

WHEN RECORDED RETURN TO:

COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DAYBREAK VISTA II

THIS DOCUMENT IS BEING RE-RECORDED FOR THE PURPOSE OF MAKING  
VARIOUS CHANGES AS NOTED.

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**COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DAYBREAK VISTA II**

WITNESSETH:

WHEREAS; Declarant is the owner of certain real property (the "Property") in the county of Maricopa, State of Arizona, which is more particularly described as:

SEE EXHIBIT "A"

WHEREAS, Declarant desires to form a non-profit corporation (hereinafter the "Association" to:

1. Acquire, construct, operate, manage and maintain the Common Areas;
2. Establish, levy, collect and disburse assessments and other charges imposed hereunder; and
3. As agent and representative of Members of the Association and residents of Daybreak Vista II, administer and enforce all provisions hereof and enforce the use and other restrictions imposed on the Property.

NOW THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, stipulations, reservations, covenants and conditions, which are for the purpose of establishing a uniform plan for development, improvement, maintenance, and sales of the Property and to insure the protection and preservation of such uniform plan, protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
Definitions**

**Section 1.** "Architectural Control Committee" shall mean and refer to the Architectural Control Committee provided for in Article IV hereof.

**Section 2.** "Areas of Association Responsibility" shall mean:

- a) All common areas;
- b) All land and improvements situated within the boundaries of a Lot which the Association acknowledges in a recorded document as land which is to be improved, maintained, repaired and replaced by the Association; and

- c) All real property and the improvements situated thereon within the properties located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance repair and replacement of such areas.

**Section 3.** “**Association**” shall mean and refer to Waterford Homeowner’s Association, an Arizona non-profit corporation, its successors and assigns.

**Section 4.** “**Board**” shall mean the Board of Directors of the Association.

**Section 5.** “**Bylaws**” shall mean the Bylaws of the Association, as the same may from time to time be amended or supplemented.

**Section 6.** “**Commencement Date**” is hereby defined as the later of the date on which the Common Areas are deeded to the Association or the Improvements to the Common Areas are completed.

**Section 7.** “**Common Areas**” shall mean and refer to those certain areas designated on the plat as Tracts A through Tract C inclusive, the improvements and appurtenances and any other areas brought within the jurisdiction of the Association as otherwise provided herein.

**Section 8.** “**Declarant**” shall mean and refer to Fidelity National Title Insurance Company, an Arizona corporation as Trustee of Trust No. 9177, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**Section 9.** “**Exterior Elevation**” shall mean and refer to the exterior roof and wall surfaces and accessories thereto of the improvements constructed upon each Lot.

**Section 10.** “**Front Yard**” shall mean and refer to that portion of each Lot between the public street (and sidewalks) and the improvements thereon and/or walls or fences located on the Lot.

**Section 11.** “**Lot**” or “**Lots**” shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the Properties.

**Section 12.** “**Member**” shall mean a person who is a Member of the Association.

**Section 13.** “**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 or a lessee. Owner shall include a purchaser under a contract for the conveyance of real property pursuant to A.R.S. § 33-74 et seq. Owner shall not include a purchaser under a Purchase Contract and Receipt, Escrow instructions or similar executory contracts which are intended to

control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801 et seq., the trustor shall be deemed to be the Owner. In the case of the Lots, the fee simple title of which is vested in a trustee pursuant to a subdivision trust agreement, the beneficiary of any such trust or its assigns who is in title possession of the trust property shall be deemed to be the Owner.

**Section 14.** “**Project Documents**” shall mean this Declaration, the Articles, the Bylaws and any rules adopted by the Board or the Architectural Control Committee.

**Section 15.** “**Properties**” shall mean and refer to that certain real property hereinbefore described, subject to the reservations set forth herein and/or in any subdivision maps or plats.

**Section 16.** “**Property**” shall mean the real property described on Exhibit “A” attached hereto and by this reference incorporated herewith.

## **ARTICLE II**

### **Reservations, Exceptions and Dedications**

**Section 1. Recorded Subdivision Plat of the Properties:** The recorded subdivision plat of the Properties dedicated for use as such, subject to the limitations set forth therein, the streets and easement shown thereon, and further establish restrictions applicable to the Properties, including without limitation certain minimum and maximum set back requirements, and all dedications, limitations, restrictions and reservations shown on the recorded plat of the Subdivision and are incorporated herein and made a part hereof, as is more fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said Properties or any part thereof whether specifically referred to therein or not.

**Section 2. Title Subject to Easements and Dedications:** It is expressly agreed and understood that the title conveyed by Declarant to any of the Properties by contract, deed or other conveyance shall be subject to any easements affecting same for roadways or drainage, water, gas, storm sewer, electric lighting, purposes, and any dedications associated therewith. The Owners of the respective Lots shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property which shall be utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for use, maintenance and enjoyment of his Lot.

**Section 3. Owner Easements of Enjoyment:** Subject to the rights and easements granted to the Declarant in Section 6 of this Article II, every Member and any person residing with such Member shall have the 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:

- ( i ) The right of the Association to dedicate, convey, transfer or encumber the Common Area; provided, however, that any such dedication, conveyance, transfer or encumbrance will require the consent of not less than two-thirds of the Class A Members of the Association and the consent of the of the Class B Member;
- ( ii ) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit such access to such portions of the Common Area, such as landscaped areas not intended for use by the Owners, lessees or guests;
- ( iii ) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area if such Owner is more than 15 days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provision of the Association Documents and has failed to cure such violation within 15 days after the Association notifies the Owner of the violation;
- ( iv ) If a Lot is leased or rented by the Owner thereof, the lessee and the members of his family residing with such lessee shall have the right to use the Common Area during the term of the lease and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

**Section 4. Utility Easement:** There is hereby created an Easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities including, but not limited to gas, water, sewer, telephone, cable television and electricity. By virtue of these Easements, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed by the Declarant or as approved by the Board.

**Section 5. Declarants Use for Sales and Leasing Purposes:** Declarant shall have the right and an Easement to maintain sales or leasing offices, management offices and models throughout the Properties and to maintain one or more advertising signs on the Common Area while the Declarant is selling Lots. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and of such locations as Declarant deems appropriate.

**Section 6. Declarants Easements:**

- ( a ) Declarant shall have the right and an Easement on and over the Area of Association Responsibility to construct all Improvements that Declarant

may deem necessary and to use the Area of Association Responsibility and any Lots and other Property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures and the performance of work respecting the Properties

- (b) The Declarant shall have the right and an easement upon, over and through the Area of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations and exercising the rights granted to or reserved by the Declarant by this Declaration.

**Section 7. Easement in Favor of Association:** The Lots are hereby made subject to the following Easements in favor of the Association and its directors, agents, employees and independent contractors:

- (a) For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from the Lots;
- (c) For corrections of emergency conditions in one or more Lots;
- (d) For the purpose of enabling the Association, the Board or any other
- (e) Committee appointed by the Board to exercise and discharge their respective rights, powers and duties under the Association Documents;
- (f) For inspection of the Lots in order to verify that the provisions of the Association Documents are being complied with by the Owners, their guests, tenants, invitees and other occupants of the Lot.

### **ARTICLE III** Use Restrictions

**Section 1. Single Family Residential Construction:** No building shall be erected, altered or permitted to remain on any Lot other than one detached single family dwelling, used for residential purposes only, and not to exceed two stories in height. Each such dwelling on a Lot shall have an attached garage which garage shall be for two or more cars. As used herein, the term “residential purposes” shall be construed to prohibit mobile homes or trailers being placed on Lots, or use of said Lots for garage apartments or apartment houses; and no Lot shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purposes. No building of any kind shall be moved on to any Lot within said subdivision, it being the intention that only new construction shall be erected thereon, except with the prior written consent of the Architecture Committee.

**Section 2. Prohibition of Offensive Activities:** No activity, whether for profit or not, shall

be permitted on any Lot which is not related to single family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which is, or may become an annoyance or a nuisance to the neighborhood. This restriction is waived in regard to normal sales activities required to sell homes in the subdivision and the lighting effects utilized to display the model homes by Declarant.

**Section 3. Use of Temporary Structures:** No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outstanding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, provided, however that Declarant reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Properties as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Such facilities may include, but not necessarily limited to, sales and construction offices, storage areas, model units, signs and portable toilet facilities.

**Section 4. Storage of Automobiles, Trailers and Other Vehicles:** No motor vehicle may be parked or stored on any part of any Lot, easement, right of way or in the street adjacent to any Lot, easement, or right of way unless such vehicle is concealed from public view inside a garage or other approved enclosure, except passenger automobiles, passenger vans, motorcycles, pickup trucks of  $\frac{3}{4}$  ton or less, or pickup trucks of  $\frac{3}{4}$  ton or less with attached bed campers that are in operating condition, having current license plates and are in daily use as motor vehicles on the streets and highways of the State of Arizona.

No non-motorized vehicle, trailer, recreational vehicle, boat, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement, right-of-way, or in the street adjacent to such Lot, easement or right-of-way unless such object is concealed from public view inside a garage or other approved enclosure. Notwithstanding anything to the contrary contained herein, no Owner may park, allow or cause to be parked a motor vehicle of any type or nature in excess of one week in a driveway on such Lot without removing the motor vehicle from the Lot or placing it inside Owner's enclosed garage, except with the prior written approval of the Architectural Control Committee. Any vehicle, which is not so parked, may not be kept on the Properties, and in the event it is removed, such cost will be assessed to the Owner of said Lot, with a lien placed on said Lot in the manner provided in Article VI.

The restrictions contained in this section 5 shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, repair or maintenance of a Lot, house or houses in the immediate vicinity.

**Section 5. Mineral Exploration:** No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

**Section 6. Animals and Wildlife:** No animal, bird, fowl or poultry or livestock, other than a



reasonable number of generally recognized house or yard pets, as allowed by local zoning requirements and use restrictions, shall be maintained on any Lot, and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. All pets, which are authorized to be kept, must be on a leash at all times when outside the fences of the individual Lots. No animal, bird, fowl, poultry or livestock shall be allowed to make noise or become a nuisance. No structure for the care, housing or confinement of any animal bird, fowl poultry or livestock shall be maintained so as to be visible from neighboring property. On the written request of any Owner, the Architectural Control Committee shall conclusively determine (in its sole discretion) whether for purposes of this Section, a particular animal, bird, fowl, poultry or livestock is generally a recognized yard pet, whether such pet is a nuisance, or whether the number of such pets on any property is reasonable. Any decision rendered by the Architectural Control Committee shall be enforceable in the same manner as any other restriction contained herein

**Section 7. Landscaping:** In the event the front yards of any Lot are not landscaped prior to the sale of such Lot to a homeowner, within one-hundred twenty (120) days from the close of the sale of such Lot, the Owner shall have fully landscaped said Lot in accordance with a Landscape Plan approved by the Architectural Control Committee. Said landscaping shall be in harmony with other landscaped areas within the Properties. If the Owner fails to comply with the provisions of this section within the time limits set forth herein, then the Association, its successors or assigns, shall have the rights and remedies provided in Section 10 of this Article III. No hedge in excess of 3 feet in height, or any wall or fences shall be erected or maintained nearer to the front Lot line than the plane of the front exterior wall of the residential structure on the Lot. No side or rear fence wall or hedge shall be more than six feet high. All fences must be constructed of masonry. No chain link fences shall be placed on any Lot without the prior written approval of the Architectural Control Committee. Each Owner shall comply with all of the requirements of the City of Chandler related to landscaping of such Owner's Lot (s).

**Section 8. Lot Maintenance:** All Owners and occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner, and shall maintain in neat order, and shall in no event use any Lot for storage of materials and equipment except for normal residential uses that are incidental to the construction and maintenance of improvements thereon as herein provided. The drying of clothes in such a manner as to be visible from any other Lot is prohibited. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Containers for the storage of trash, garbage and other waste materials shall be stored out of public view. Equipment for storage or disposal of such waste materials shall be kept in a clean and sanitary condition and shall be stored out of public view. New building materials used in the construction of improvements erected upon a Lot may be placed upon such Lot at the time construction is

commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of improvements, after which time these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

**Section 9. Prosecution of Construction, Maintenance and Repairs:** All construction, maintenance and repair work shall be prosecuted diligently from commencement until completion. All buildings shall be completed within one (1) year after the commencement of construction (in accordance with the plans and specifications approved by the Architectural Control Committee) and landscaping of each Lot (in accordance with the plans and specifications approved by the Architectural Control Committee) shall be completed within 120 days after a certificate of occupancy is issued for the dwelling constructed thereon, or occupancy commences, whichever is later. In the event any building is destroyed or damaged by fire, act of God, or other occurrence, such damage must be repaired and reconstructed within 12 months after such damage or destruction. The time limits set forth in this paragraph shall be extended by any periods during which construction is not able to proceed due to acts of God, labor disturbances, actual inability to procure necessary materials or other causes beyond the reasonable control of Owner.

**Section 10. Improper Maintenance and Use of Lots:** In the event any portion or the whole of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surroundings Lots and Properties, or in the event any portion of a Lot is being used in a manner which violates this Declaration or any plat of the subdivision or local zoning ordinances, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration or other controlling documents, the Association may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner and unless corrective action is taken within 14 days, the Association may cause such action to be taken at said Owner's cost. If at the expiration of said 14 day period of time the requisite corrective actions have not been taken, the Association shall be authorized and empowered to cause said action to be taken and the cost thereof shall become a lien against the Property, enforceable as provided in Article V hereof.

**Section 11. Maintenance of Window Coverings:** No reflective materials, including without limitation aluminum foil, reflective screens or glass, mirrors or similar type items shall be installed or placed upon the outside or inside of any windows of any residence or other structure without the prior written approval of the Architectural Control Committee.

**Section 12. Heating, Air Conditioning and Solar Panels:** All heating, cooling, air conditioning units ventilating devices, and any solar panels or water heaters shall be installed in such a manner as to be concealed from any other Lots, adjacent streets and alleys unless approved by the Architectural Control Committee.

**Section 13. Signs:** No sign of any kind shall be displayed to the public view on any Lot, except traditional mail boxes and residential name plates, which shall only contain the Occupant's name (s) and address. The Architectural Control Committee shall approve any signs advertising the property for sale or rent prior to use or display. Signs used by a builder to advertise the property during the construction and sales period may be displayed and shall be promptly removed upon completion of the builder's construction activities on the Lot. This restriction shall not apply to Declarant in Declarant's normal and customary sales activities.

**Section 14. Exemption For Purposes of Construction, Development and Sale:** The restrictions contained in this Article III shall not apply to Declarant, its agents, servants, employees, contractors or sub-contractors or other persons on the Properties for the benefit of Declarant. Declarant shall also have the right and power to erect and utilize sales offices and models on the Properties, grant easements, amend the Declaration to comply with FHA/VA and FNMA requirements, and to otherwise amend the Declaration during the period of Declarant's control. Declarant shall have the right during the period of construction, development and sale to grant specifically limited exemptions from these restrictions to any other developer, builder or any Owner. Any such exemptions shall be granted only upon the specific request itemizing the exemptions requested, the location thereof and the need therefore and the anticipated duration and any authorization thereof shall be similarly itemized. No such exemption shall be broader in terms of activity, location or time than is reasonable required, and shall be for a specified period of time.

**Section 15. Common Areas:** All the Common Areas shall be for the exclusive purpose of and use by the Owners and Occupants of Lots and Residences in the Properties. The Common Areas will be maintained by the Association and the Association shall be responsible for all costs of maintenance, upkeep and the like thereon. The cost of maintaining the Common Areas shall be borne by the Association and its Members through Assessments, as provided in Article VI below.

## **ARTICLE IV**

### **Architectural Control Committee**

**Section 1. Establishment:** The board shall establish an Architectural Control Committee to perform the functions of said Committee set forth in this Declaration and shall adopt procedural rules and regulations for performance of such duties by such Committee, including procedures for preparation, submission and determination of applications for any approvals required by this Declaration. The Architectural Control Committee shall consist of such number of regular Members and alternate Members as the Board may designate and such members shall be appointed by the Board. Committee appointees need not be architects, except as the Board may, in its discretion, require. The Architectural Control Committee shall hold regular

meetings. A quorum for such meetings shall consist of a quorum or regular Members and the concurrence of a majority of the regular Members shall be necessary for any decision of said Committee. An alternate Member may participate at any meeting at which there is not a quorum of regular Members present, may be counted in the quorum and shall have all the authority of a regular member while so participating. The Architectural Control Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions, which guidelines and standards must be approved by the Board prior to implementation.

**Section 2. Approval of Building Plans:** No building structure or improvements, including but not limited to landscaping, shall be erected, placed or altered on any Lot until construction plans and specifications, and the plot plans showing the location of the structure and its elevation have been approved as to harmony of exterior design and color with existing structures, as to location with respect to topography and finished ground elevation and as to compliance with minimum construction standards by the Architectural Control Committee. No existing structure shall be modified, altered, added to or repainted until copies of the construction plans and specifications and plat plans, together with such information as may be deemed pertinent, shall be submitted to the Architectural Control Committee or its designated representative prior to commencement of construction and the proposed color, materials, plans and specifications have been approved. The Architectural Control Committee may require the submission of such plans, specifications and plot plans together with such other documents as it may deem appropriate, in such form and detail and at such times as it may elect, in its discretion. The Architectural Control Committee shall have full and complete authority to approve construction of any improvement on any Lot and its judgment shall be final and conclusive.

**Section 3. Committee Membership:** The Architectural Control Committee shall be initially composed of Walter Venberg, David Piccoli and David M. Brown, who may designate a representative to act for them. Committee members may be removed and replaced by a majority vote of the Board members (other than the member sought to be removed). The address of the Committee is 2164 East Broadway, # 300, Tempe, Arizona 85282 or such other place as the Committee may from time to time designate.

**Section 4. Replacement:** In the event of death or resignation of any Member or Members of said Committee, the Board shall appoint a successor Member or Members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications and plot plans submitted or to designate a representative with like authority.

**Section 5. Construction Standards:** The Architectural Control Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and the Architectural Control Committee shall not be bound thereby.

**Section 6. Variances:** The Architectural Control Committee may permit variances from any of the particular restrictive covenants contained in Article III of this Declaration. The Architectural Control Committee shall require submission to it of such documents and items, as it shall deem appropriate in connection with such consideration for variance. Such variances granted by the Architectural Control Committee shall be in writing, shall be signed by the majority of the members of the Architectural Control Committee or its designated representative, and shall not be effective until delivered to the Owner. Any requests for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either

- (a) Written notice of disapproval from the Architectural Control Committee; or
- (b) Failure by the Architectural Control Committee to respond to the request for variance.

The granting of one or more variances by the Architectural Control Committee shall not require the granting of one or more variances at any time thereafter. In the event the Architectural Control Committee or any successor to the authority thereof shall not then be functioning, and/or the term of the Architectural Control Committee shall have expired, no variances from the covenants of this Declaration shall be permitted; it being the intention of the Declarant that no variances be available except at the discretion of the Architectural Control Committee.

## **ARTICLE V**

### **Homeowner's Association**

**Section 1. Purpose:** The purpose of the Association is to assure and monitor the maintenance, preservation and use of the Common Areas of the Property and Lots by the Homeowners. For that purpose the Association may make assessments, whether regular or special, enforce those assessments and rules and regulations set forth herein, and otherwise enforce the provisions contained in the Bylaws and Articles of Incorporation of the Association.

**Section 2. Membership and Voting Rights:** Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and shall not be separate from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

**Section 3. Membership Classes:** 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 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 occur earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On May 1, 2003.

**Section 4. Articles of Incorporation and Bylaws:** The Homeowner's Association shall have been organized by the Declarant filing with the Arizona Corporation Commission Articles of Incorporation and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said non-profit corporation. The Association shall be governed by a set of bylaws which shall not conflict with the terms and provisions contained in the Declaration. All Members shall have the right to inspect all books and records of the Association at reasonable times during normal business hours.

## **ARTICLE VI**

### **Maintenance Assessments or Liens**

**Section 1. Creation of 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 thereafter, whether or not is shall be so expressed in such Deed, is deemed to covenant and agree to pay 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 in the Properties and enforce the same and for the improvement and maintenance of the Common Areas. The responsibility of the Homeowner's Association shall include, by way of example but not limitation and subject to the discretion of the

Board of Directors, any and all of the following: maintaining the Common Areas if any; payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions and conditions affecting the Property to which the maintenance obligation applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charges and assessments; caring for vacant Lots and doing any other thing necessary or desirable, in the opinion of the Association, to keep the Properties in neat and in good order, or which is considered to be of general benefit to the Owners of the Properties.

**Section 3. Maximum Annual Assessment:** The annual assessment is to be established by the Board and may not exceed a certain amount hereinafter referred to as the “Maximum Annual Assessment” which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

- (a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment against each Owner or Lessee shall be \$ 312.00 per each membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner and until January 1 of the second year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment against each Owner or Lessee shall be \$ 360.00 per each membership.
- (c) From and after January 1 of the second year immediately following the conveyance of the first Lot to an Owner, the Board of Directors may, without vote of the Members, increase the Maximum Annual Assessment during each fiscal year of the Association by an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for all Urban Consumers (All Items) U.S. City Average, published by the United States Department of Labor Bureau of Labor Statistics (1984 100), or in the event said Index ceases to be published, by any successor Index recommended as a substitute therefor by the United States government, or an amount equal to five percent of the prior year’s annual assessment, whichever is greater.
- (d) From and after January 1 of the second year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment may be increased by an amount greater than the maximum increase allowable pursuant to Paragraph (b) above, only by a vote of at least 2/3rds of each class of Members who are voting in person or by proxy at a meeting called for this purpose.

**Section 4. Rate of Assessment:** The maintenance charge and assessments on Class B Lots shall be a maximum of 25% of the maintenance charge and assessments on Class A Lots per month and shall begin to accrue on a monthly basis on each Lot on the Commencement Date. The maintenance charge applicable to Class B Lots shall

continue so long as Declarant, its successors or assigns (excluding Owners) shall own any Lot. The entire accrued charge shall become due and payable on the date such Lot and its membership convert from Class B to Class A by reason of the Owner's purchase of a residence thereon. For the first year of ownership, or any fraction thereof, the assessment shall be the number of months the Lot has been conveyed from Declarant to Owner times the monthly assessment to be payable on January 1 for that year or fraction of the first year. After the first year, the maintenance charge and assessment will be collected annually in the amount of the annual assessments (or otherwise as decided by the Board of Directors), payable on January 1 (or the first day of each month when due, if applicable). The annual budget and the rate at which each Lot shall be assessed will be determined by the Board of Directors annually and may be adopted and adjusted from year to year by the Board of Directors of the Association as the needs of the Properties may, in the judgment of the Board of Directors, require and provided that such Assessment will be uniform (except for special assessments).

**Section 5. Special Assessments for Lot Maintenance:** In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only and applicable only to the Lots requiring maintenance or Owners in violation of this Declaration for the purposes of defraying the cost of such repair and maintenance of any Lot which is not properly maintained by a Lot Owner or curing any violation by an Owner of the Declaration. Such special assessments shall be levied against such Owners and at such times as the Board of Directors deems necessary and appropriate to bring each Lot and Owner in conformance with this Declaration.

**Section 6. Effect on Non-Payment of Assessment:** Any assessment not paid within thirty days after the due date shall bear interest from the due date at the compounded rate of twelve percent (12%) per annum as well as a \$15 late payment penalty fee. The Association may bring an action at a law against the Owner personally obligated to pay the same or foreclose the lien against the property. Additionally, actions in equity may be maintained to enforce compliance hereof against any Owner. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Properties or abandonment of his Lot.

**Section 7. Subordination of the Lien to Mortgage:** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not effect 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 assessment thereafter becoming due or from the lien thereof.

**Section 8. Working Capital Fund:** To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Owner purchasing a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of a Lot, a sum equal to 1/6th of the Annual Assessment of



the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted hereunder or under the Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any assessments levied by the Association pursuant to this Declaration.

**Section 9. Transfer Fee:** Each purchaser of a Lot shall pay to the Association, immediately upon becoming the Owner of the Lot, a Transfer Fee in such amount as is established from time to time by the Board.

## **ARTICLE VII**

### **Miscellaneous**

**Section 1. Term:** Each covenant shall run with the land and shall be binding upon all parties and all persons claiming hereunder for a period of 40 years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then-owners of the Lots has been recorded agreeing to change or terminate this Declaration in whole or in part.

**Section 2. Amendment:** The terms and conditions of this Declaration may be amended in whole or in part, uniformly or non-uniformly, and affecting some or all of the Properties at any time when an instrument setting forth such amendments shall be signed and approved by at least two-thirds of the Lot Owners and recorded in Maricopa county, Arizona, except as otherwise provided in Sections 3 and 4 below.

**Section 3. Right of Amendment if Requested by Governmental Agency, State or Federally Chartered Lending Institutions.** Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration (“FHA”), the Veterans Administration (“VA”), or FNMA and to further amend to the extent requested by any other federal, state or local government agency which requests such an amendment as a condition precedent to such agency’s approval of this Declaration, or by any state or federally chartered lending institution as a condition precedent to leading funds upon the security of any Lot(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the recordation, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the mandatory language requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency’s or institution’s request for such an amendment, and such Certificate, when recorded, shall be binding upon all

Daybreak Vista II, all persons having an interest therein. Except as provided this Declaration otherwise than in accordance with and pursuant to the provisions of Section 2 of this Article.

**Section 4. Enforcement:** Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 5. Severability:** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions hereof which remain in full force and effect.

**Section 6. FHA/VA Approvals Required:** As long as there is a Class B Member, each of the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging or encumbering of any common areas or dedication of any common areas within control of the Association, or dissolution and amendment of the Declaration.

## ARTICLE VIII Insurance

**Section 1. Scope of Coverage:** Commencing not later than the time of the first conveyance of a Lot to a purchaser, the Association shall maintain to the extent reasonably available the following insurance coverage:

- (a) Comprehensive general liability insurance including, medical payments insurance in an amount determined by the Board but not less than \$1,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Properties which the Association is obligated to maintain under this Declaration and shall also include higher automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of Owners as a group to an Owner;
- (b) Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss insured against an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility as determined by the Board; provided, however, that the total amount of insurance after application of any deductible shall not be

less than 100% of the current replacement cost of the insured property exclusive of land, excavations, foundations and other items normally excluded from a property policy;

- (c) Workers' compensation insurance, the extent necessary to meet the requirements of laws of the State of Arizona;
- (d) Such other insurance as the Association shall determine from time to time to be appropriate or to protect the Association or the Owners;
- (e) Insurance policies purchased by the Association shall to the extent reasonably available contain the following provisions:
  - i. That there shall be no subrogation with respect to the Association, its agents, servants and employees with respect to Owners and Members of their households;
  - ii. No act or omission by any Owner unless acting within the scope of his authority on behalf of the Association will void the policy or be a condition to recovery on this policy;
  - iii. That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their Mortgagees or Beneficiaries under Deeds of Trust;
  - iv. A "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owner;
  - v. A statement of the name of the insured as the Association;
  - vi. For policies of hazard insurance, a standard mortgage clause providing that the insurance carrier shall notify the first mortgage named in the policy at least 10 days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

**Section 2. Payment of Premium:** The premiums for any insurance obtained by the Association pursuant to this Article VIII of the Declaration shall be included in the budget of the Association and shall be paid by the Association.

**Section 3. Payment of Insurance Proceeds:** With respect to any loss to any Area of Association of Responsibility covered by property insurance obtained by the Association and in accordance with this Article the law shall be adjusted with the Association and insurance proceeds shall be disbursed for repair or restoration of the damage to the Area of Association Responsibility.

IN WITNESS WHEREOF, the undersigned have hereunto set its hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

“DECLARANT”  
FIDELITY NATIONAL TITLE  
INSURANCE COMPANY, an Arizona  
corporation, as trustee of Trust No. 9177

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA    )  
                                  ) ss:  
County of Maricopa    )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me, the undersigned notary public, this \_\_\_ day of \_\_\_\_\_ 2005, by \_\_\_\_\_ as an authorized representative of FIDELITY NATIONAL TITLE INSURANCE COMPANY, as Trustee of Trust No. 9177.

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

My Commission Expires:

\_\_\_\_\_

## **EXHIBIT “A”**

Lots 1 through 54 inclusive and Tracts A, B and C of DAYBREAK VISTA II, according to the plat of record in the office of the County Recorder of Maricopa, Arizona, recorded in Book 381 of Maps, page 11.