this Declaration for a period of thirty (30) days or shall be in default in the performance of any provisions of this Declaration for a period of thirty (30) days, that Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until payments are brought current or otherwise as provided in Article II, Section 1(b) hereof.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area. The assessments shall cover the cost of water and sewer for the Common Area, garbage removal services of the City of Gilbert, the cost of all repairs, replacement and maintenance of the Common Area and all other authorized activities and facilities, including, but not limited to, common yard maintenance, sprinkler system, common parking areas, costs of additional common facilities and improvements, professional fees, taxes and insurance for the Common Area, as may, from time to time, be authorized by the Association's Board of Directors. The Association may impound each Owner's share of Common Area insurance at the time of closing.

Section 3. Establishment of Assessment. Declarant and each Owner of a Lot covenants for themselves and their heirs, successors and assigns, that such Lot shall be subject to an assessment, in an amount to be determined by the Association, as permitted by this Declaration of Covenants, Conditions and Restrictions. The amount to be prorated among the members of the Association shall be established annually by the Board of Directors.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Twenty Dollars (\$120.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than the amount that the cost of living has increased above the maximum assessment for the previous year according to the index which is maintained by the Valley National Bank of Arizona, a national banking association, without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount that the cost of living has increased according to the index which is maintained by the Valley National Bank of Arizona, a national banking association, by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including-fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 60 percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. In addition to the above, any assessment not paid on or before the due date shall be automatically assessed \$25.00 as a late charge.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee; fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE VI

USE RESTRICTIONS

Section 1. Lots 1 through 98, inclusive, of SUMMERFIELD PLACE, shall be single-family residential Lots, and there may be erected on anyone Lot not more than one single-family residence plus such accessory and auxiliary garages, guest house and servants quarters as are incidental to single-family residential use. No other buildings shall be erected on any of said Lots, nor shall any of said Lots or any part thereof be used for any business purposes whatsoever.

Section 2. 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 utilities purposes in which event the remaining portion of such Lots shall, for the purpose of this provision, be treated as a whole Lot.

Section 3. 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 any such parking area shall comply with the same set back requirements as the residential dwellings and be subject to required approval by the Architectural Control Committee. Campers, horse trailers, and boats may be parked on the back of any Lot; provided that any such parking area shall be attractively screened or concealed from neighboring Lots, roads or streets, and then only with the prior approval of the Architectural Control Committee. All other trucks, vehicles and equipment shall not be kept on any Lot or street except in a private garage. No motor vehicle which 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, in SUMMERFIELD PLACE, unless it is within an enclosed garage or structure.

Section 4. All clothes lines, yard equipment, garbage cans, and service yards shall be kept screened by adequate planting or fencing so as to conceal them from 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 outside antenna or broadcasting tower shall be erected on any of the said Lots in SUMMERFIELD PLACE.

Section 5. No animals, reptiles, fish or birds of any kind shall be kept on any Lots provided, however, that a reasonable number of dogs, cats, birds or fish may be kept on a Lot as household pets if such pets are not a nuisance or threat to other Lot Owners and are not kept, bred or maintained for commercial purposes. All such household pets must be kept within a fenced area, encaged or otherwise controlled and not allowed to wander off or "fly about. At no time will swine, peacocks, pigeons or geese be allowed.

Section 6. No exterior signs or advertisements of any kind shall be placed, allowed or maintained on any Lot, except that mailboxes, residential nameplates and "for sale" and "for rent" signs of a size not in excess of 480 square inches may be placed and maintained on a Lot in conformity with common specifications. Exceptions to this restriction will be the Developer's signs during construction and sale of Property.

Section 7. No elevated tanks of any kind shall be erected, placed or permitted on any Lots. Any tanks, including tanks for the storage of fuel, must be buried or attractively screened to conceal it from neighboring Lots, roads or

streets, and then only with the prior approval of the Architectural Control Committee.

Section 8. All structures erected in SUMMERFIELD PLACE, must be of new masonry or frame stucco construction, and no buildings or structures may be moved from any other location, other than the point of distribution of manufacture, onto any of said Lots or tracts. Wood siding shall not be permitted on any residence except as may be approved by the Architectural Control Committee as design work on the front of a home. The side walls of all residences shall be of masonry block or stucco construction. All construction shall include a bomanite main entry.

Section 9. All roofs must be of either tile or wood shake construction having a straight, Dutch gable or hip. With exception of patios and rear covers, No 312 pitched roof shall be permitted. Flat roofs shall be permitted with the approval of the Architectural Control Committee.

Section 10. All single-family residences constructed within SUMMERFIELD PLACE shall be constructed with two-car garages enclosed with garage doors. No single or double carport shall be allowed.

Section 11. Each Lot shall be required, as a minimum, to be landscaped with three (3) five-gallon trees, ten (10) one gallon shrubs and two (2) 24-inch box trees. In addition, each yard shall be leveled and seeded or covered with plastic and gravel. All required landscaping shall be completed prior to occupancy of the residence or within six (6) months thereafter. Compliance with the above restriction shall be monitored and enforced by Declarant and the Association.

Section 12. All single-family residences constructed within SUMMERFIELD PLACE, shall contain a minimum livable area of 1600 square feet on grade level if one story, with or without basement, and 1100 square feet on the grade level if two story. A split level home containing a grade level, sub-grade level and above grade level shall contain a minimum livable area of 1600 square feet on the grade level and sub-grade level combined. All square footage requirements shall be exclusive of open porches, pergolas or attached garages.

Section 13. Except as provided herein, no single-family residence, garage, guest house, or shed, fence or other structure shall be constructed within SUMMERFIELD PLACE without having first obtained the prior approval of design, location and materials by the Architectural Control Committee as described herein. All such approvals shall be obtained pursuant to the provisions and requirements of Article V herein.

Section 14. No garage, guesthouse, or similar structure shall be erected on any Lot until construction of the primary single-family residence (complying with these restrictions) shall have been commenced on said Lot, and no garage or guesthouse shall be maintained or occupied until construction on said single-family residence is finished and ready for occupancy. Any garage, guesthouse, or similar structure erected on any Lot shall be of the same design and constructed of the same materials as the permanent residence on said Lot.

Section 15. No garage, guesthouse, trailer, mobile home, 'motor home, motor vehicle, or any temporary structure of any nature may be used temporarily or permanently as a residence on any Lot or tract. All permanent structures on all Lots shall comply with all minimum yard set back requirements established by, the zoning ordinance of the City of Gilbert, Arizona, as it may be amended from time to time.

Section 16. Each Owner shall enclose his back and side yards with a six-foot masonry block wall. The location, design and type of materials for such fence must be approved in advance by the Architectural Control Committee.

Section 17. No hotel, store, multi-family dwelling, boarding house, guest ranch, or any other place of business of any kind, 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 premisses of any Lot, or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence or building on any said Lots.

Section 18. The Owners of all Lots shall keep the same reasonably clean and clear of weeds and trash, so as not to cause an unsightly or dangerous condition, and if such Owner should fail after ten (10) days written notice from the Architectural Control Committee to do so, the Committee shall have the right to enter upon such Lot and may cause the same to be cleaned four times yearly, if necessary, and assess the actual cost thereof to the Owner of such lot. Any such assessment shall be a lien against the Property and may be enforced as set out in Article IV.

Section 19. Trash Containers and Collection: No garbage or trash shall be placed or kept on any Property within SUMMERFIELD PLACE, 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.

Section 20. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant as Developer, to maintain during the period of development, improvements and sale of the original Lots, upon such portion of the premises as such builder may choose such facilities as may be reasonably required, convenient or incidental to the development and improvement of the Properties including, without limitation, a business office, storage area, construction yards, signs, model units, and sales office.

Section 21. The Common Area shall remain undivided and shall, at all times, be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area.

Section 22. Noise from automobiles, stereos, televisions, parties, conversations, etc., must not be excessive and must not be an imposition or annoyance to other Owners.

## ARTICLE VII

### WATER

The Association shall provide water only for use on the Common Area and shall not be responsible to provide water for any Lot herein for domestic consumption or landscape maintenance. The cost of water used for the Common Area shall be paid by the Association from assessments levied pursuant to Article IV.

## ARTICLE VIII

RIGHTS OF ELIGIBLE MORTGAGE HOLDERS, INSURERS OR GUARANTORS

Section 1. Notice of Action. Upon request to the Association, identifying the name and address of the holder, insurer or guarantor, and the Lot number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

- (a) Any delinquency in the payment of assessments or charges owed by Owner of a Lot subject to a first mortgage held, insured, or guaranteed by such eligible holder or eligible insurer or guarantor which remains uncured for a period of sixty (60) days;
- (b) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in Section 4 of Article 4 of Article IX below.

## ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The covenants, restrictions, reservations and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing, occupying, owning and otherwise having an interest in any Lot, their heirs, personal representatives, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions and all decisions of the Association pursuant hereto may be enforced by the Association, or its Board of Directors, which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof, and also may be enforced by the Owner of any Lot or by the holder of any first mortgage, or deed of trust, or the Owner under a valid agreement of sale, or anyone or more of said parties. Any lien, liability or obligation arising as the result of a breach of the covenants, restrictions, reservations and conditions shall be binding upon and effective against any Owner of the premises, other than one whose title thereto is acquired by foreclosure of a mortgage, or deed of trust sale, or deed in lieu of foreclosure, or forfeiture proceeding or sheriff's sale or equivalent proceedings. Any person shall take such title subject to the lien hereof for all the charges pursuant to the provisions of this Declaration that have accrued up to' the time of such taking of title, and subject to the lien hereof for all the charges that shall accrue subsequent to the taking of such title. Any person or entity acquiring title by foreclosure of a mortgage, or deed of trust sale, or deed in lieu of foreclosure, or forfeiture of an agreement of sale, or sheriff's sale or equivalent proceedings, shall take title subject to the liens hereof for only those charges that accrue subsequent to the taking of such title. The breach of any of the covenants, restrictions or conditions may be enjoined or reviewed by appropriate proceedings notwithstanding the lien or existence of any mortgage or deed of trust. ALL INSTRUMENTS OF CONVEYANCE OF ANY INTEREST OF ALL OR ANY PART OF A LOT SHALL CONTAIN REFERENCE TO THIS INSTRUMENT AND SHALL BE SUBJECT TO THE COVENANTS, RESTRICTIONS, RESERVATIONS AND CONDITIONS HEREIN. THIS INSTRUMENT SHALL BE BINDING UPON ALL RESALE PURCHASERS OF LOTS AND UPON ALL PERSONS AFFECTED BY ITS

TERMS, WHETHER OR NOT EXPRESS REFERENCE IS MADE TO THIS INSTRUMENT IN & Y SUCH INSTRUMENT OF CONVEYANCE. Enforcements shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Owners of individual Lots shall have similar rights of action against the Association, where applicable.

Section 2. Attorneys' Fees. In the event the Association employs an attorney or attorneys to enforce the collection of any amounts due pursuant to this Declaration or in connection with any lien provided for herein, or the foreclosure thereof, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the Owner, Owners and parties against whom the action is brought shall pay all attorneys' fees, costs and expenses thereby incurred by the Association in the event the Association prevails in any such action.

Section 3. Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs or section Or sections had not been inserted.

In the event that any provision or provisions of this instrument appear to be violative of the Rule against Purpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of SUMMERFIELD PLACE HOMEOWNERS ASSOCIATION, INC., or twenty-one (21) years after the death of the last survivor of all of the incorporators' children and grandchildren who shall be living at the time this instrument is executed, whichever is the later.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by persons or parties owning not less than ninety percent (90%) of the Lots and thereafter by an instrument signed by persons or parties owning not less than seventy-five percent (75%) of the Lots. Any amendment must be recorded.

For as long a period of time as may be required to fully amortize any mortgage upon any of the residence units in which the Federal National Mortgage Association (FNMA) or the Government National Mortgage Association (GNMA) have any interest, no amendment shall be made which would be deemed to be in conflict with, or contrary to, the terms of any promissory note, mortgage, regulatory agreement or document executed by the Association or any of the Owners of residence units for the purpose of obtaining written approval and consent of FNMA and GNMA.

The consent of Owners of Lots to which at least 67% of the vote in the Association are allocated and the approval of eligible holders holding mortgages on Lots which have at least 67% of the votes of Lots subject to

eligible holder mortgages shall be required to terminate the legal status of the project as a planned unit development. In addition, the approval of eligible holders holding mortgages on Lots which have at least 51% of the votes of Lots subject to eligible holder mortgages shall be required to add or amend any material provisions of the Restrictions which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair, and replacement of a Common Area;
- (d) Insurance or fidelity bonds;
- (e) Rights to use of the Common Area;
- (f) Responsibility for maintenance and repair of the several portions of the Property;
- (g) Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
- (h) The interests in the Common Area;
- (i) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lots;
- (j) Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insureds or guarantors of first mortgages on Lots.

The foregoing provisions of this Section 4 shall not apply to amendments made as a result of destruction, damage or condemnation. In addition, any additional amendments shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

An eligible mortgageholder who receives a written request to approve additions or amendments to the Articles of Incorporation, Bylaws, any management agreement, or the Restrictions, but who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: dedication of Common Area and amendment of this Declaration of Covenants, Conditions and Restictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 24th day of April, 1985.

ARTISTIC CONSTRUCTION & DEVELOPMENT,

**85 188182**

INC., an Arizona Corporation

By \_\_\_\_\_  
Dwayne Seiter, President

By \_\_\_\_\_  
Reed Phelps, Vice President

WESTERN TREND DEVELOPMENT, INC., an  
Arizona Corporation

By \_\_\_\_\_  
Rick W. Palmer, President  
"Declarant"

STATE OF ARIZONA )  
 ) ss  
County of Maricopa )

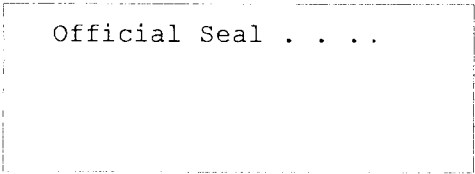
On this: 24<sup>TH</sup> day of April, 1985, before me, a Notary Public, personally appeared DWAYNE SEITER and REED PHELPS, President and Vice President, respectively, of ARTISTIC CONSTRUCTION & DEVELOPMENT, INC., an Arizona corporation, and that they, as such officers, known to me to be the persons whose names are subscribed to the foregoing instrument, acknowledged that they executed the same for the purposes therein contained.

STATE OF ARIZONA

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

My Commission Expires:

April 11, 1987



STATE OF ARIZONA )  
 ) ss  
County of Maricopa )

On this 24th day of April, 1985, before me, a Notary Public, personally appeared RICK W. PALMER, President, of WESTERN TREND DEVELOPMENT, INC., an Arizona corporation, and that he, as such officer, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged that he executed the same for the purposes therein contained.

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

My Commission Expires:

April 11, 1987