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Lennar Communities Development, Inc.
1610 West Camelback Road, Suite 7
Phoenix, Arizona 85015
ATTN: SHE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PINNACLE HILL

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AND RESTRICTIONS
FOR
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

PINNACLE HILL

This Declaration of Covenants, Conditions, and Restrictions for Pinnacle Hill (the "Declaration") is made this 8 day of March, 1993, by Lennar Communities Development, Inc., a Delaware corporation (the "Declarant").

ARTICLE 1

DEFINITIONS

1.1 "Additional Property" means the real property described on Exhibit B attached to this Declaration, together with all Improvements situated thereon, and any real property, together with the Improvements located thereon, situated within the vicinity of the Project.

1.2 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

1.3 "Architectural Committee" means the committee of the Association appointed pursuant to Section 5.11 of this Declaration.

1.4 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.11 of this Declaration, as they may from time to time be amended or supplemented.

1.5 "Articles" means the Articles of Incorporation of the Association, as they may from time to time be amended.

1.6 "Assessment" means an Annual Assessment, Parcel Assessment or Special Assessment.

1.7 "Assessment Lien" means the lien created and imposed by Article 6 of this Declaration.

1.8 "Assessment Period" means the period set forth in Section 6.7 of this Declaration.

1.9 "Association" means the Arizona nonprofit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "Pinnacle Hill Owners Association", but Declarant reserves the right to organize the Association under such other name as the Declarant deems appropriate.

1.10 "Association Land" means all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the Owner of the fee or leasehold interest.

1.11 "Association Rules" means the rules adopted by the Board pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

1.12 "Board" means the Board of Directors of the Association.

1.13 "Bylaws" means the Bylaws of the Association, as they may from time to time be amended.

1.14 "Common Area" means (i) all Association Land; (ii) all land, and the Improvements situated thereon, within the Project which the Declarant indicates on a Neighborhood Plat or other Recorded instrument is to be conveyed to the Association for the benefit and use of the Members in accordance with this Declaration; (iii) all land, and the Improvements situated thereon, situated within the boundaries of a Lot which is designated on a Neighborhood Plat recorded by the Declarant or approved by the Association as land which is to be improved, maintained, repaired and replaced by the Association, (iv) all land, and the Improvements situated thereon, within the Project which the Declarant indicates on a Neighborhood Plat or other Recorded instrument is to be used for landscaping, drainage or water retention or flood control for the benefit of the Project or the general public and which is to be dedicated to the public upon the expiration of a fixed period of time, but only until such land is so dedicated; (v) all real property, and the Improvements situated thereon, located within dedicated rights-of-way with respect to which the City of Phoenix has not accepted responsibility for the maintenance thereof, but only until such time as the City of Phoenix has accepted all responsibility for the maintenance, repair and replacement of such areas; and (vi) all land, and the Improvements situated thereon, which is designated in a recorded amendment to this Declaration or on a Neighborhood Plat as Parcel Assessment Areas.

1.15 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.16 "Condominium Development" means a condominium established in accordance with the laws of the State of Arizona.

1.17 "Condominium Unit" means a Unit within a Condominium Development.

1.18 "Declarant" means Lennar Communities Development, Inc., a Delaware corporation, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.

1.19 "Declaration" means this Declaration of Covenants, Conditions, and Restrictions, as it may be amended from time to time.

1.20 "Developer" means any Person who purchases one or more Lots from the Declarant and who is engaged in bona fide residential land development and the marketing and sale of Residential Units to the public and who continues to engage in such business on a continuous, regular and permanent basis.

1.21 "Development Plan" means the Conceptual Development Plan for the Project approved by the City of Phoenix, Arizona, as the plan may be amended from time to time.

1.22 "Exempt Property" means (i) all land and improvements owned by, or dedicated to and accepted by, the United States, the State of Arizona, the County of Maricopa, Arizona, or any political subdivision thereof, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective; (ii) all Association Land; (iii) all Neighborhood Common Area; and (iv) all real property which is part of the common elements of a Condominium Development.

1.23 "Improvement" means any Residential Unit, Condominium Unit, building, fence, wall or other structure or any road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.

1.24 "Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

1.25 "Lot" means (i) each area of real property in the Project which is designated as a lot on any Neighborhood Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot, or (ii) a Condominium Unit.

1.26 "Maintenance Standard" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

1.27 "Member" means any Person who is a Member of the Association.

1.28 "Membership" means a membership in the Association.

1.29 "Neighborhood Association" means any homeowners association, condominium association or similar association formed or organized pursuant to any Neighborhood Declaration.

1.30 "Neighborhood Common Area" means all real property, and all Improvements located thereon, owned or leased by a Neighborhood Association for the common use and benefit of the members of the Neighborhood Association.

1.31 "Neighborhood Declaration" means any declaration of covenants, conditions and restrictions, condominium declaration or similar instrument, other than this Declaration, recorded against any part of the Project.

1.32 "Neighborhood Plat" means any subdivision plat or condominium plat recorded against any part of the Project, and all amendments, supplements and corrections thereto.

1.33 "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. § 33-741 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 Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.34 "Parcel Assessment" means an assessment levied against less than all of the Lots in the Project pursuant to Section 6.4 of this Declaration.

1.35 "Parcel Assessment Area" means any area of the Project designated in an amendment to this Declaration or on a Neighborhood Plat as an area which is to be maintained, repaired and replaced by the Association but which is for the sole or primary benefit of the Owners of less than all of the Lots in the Project.

1.36 "Period of Declarant Control" means the period commencing on the date of the Recording of this Declaration and ending on the earlier of (i) ninety (90) days after the number of votes entitled to be cast by Owners other than the Declarant

exceeds the number of votes entitled to be cast by the Declarant, (ii) December 31, 1999, or (iii) when the Declarant notifies the Association in writing that the Declarant desires to terminate the Period of Declarant Control.

1.37 "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.38 "Property" or "Project" means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon, and all real property, together with all Improvements located thereon, which is annexed and subjected to this Declaration by the Declarant pursuant to Section 2.2 of this Declaration.

1.39 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

1.40 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots or (ii) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration, or (iii) a Developer.

1.41 "Recording" means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and "Recorded" means having been so placed of public record.

1.42 "Resident" means each individual residing in any Residential Unit.

1.43 "Residential Unit" means (i) any building, or portion of a building, situated upon a Lot (other than a Condominium Unit) and designed and intended for independent ownership and for use and occupancy as a residence, or (ii) a Condominium Unit.

1.44 "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Unit.

1.45 "Special Assessment" means any assessment levied and assessed pursuant to Section 6.5 of this Declaration.

1.46 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. Declarant declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Annexation of Additional Property.

2.2.1 At any time on or before the date which is ten (10) years after the date of the Recording of this Declaration, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property without the consent of any other Owner or Person. The annexation of all or any portion of the Additional Property shall be effected by the Declarant recording with the County Recorder of Maricopa County, Arizona, an amendment to this Declaration setting forth the legal description of the Additional Property being annexed, stating that such portion of the Additional Property is annexed and subjected to the Declaration and describing any portion of the Additional Property being annexed which will be Common Area.

2.2.2 The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The Additional Property annexed by the Declarant pursuant to this Section 2.2 need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of

annexation as to any other portion of the Additional Property. The Declarant makes no assurances as to which, if any, part of the Additional Property will be annexed.

2.3 Withdrawal of Property. At any time on or before the date which is three (3) years after the date this Declaration is Recorded the Declarant shall have the right to withdraw property from the Project without the consent of any other Owner or Person. The withdrawal of all or any portion of the Project shall be affected by the Declarant recording with the County Recorder of Maricopa county, Arizona, an amendment to this Declaration setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from the Project pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

2.4 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen representing the Declarant or any Developer shall be deemed to create any implied covenants or restrictions with respect to the use of any property subject to this Declaration or any part of the Additional Property.

2.5 Development Plan. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Development Plan with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the property owned by the Declarant or changing the nature or extent of the uses to which the property may be devoted.

ARTICLE 3

PERMITTED USES AND RESTRICTIONS

3.1 Architectural Control.

3.1.1 All Improvements constructed on Lots within the Project shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

3.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.3 No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

3.1.4 No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee.

3.1.5 Any Owner desiring approval of the Architectural Committee for the construction, installation addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his Lot, or the Improvements located thereon, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans.

3.1.6 In reviewing requests for the construction, installation, addition, alteration, repair, change or replacement of any Improvement, the Architectural Committee shall consider (i) whether the proposed Improvement would be consistent with the requirements of this Declaration and the Architectural Rules, (ii) whether the proposed Improvement would be generally consistent with other Improvements already constructed on Lots or approved by the Architectural Committee but not yet constructed, (iii) whether the Improvement would be in conformity with applicable laws, ordinances and regulations of any governmental entity or agency having jurisdiction over the Project, and (iv) any other factors which the Architectural Committee deems appropriate.

3.1.7 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.1.8 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural

Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.9 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.1.10 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.11 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant.

3.1.12 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Architectural Committee.

3.3 Maintenance of Lawns and Plantings. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot, (ii) any public right-of-way or easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike-path or similar area, and (iii) any non-street public right-of-way or easement area adjacent to his Lot, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by this Declaration; or (iii) Maricopa County or any municipality having jurisdiction over such property assumes responsibility, for so long as the Association, Maricopa County or such municipality assumes or has responsibility.

3.4 **Nuisances; Construction Activities.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot or other property. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and other property shall be kept in a neat and tidy condition during construction periods. Trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

3.5 **Diseases and Insects.** No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.6 **Repair of Building.** No Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be immediately repaired or rebuilt or shall be demolished.

3.7 **Antennas.** No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot so as to be Visible From Neighboring Property.

3.8 **Mineral Exploration.** No Lot or other property 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.

3.9 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property.

3.10 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other property so as to be Visible From Neighboring Property.

3.11 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

3.12 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior approval of the Architectural Committee.

3.13 Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents, the Board may make rules restricting or regulating their presence in the Project as part of the Association Rules or may direct the Architectural Committee to make rules governing their presence on Lots or other property as part of the Architectural Committee Rules.

3.14 Model Homes. The provisions of this Declaration or Neighborhood Declarations which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of Residential Units in the Project and parking incidental to the visiting of such model homes so long as the location of such model homes and the opening and closing hours are approved in writing by the Architectural Committee, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Architectural Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of Maricopa County, any

municipality having jurisdiction over the Project and the Architectural Committee Rules. Any Residential Units constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of Residential Units in the Project, and no home shall be used as a model home for the sale of homes not located in the Project. The provisions of this Section shall not restrict or prohibit the right of the Declarant to construct, operate and maintain model homes in the Project. Any garage of a Residential Unit which is used as a sales office by a Developer must be converted back to a garage prior to the sale of the Residential Unit to a Purchaser.

3.15 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project, (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project, and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full or part time, (ii) such activity is intended or does generate a profit, or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.16 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that two dogs, cats, parakeets or similar household birds may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to 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. Upon the written request of any Owner, Lessee or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration.

3.17 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which Declarant or the Association may require for the operation and maintenance of the Project.

3.18 **Signs.** No signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

3.18.1 Signs required by legal proceedings.

3.18.2 Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.

3.18.3 Signs of Developers approved from time to time by the Architectural Committee as to number, size, colors, design, message content, location and type.

3.18.4 Such construction job identification signs, business identification signs and subdivision identification signs which are in conformance with the requirements of Maricopa County or any municipality having jurisdiction over the property and which have been approved in writing by the Architectural Committee as to size, colors, design, message content and location.

3.19 **Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot or Neighborhood Common Area without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot or Neighborhood Common Area shall be filed with any governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.20 **Trucks, Trailers, Campers and Boats.** No truck, mobile home, travel trailer, tent trailer, trailer, camper shall, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot, Common Area or Neighborhood Common Area or

on any street so as to be Visible From Neighboring Property without the prior written approval of the Architectural Committee; except for: (i) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; (ii) vehicles parked in garages or driveways on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; (iii) the storage of such vehicles in any area designated for such purposes by the Board; (iv) trucks, vans, mini-motor homes or other vehicles not exceeding seven (7) feet in height and eighteen (18) feet in length which are not used for commercial purposes and which do not display any commercial name, phone number or message of any kind, or (v) temporary parking of vehicles on a street by guests or invitees of Owners, Lessees or Residents.

3.21 Motor Vehicles.

3.21.1 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot or other property in the Project, and no inoperable vehicle may be stored or parked on any such Lot so as to be Visible From Neighboring Property or to be visible from any Common Area, Neighborhood Common Area or any street.

3.21.2 No motorcycle, motorbike, all-terrain vehicle, off-road vehicle or any similar vehicle shall be parked, maintained or operated on any portion of the Project except in garages on Lots.

3.22 Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessments.

3.23 Variances. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for Owners, Lessee or Residents.

3.24 Change of Use of Common Area. Upon (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners and (ii) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such Common Area under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any zoning regulations restricting or limiting the use of the Common Area.

3.25 Drainage. No Residential Unit, Condominium Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located. At such time as a Residential Unit is constructed on any of the Lots described on Exhibit "C" attached hereto, the Owner of the Lot shall construct, at the Owner's sole expense, any drainage and grading improvements required to be constructed on the Lot by the City of Phoenix. The Lot Owner shall be responsible for the maintenance, repair and replacement of all such drainage and grading improvements on the Owner's Lot.

3.26 No Removal of Trees. No living trees having a natural height of four or more feet shall be cut down, shortened or otherwise removed without the prior written consent of the Architectural Committee, except as necessary to protect the safety and welfare of the Owner or Residents on a Lot. No approval, express or implied, written or otherwise, of construction by the Architectural Committee shall be construed to permit the removal of trees unless the removal of trees is specifically and prominently shown on the request for such approval and the approval by the Architectural Committee specifically authorizes such removal.

3.27 Garages and Driveways. The interior of all garages or carports shall be maintained in a neat, clean and sightly condition. Garages and carports shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee.

3.28 Rooftop Air Conditioners and Evaporative Coolers Prohibited. No air conditioning units, evaporative coolers or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building.

3.29 Minimum Size of Residential Units. In addition to any other requirements imposed by the Architectural Committee or this Declaration, each Residential Unit constructed on a Lot must have a minimum of 1,500 livable square feet exclusive of attached garages, carports or patios, except for Residential Units built on Lots 118 through 149, inclusive, which may have a minimum of 1,290 livable square feet exclusive of attached garages, carports or patios, and except for Residential Units built on Lots 241 through 259, inclusive and Lots 344 through 360, inclusive, which may have a minimum of 2,000 liveable square feet exclusive of attached garages, carports or patios.

3.30 Height Restriction. No Residential Unit constructed on any of the Lots described on Exhibit D attached to this Declaration shall exceed 18 feet in height as measured from the higher of the natural grade level or the finished grade level established by the City Engineer of the City of Phoenix pursuant to the floodplain or grading and drainage regulations of the City of Phoenix to the highest level of the roof surface of flat roofs or to the mean height between eaves and ridge of gable, gambrel or hip roofs.

3.31 Roofing Materials. The roof of any Residential Unit or other structure constructed on a Lot must be concrete tile.

3.32 Restrictions on Lots Bordering School Site. The property to the North of Lot 191 and Lots 200 through 210, inclusive, is intended to be used for an elementary school (the "School Site"). No walls or fences constructed as a boundary between Lots 191 and 200 through 210, inclusive, and the School Site shall contain gates, doors or other openings. In addition, no such boundary wall or fence shall be removed or altered without the prior written approval of the owner of the School Site.

ARTICLE 4

EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.4 and 4.5 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right 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 or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board. Unless otherwise required by zoning stipulations or agreements with

Maricopa County or any municipality having jurisdiction over the Project, or any part thereof, effective prior to the date hereof or specified on a Recorded subdivision plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners representing three-fourths (3/4) of the total votes in the Association agreeing to such dedication or transfer has been recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit the Project and which do not have any substantial adverse effect on the enjoyment of the Common Area by the Members.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or Residents.

(iii) With respect to a portion of the Common Area designated as a Parcel Assessment Area, only the members whose Lots will be assessed a Parcel Assessment for such Parcel Assessment Area shall have the right to use such Parcel Assessment Area.

(iv) The right of the Association to suspend the right of an Owner and any Resident of such Owner's Lot to use any recreational facility situated upon the Common Area for any period during which an Assessment or other amount due to the Association by such Owner remains unpaid or for a period not to exceed sixty (60) days for any other violation of the Project Documents.

4.1.2 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.

4.1.3 The guest and invitees of any Member or other Person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by a Member or other Person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the number of guests and invitees who may use the recreational

facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area, Lots and other property 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 this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area, Lots and other property but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area, Lots and other property except as initially designed, approved and constructed by the Declarant or as approved by the Board.

4.3 Easements for Ingress and Egress. There is hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners Lessees and Residents of the Lots and their guests and invitees.

4.4 Declarant's Use for Sales and Leasing Purposes.

4.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area while the Declarant is selling Lots and other property in the Project. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots or other property owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

4.4.2 So long as Declarant is marketing Lots or other property, Declarant shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

4.5 Declarant's Easements.

4.5.1 Declarant shall have the right and an easement on and over the Common Area to construct all Improvements the Declarant may deem necessary and to use the Common Area 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 Project.

4.5.2 The Declarant shall have the right and an easement upon, over, and through the Common Area 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.

4.6 Easement in Favor of Association. The Lots and Neighborhood Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.6.1 For inspection of the Lots and Neighborhood Common Area in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.6.2 For inspection, maintenance, repair and replacement of the Common Area accessible only from such Lots or Neighborhood Common Area;

4.6.3 For correction of emergency conditions in one or more Lots or Neighborhood Common Area or casualties to the Common Area;

4.6.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

4.6.5 For inspection of the Lots and Neighborhood Common Area in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot or Neighborhood Common Area.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically

require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

5.3 The Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) the management, operation and use of the Common Area including, but not limited to, any recreational facilities situated upon the Common Area, (ii) traffic and parking restrictions including speed limits on private streets within the Project, (iii) minimum standards for any maintenance of Common Areas, Lots and Neighborhood Common Area within the Project or (iv) any others subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in wilful or intentional misconduct.

5.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

5.6 Neighborhood Declarations and Associations. Any Neighborhood Declaration Recorded by any Person other than the Declarant and the articles of incorporation, bylaws or other governing documents for any Neighborhood Association shall not be effective unless the contents thereof have been approved in writing by the Board and by the Declarant so long as the Declarant owns any Lot in the Project, and such documents specify that such Neighborhood Association and the rights of its members are subject and subordinate to the provisions of the Project Documents.

5.7 Membership in the Association. Every Owner of a Lot shall be a Member of the Association. Each such Owner shall have one (1) Membership for each Lot owned by the Member.

5.8 Votes In The Association.

5.8.1 Each Owner other than the Declarant shall be entitled to one (1) vote for each Membership held by such Owner.

5.8.2 The Declarant shall be entitled to three (3) votes for each Membership held by the Declarant until the expiration of the Period of Declarant Control. After the expiration of the Period of Declarant Control, the Declarant shall have one (1) vote for each Membership held by the Declarant.

5.9 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that the Member was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Lot by a Member other than the Declarant, none of the votes shall be counted and all of the votes shall be deemed void.

5.10 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after the Purchaser becomes the Owner of a Lot. The Association may require the Purchaser of a Lot to pay to the Association a transfer fee in an amount to be set by the Board, and payment of the transfer fee shall be secured by the Assessment Lien.

5.11 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot in the Project, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot in the Project, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lot in the Project, that specified actions of the Architectural Committee, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee shall promulgate architectural guidelines and standards to be used

in rendering its decisions. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

5.12 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due or if any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Project Documents are corrected.

5.13 Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent of the Declarant and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Members other than the Declarant.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2 Annual Assessments

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 Rate of Assessment

6.3.1 The amount of the Annual Assessment against each Lot shall be determined as follows:

(i) For purposes of this Subsection 6.3.1, the term "Membership Assessment" shall mean the amount equal to the total budget of the Association (except for any Common Expenses to be assessed as a Parcel Assessment under Section 6.4 of this Declaration) for the applicable Assessment Period divided by the total number of Memberships in the Association.

(ii) Except for Lots subject to assessment pursuant to Subsection (iii) of this Subsection 6.3.1, each Lot shall be assessed an Annual Assessment in an amount equal to the number of Memberships attributable to such Lot pursuant to Section 5.7 of this Declaration multiplied by the Membership Assessment.

(iii) Each Lot owned by the Declarant shall be assessed an Annual Assessment of twenty-five percent (25%) of the amount equal to the total number of memberships attributable to such Lot under Section 5.7 of this Declaration multiplied by the Membership Assessment.

(iv) During the Period of Declarant Control, the Declarant shall subsidize the Association for the difference between the cost of operating and administering the Association and the total amount of Annual Assessments levied against the Lots.

(v) In no event shall the Annual Assessment against a Lot exceed the Maximum Annual Assessment established under Section 6.3.3 of this Declaration.

6.3.2 If the rate of assessment for any Lot changes during any Assessment Period pursuant to the provisions of Subsection 6.3.1, the Annual Assessment attributable to such Lot shall be prorated between the applicable rates upon the basis of the number of days in the Assessment Period that the Lot was assessed under each rate.

6.3.3 The maximum Annual Assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum Annual Assessment for each Membership shall be \$198.00.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the Members, increase the maximum Annual Assessment during each fiscal year of the Association by the greater of (a) 5% of the maximum Annual Assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

X = Consumer Price Index for September of the calendar year immediately preceding the year in which the Annual Assessments commenced.

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum Annual Assessment is to be determined.

$\frac{Y-X}{X}$ multiplied by the maximum Annual Assessment for the then current fiscal year equals the amount by which the maximum Annual Assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the maximum Annual Assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index selected by the Board.

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum Annual Assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.4 Parcel Assessments All Common Expenses of the Association pertaining to the maintenance, repair and replacement of Parcel Assessment Areas shall be shown separately in the budget adopted by the Board. The Common Expenses pertaining to the maintenance, repair and replacement of a Parcel Assessment Area shall be assessed solely against the Lots which are benefitted by the Parcel Assessment Area as established by the amendment to this Declaration or the Neighborhood Plat designating the Parcel Assessment Area. No Common Expenses pertaining to the maintenance, repair or replacement of a Parcel Assessment Area shall be used in computing the Annual Assessments to be levied pursuant to Sections 6.2 and 6.3 of this Declaration. Parcel Assessments shall be levied against the Lots benefitted by the Parcel Assessment Area at a uniform rate per Membership. If the Board determines during any Assessment Period that Parcel Assessments with respect to any Parcel Assessment Area are, or will, become inadequate to meet all Common Expenses pertaining to that Parcel Assessment Area for any reason, including, without limitation, nonpayment of Parcel Assessments by Members, the Board may increase the Parcel Assessment for that Assessment Period and the revised Parcel Assessment shall commence on the date designated by the Board.

6.5 Special Assessments. The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.6 Notice and Quorum for any Action Authorized under Section 6.3.3(iii) or 6.5. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under Section 6.3.3(iii) or 6.5 of this Declaration shall be sent to all Members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all of the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.7 Assessment Period. The period for which the Annual Assessment and Parcel Assessments are to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Annual Assessments and Parcel Assessments shall commence upon the conveyance of the first Lot to a Purchaser or a Developer and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.8 Rules Regarding Billing and Collection Procedures. Annual and Parcel Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installation thereof is past due and of the amount owing. Such notice may be given at any time after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period. Successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.9 Effect of Nonpayment of Assessments; Remedies of the Association.

6.9.1 Any Assessment, or any installment of an Assessment, not paid within five (5) days after the Assessment becomes due shall bear interest from the due date at the rate of twelve percent (12%) per annum or the prevailing VA/FHA interest rate for new home loans, whichever is higher.

6.9.2 The Association shall have a lien on each Lot for (i) all Assessments levied against the Lot, (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot, (iii) all fines levied against the Owner of the Lot, and (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before recording any Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot.

6.9.3 The Assessment Lien shall have priority over all liens or claims except for (i) tax liens for real property taxes, (ii) assessments in favor of any municipal or other governmental body and (iii) the lien of any first mortgage or first deed of trust. Any first mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the first mortgage or first deed of trust, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the first mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6.9.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.10 Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating (i) that all Assessments, interest, and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate, or (ii) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

6.11 Purposes for which Association's Funds may be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas and public right-of-way and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds under the laws of the State of Arizona or such municipality's charter.

6.12 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce

the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

6.13 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the Annual Assessment on 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 under the Project Documents. 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.

6.14 Transfer Fee. Each Purchaser of a Lot from a Person other than the Declarant or a Developer 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 7

MAINTENANCE

7.1 Common Areas.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Area, and all Improvements located thereon, except the Association shall not maintain areas which any governmental entity is maintaining is obligated to maintain.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.1.3 In the event any Neighborhood Plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of the Project for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the

Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

7.2 Lots. Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his Lot, and all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is Common Area. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Lots upon which no Residential Units, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

7.3 Installation of Landscaping. Within ninety (90) days after the date on which a Residential unit (other than a Condominium Unit) is first occupied, the Owner of the Lot upon the Residential Unit is situated shall install grass, trees, plants, desert landscaping and other landscaping improvements (together with a sprinkler system sufficient to adequately water the grass, trees, plants, desert landscaping and other landscaping improvements) in the front and side yards of the Lot. All landscaping installed pursuant to this Section must be installed in accordance with plans approved in writing by the Architectural Committee; provided, however, that no plans need to be submitted or approved by the Architectural Committee if the landscaping complies in all respects with the Architectural Rules. If any Owner fails to landscape his Lot in the manner and within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owners to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessment.

7.4 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of the Common Area or any other area maintained by the Association is caused through the willful or negligent act of any Member, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the

Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

7.5 Improper Maintenance and Use of Lots. In the event any portion 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 surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration or Neighborhood Declaration applicable thereto; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents or Neighborhood Declaration applicable thereto, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such 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 the Owner's Lot is subject and shall be secured by the Assessment Lien.

7.6 Common Walls. The rights and duties of Owners of Lots with respect to common walls shall be as follows:

7.6.1 The Owners of contiguous Lots who have a common wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner;

7.6.2 In the event that any common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the common wall without cost to the other Owner or Owners;

7.6.3 In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

7.6.4 Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

7.6.5 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;

7.6.6 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners;

7.6.7 In the event any common wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall;

7.7 Maintenance of Walls other than Common Walls.

7.7.1 Walls (other than common walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

7.7.2 Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area.

ARTICLE 8

INSURANCE

8.1 **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:

8.1.1 Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

8.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. 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 Common Area and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired

automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the Owners or the directors and officers of the Association, the members of the Architectural Committee or any other Committee of the Association;

8.1.5 The 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 household;

(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 the 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 Owners;

(v) Statement of the name of the insured as the Association;

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

8.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30)

days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

8.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

8.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9

GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

9.2 **Term; Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership and by the holders of first mortgages or first deeds of trust on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 **Amendments.**

9.3.1 Except for amendments made pursuant to Subsection 2.2, 2.3, 9.3.2 or 9.3.3 of this Declaration, the Declaration may only be amended by approval or the affirmative vote, or any combination thereof, of the Owners of not less than seventy-five percent (75%) of the Lots.

9.3.2 Either the Board or the Declarant may amend this Declaration or the Project Plat, without obtaining the approval or consent of any Owner or other Person having an interest in the Project, in order to conform this Declaration or the Project Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Project Plat or the Project Documents is required by law or requested by the Declarant.

9.3.3 Without obtaining the consent of any other Owner, Declarant may amend this Declaration to designate Parcel Assessment Areas and to identify those Lots which will be subject to a Parcel Assessment with respect to such Parcel Assessment Areas.

9.3.4 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

9.3.5 During the Period of Declarant Control, any amendment to this Declaration must have the prior written approval of the Veterans Administration or the Federal Housing Administration.

9.3.6 Any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 2.2, 2.3, 9.3.2 or 9.3.3 of this Declaration shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County, Arizona.

9.4 Condemnation of Common Area. If all or any part of the Common Area is taken or condemned, or conveyed in lieu of or under threat of such condemnation by the Board with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by any authority having the power of condemnation of eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall restore or replace such Improvements so taken on the remaining Common Area to the extent land is available for such construction unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or a combination thereof, instruct the Board not to rebuild or replace such Improvements. If such Improvements are to be repaired or restored, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such repair or restoration. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to repair or restore any Improvements taken by condemnation or if there are any net funds remaining after such restoration or replacement is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed for each membership or retain such funds as additional operating or capital reserves.

9.5 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

9.6 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.7 **Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

9.8 **Rules and Regulations.** In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

9.9 **Laws, Ordinances and Regulations.**

9.9.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, ordinances and regulations.

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

9.10 **References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

9.11 **Gender and Number.** Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.12 **Captions and Titles.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

9.13 **Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Maricopa County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

9.14 **FHA/VA Approval.** During the Period of Declarant Control, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration if either of those agencies have approved the Project as eligible under any loan program or loan guaranty program administered by them: annexation of additional properties, dedication of common areas, an amendment to this Declaration.

9.15 **No Absolute Liability.** No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Common Area or the Lots. Owners shall only be responsible for damage to the Common Area or the Lots caused by the Owners' negligence or intentional acts.

LENNAR COMMUNITIES DEVELOPMENT, INC., a Delaware corporation

By: _____

Its: President

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this 8 day of March, 1993, by James G. Stokey, the President of Lennar Communities Development, Inc., a Delaware corporation, on behalf of the corporation.

Jul M Arnold
Notary Public

My Commission Expires:

9-15-95

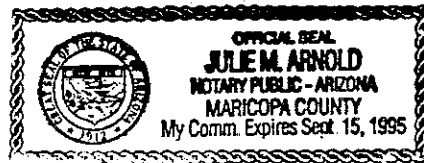


EXHIBIT A

PROPERTY SUBJECT TO DECLARATION

Lots 1 through 259, inclusive, and Tracts B, C, E, F, G, I, N and O, Pinnacle Hill, according to the plat recorded in Book 356 of Maps, page 50, Official Records of Maricopa County, Arizona; and Lots 278 through 343, inclusive, and Tracts P, Q and T, Pinnacle Hill Unit 2, according to the plat recorded in Book 359 of Maps, page 30, Official Records of Maricopa County, Arizona; and Lots 344 through 364, inclusive, and Tract U, V and X, Pinnacle Hill Unit 3, according to the plat recorded in Book 359 of Maps, page 41, Official Records of Maricopa County, Arizona.

EXHIBIT B

DESCRIPTION OF ADDITIONAL PROPERTY

Tracts R and S, Pinnacle Hill Unit 2, according to the plat recorded in Book 359 of Maps, page 30, Official Records of Maricopa County, Arizona, and the Southeast Quarter of the Northwest Quarter of Section 7, Township 4 North, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXHIBIT C

LOTS SUBJECT TO SPECIAL DRAINAGE AND GRADING IMPROVEMENTS

Lots 106 through 117, inclusive, and Lots 232 through 240, inclusive, Pinnacle Hill, according to the plat recorded in Book 356 of Maps, page 50, records of Maricopa County, Arizona; and Lots 339 through 343, inclusive, Pinnacle Hill Unit 2, according to the plat recorded in Book 359 of Maps, page 30, Official Records of Maricopa County, Arizona; and Lots 361 through 364, inclusive, Pinnacle Hill Unit 3, according to the plat recorded in Book 359 of Maps, page 41, Official Records of Maricopa County, Arizona.

EXHIBIT D

LOTS SUBJECT TO HEIGHT LIMITATION

Lots 210 through 212, inclusive, and Lots 223 through 231, inclusive, and Lots 250 through 257, inclusive, Pinnacle Hill, according to the plat recorded in Book 356 of Maps, page 50, Official Records of Maricopa County, Arizona; and Lots 344 through 350, inclusive, Pinnacle Hill Unit 3, according to the plat recorded in Book 359 of Maps, page 41, Official Records of Maricopa County, Arizona.



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2002-0040786 01/14/02 15:25
1 OF 4

JAHNC

When recorded return to:

Ekmark & Ekmark, L.L.C.
6720 N. Scottsdale Road, Suite 261
Scottsdale, Arizona 85253

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PINNACLE HILL**

Pinnacle Hill Owners Association ("Association") hereby amends the Declaration of Covenants, Conditions, and Restrictions for Pinnacle Hill, recorded at recording number 93-0141997, of the records of Maricopa County, Arizona Recorder ("Declaration"), along with any amendments that may exist thereto, as follows:

Article III, Section 3.18 is amended as follows:

- 3.18 Signs. No signs whatsoever which are visible from Neighboring Property shall be erected or maintained on any Lot except:
- 3.18.1 One for sale or for rent sign placed in the front yard of the lot.
 - 3.18.2 One security sign not to exceed 18" in diameter and 18" tall placed in front yard of the lot.
 - 3.18.3 Signs required by legal proceedings.
 - 3.18.4 Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.
 - 3.18.5 Signs of Developers approved from time to time by the Architectural Committee as to number, size, colors, design, message content, location and type.
 - 3.18.6 Such construction identification signs, business identification signs and subdivision identification signs which are in conformance with the requirements of Maricopa County or any municipality having jurisdiction over the property and which have been approved in writing by the Architectural Committee as to size, colors, design, message content and location.

The President of the Association hereby certifies that this amendment has been approved by Owners of not less than seventy-five percent (75%) of the Lots, in accordance with Article 9, Section 9.3 of the Declaration.

DATED this 11th day of January, 2002

PINNACLE HILL OWNERS ASSOCIATION


By: Brian McBreen
President

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

On this 11 day of January, 2002, before me, the undersigned notary public, in and for said county and state, personally appeared Brian McBreen, the President of Pinnacle Hill Owners Association, an Arizona non-profit corporation, personally known (or proved) to me to be the person whose name is subscribed to the above instrument and who acknowledged that he executed the above instrument for and on behalf of the corporation, in his capacity as an authorized officer thereof.

[Signature]
Notary Public

My Commission Expires:

 Notary Public State of Arizona
Maricopa County
Michael L. Roberson
Expires June 22, 2003