

**ALPINE HEIGHTS  
HOMEOWNERS ASSOCIATION**



PAYSON, ARIZONA

**DECLARATIONS OF RESTRICTIONS**

2009

# ALPINE HEIGHTS HOMEOWNERS ASSOCIATION

## DECLARATION OF RESTRICTIONS

Alpine Heights: A subdivision in Gila County, in the Incorporated Town of Payson, Arizona, Lots 1A & IB-257 Alpine Heights as Map 559, Records of the County Recorder of Gila County, Arizona.

The Members of the Association hereby declare 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 properties 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

The Payson Unified Development Code shall be the source for all definitions regarding any improvement on any Lot

- **“Architectural Committee”** shall mean the committee created Pursuant to ARTICLE VII hereof.
- **“Architectural Property Rules”** shall mean the rules adopted by the Architectural Committee and approved by the Board, which may be amended from time to time.
- **“Assessments”** shall mean any monetary item including, but not limited to, annual dues, or recovery of monies for violation or enforcement of covenants and restrictions which has been issued by the Board of Directors, according to the Covenants, Conditions and Restrictions.
- **“Association”** shall mean and refer to Alpine Heights Homeowners’ Association, an Arizona non-profit corporation, its successors and assigns.
- **“Board”** shall mean the Board of Directors of the Association.
- **“By-Laws”** shall mean the By-Laws of the Association, as such By-Law may be amended from time to time.
- **“Dues”** shall mean the annual assessment on each Lot payable according to the Declaration of Restrictions.
- **“Improvements”** shall mean, but not exclusively, any driveway, excavation, buildings, garage, parking areas, fences, walls, and all structures of any kind.
- **“Lot”** shall mean any parcel of real property designated as a Lot on any recorded Subdivision Map within the Properties. A *Lot* shall be deemed “Improved” when a

Single Family Residence has been completely constructed thereon. All other Lots shall be deemed “Unimproved” Lots.

- **“Owner(s)”** shall mean and refer to the owner of record, whether one or more persons or entities, of equitable or beneficial title (or Legal title if same has merged) of any Lot. **“Owner”** shall include the purchaser of a Lot under an executor contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation or lessees of any Owner.
- **“Qualified Voters”** shall mean those Lot owners who are **not** delinquent in paying annual dues over thirty days from October 1<sup>st</sup> due date and/or those Lot owners who’s right to vote has not been repealed per Article VI, Section 2, paragraph B.
- **“Properties”** shall mean and refer to all real property described within Alpine Heights subdivision.
- **“Single Family”** shall mean a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group not more than three(3) persons not all so related, together with their domestic servants, who maintain a common household in a dwelling. “Single Family Residential Use” shall mean the occupation or use of a residence by a Single Family.
- **“Structure”** shall mean, but is not limited to, any accessory, attachment, awning, balcony, deck, equipment, garage, fence six(6) foot or higher, pool or spa, residence, screen, or utility of any kind built on a Lot

**PLEASE BE INFORMED THAT ALL NEW CONSTRUCTION, IMPROVEMENTS, AND ALTERATIONS TO HOMES AND PROPERTY MUST FOLLOW THE TOWN OF PAYSON BUILDING CODES AND MUST BE APPROVED BY THE ALPINE HEIGHTS ARCHITECTURAL COMMITTEE PURSUANT TO THE FOLLOWING “COVENANTS, CONDITIONS, AND RESTRICTIONS(CC & R’s).**

**ARTICLE II.**  
**LAND USE CLASSIFICATIONS, PERMITTED USES AND  
RESTRICTIONS**

**Section 1. Permitted Uses and Restrictions**

The permitted uses, easements, and restrictions for the Properties covered by this Restated Declaration, Shall be as follows:

A. **SINGLE FAMILY RESIDENTIAL USE.** All Lots shall be used, improved, and devoted exclusively to Single Family Residential Use.

1. All buildings and structures erected on the Lots shall be of new construction and site built (and NO dwelling shall be moved from any location onto any Lot). All new homes and accessory buildings and additions shall have pitched roof with overhanging eaves consistent with existing homes. All homes shall be constructed of new material. Roofing materials shall be tile, asphalt, fiberglass composition, or colored metal. Roofing color must NOT be bright or reflective.
2. Effective after the date of recording of this Restated Declaration, all dwellings or residences constructed or erected on the Properties shall contain a minimum livable area of 1500 square feet. All square footage requirements shall be exclusive of garages.
3. New residential dwellings will be limited to a height of 35 feet above the grade level, per town of Payson.
4. Each new dwelling shall have a garage. Each existing dwelling shall not be altered to eliminate any garage for conversion to livable area unless the square footage of the new garage is a minimum of 250 square feet and matches the existing style of the home.
5. In the case of all building structures, the following building set back limitations shall be observed. Any exceptions to these set backs must be approved by the Town of Payson and the Architectural Committee as well as the Board. Distances measured from property lines are:
  - (a) Twenty(20) feet from the front
  - (b) Twenty(20) feet from the rear
  - (c) Seven(7) feet from interior sides
  - (d) Fifteen(15) feet from the street side yards for corner lots.
  - (e) Accessory buildings Refer to item D. below.

B. **ANIMALS.** No animals, other than a reasonable number of dogs and cats raised solely as domestic pets, shall (i) be kept, permitted, or maintained on any Lot for commercial purposes; (ii) no farm animals are permitted; and (iii) no animals shall be permitted to make an unreasonable amount of noise or create a nuisance. All dogs shall be kept on a leash as indicated by the Town of Payson Code. All animals

must comply with the Town of Payson Ordinance No. 664A. A Lot owner with a “Public Nuisance” animal will be subject to compliance under the ordinance.

C. **ARCHITECTURAL REVIEW**. Except as otherwise expressly provided in the Restated Declaration or in the Architectural Property Rules, **NO** major outside improvement that changes the existing appearance, including color, as determined by the Architectural Committee, may be made to any structure or lot without prior written approval of the Architectural Committee.

D. **ACCESSORY BUILDINGS. WATER STORAGE. ALTERNATIVE ENERGY AND FENCING**. No more than two(2) accessory structures, as defined by the Town of Payson are permitted per Lot and each structure shall not exceed two hundred square feet. Square footage of all structures on the Lot shall not exceed 40% of the area of the Lot, excluding green belt Accessory structures must be located to the rear of the rear of the home, and not closer than three(3) feet from any property line. No accessory structures shall exceed a height of 15 feet. Such structures **must** be approved by the Architectural Committee and shall be in Compliance with the Town of Payson building codes and permit requirements. Roofing and siding must be compatible with the home. Canvas and metal structures *are* **NOT** permitted. All utilities to structures must be underground.

1. **Storage tanks** for harvesting of water must be screened from view, not unsightly, and must be approved by the Architectural Committee. Such tanks must be to the rear of the front of the home.

2. **Alternative energy devices**, including solar panels must be approved by the Architectural Committee.

3. All **fencing** must be approved by the Architectural Committee and be in compliance with the Town of Payson codes. Maximum height of fencing is three(3) feet within the 20 feet front set back and six(6) feet thereafter. No chain link fencing is permitted within the **front set back**.

E. **GREENBELTS**. Greenbelts are part of the private property of that lot owned by each lot owner that is subject to the greenbelt easement designation. Greenbelts are not common subdivision property. There are two greenbelts in the Alpine Heights subdivision, one at 30' wide x +/- 1,390' long and west of Arrowhead Dr. (West), which is owned by the Town of Payson and one 50' to 100' wide x +/- 3,980' long, which is owned by each hillside lot owner that owns a lot subject to this greenbelt designation(East). See plat map.

1. **MAINTENANCE**: The maintenance of the greenbelt is the responsibility of the owner, owners of that portion of their lot within the greenbelt that they own. The (West) greenbelt's maintenance is the responsibility of the Town of Payson

2. **NO STRUCTURES**, open or enclosed, are allowed to be constructed within the designated greenbelt area with the exception of fences. Any fence constructed within an individual owner's greenbelt area is subject to

conformance of the Town of Payson ordinance and requires Architectural Committee approval.

F. **VEHICLES/TRAILERS.** No commercial trailers, trucks, semi-trucks, or commercially-licensed vehicles in excess of one(1) ton, other than those temporarily on business, may be parked on the property or street. No overnight parking of such vehicles shall be permitted. Any vehicle of any type, not garaged, including recreational vehicles(RV's), that is not currently registered or is inoperable stored or kept on any Lot for longer than twenty-four (24) hours shall be considered a nuisance as defined by the Town of Payson. No vehicle, RV, trailer, or boat/trailer shall be parked on any street over twenty- four (24) hours. RV's shall not be used as a dwelling. No vehicle, including any structure of over three(3) feet high, may be parked or located so as to obstruct the view from the driveway of another Lot where it meets the road.(Per: Town of Payson Unified Development Code) All lot owners should be considerate of their neighbors when parking vehicles. RV's. boats & etc, to insure every one's safety and enjoyment of private property.

G. **MAINTENANCE OF PROPERTY AND VEGETATION: DISEASED PLANTS AND INSECTS.** Each Owner of a Lot shall keep his/her Lot free of trash, building material scraps, and other unsightly material. No tree trunk which exceeds six(6) inches in diameter(as measured two(2) feet from the ground) shall be cut down, destroyed or moved from a Lot without prior written consent of the Town of Payson. All trees shall be kept free of mistletoe. All Lots shall be maintained so as not to pose a fire hazard from brush, trees, or undergrowth, as determined by the Association Board. Failure of the Lot Owner to comply will result in action by the Board per Article VI. In the event any Lot is not maintained and presents a public or private nuisance, hazard, or health problem, the Board will contact the Lot owner stating the violations and listing corrective measures to be taken by the Lot owner. If corrective action is not taken within sixty(60) days by the Lot owner, the Board may cause corrective action to be taken and the cost thereof shall be added to and become a part of the assessment to which the offending owner and owner's Lot is subject. Such cost shall be secured by an assessment lien as provided herein.

H. **MINERAL EXPLORATION.** No part of the Properties shall be used in any manner to explore for or to remove any water, oil, or other hydrocarbons or minerals of any kinds.

I. **MACHINERY AND EQUIPMENT.** No machinery or equipment of any kind shall be placed, operated, or maintained outside of a structure, upon or adjacent to any of the Properties, except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence, appurtenant structures, or other improvements.

J. **NUISANCES.** No rubbish or debris of any kind or vehicles in disrepair or unlicensed shall be placed or permitted to accumulate upon or adjacent to any Lot so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly, dangerous, or offensive. Without limiting the generality of

any of the foregoing provisions, no offensive whistles, bells, lighting or other offensive sound devices, except security devices used exclusively for security purposes, shall be used on any such Lot **No guns or firearms, including BB guns and air rifles**, may be discharged within the Properties. All appliances (water heaters & household i.e.; washers/dryers) shall be contained in an enclosed structure.

- K. **REPAIR OF BUILDINGS**. No building or structure upon any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.
- L. **TRASH CONTAINERS AND COLLECTION**. The weekly storage, collection, disposal, and removal of all household refuse, debris, garbage, and trash must be arranged with an established service permitted to charge a fee as recommended by the State or County Health agent. No garbage or trash shall be placed or kept on any Lot except in covered containers and shall be screened from public view and right of way. No trash trailers shall remain on any Lot in excess of 48 hours with the exception of new construction or approved remodeling.
- M. **NO BUSINESS USES**. No trade or business of any kind may be conducted in or from any such Lot except that an Owner may conduct a business activity within a dwelling so long as the existence or operation of the business of the business activity (i) is not apparent or detectable by sight, sound, or smell from the exterior of the unit; (ii) is consistent with the residential character of the Properties; and (iii) does not constitute a nuisance, or a hazardous or offensive use including, without limitation, excessive or unusual traffic or parking of vehicles in the vicinity of any Lot as may be determined by the discretion of the Board.
- N. **LEASES**. Owners shall have the right to lease/rent their residence to **only one** "Single Family" as defined in definitions. Leases or rentals shall be for a period of at least six(6) months. Agreements to sub-lease are **not** permitted. Leases must be in writing and must require lessee or tenant to comply with the Property Rules, By-Laws, Articles, and provisions of the Association. Owner shall be responsible for lessee's compliance with the Rules, By Laws, Articles and this **Restated Declaration** and damages caused by lessee together with assessment, fines, penalties, dues, or other charges payable. **Owners will advise the Board of their mailing address and phone no. and names of tenants when their property has been leased/rented.**
- O. **FIRES**. No open fires shall be lighted or permitted on the Properties, except in a contained commercially designed unit, used in compliance with design standards, well attended, for that purpose. All fireplace chimneys and outlets from stove and heating appliances must be screened or capped.

## ARTICLE III.

### ALPINE HEIGHTS HOMEOWNERS ASSOCIATION

#### **Section 1. Organization**

- A. **The Association.** The Association is a non-profit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this **Restated Declaration**. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this **Restated Declaration**.
- B. **Board of Directors and Officers.** Control and management of the business and affairs of this corporation shall be vested in a Board of Directors. The Board shall be composed of no more the seven(7) members of the Association. The Directors shall be elected at the annual meeting as provided in the Bylaws.
- C. **The Annual Meeting of the Members of the Association** shall be held on or about the first Saturday of October of each year and on the same day of each and every year thereafter. Special meetings of the Board of Directors and/or membership may be held at such time and place and in such manner as may be prescribed by the Bylaws of the Corporation.
- D. **Elections.** The Board of Directors shall elect a President, one or more Vice-Presidents, Secretary, Treasurer, and Assistants thereto. The time and method of electing said Officers, and length of the term of their office, shall be fixed in the Bylaws. The President and Vice-President selected shall be members of the Board of Directors, but Secretary and the Treasurer and their Assistants need not be members of the Board of Directors. In addition, the Board of Directors may elect a Chairman of an Executive Committee from its membership. Any and all vacancies in the Board of Directors or in any office may be filled by the remaining Directors, and the person so chosen to fill a vacancy shall serve during the unexpired term of his predecessor and until his successor be elected and qualified. The Board of Directors will hold regular Board Meetings on a quarterly basis, or as required, to discuss any business presented.

#### **Section 2. Powers and Duties of the Association.**

The Association shall have rights, duties, and powers as set forth in the Articles and Bylaws, as same may be amended from time to time.



### **Section 3. Personal Liability.**

No member of the Board or any committee of the Association, or any officer of the Association, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed resulting from an act, omission, error or negligence of the Association, the Board, Officer, employee, the Architectural Committee or any other committee, or any other representative of the Association, provided that such person has, upon the basis of such information as may be possessed by him/her, acted in good faith, without willful or intentional misconduct.

## **ARTICLE IV.**

### **MEETINGS**

- A. Notices of the annual meeting and any special meeting shall be mailed at least twenty(20) days prior to such meeting, to the last known address of each Owner, as the same appears on the records of the Homeowners' Association.
- B. The President or his designee shall call the meetings to order. The Secretary of the Homeowners' Association shall act as Secretary at all meetings. All meetings shall be conducted in accordance with Robert's Rule of Order.
- C. Special meetings of the Homeowners' Association may be called at any time by the Board of Directors. A special meeting may be called when petitioned by 20% of the members entitled to vote.
- D. Prior to each annual meeting, the Board of Directors or a Nominating Committee will present a recommended slate of Directors for consideration by the Members of the Association. The persons receiving the highest number of votes cast for Directors shall be deemed elected.

## **ARTICLE V.**

### **ELECTIONS AND VOTING**

#### **Section 1. Membership.**

Every Owner of a Lot which is subject to assessment annual dues) shall be a Member of the Association. Membership shall not be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Membership in this Association shall be limited solely to those individuals owning one or more Residential Lots within the above described Property.

#### **Section 2. One Vote Per Lot**

All Owners shall be entitled to one(1) 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 Lots shall be exercised as they among themselves determine, but in no event shall more than one(1) vote be cast with respect to any Lot. One vote per Lot is

allowed by the Owner, Owners or Trustees of a Lot, which can be cast at annual meetings, special meeting, or ballots, issued by mail. Voting privileges remain with the Owner, Owners, or Trustees of the Lot. Upon the sale of a particular Lot, the voting privilege belongs to the new Owner. Any Owner which owns more than one Lot is entitled to one(1) vote for each Lot owned. No member shall be permitted to vote at any annual or special election who is thirty(30) days or more in default in the payment of any assessments due the Association.

### **Section 3. No Fractional Voting.**

The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. Where two or more persons own a Lot, they shall determine among themselves who is to cast the vote represented by said Ownership and shall notify the Secretary thereof. If the Secretary is not notified and two or more votes are cast for one Lot, the votes shall be disregarded by the Association. Any Lot which becomes part of an existing Lot and which is re-plated and becomes one Association Lot is considered one vote and one assessment.

### **Section 4. Membership Rights, Duties, and Obligations.**

Each Member shall have such other rights, duties, and obligations as set forth in the Articles, Bylaws, Architectural Committee Rules and Property Rules, as same may be amended from Time to time.

### **Section 5. Notice and Quorum For Any Action as Prescribed in the Meeting Notice**

Written notice of any meeting called shall be mailed to all Owners of each Lot at the last known address as appears on the Homeowners' Association records not less than twenty(20) days nor more than thirty(30) days in advance of the meeting. Votes either by presence or proxy to constitute a quorum to conduct a meeting and vote on the issue will be at least 30% of all Owners entitled to cast a vote. If the required quorum is not present, another meeting may be called for the same purpose, but the required quorum will be one half(1/2) the quorum required at the preceding meeting. No such subsequent meeting shall be held more than sixty(60) days following the first meeting.

## **ARTICLE VI. ASSESSMENTS**

### **Section 1. Assessments.**

- A. The Board of Directors shall assess and collect from each member of the Association, such sums as may be necessary to properly carry out the responsibilities and obligations herein imposed. The maximum amount which may be assessed as the **Annual Dues** by the Board of Directors of the Association, for the purposes herein enumerated, shall not exceed **\$25.00** per Lot per year. Any increase in the annual maximum assessment/dues shall have the assent of a majority of the votes of the qualified Members who are voting in

person or by proxy at the Annual Meeting *or other meeting called for this purpose.*

- B. Invoices for said assessment/dues shall be addressed to Owners of a Lot within Alpine Heights subdivision and be tendered annually. In the event any assessment/dues is not paid within thirty(30) days from the October 1<sup>st</sup> due date, a penalty of **\$10.00 per month** will be assessed. If the assessment/dues has not been paid by the following May 1<sup>st</sup>, the Board of Directors may file lien against the Property in the Gila County Recorder's Office.

## **Section 2. Effect of Non-payment of Assessments: Remedies of the Association**

Each Owner of any Lot shall be responsible and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney for the collection of any assessment, to enforce compliance of this **Restated Declaration**, the Owner agrees to pay reasonable attorneys' fees and costs thereby incurred. In the event of a default in payment of any such assessment when due, the Association may enforce each such obligation in any manner provided by law by either or all of the following procedures:

### **A. Notification of Violation.**

The Homeowners' Association will first notify a Lot Owner of any violation and will agree to a reasonable time period for the Lot Owner to correct a violation. The Lot Owner may respond to the Association Board by certified mail within ten(10) business days after the date of the notice. Within ten(10) days after the certified mail containing the response from the member, the Association shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the community documents that has allegedly been violated.
2. The date of the violation or date the violation was observed.
3. The first and last names of the person(s) who observed the violation.
4. The process the member must follow to contest the notice.

If after sixty(60) days from the initial notification there is no acceptable response to the Board, with a plan to correct the violation, the following enforcements may be evoked against the Lot Owner and Lot Owner's property by a majority vote of the members of the Board. The Board or Officers of the Board may also evoke immediate action when an issue warrants a response for a Lot Owner prior to the sixty(60)day resolve period.

## **B. Enforcement**

The Board may impose sanctions for violations by a Lot Owner including but not limited to those listed below and any others specifically described in these Declarations:

1. Suspension of a Lot Owner's right to vote.
2. Suspension of a Lot Owner's right of any services of the Association.
3. Exercising self-help to remedy a non-compliance of a Lot Owner.
4. Enforcement by Suit The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation or any other obligation charged to the Owner. Any judgment rendered in any legal action shall include the amount of delinquency, court costs, and reasonable attorney's fee in such amount as the Court may adjudge against the Lot Owner.
5. Enforcement by Assessment. The Board may place an assessment on a lot for the cost of correcting a violation, including any legal or professional assistance necessary to correct a violation. Any assessments which are outstanding at the time of the sale of any Lot shall be reported to the title company for settlement to the Association prior to the closing of the sale or exchange of the Lot.
6. Enforcement by Lien. The Board may initiate a lien against a Lot for Assessments plus costs connected therewith including reasonable attorney's fees. After the occurrence of any default in the payment of any such assessment, the Association or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting owner on behalf of the Association. The demand shall state the date and amount of die delinquency. Each default shall constitute a separate basis for the demand or claim of lien or a lien, but any number of defaults may be included with in a single demand.

## **ARTICLE VII.**

### **ARCHITECTURAL PROPERTY RULES**

#### **Section 1. Organization. Power of Appointment, and Removal of Members.**

There shall be an Architectural Committee, organized as follows:

- A. Committee Composition.** The Architectural Committee shall consist of

no more than three(3) persons appointed by the Board. The Board will search out and recruit members with architectural or building experience to assume the responsibilities of this committee. A member need not be, but may be, a member of the Board or an Officer of the Association.

**B. Appointment and Removal.** The right to appoint and remove all members of the Architectural Committee at any time shall be and is hereby vested solely in the Board. The Board may remove a member or members for any reason at all.

**C. Vacancies.** Vacancies on the Architectural Committee, however caused, shall be filled by the Board. A vacancy or vacancies shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

## **Section 2. Duties.**

It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Property Rules, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by the Bylaws. The Architectural Committee shall exercise its best judgment to the end that all dwelling units, attachments, improvements, construction and alterations to structures on lands located within the Properties conform to and harmonize with the existing surroundings and structures. Decisions of the Architectural Committee may be appealed to the Association Board. The decision of the Board is final.

## **Section 3. Meetings.**

The Architectural Committee shall meet from time to time as necessary to perform its *duties* hereunder. The vote or written consent of a majority of the regular members, at a meeting or otherwise shall constitute the act of the Architectural Committee. The Architectural Committee shall keep and maintain a written record of all actions taken by it at each meeting or otherwise.

## **Section 4. Architectural Property Rules.**

The Architectural Committee may, from time to time, adopt, amend, and repeal by vote or written consent, rules and regulations to be known as “Architectural Property Rules”. Said Architectural Property Rules must also be approved by a majority of the Board and voted on by the general membership at an annual meeting or a specially-called meeting of the membership, and shall set forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of buildings, color schemes, exterior finishes, and materials and similar features which are recommended for use in the Properties.

## **Section 5. Waiver.**

The approval by the Architectural Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the

Architectural Committee, shall not be deemed to constitute a waiver of any right of the Architectural Committee to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

### **Section 6. Liability**

Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss, or prejudice suffered or claimed as the result of:

- A. The approval or disapproval of any plans, drawings, or specifications, whether or not effective.
- B. The construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications.
- C. The development of any property within the Properties, or
- D. The execution and filing of any estoppel certificate, whether or not the facts therein are correct, unless the Architectural Committee or any member thereof committed willful or intentional misconduct without and in any way limiting the generality of any of the foregoing provisions of this Section 6.
- E. The Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee.

### **Section 7. Time for Approval**

In the event the Architectural 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 VIII. GENERAL PROVISIONS**

### **Section 1. Enforcement.**

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, reservations, liens, and charges now or thereafter imposed by the provisions of this Restated Declaration. Failure by 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 2. Severability.**

Invalidation of any of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.

### **Section 3. Amendment.**

The covenants and restrictions of this Restated Declaration shall run with and bind the land and shall inure to the benefit of and be enforced by the Association or the Owner of any Lot subject to this Restated Declaration, their respective legal representative, heirs, successors, and assigns, for a term of five(5) years from the date this **Restated Declaration** is recorded, after which time they shall be automatically extended for successive periods of five(5) years each, unless by a majority of the qualified voters of the Owners of the Lots voting in said Alpine Heights it is agreed to change said covenants in whole or in part. Any Amendments) approved as required above, will be acknowledged in writing by the Association President and Secretary, certifying such Amendment prior to the recording of such with the Gila County Recorder.

### **Section 4. Violations and Nuisance.**

Every act or omission whereby any provision of this **Restated Declaration** is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or any Owner or Owners of Lots within the Properties. However, any other provision to the contrary notwithstanding, the Association, the Board, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of the **Restated Declaration**. A violation of these restrictions and covenants, or any one of them, shall not affect the lien of any first mortgage or deed of trust now of record, or which hereafter may be recorded, upon said Lots or any part thereof.

### **Section 5. Violation of Law.**

Any violation of any state, municipal, county, or local law, ordinance, or regulation, pertaining to the ownership, occupation, or use of any property within the Properties is hereby declared to be a violation of this **Restated Declaration** and subject to any and all of the enforcement procedures set forth or to be set forth herein or in the Architectural Property Rules.

### **Section 6. Delivery of Notices and Documents.**

Any written notice or other documents relating to or required by this **Restated Declaration** or the Architectural Property Rules may be delivered seventy two(72) hours after a copy of the same has been deposited in the United States Mail, postage prepaid, properly addressed to the Lot of such Owner or such other address indicated in writing by Owner. **Owners are obligated to inform the Association in writing of any change in the Owner's mailing address.**

### **Section 7. The Restated Declaration.**

Deeds of conveyance of a Lot may contain the restrictions and covenants contained herein by references to this document, but whether or not such reference is made in any or all of said deeds, by acceptance of a deed or by acquiring any ownership interest in any of the real property included within this **Restated Declaration**, each person or entity, for himself or itself, his heirs, personal representatives, successors,

transferees, and assigns, binds himself, his heirs, person representatives, *successors*, *transferees*, and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this **Restated Declaration**. In addition, each such person by so doing hereby acknowledges that this **Restated Declaration** sets forth a general scheme for the improvement and development of the Properties and hereby evidences his intent that all the restrictions, conditions, covenants, rules, and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Further more, each such person fully understands and acknowledges that this **Restated Declaration** shall be mutually beneficial, prohibitive, and enforceable by the various subsequent and future Owners.

**IN WITNESS WHEREOF**, the Association adopts this **Restated Declaration**, to be effective as of the date of its recording in the Gila County Recorder's Office, State of Arizona.

ALPINE HEIGHTS HOMEOWNERS ASSOCIATION

BY \_\_\_\_\_ ITS' PRESIDENT

BY \_\_\_\_\_ ITS' SECRETARY



