

ARTICLES OF INCORPORATION  
OF  
WYNSTONE COMMUNITY ASSOCIATION, INC.  
an Arizona Non-Profit Corporation

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APPR *A. Walker*  
DATE APR 13-17-95  
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In compliance with the requirements of §10-1002, et seq., Arizona Revised Statutes, as may from time to time be amended, the undersigned, all of whom are of full legal age, have voluntarily associated themselves on the date set forth below for the purpose of forming an Arizona non-profit corporation. All of the undersigned incorporators certify and adopt the following Articles of Incorporation ("Articles"):

ARTICLE I

NAME AND TERM

The name of the corporation is Wynstone Community Association, Inc. ("Association"). The Association shall exist perpetually.

ARTICLE II

DEFINED TERMS

Terms in all capital letters used in these Articles without definition shall have the meanings specified for those terms in the Declaration of Covenants, Conditions, and Restrictions for Wynstone to be recorded with the Official Records of Maricopa County, Arizona ("Declaration"). In the case of any conflict between the Articles and the Declaration, the Declaration shall control. As used in these Articles of Incorporation, the term "Association Property" shall mean the COMMON AREAS, all other property owned by the Association or placed under its jurisdiction, all property and improvements within the PROPERTY used in common by and for the common benefit of the OWNERS of LOTS, and any additions to any of the foregoing as may be brought within the jurisdiction of the Association pursuant to the Declaration.

ARTICLE III

PRINCIPAL OFFICE

The principal office of the Association shall be located at Two West Alameda, Suite Five, Tempe, Arizona 85282.

## **ARTICLE IV**

### **STATUTORY AGENT**

Jay Barrus CPA, whose address is 64 East Broadway, Suite 165, Tempe, Arizona 85282, and who has been a bona fide resident of the State of Arizona for more than three (3) years last past, is appointed and designated as the Statutory Agent for the corporation for the State of Arizona, upon whom service of process may be made. This appointment may be revoked at any time by the Board of Directors of the Association by the filing of the appointment of another Statutory Agent.

## **ARTICLE V**

### **PURPOSE OF THE ASSOCIATION**

The object and purpose for which this Association is organized is to provide for the acquisition, construction, management, maintenance, and care of the Association Property. In furtherance of, and in order to accomplish these objectives and purposes, the Association may transact any or all lawful business for which non-profit corporations may be incorporated under the laws of the State of Arizona, as such laws may be amended from time to time. All business transacted by the Association shall be transacted in such a way so as to further its tax-exempt status as an Association under the Internal Revenue Code, if the Association so elects to be treated as such a tax-exempt organization. The Association shall come into existence on the date of the filing of these Articles with the Arizona Corporation Commission.

## **ARTICLE VI**

### **THE CHARACTER OF THE BUSINESS**

The general nature and character of the business to be transacted by the Association shall be as follows:

(a) To own, operate, repair, manage, and maintain the Association Property;

(b) To: (i) accept the Association Property and to maintain, repair, and replace all landscaping, walk areas, recreational facilities, recreational areas, and private streets (if any) located upon the Association Property and which are the responsibility of the Association to maintain, repair, and replace pursuant to the Declaration; (ii) pay all taxes and assessments, if any, which may be properly levied against the Association Property; (iii) fix and levy assessments and impose liens against the individual LOTS to secure the payment of all assessments and other obligations due from the OWNERS of the applicable Lots to the Association and to

collect, foreclose, or otherwise enforce, compromise, release, satisfy, and discharge these liens and demands, and to do all other acts necessary to the filing, maintenance, and discharge of these demands and liens; (iv) take any action necessary to enforce the PROJECT DOCUMENTS; (v) do any and all lawful things and acts which the Association may deem, at any time and from time to time, and in its sole discretion, to be in the best interests of the MEMBERS (and to pay all associated costs and expenses) and in connection with any and all the purposes of the Association; (vi) do any and all lawful things which may be advisable, proper, authorized, or permitted to be done by the Association under and by virtue of any condition, covenant, restriction, reservation, charge, or assessment affecting all or any portion of the Association Property, and to do and perform any and all acts which may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety, or general welfare of the MEMBERS; and (vii) do any and all things and exercise all rights and powers permitted to non-profit corporations under the laws of the State of Arizona (as may be amended from time to time);

(c) To adopt and amend the Bylaws of the Association;

(d) To institute, defend, or intervene in litigation or administrative proceedings in its own name or on behalf of the OWNERS on matters affecting the PROPERTY;

(e) To do and perform any and all acts and things and to transact any business, not inconsistent with law, which may be necessary, incidental, or convenient in carrying out of any of the business or purposes of the Association, including, without limitation, all acts necessary to perform all obligations and duties and exercise all rights and powers of the Association under (and in accordance with) the PROJECT DOCUMENTS; and

(f) To indemnify the Directors, officers, MEMBERS, employees, or agents of the Association in the manner and upon the conditions specified in the Bylaws.

## ARTICLE VII

### MEMBERSHIP

1. Identity of Members. The Association shall be a non-stock corporation. No stock shall be issued, and no dividends or pecuniary profits shall be paid at any time to its MEMBERS. Membership in the Association shall be limited to OWNERS of LOTS. An OWNER of a LOT shall automatically, upon becoming the OWNER of such LOT, become a MEMBER of the Association and shall remain a MEMBER of the Association until such time as his ownership ceases, for any reason, at which time his membership in the Association shall automatically cease.

2. Transfer of Membership. Membership in the Association shall be appurtenant to each LOT and a membership in the Association shall not be transferred, pledged, or alienated in any way, except: (i) upon the sale of a LOT, and then only to the purchasers; (ii) by intestate succession or testamentary disposition; (iii) foreclosure of mortgage (or similar security instrument) of record; or (iv) other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

3. First Annual Meeting. The first annual meeting of the MEMBERS of the Association shall be held on January 1, 1996, or at such other date designated by the Board of Directors; however, the first annual meeting of the MEMBERS of the Association shall in no event be held later than one (1) year after the date of the close of escrow on the first retail sale.

## ARTICLE VIII

### VOTING RIGHTS

1. Classes of Members. The Association shall have two classes of voting membership, Class A and Class B.

2. Class A. Class A members shall be all OWNERS of LOTS with the exception of the DECLARANT. Each Class A member shall be entitled to one (1) vote for each LOT owned.

3. Class B. The Class B member shall be the DECLARANT (or its successor). The Class B member shall be entitled to three (3) votes for each LOT owned. The Class B membership shall cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earlier:

(a) Four (4) months after the date when the total votes held by Class A members equals the total outstanding votes (tripled as above) held by the Class B members;

(b) The date which is five (5) years after the date of the close of escrow on the first retail sale;

(c) When the DECLARANT notifies the Association in writing that it relinquishes its Class B membership, which relinquishment shall require the written consent of DMB in order to be effective if DMB then owns any LOT.

## ARTICLE IX

### BOARD OF DIRECTORS

1. Number and Affairs. The affairs of the Association shall be conducted by a Board of Directors of the Association (sometimes individually or collectively called "Board," "Directors," "Director," or "Board of Directors") and such officers and committees as the Board may elect and appoint. The Board of Directors shall be elected by the MEMBERS. So long as there is a Class B membership in the Association, the Directors need not be MEMBERS of the Association. After the termination of the Class B membership, all Directors must be MEMBERS of the Association. The Board may increase the number of Directors on the Board; however, the number of Directors must always be an odd number and may not exceed seven (7) Directors. The number of Directors constituting the initial Board shall be three (3), one of which shall serve a three (3) year term, one of which shall serve a two (2) year term, and one of which shall serve a one (1) year term. All additional Directors that may be added from time to time to the Board (i.e., in addition to the initial three (3) and up to seven (7) members) will serve three (3) year terms. The names and addresses of the initial Board of Directors of the Association are as follows:

<u>Name</u>	<u>Mailing Address</u>
Rodney L. Morris (3 year term)	Two West Alameda Drive, Suite Five Tempe, Arizona 85282
Richard R. Rohde (2 year term)	Two West Alameda Drive, Suite Five Tempe, Arizona 85282
William J. Carlson (1 year term)	Two West Alameda Drive, Suite Five Tempe, Arizona 85282

The initial Directors shall serve for the terms specified below their names and until their successors have been elected and qualified. Successor Directors to the initial Directors also will serve the one, two, or three year terms specified above.

2. Vacancy. Vacancies on the Board caused by any reason other than the removal of a Director by the MEMBERS shall be filled by a majority vote of the remaining Directors at the first regular or special meeting of the Board held after the occurrence of the vacancy. Each person elected shall serve the unexpired portion of the prior Director's term.

3. Bylaws. The Board is expressly authorized to adopt bylaws for the Association ("Bylaws"), by a majority vote of the Board, at a regular or special meeting.

## ARTICLE X

### LIMITED LIABILITY AND INDEMNITY

1. The Association shall indemnify every present and former director or officer, his heirs, executors and administrators ("Indemnified Parties"), against costs and expenses incurred by him in connection with any actual or threatened action, suit, or proceeding, whether civil, criminal, administrative or investigative to which he may be made a party by reason of his being or having been a director or officer of the Association, or on account of any action taken by him within the scope of his employment as a director or officer of the Association, regardless of whether such action, suit or proceeding is brought by or in the name of the Association or by any other party, and against said costs and expenses incurred by him in connection with the settlement of any said action, suit or proceeding, and indemnification shall be mandatory and shall be made by the Association upon written notice given to the President of the Association that he has incurred or may incur said expenses, unless the majority of the whole Board of Directors (in which majority there shall not be included any director who shall have or shall at any time have had any financial interest adverse to the Association in said action, suit or proceeding or the subject matter or outcome thereof) adopts a resolution to the effect that the director or officer acted, failed to act, or refused to act willfully or with gross negligence or with fraudulent or criminal intent. This right of indemnification shall not be exclusive of other rights to which he may be entitled. As used herein, expenses shall include amounts of judgments, penalties, or fines rendered or levied against such officer or director, attorneys' fees, and amounts paid in settlement by him if such settlement shall have been approved by the Board of Directors of the Association. Notwithstanding the foregoing, all Indemnified Parties shall be indemnified to the full extent permitted by Arizona Revised Statutes §10-1005(c) or the indemnification provisions of any successor or amended statute or as provided in the Bylaws of the Association or by agreement.

2. Any person who serves as a director shall be immune from civil liability and shall not be subject to suit directly or by way of contribution for any act or omission resulting in damage or injury if such person was acting in good faith and within the scope of his official capacity unless such damage or injury was caused by willful and wanton or grossly negligent conduct of such person. "Official capacity" as used in this Article is any decision, act or event undertaken by the nonprofit Association in furtherance of the purpose or purposes for which such organization is organized. If the Arizona corporation law is amended to authorize further

elimination or limitation of the liability of a director, then the liability of a director of the Association shall be eliminated or limited to the fullest extent permitted by the Arizona corporation law as so amended. Any repeal or modification of this article shall not increase the liability of a director of the Association arising out of the acts or omissions occurring before the repeal or modification becomes effective.

## ARTICLE XI

### DISSOLUTION

The Association may be dissolved with the affirmative assent given in writing and signed by not less than two-thirds (2/3) of the authorized votes of each class of MEMBERS. Upon dissolution of the Association, other than incidental to a merger or consolidation, the assets of the Association shall be applied and distributed as provided in A.R.S. §10-1046.

## ARTICLE XII

### AMENDMENTS

Amendment of these Articles shall require the affirmative assent of at least seventy-five percent (75%) of the authorized votes of each class of MEMBERS. Notwithstanding any contrary provision of these Articles, any amendment of these Articles shall require DMB's written consent in order to be effective if, at the time of such amendment, DMB owns any LOT or any other portion of the PROJECT. Any attempted amendment in violation of the foregoing consent requirement shall be null and void and of no force or effect. DMB shall not unreasonably withhold its consent to any amendment.

## ARTICLE XIII

### INCORPORATORS

The name and address of the incorporator of the Association is:

Name

Mailing Address

William J. Carlson  
(1 year term)


Two West Alameda Drive, Suite Five  
Tempe, Arizona 85282

**ARTICLE XIV**

**FHA/VA APPROVAL**

As long as there is a Class B membership in the Association and if either FHA or VA financing is applicable to all or any portion of the PROPERTY, the following will require the prior approval of the Federal Housing Administration or the Veterans Administration, if applicable: (i) annexation of additional properties; (ii) mergers and consolidations; (iii) mortgaging of COMMON AREAS; (iv) dedication of COMMON AREAS; and (v) dissolution and amendment of these Articles of Incorporation.

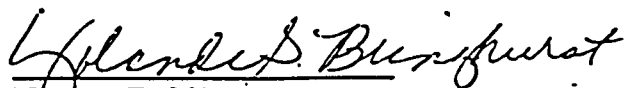
For the purpose of forming this non-profit corporation under the laws of the State of Arizona, the undersigned, constituting all of the incorporators of the Association, has executed these Articles of Incorporation as of MARCH 16, 1995.

  
\_\_\_\_\_  
William J. Carlson, Incorporator

STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa     )

On this 16th day of March, 1995, before me, the undersigned Notary Public, personally appeared William J. Carlson, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

My Commission Expires:  
Sept. 28, 1997

