

When recorded, return to:

INTERNATIONAL EQUITY COMPANY  
c/o Arthur Nehf  
Pinnacle Peak Land Company  
8787 East Pinnacle Peak Road  
Suite 200  
Scottsdale, Arizona 85255

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RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA	
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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PINNACLE PEAK VISTAS III  
MARICOPA COUNTY, ARIZONA

THIS DECLARATION, is made as of this 11<sup>th</sup> day of  
February, by INTERNATIONAL EQUITY COMPANY, an  
Arizona general partnership (the "Declarant").

R E C I T A L S

A. Declarant is the fee owner of the real property in Scottsdale, Arizona described as:

Lots 1-210 and Tracts A and B according to Book 291 of Maps, page 47, records of Maricopa County, Arizona (the "Subdivision").

B. Declarant desires to establish covenants, conditions and restrictions upon the Subdivision and each and every lot and portion thereof, which will constitute a general scheme for the development and government of the Subdivision and for the use, occupancy and enjoyment of the Subdivision and all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision and enhancing the quality of life within the Subdivision.

C. Declarant intends to form a corporation to be known as Pinnacle Peak Vistas III Association, which shall have the responsibility to maintain and administer the Common Areas, to administer and enforce this Declaration, and to perform such other acts as set forth in this Declaration and as shall generally benefit the Subdivision.

D. Declarant will hereinafter hold and convey title to all of the Subdivision, and each and every lot and

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portion thereof, subject to certain protective covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that the Subdivision shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision, and all of which are declared to run with the land and, to be binding on all parties having or acquiring any right or title in the Subdivision or any part thereof, to be for the benefit of all of the Subdivision and its owners, their heirs, successors, grantees and assigns.

#### ARTICLE I

##### USE RESTRICTIONS

1. Single Family Residences. All of the lots in the Subdivision shall be known as, and limited in use to, single family residential lots and shall be used only for residential purposes.

2. Construction Materials. All structures on the lots within the Subdivision shall be of new construction and no building shall be moved Unofficial Document to any other location onto any of the lots.

3. Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be constructed, erected, placed or used on any portion of the Subdivision, at any time for any purpose whatsoever, either temporarily or permanently. Notwithstanding the foregoing, it shall be expressly permissible for Declarant to maintain, during the period of construction and sale of lots within the subdivision, upon such portions of the Subdivision as Declarant may authorize, a temporary office convenient or incidental to the sale of lots and the construction of residences on such lots.

4. Use of Garage as a Residential Structure. No garage or other structure of any type whatsoever shall be erected on any of the lots until a dwelling shall have first been erected on said lot or until a contract with a reliable contractor shall have been entered into for the construction of a dwelling on the lot. No garage or other outbuilding shall be used for residential purposes; provided, however, that this restriction shall not prevent the inclusion of guest or servant quarters in such garage or other outbuilding for the use of actual non-paying guests or for actual servants of the occupants of the main residential building, but

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no such quarters shall be rented or used for income purposes. Such guest or servant quarters shall be limited to three (3) rooms and a bath.

5. Number and Height of Structures. No structure shall be erected, altered, placed or permitted to remain on any of the lots in the Subdivision other than one (1) detached single family dwelling, one (1) guest house, outbuildings, tennis courts (provided, however the artificial lighting, if any, proposed for any tennis court shall not be installed or operated without the prior written consent of the Architectural Committee), and a private garage, each structure not to exceed twenty-six (26) feet in height (measured from the undisturbed natural grade directly beneath such point) and to be either single or split level with the upper level floor to overlap no more than twenty-five percent (25%) of the lower level floor.

6. Size of Dwelling House. No dwelling house having a ground floor area of less than twenty-four hundred (2,400) square feet shall be erected, permitted or maintained on any of the lots. All ground floor area measurements shall include the walls proper of the house, but shall exclude open porches, pergolas or outbuildings, any guest houses, attached garages, or other similar extension or projection. All exterior designs for all dwelling houses shall be characteristic of one (1) story Spanish, Southwest Indian or Mexican architecture, except as may otherwise be approved by the Architectural Committee.

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7. Roof Construction. The roof of each building erected, constructed or maintained on said lot shall be tile if sloped, unless otherwise permitted by the Architectural Committee. Except for solar energy devices permitted by Arizona Revised Statutes Section 33-439, as amended, no roof mounted appliances or antennas are permitted. The roof material for flat roofed structures shall be approved by the Architectural Committee prior to installation of such material.

8. Height of Walls and Fences. No solid wall or fence shall be constructed or maintained closer to the front street line, side yard lines and back yard lines of any lot than the minimum front yard, side yard and backyard building set back lines, respectively. Where no residence has been constructed on a lot, no solid wall or fence over two and one-half (2-1/2) feet in height shall be constructed or maintained closer than fifty (50) feet to the front lot line of any lot. No side or rear fence and no side or rear wall (except the wall of the building constructed on any of said lots), shall be more than six (6) feet in height. No hedge

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more than three (3) feet in height shall be permitted closer than thirty (30) feet to the front lot line of any lot. All walls and fences shall be either slump block or cinder block. If slump block is used, it shall be of the same color and quality as used on the dwelling. If cinder block is used, it shall be stucco-finished, on both sides thereof, to the same color and texture as the dwelling unless otherwise approved by the Architectural Committee.

9. Use Prior to Installation of Sanitary Facilities. None of the lots shall be used for residential purposes prior to installation of water flush toilets in the dwelling houses constructed on them. All bathrooms, toilets or sanitary conveniences shall be inside the buildings permitted by this Declaration. Until such time as sewers may be available, all bathrooms, toilets or sanitary conveniences shall be connected to septic tanks and cesspools constructed according to applicable governmental specifications. All septic tanks and cesspools shall be constructed in a manner which permits connection to the Scottsdale sewer system when and if it is made available to the Subdivision. Cesspools shall be deep enough to prevent water from coming to the surface. When and after sewers are available, all such toilets, bathrooms and sanitary conveniences installed thereafter shall be connected to such sewer systems.

10. Resubdivision Unofficial Document of the lots in the Subdivision shall be resubdivided into smaller lots nor conveyed in less than the full original dimensions of such lots as shown by the plat for the Subdivision.

11. Commercial or Other Purposes. No store, office, hospital, sanitarium or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theatre, saloon or other place of entertainment shall ever be erected or permitted upon any of the lots, or any part of them, and no business of any kind or character whatsoever shall be conducted in or from any residence on the lots.

12. Mobile Homes and Campers. No mobile home or trailer house of any type may be used on the lots either temporarily or permanently. Storage of any type of these vehicles as well as large campers or other recreational vehicles, including boats, must be in an enclosed garage or barn so that it is not visible from any other lot.

13. Signs. No advertising signs (except for standard size residential "For Sale" signs which have been approved by the Architectural Committee as provided in Article Two below), billboards, unsightly objects or nuisances shall

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be erected, placed or permitted to remain on any of the lots, nor shall the lots be used in any way for any purpose which may endanger the health or unreasonably disturb the owner of any lot in the Subdivision. This restriction shall not (i) prohibit Declarant, during the construction and sale of lots, from erecting such signs as it deems appropriate, or (ii) apply to the activities of the Association in furtherance of its powers and purposes as herein set forth.

14. Easements. No structure of any kind shall be erected, permitted or maintained on the easements for utilities designated on the plat of Pinnacle Peak Vistas III.

15. Landscaping - General. In order to preserve the present natural desert landscape existing in the Subdivision, desert growth shall not be destroyed or removed except as it is necessary for the construction of roads, dwelling houses and connecting buildings to the dwelling houses. All landscaping plans for any lot must be submitted to and approved by the Architectural Committee in the manner provided in Article Two hereof. The Architectural Committee shall have the authority to restrict or prohibit any activity within the Subdivision which is allergy producing, contributes to odors, or otherwise would be inconsistent with the clean air and natural desert environment of the Subdivision. Only desert landscaping may be installed in the front and side yard of a lot, unless otherwise approved by the Architectural Committee.

16. Landscaping - Prohibited Plant List. Any species of tree or shrub whose mature height may reasonably be expected to exceed twenty-five (25) feet will not be permitted. Common bermuda grass will be allowed in backyard areas only. All palm trees and pine trees with a mature height of over ten (10) feet, olive trees, Mexican palo verde trees (*Parkinsonia aculeata*), oleanders (except for dwarf varieties), fountain grass (except for *Pennisetum setaceum* 'Cupreum'), are prohibited.

17. Owner Maintenance. The owner of each lot shall, at such owner's expense, maintain all structures on such owner's lot in good condition and repair, and shall, except as otherwise expressly provided herein, maintain all landscaping installed pursuant to a duly approved site plan, in a weed-free, neatly cut, trimmed and viable condition.

18. Large Animals. No poultry, sheep, goats, or cattle shall be kept on any of the lots. Horses may only be maintained on lots 142 through 148 and lots 160, 169, 170, 171, 187, 188 and 189. The number of horses will be limited to 4 horses per lot unless a greater number of horses is ap-

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proved by the Board of Directors of the Association. No horse corral or stable shall be built or maintained within 100 feet of any adjacent home, guest house or swimming pool. Stables and corrals will be maintained regularly, with manure placed in covered containers and modern insect control equipment installed. All corral and stable plans and the lighting for corrals and stables shall be subject to the approval of the Architectural Committee as provided in Article Two below.

## ARTICLE TWO

### ARCHITECTURAL CONTROL

1. Approval of Structures. No structure or dwelling of any kind shall be commenced, erected or placed on any of the lots within the Subdivision until the design (including all exterior colors), location and kind of materials to be used in the structure or dwelling have been approved in writing by the Architectural Committee described in Paragraph 2 of this Article Two. It shall be the purpose of the Architectural Committee to maintain a high standard of architectural design and general construction within the Subdivision in such a manner as to enhance the aesthetic desirability and compatibility and the structural soundness of all structures in the Subdivision. The Architectural Committee's decision to allow or deny the construction of any structure or dwelling shall be final. All structures shall conform to the requirements of any <sup>Unofficial Document</sup> applicable governmental building codes, zoning standards and other laws and regulations of governmental units having jurisdiction over the Subdivision. All requests for Architectural Committee approval shall be submitted in writing, together with the plans, specifications and/or such other information as the Architectural Committee may reasonably request, at least thirty (30) days prior to the date on which construction is to commence. All structures shall, in addition to the foregoing requirements, be constructed in accordance with a site plan that is in compliance with the natural area open space requirements for each lot within the Subdivision. In the event the Architectural Committee fails to approve or disapprove any proposed plans within thirty (30) days after receipt of a written request prepared and submitted in accordance with the requirements hereof, then, in such event, approval shall be deemed to have been given; provided, however, that in no event shall the design, location and kind of materials and the structure to be built on said lots be violative of any of the covenants, conditions and restrictions contained in this Declaration.

2. Architectural Committee. The Architectural Committee shall consist of not less than three (3) individuals to be appointed from time to time by Declarant, its suc-

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cessors and assigns until such time as Declarant's Class B membership in the Association has ceased. Thereafter, the Architectural Committee shall be appointed by the Board of Directors of the Association.

3. Meetings. The Architectural Committee shall hold regular meetings. A quorum for such meetings shall consist of a majority of the committee members, and the affirmative vote of a majority of the members shall be necessary for any decision of the Architectural Committee. The Architectural Committee shall keep and maintain a record of all actions taken at its meetings.

4. Architectural Standards and Committee Procedures. The Architectural Committee may promulgate written architectural standards and procedures (the "Architectural Committee Rules") to be followed by lot owners in preparing and submitting plans and specifications and to be used by the Architectural Committee in reviewing plans and specifications for proposed improvements, in rendering its decisions, and otherwise performing its functions under this Declaration. The Architectural Committee Rules adopted from time to time by majority vote of the Architectural Committee must be approved by the Board of Directors of the Association prior to their implementation, and once approved by the Board, shall have the same force and effect <sup>Unofficial Document</sup> if they were set forth in and were a part of this Declaration, subject however to the right of the Architectural Committee to amend or repeal the Architectural Committee Rules with the approval of the Board. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee Rules shall not be inconsistent with the terms of this Declaration and if there are any inconsistencies, the provisions of this Declaration shall control. Within five (5) days after the adoption, amendment or repeal of an Architectural Committee Rule, the Board shall send each lot owner a copy of the adopted or amended Rule or a notice of repeal, if a Rule has been repealed. An Architectural Committee Rule shall be effective fifteen (15) days after its adoption or amendment.

5. Fee. The Board of Directors of the Association may establish reasonable processing fees to defray the cost of the Architectural Committee in considering any requests for approval submitted to it. The appropriate fee shall be paid at the time the request for approval is submitted.

6. Compensation; Delegation. Unless authorized by the Board of Directors of the Association, the members of the Architectural Committee shall not receive any compensa-

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tion for services rendered. All members shall be entitled to reimbursement from Association funds for reasonable expenses incurred by them in connection with the performance of any Architectural Committee function or duty. Professional consultants retained by the Architectural Committee shall be paid such compensation as the Architectural Committee determines. The Architectural Committee may delegate its plan review responsibilities, except final plan approval, to one or more of its members or to architectural consultants retained by the Committee.

7. Non-Liability. Neither the Association, the Board members, Declarant, nor any member of the Architectural Committee shall be liable in damages to anyone submitting plans to them for approval or to any owner or other person by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans submitted to the Architectural Committee, and each lot owner or other person submitting plans agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Architectural Committee, any member thereof, the Association, the Board members, or Declarant to recover damages. Approval by the Architectural Committee, any member thereof, the Board or Declarant shall not be deemed to be a representation or warranty that the lot owner's plans or specifications or the actual Unofficial Document construction of an improvement pursuant to the plans complies with all applicable governmental ordinances or regulations, including, but not limited to; zoning ordinances and local building codes. It shall be the sole responsibility of the lot owner or other person submitting plans to the Architectural Committee or performing any construction to comply with all such ordinances, regulations and codes.

### ARTICLE THREE

#### ASSOCIATION

1. Purpose. The Pinnacle Peak Vistas III Homeowners Association shall be a nonprofit corporation organized under and by virtue of the laws of the State of Arizona for the general welfare and benefit of the owners. The Association, through its members and Board of Directors, shall take appropriate action to manage, maintain, repair, replace and improve all real and personal property owned by the Association (the "Common Areas"), together with all improvements located thereon, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, or set forth in the Articles of



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Incorporation (the "Articles") or Bylaws (the "Bylaws") of the Association. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall be incorporated by Declarant.

2. Prohibited Activities. Notwithstanding anything herein contained to the contrary, no part of the activities of the Association shall be devoted to carrying on propaganda or otherwise attempting to influence legislation and the Association shall make no gift, donation or contribution to any institution or organization engaged in such activities. No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of the Association's property, and other than by a rebate of excess membership assessments) to the benefit of any private member or individual.

3. Duties and Obligations. The Association shall have the power and shall undertake and perform within the Subdivision the following duties and obligations:

(i) Plant, protect, maintain and otherwise manage the landscaping located in the streets, pathways, walks, trails, those areas designated as natural area open space upon Unofficial Documentilar lot (provided, however, the Association shall not have any right or obligation to maintain such areas as aforesaid unless the subject lot owner has violated an applicable governmental law, rule or regulation) or land to which all the property owners have access in the Subdivision or which inures to the general benefit of the owners in the Subdivision;

(ii) Provide for the repair, maintenance, replacement and management of all alleys, pathways, walks, trails, walls, fences, berms, drainage structures, gateways, entrances, entrance markers, ornamental features, lighting systems and other facilities of any nature, to which all owners have access or which inure to the general benefit of the owners in the Subdivision except those which are public right of ways dedicated to the City of Scottsdale;

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(iii) Carry out the duties and obligations set forth in this Paragraph and those of the Architectural Committee as set forth above, with the expenses and costs thereof to be paid out of the funds of the Association;

(iv) Acquire and own such real estate, together with any improvements located thereon, as may be reasonably necessary in order to carry out the purposes of the Association; and pay taxes on such real estate and improvements as may be owned by it; and pay all premiums for property, hazard and public liability insurance; and

(v) Levy and collect the assessments which are set forth below.

#### 4. Membership.

(a) Membership in the Association shall be limited to the owners of lots, and such membership shall be subject to all the provisions of this Declaration and to the Association's Articles and Bylaws, as the same may be amended from time to time. An owner of a lot shall automatically be a member of the Association upon becoming the owner of the lot. An owner shall remain a member of the Association until such time as he ceases to be an owner of a lot, at which time his membership in the Association automatically shall cease. Ownership of a lot shall be the sole qualification and criterion for membership.

(b) Membership shall be appurtenant to and may not be separated from ownership of any lot. A membership in the Association shall not be transferred, pledged or alienated in any way except on the sale of such lot and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the owner of any lot should fail or refuse to transfer the membership registered in his name to the purchaser of such lot, the Association shall have the right to record the transfer upon the books of the Association and to issue a new membership to the purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

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(c) The owner of a lot shall be entitled to one membership in the Association; provided, however, in the event any such lot is owned by two or more persons, the membership as to such lot shall nevertheless be a single membership entitled to one (1) vote, although the membership for such lot shall be issued in the names of all of the joint owners, and they shall designate to the Association, in writing, the person who shall have the power to vote said membership, and in the absence of such designation, and until such designation is made, the Board shall make such designation.

(d) At the discretion of the Board, no certificates of membership need be issued, and if certificates are not issued, membership shall be evidenced by an official list of members kept by the Secretary of the Association.

#### 5. Voting Rights.

(a) The Association shall have two classes of voting membership:

Class A. Class A members shall be the owners of lots (other than the Declarant, until such time as Declarant's Class B membership is converted to a Class A membership). Each Class A member shall be entitled to one vote for each lot owned.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three votes for each Lot owned.

(b) Anything in this Declaration to the contrary notwithstanding, Class A members shall not be entitled to exercise any voting rights until the first to occur of (the "Turnover Date"):

(i) the expiration of nine (9) full calendar months following the sale of all lots included in the Subdivision by Declarant to public purchasers, or

(ii) such time as Declarant shall elect to convert its Class B membership to Class A membership by notice to the Association in writing.

At such time as the Class A members become entitled to vote, any Class B membership shall be converted to Class A membership.

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6. Board of Directors. The Board of Directors (the "Board") shall consist of not less than three (3) individuals who shall be elected at each annual meeting of the members of the Association, as more particularly set forth in the Articles and Bylaws. During such time as the Class B membership continues, members of the Board do not have to be owners of lots; however, all members of the Board elected after the Class B membership ceases shall be owners of lots (or the spouses of owners, or if an owner is a corporation, partnership or trust, an officer, director, partner, agent, trustee or beneficiary, as applicable).

7. Personal Liability. No member of the Board of Directors 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 lot owner 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 of Directors, the manager, any representative or employee of the Association, or any committee member or officer of the Association; provided, however, the limitations set forth in this Paragraph shall not apply to any person who is engaged in willful or intentional misconduct. The Association shall be entitled to indemnify its members, directors, officers, employees and agents to the full extent permitted by law.

8. Suspension of Voting Rights. In the event any owner shall be in arrears (Unofficial Document) payment of any amount due under any of the provisions of this Declaration for a period of fifteen (15) calendar days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen (15) calendar days, said owner's right to vote as a member of the Association shall be automatically suspended and shall remain suspended until all payments are brought current and all defaults cured.

#### ARTICLE FOUR

##### COVENANT FOR ASSESSMENTS

1. Creation of the Lien and Personal Obligation for Assessments. Each owner of any lot or lots within the Subdivision, by acceptance of a deed or other conveyance, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments and Special Assessments (collectively, "Assessments"), such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon and costs of collection thereof, as hereinafter provided,

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shall be a charge on the land and shall be a continuing lien (hereinafter "Assessment Lien") upon the lot or lots against which each such Assessment is made. Each such Assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the owner of such lot or lots at the time when the Assessment fell due. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them, but subject to the provisions of Paragraph 12 herein entitled "Subordination of Assessment Liens," the Assessment Lien for the full amount of Assessments unpaid at the date of a transfer of the lot or lots shall continue as a charge against the lot or lots in the hands of the subsequent owner. No owner of a lot may exempt himself from liability for his contribution toward the Common Expenses (as defined in Paragraph 14 below) by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his lot.

2. Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the owners of lots within the Subdivision, enhancing the quality of life within the Subdivision and enhancing and protecting the value, desirability and attractiveness of the Subdivision, including, without limitation, the improvement and maintenance of the Common Areas, services and facilities devoted to this purpose and the discharge of the Association's duties under this Declaration and other agreements to which the Association is a party. Unofficial Document

3. Regular Assessments.

(a) The amount and time of payment of Regular Assessments shall be determined by the Board pursuant to the Articles and Bylaws after giving due consideration to the current maintenance costs and future needs of the Association. Not later than thirty (30) days prior to the beginning of each fiscal year, the Board shall estimate the total Common Expenses to be incurred for the forthcoming fiscal year. The Board shall then determine the amount of the Regular Assessment against each lot. Each lot's Regular Assessment shall be that fractional amount of the total Common Expenses determined by the Board, "fractional amount" being defined as one divided by the total number of lots from time to time subject to this Declaration; however, anything in this Declaration to the contrary notwithstanding, Declarant shall not be liable for and shall not be required to pay Assessments upon lots owned by Declarant. In lieu thereof, Declarant agrees that during such time as Declarant owns lots as to which Assessments are not being paid, Declarant shall pay to the Association the difference between the amount of Assess-

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ments receivable by the Association, regardless of whether the Assessments are actually collected, and the actual expenses of the Association. Such payments by Declarant shall be made at such times as Declarant and the Board shall agree.

(b) Written notice of the annual Regular Assessments shall be sent to every owner. Each owner shall thereafter pay to the Association his Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the total Common Expenses and determine the revised amount of Regular Assessments against each owner. In the event the Board shall determine that the amount collected or to be collected through Regular Assessments is in excess of the Association's needs for the current year and reserves appropriate for future years, the Board in its discretion may refund to the members who paid such Assessments all or a portion of such excess, reduce the amount of the Regular Assessments or abate collection of Regular Assessments, as it deems appropriate.

4. Special Assessments. Special Assessments shall be levied by the Board against lots with respect to which particular costs have been incurred by the Association. In the event the Association Unofficial Document undertakes to provide materials or services which benefit individual lots and which can be accepted or not by individual owners, such owners in accepting such materials or services shall be deemed to have agreed that statements thereof from the Association shall be Special Assessments. In addition to any other assessments authorized by this Declaration, the Board shall also have the right and power to provide for the construction of additional recreational and other common facilities, or the alteration, improvement, demolition or removal of existing recreational and other common facilities and to provide for the payment thereof by special assessment. Any such alteration, demolition, removal, construction or improvement shall first be authorized by an affirmative vote of three-fourths (3/4) of the Board at a duly called meeting at which a quorum is present and ratified and approved by the affirmative vote of sixty-six percent (66%) of the members present at a duly called meeting at which a quorum is present.

5. Certificates of Payment. The Association shall, upon demand, furnish to any member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified lot have been paid, and the amount

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of delinquency, if any, and whether any other violations pursuant to this Declaration exist and the nature of such violations, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

6. Date of Commencement of Regular Assessments. Subject to the provisions of Section 3 above, Regular Assessments shall commence as to all of the lots on the first day of the month following the conveyance of any lot by Declarant to a public purchaser.

7. No Offsets. Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties or responsibilities under this Declaration.

8. Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent. If any such Assessment is not paid within thirty (30) days after the delinquency date, a late charge of Ten Dollars (\$10.00) per month, or such other amount as the Board shall from time to time determine, shall be levied and the Assessment shall bear interest from the date of delinquency until paid at the rate of fifteen percent (15%) per annum. The Association may, at its option, bring an action at law against the member personally obligated to pay the same and/or foreclose the Assessment Lien against the member's lot or lots in accordance with the then prevailing law of the State of Arizona relating to the foreclosure of liens upon real property. If an action is commenced, there shall be added to the amount of such Assessment the late charge, interest, expenses incurred in connection with collection of the debt secured by the Assessment Lien, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include said late charge, interest, collection costs, reasonable attorneys' fees, and the costs of the action. Each member vests in the Association, or its agents, the right and power to bring all actions at law or equity against such member for the collection of such delinquent Assessments. At any foreclosure sale of a lot or lots authorized pursuant to the then prevailing laws of the State of Arizona, the Association, through its duly authorized agents, shall have the power to bid on such lot or lots at the sale, using Association funds or funds borrowed for such purpose, and to acquire and hold, lease, mortgage and convey the same.

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9. Priority of Assessment Lien. An Assessment Lien upon a lot or lots shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon such lot or lots; provided, however, that such Assessment Lien shall be subject and subordinate to: (i) liens for taxes and other public charges which by applicable law are expressly made superior, and (ii) all liens recorded in the Office of the County Recorder of Maricopa County, Arizona, prior to the date of recordation by the Association of an instrument (hereinafter referred to as the "Notice of Lien Priority"), which will establish pursuant to the then prevailing law of the State of Arizona, as to all of such lot or lots, the date of priority of the Assessment Lien as being the date of recordation of the Notice of Lien Priority. All liens recorded subsequent to the recordation of the Notice of Lien Priority shall be junior and subordinate to the Assessment Lien as to the amount stated in such Notice of Lien Priority to be then due. All liens recorded prior to the recording of the Notice of Lien Priority shall remain superior to the Assessment Lien.

10. Curing of Default. Upon the timely curing of any default for which a Notice of Lien Priority was recorded by the Association, officers of the Association are hereby authorized to record an appropriate release of such Notice, upon payment by the defaulting Owner of a fee to be determined by the Association to cover the cost of preparing and recording such release together with the payment of such other costs, including, without limitation, legal fees and court costs, interest or fees as Unofficial Document have been incurred.

11. Cumulative Remedies. The Assessment Lien and the rights to foreclosure thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law or equity, including a suit to recover a money judgment for unpaid Assessments, as above provided.

12. Subordination of Assessment Liens. If any lot or lots subject to a monetary lien created by any provision hereof shall be subject to the lien of a deed of trust or mortgage: (1) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such deed of trust or mortgage; and (2) the foreclosure of the lien of a deed of trust or mortgage, the acceptance of a deed in lieu of foreclosure of the deed of trust or mortgage or sale under a power of sale included in such deed of trust or mortgage (such events hereinafter being referred to as "Events of Foreclosure") shall not operate to affect or impair the Assessment Lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure



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shall take title free of the Assessment Lien hereof for all said charges that have accrued up to the time of any of the Events of Foreclosure and the expiration of any applicable redemption period, but subject to the Assessment Lien hereof for all said charges that shall accrue subsequent to any of the Events of Foreclosure, and subsequent to any applicable redemption period. Nothing in this Section shall be construed to release any Owner from his obligation to pay for any Assessment levied pursuant to this Declaration.

13. Exempt Property. The Common Areas shall be exempt from Assessments.

14. Common Expenses. As used in this Article, Common Expenses shall mean and refer to the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Areas and all improvements thereon; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers and other employees, accountants, attorneys and other agents; the costs of utilities, trash pick-up and disposal, landscaping, security services, and other services benefitting the Subdivision; the cost of fire, casualty, liability, workmen's compensation and other insurance covering the Common Areas; reasonable reserves as deemed appropriate by the Board; the costs of bonding of the members of the Board and officers of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof; and the costs of any other item or items designated by, or incidental to other expenses incurred by, the Association for any reason whatsoever which in the good faith judgment of the Board are incurred in connection with the Common Areas, pursuant to the Articles or the Bylaws in furtherance of the purposes of the Association, or in the discharge of any obligations imposed on the Association by this Declaration.

## ARTICLE FIVE

### GENERAL PROVISIONS

1. Term, Amendment. This Declaration shall be effective upon the date of recordation and, as amended from time to time, shall continue in full force and effect until December 31, 2015. From and after said date, this Declaration, as amended, shall be automatically extended for successive terms of ten (10) years each unless there is an affirmative vote to terminate this Declaration by the then owners holding at least seventy-five percent (75%) of the

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total voting power in the Association at an election held for such purpose within six (6) months prior to the expiration of the initial term hereof, or any ten (10) year extension period. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained from the holders of recorded first mortgages or deeds of trust on seventy-five percent (75%) of the lots upon which there are such recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be recorded a Certificate of Termination, duly signed and acknowledged 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 be of no further force or effect, and the Association shall be dissolved.

2. Amendments. This Declaration may be amended by the affirmative vote of owners holding at least seventy-five percent (75%) of the total voting power in the Association at a meeting duly called pursuant to the Articles and Bylaws of the Association for the adoption of the amendment. If the necessary votes are obtained to amend this Declaration, the Board shall cause a Certificate of Amendment, duly signed and acknowledged by the president or vice president and attested by the secretary or assistant secretary of the Association to be recorded in Maricopa County, Arizona.

3. Declarant's Right to Amend. Notwithstanding the provisions of Paragraph <sup>Unofficial Document</sup> 2 of this Article, Declarant hereby reserves the right to amend this Declaration as may be necessary or appropriate in its sole discretion by recording a Declaration of Amendment in Maricopa County, Arizona, and such right to amend shall continue until such time as the Class B membership of Declarant terminates.

4. Binding Effect. The covenants, conditions, charges, liens, reservations, easements and restrictions herein contained shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing, occupying or otherwise having any interest in any lot, their heirs, executors, administrators, successor and assigns. Deeds or other instruments of conveyance of said lots may contain the above covenants, conditions and restrictions by reference to this document, but whether or not such references are made in such deeds or instruments, each and all of such covenants, conditions and restrictions shall be binding upon all persons affected by the terms hereof.

5. Enforcement. If there shall be a violation or threatened or attempted violation of any of these covenants,

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conditions or restrictions, it shall be lawful for the Association, by and through its Board of Directors, and any person or persons owning real property situated in the Subdivision to prosecute proceedings at law or in equity to enjoin and/or to receive damages for each and every violation or threatened violation of any of the covenants, conditions and restrictions contained in this Declaration. However, a violation of these covenants, conditions and restrictions, or any one or more of them, shall not affect the lien of any mortgage now on record, or which may hereafter be placed of record upon said lots or any part of such lots. In the event the Declarant or Association deems it necessary to bring any legal proceedings against any lot owner or owners to enforce the provisions of this Declaration, and if the Declarant or Association prevails in such proceeding, such party shall be entitled to recover from the lot owner or owners, and such owner or owners agree to pay, all damages, costs and expenses of such proceeding, including, but not being limited to, reasonable attorneys' fees and expert witness fees. All such amounts due from an owner or owners shall be a charge upon the land and a continuing lien upon the lot owned by such owner, such lien to be subject to the provisions of Article Four hereof, the same as if said lien were an Assessment Lien.

6. Severability. <sup>Unofficial Document</sup> If any one or more of these covenants, conditions and restrictions or the applicability of any covenant, condition or restriction to a specific situation shall be held invalid or unenforceable, such covenant, condition or restriction shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other covenants, conditions and restrictions hereof and all other applications of such covenants, conditions and restrictions shall not be affected by such determination.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first hereinabove written.

INTERNATIONAL EQUITY COMPANY,  
an Arizona general partnership

By

  
Jerry Nelson,  
general partner

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STATE OF ARIZONA     )  
                          )  
County of Maricopa    )     ss.

This instrument was acknowledged before me this 14th day of February, 1986, by Jerry Nelson, general partner of International Equity Company, an Arizona general partnership, on behalf of the partnership.

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

My commission expires:

My Commission Expires Jan 20, 1989

Unofficial Document

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CONSENT

The Great American First Savings Bank, F.S.B., formerly Home Federal Savings and Loan Association, as Beneficiary of that certain Construction Deed of Trust dated August 14, 1984, which was recorded as Instrument No. 84-357699 on August 15, 1984, in the records of Maricopa County, Arizona, hereby consents to the Declaration, and covenants and agrees that its interest in the Trust Property, as that term is defined in the Deed of Trust, is subject and subordinate to the Declaration.

DATED: August 13, 19 86

THE GREAT AMERICAN FIRST SAVINGS BANK,  
F.S.B., formerly Home Federal Savings and  
Loan Association

By *Harmon J. Jatsch*  
Its VICE PRESIDENT

STATE OF ARIZONA     )  
                              ) ss  
County of Maricopa    )

Unofficial Document

The foregoing instrument was acknowledged before me this 13 day of August, 1986, by Deanne H. Katalin, the Vice President of THE GREAT AMERICAN FIRST SAVINGS BANK, F.S.B., formerly Home Federal Savings and Loan Association, on behalf of the association.

*Julius C. Munson*  
Notary Public

My commission expires:

April 7, 1989

AM/ma/160/87