

1 of 2

TRANSAMERICA TITLE INS. CO.
BUILDER SERVICES

2800 7362

WHEN RECORDED, RETURN TO:

Janet Jeter Gould
Broadbent, Walker & Newmark
3101 North Central Avenue
Suite 1500
Phoenix, Arizona 85012

478

90 157379

| |
|---|
| RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA APR 10 '90-4 02 HELEN PURCELL, County Recorder FEE 29- PGS 24 IG |
|---|

PROP RSTR (RS)

1

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
PINNACLE PEAK VISTAS IV**

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
PINNACLE PEAK VISTAS IV**

90 157379

TABLE OF CONTENTS

| | | <u>Page</u> |
|--------------------|---|-------------|
| ARTICLE 1 | | |
| DEFINITIONS | | |
| 1.1 | "Annual Assessment" | 1 |
| 1.2 | "Articles" | 1 |
| 1.3 | "Assessments" | 1 |
| 1.4 | "Assessment Lien" | 1 |
| 1.5 | "Association" | 1 |
| 1.6 | "Association Maintenance Area" | 1 |
| 1.7 | "Association Rules" | 1 |
| 1.8 | "Board" | 2 |
| 1.9 | "Bylaws" | 2 |
| 1.10 | "Declarant" | 2 |
| 1.11 | "Declaration" | 2 |
| 1.12 | "First Mortgage" <small>Unofficial Document</small> | 2 |
| 1.13 | "First Mortgagee" | 2 |
| 1.14 | "Improvement" | 2 |
| 1.15 | "Lot" | 2 |
| 1.16 | "Maximum Annual Assessment" | 2 |
| 1.17 | "Member" | 2 |
| 1.18 | "Owner" | 2 |
| 1.19 | "Person" | 3 |
| 1.20 | "Plat" | 3 |
| 1.21 | "Project Documents" | 3 |
| 1.22 | "Property" or "Project" | 3 |
| 1.23 | "Purchaser" | 3 |
| 1.24 | "Residential Unit" | 3 |
| 1.25 | "Single Family" | 3 |
| 1.26 | "Special Assessment" | 3 |

ARTICLE 2

PLAN OF DEVELOPMENT

| | | |
|-----|---|---|
| 2.1 | Property Subject to the Declaration | 4 |
| 2.2 | Disclaimer of Representations | 4 |

ARTICLE 3

THE ASSOCIATION; RIGHTS AND DUTIES,
MEMBERSHIP AND VOTING RIGHTS

| | | |
|------|---|---|
| 3.1 | Rights, Powers and Duties | 5 |
| 3.2 | Board of Directors and Officers | 5 |
| 3.3 | Association Rules | 5 |
| 3.4 | Identity of Members | 5 |
| 3.5 | Transfer of Membership | 5 |
| 3.6 | Classes of Members | 5 |
| 3.7 | Joint Ownership | 6 |
| 3.8 | Declarant Vote | 6 |
| 3.9 | Corporate Ownership | 6 |
| 3.10 | Suspension of Voting Rights | 6 |
| 3.11 | Implied Rights | 6 |

Unofficial Document

ARTICLE 4

COVENANT FOR MAINTENANCE ASSESSMENTS

| | | |
|------|--|----|
| 4.1 | Creation of the Lien and Personal Obligation of Assessments | 7 |
| 4.2 | Purpose of the Assessments | 7 |
| 4.3 | Annual Assessment | 7 |
| 4.4 | Special Assessments | 8 |
| 4.5 | Date of Commencement of Annual Assessments; Due Dates | 9 |
| 4.6 | Effect of Nonpayment of Assessments; Remedies of the Association | 9 |
| 4.7 | Exemption of Owner | 10 |
| 4.8 | Maintenance of Reserve Fund | 10 |
| 4.9 | No Offsets | 10 |
| 4.10 | Working Capital Fund | 10 |

90 157379

ARTICLE 5

EASEMENTS

| | | |
|-----|--|----|
| 5.1 | Declarant's Use for Sales and Leasing Purposes | 12 |
| 5.2 | Easement over Lots in Favor of Association | 12 |
| 5.3 | Natural Open Space Easement | 12 |

ARTICLE 6

MAINTENANCE

| | | |
|-----|--|----|
| 6.1 | Maintenance by the Association | 13 |
| 6.2 | Maintenance of Lots by Owners | 13 |

ARTICLE 7

INSURANCE AND CASUALTY LOSSES

| | | |
|-----|---|----|
| 7.1 | Insurance Obtained by Association | 14 |
| 7.2 | Certificate of Insurance | 15 |
| 7.3 | Payment of Premiums | 15 |

Unofficial Document
ARTICLE 8

GENERAL PROVISIONS

| | | |
|------|---|----|
| 8.1 | Enforcement | 16 |
| 8.2 | Severability | 16 |
| 8.3 | Duration | 16 |
| 8.4 | Amendment | 16 |
| 8.5 | Multiple Declarants | 17 |
| 8.6 | Remedies Cumulative | 17 |
| 8.7 | Delivery of Notices and Documents | 17 |
| 8.8 | Perpetuities | 17 |
| 8.9 | Gender | 17 |
| 8.10 | Topic Headings | 17 |
| 8.11 | Survival of Liability | 17 |
| 8.12 | Construction | 18 |
| 8.13 | Joint and Several Liability | 18 |
| 8.14 | Attorneys' Fees | 18 |

90 157379

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PINNACLE PEAK VISTAS IV**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PINNACLE PEAK VISTAS IV is made as of this 9th day of March, 1990, by Shea Homes Limited Partnership, a California limited partnership ("Shea Homes"), and Pinnacle Peak Land Company, an Arizona corporation ("Pinnacle Peak").

ARTICLE I

DEFINITIONS

1.1 "Annual Assessment" means the assessments levied and assessed against each Lot pursuant to Section 4.3 of this Declaration.

1.2 "Articles" means the Articles of Incorporation of the Association which have been or will be filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

1.3 "Assessments" means the Annual Assessments and Special Assessments levied and assessed Unofficial Document against each Lot pursuant to Article 4 of this Declaration.

1.4 "Assessment Lien" means the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable to the Association under the Project Documents.

1.5 "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 Peak Vistas IV Owners Association", but Declarant may organize the Association under such other name as the Declarant deems appropriate.

1.6 "Association Maintenance Area" means (i) all real property designated on the Plat as "Drainage Easement" areas (including without limitation those areas on the Plat designated as "N.A.O.S. and Drainage Easement") and all Improvements located thereon, and (ii) all real property, and all Improvements situated thereon, which the Association has the obligation to maintain under any contract or agreement between the Association and any other Person provided such contract or agreement has been approved by the affirmative vote or written consent of Members representing at least sixty-seven percent (67%) of the votes in the Association.

1.7 "Association Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

90 157379

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

1.9 "Bylaws" means the bylaws of the Association, as such bylaws may be amended from time to time.

1.10 "Declarant" means Shea Homes Limited Partnership, a California limited partnership, and Pinnacle Peak Land Company, an Arizona corporation, their successors and any person or entity to whom either entity may expressly assign any or all of its rights under this Declaration. An assignment of the rights of the Declarant under this Declaration may assign less than all of the rights of the Declarant under this Declaration and may apply to less than all of the Property. No assignment of the Declarant's rights under this Declaration shall be valid until it is recorded with the County Recorder of Maricopa County, Arizona.

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

1.12 "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages or deeds of trust on the same Lot.

1.13 "First Mortgagee" means the holder of any First Mortgage.

1.14 "Improvement" means levees, dikes, channels and other works of drainage and flood control, buildings, roads, driveways, parking areas, fences, walls, swimming pools, spas, rocks, hedges, Unofficial Document planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

1.15 "Lot" means any parcel of real property designated as a Lot on the Plat and, where the context indicates or requires, includes the Residential Unit and all other Improvements situated on the Lot.

1.16 "Maximum Annual Assessment" means the maximum annual assessment that may be levied and assessed against each Lot pursuant to Section 4.35 of this Declaration.

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

1.18 "Owner" means the record owner, whether one or more Persons, of fee simple title to a Lot, but excluding (i) Persons having an interest in a Lot merely as security for the performance of an obligation and (ii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. Owner shall include a purchaser under a contract for the conveyance of real property which is subject to the provisions of Arizona Revised Statutes Section 33-741, et seq. In the case of Lots and fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the

90 157379

trustor under the deed of trust shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.19 "Person" means a natural person, a corporation, a partnership, a trust, an association or other legal entity.

1.20 "Plat" means the plat of survey of Pinnacle Peak Vistas IV recorded with the County Recorder of Maricopa County, Arizona, in Book 327 of Maps, page 27, as corrected by the Certificate of Correction recorded at Recorder's No. 88-620963, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

1.21 "Project Documents" means this Declaration and the Articles, Bylaws, and Association Rules.

1.22 "Property" or "Project" means Lots 1 through 76, inclusive, Pinnacle Peak Vistas IV, according to the plat recorded in Book 327 of Maps, page 27, as certified by the Certificate of Correction recorded at Recorder's No. 88-620963, records of Maricopa County, Arizona, together with all Improvements located thereon.

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

1.24 "Residential Unit" means any building or part of a building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

1.25 "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, together with their domestic servants, who maintain a common household in a Residential Unit.

1.26 "Special Assessment" means the assessments levied and assessed against each Lot pursuant to Section 4.4 of this Declaration.

(End of Article 1)

90 157379

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 Property 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. 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 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 shall be deemed to create any implied covenants or restrictions with respect to the use of any property subject to this Declaration.

(End of Article 2)

90 157379

ARTICLE 3

THE ASSOCIATION; RIGHTS AND DUTIES,
MEMBERSHIP AND VOTING RIGHTS

3.1 Rights, Powers and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Project Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

3.2 Board of Directors and Officers. The affairs of the Association shall be conducted by a board of directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and the Bylaws.

3.3 Association Rules. The Board shall have the power to adopt, amend and repeal rules and regulations pertaining to the management, maintenance and operation and use of the Association Maintenance Area. In the event any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

3.4 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Unofficial Document automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

3.5 Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a 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 shall be void and shall not be reflected upon the books and records of the Association.

3.6 Classes of Members. The Association shall have two classes of voting membership.

3.6.1 Class A. Class A members shall be all Owners (including Pinnacle Peak), with the exception of Shea Homes until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned.

3.6.2 Class B. The Class B member shall be Shea Homes. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (i)

90 157379

the date on which the votes entitled to be cast by the Class A members equals or exceeds the votes entitled to be cast by the Class B member, or (ii) when Shea Homes notifies the Association in writing that it relinquishes its Class B membership.

3.7 Joint Ownership. When more than one Person is the Owner of any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint 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 Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

3.8 Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner or chief executive officer of such corporation, partnership or association shall have the power to vote the membership.

3.9 Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents or is in violation of any other provision of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current and all other violations of the Project Documents are corrected.

3.10 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.

(End of Article 3)

90 157379

ARTICLE 4

COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association Annual Assessments and Special Assessments. The Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

4.2 Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for (i) the upkeep, maintenance and improvement of the Association Maintenance Area, and (ii) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents.

4.3 Annual Assessment.

4.3.1 In order to provide for the operation and management of the Association and to provide funds for ^{Unofficial Document}ation to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each fiscal year of the Association commencing on the "Commencement Date" (as defined in Section 4.5 of this Declaration), shall levy an Annual Assessment against each Lot. The amount of the Annual Assessment for each Lot owned by an Owner other than the Declarant shall be an amount equal to the total budget of the Association for the applicable fiscal year divided by the number of Lots subject to this Declaration. The amount of the Annual Assessment for each Lot owned by Shea Homes shall be an amount equal to twenty-five percent (25%) of the amount obtained by dividing the total budget of the Association for the applicable fiscal year by the number of Lots subject to this Declaration.

4.3.2 So long as there is a Class B membership in the Association, Shea Homes shall subsidize the Association for the difference between the cost of operating and administering the Association (other than costs for which a Special Assessment is levied pursuant to Section 4.4 of this Declaration) and the total amount of Annual Assessments levied against Lots owned by Owners (including Pinnacle Peak) other than Shea Homes.

4.3.3 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the Annual

90 157379

Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment.

4.3.4 If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that fiscal year and the revised Annual Assessment shall commence on the date designated by the Board, provided, however, that any such increase which results in the Annual Assessment exceeding the Maximum Annual Assessment for such fiscal year shall not become effective until approved by 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.

4.3.5 The "Maximum Annual Assessment" for each fiscal year of the Association shall be as follows:

(i) From and after January 1 of the year immediately following the "Commencement Date," the Board may, without a vote of the membership, increase the Annual Assessment during each fiscal year of the Association by the greater of an amount equal to 5% of the Annual Assessment for the immediately preceding fiscal year or the amount obtained by multiplying the Annual Assessment for the immediately preceding fiscal year by the percentage increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1967=100), or in the event said index ceases to be published, by any successor index recommended as a substitute therefor by the United States Government.

(ii) The increase in the Annual Assessment pursuant to Subsection 4.3.5(i) shall be calculated without considering the portion of the immediately preceding Annual Assessment attributable to the payment of utility charges or insurance premiums by the Association. In addition to the increase in the Annual Assessment pursuant to Subsection 4.3.5(i) above, the Maximum Annual Assessment shall include an increase for each fiscal year from and after January 1 of the year immediately following the "Commencement Date" by an amount equal to the amount in the Association budget for the prior fiscal year applicable to utility charges and insurance premiums, multiplied by the percentage increase in utility charges or the percentage increase in insurance premiums during the prior fiscal year, whichever is greater.

4.4 Special Assessments. In addition to the Annual Assessments, the Association may levy a Special Assessment for the purpose of defraying, in whole or in

90 157379

part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on any Association Maintenance Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such Special Assessment shall have the assent of Members having 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. Special Assessments shall be levied at a uniform rate for each Lot and shall be due at such time as is designated by the Board.

4.5 Date of Commencement of Annual Assessments; Due Dates. The Annual Assessments shall commence as to all Lots on the first day of the month following the occurrence of the following two events: i) recordation of this Declaration and ii) organization of the Association (the "Commencement Date"). The first Annual Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the Annual Assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

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

4.6.1 Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board of Directors. In addition, the Board may assess each month a late fee in an amount established from time to time by the Board.

4.6.2 The Association shall have a lien upon each Lot for (i) all Assessments and other fees and charges levied against the Lot or owed to the Association by the Owner of the Lot which are not paid when due and (ii) all costs (including, but not limited to, all attorneys' fees, court costs, title report fees, credit report fees, and collection agency fees) incurred by the Association in collecting, or attempting to collect, any Assessments or other fees and charges owed to the Association. The recording of this Declaration constitutes record notice of the Assessment Lien, and no recordation of any claim or notice of lien is required in order to perfect the Assessment Lien. The Association shall have the right, but not the obligation, to record a notice of lien against any Lot setting forth the amounts secured by the Assessment Lien. If the Association records a notice of lien against Lot, the Association may assess against such Lot a lien fee in an amount established from time to time by the Board. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, collection costs and all other amounts levied or assessed against such Lot or payable by the Owner of such Lot are paid in full.

4.6.3 The Assessment Lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration except for (i) tax liens for real property taxes on the Lot, (ii) assessments on any Lot in favor of any municipal or other governmental body and (iii) the lien of any First Mortgage. The sale or transfer of any

90 157379

Lot shall not affect the Assessment Lien except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof shall extinguish the Assessment Lien as to payments which become due prior to the sale or transfer. Any First Mortgagee who obtains title to a Lot pursuant to judicial or nonjudicial foreclosure or any deed or proceeding in lieu thereof shall not be liable for any unpaid Assessments or other fees or charges which became due and payable to the Association prior to the acquisition of title by the First Mortgagee. No sale or transfer shall relieve the Owner of such Lot at the time when an Assessment became due from its personal obligation to pay such Assessment, together with interest, costs and reasonable attorneys' fees.

4.6.4 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, interest, lien fees, late charges, reasonable attorneys' fees and all other costs of collection 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.

4.7 Exemption of Owner. No Owner of a Lot may exempt himself from liability for Assessments levied against ^{Unofficial Document} or for other amounts which he may owe to the Association under the Project Documents by waiver of any of his rights under this Declaration or by the abandonment of his Lot.

4.8 Maintenance of Reserve Fund. Out of the Annual Assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements to the Association Maintenance Area.

4.9 No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

4.10 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 the sum equal to one-sixth (1/6th) of the Annual Assessment for 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

90 157379

permitted under the Project Documents. Payments made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

(End of Article 4)

Unofficial Document

90 157379

ARTICLE 5

EASEMENTS

5.1 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Association Maintenance Area while the Declarant is selling Lots in the Project. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant in such manner, of such size and in such locations as Declarant deems appropriate.

5.2 Easement over Lots in Favor of Association. The Lots, but not the interior of the Residential Units situated thereon, are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

5.2.1 For inspection, maintenance, repair and replacement of any Association Maintenance Area situated on or accessible from such Lots; and

5.2.2 For the purpose of enabling the Association, the Board or any committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents.

5.3 Natural Area Open Space Easement. Some of the Lots are subject to a natural area open space easement Unofficial Document ("N.A.O.S. Easement") as depicted on the Plat. The N.A.O.S. Easement areas shall not be maintained by the Association unless such areas also serve as "Drainage Easement" areas as depicted on the Plat (the "N.A.O.S. and Drainage Easement Areas") or the Board directs the Association to maintain the N.A.O.S. Easement areas in a litter-free state. No Owner or other Person shall construct or install any Improvement on any part of the N.A.O.S. and Drainage Easement Areas, and no Owner or other Person shall remove any plants (living or dead), rocks, bushes or other items from the N.A.O.S. and Drainage Easement Areas or in any way alter the appearance of any of the N.A.O.S. and Drainage Easement Areas.

(End of Article 5)

ARTICLE 6**MAINTENANCE**

6.1 Maintenance by the Association. The Association shall manage, maintain, repair and replace the Association Maintenance Area, and all Improvements located thereon, including without limitation construction of levees, dikes, channels and other works of drainage or flood control thereon, except for any part of the Association Maintenance Area which a governmental entity is obligated to maintain, repair and replace. The Board shall be the sole judge as to the appropriate maintenance of the Association Maintenance Area, but the Association shall keep the Association Maintenance Area in good, clean and sanitary condition and repair.

6.2 Maintenance of Lots by Owners. Except for any part of a Lot which is to be maintained by the Association pursuant to this Declaration, each Owner shall maintain, repair and replace his Lot, and the Residential Unit and all other Improvements situated thereon, in good, clean and sanitary condition and in compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations.

(End of Article 6)

Unofficial Document

90 157379

ARTICLE 7

INSURANCE AND CASUALTY LOSSES

7.1 Insurance Obtained by Association. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, Association shall maintain, to the extent reasonably available, the following insurance coverage:

7.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Association Maintenance Area, and shall also include hired automobile and nonowned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

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

7.1.3 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

7.1.4 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) The Association shall be named as the Insured;

90 157379

7.2 Certificate of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates 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.

7.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

(End of Article 7)

Unofficial Document

90 157379

ARTICLE 8

GENERAL PROVISIONS

8.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the affirmative vote or written consent of Members representing seventy-five percent (75%) of the votes in the Association, except for (i) actions brought by the Association to enforce the provisions of this Declaration including, but not limited to, actions to collect delinquent assessments or foreclose the Assessment Lien, or (ii) defend counterclaims brought against the Association in proceedings instituted by the Association.

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

8.3 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which ^{Unofficial Document} they shall be automatically extended for successive periods of ten (10) years.

8.4 Amendment.

8.4.1 Except for amendments which may be executed by the Board or the Declarant pursuant to Subsection 8.4.2 of this Declaration, this Declaration may only be amended by the written approval or the affirmative vote of Owners representing not less than sixty-seven percent (67%) of the votes in the Association.

8.4.2 Either the Declarant or the Board may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the 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 Plat or the Project Documents is required by law or is requested by the Declarant.

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

8.4.4 Any amendment approved pursuant to Subsection 8.4.1 of this Declaration or by the Board pursuant to Subsection 8.4.2 of this Declaration above shall be recorded with the County Recorder of Maricopa County, Arizona. Any such

90 157379

amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection 8.4.2 of this Declaration shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County, Arizona.

8.5 Multiple Declarants. As of the date of this Declaration, Declarant consists of Shea Homes and Pinnacle Peak. Pinnacle Peak hereby irrevocably appoints and constitutes Shea Homes its attorney-in-fact, coupled with an interest, to exclusively enjoy all benefits, rights, power and authority of Declarant hereunder.

8.6 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

8.7 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Declarant or the Association at 4040 E. Camelback Road, Phoenix, Arizona 85201; if to an Owner, to the address of his Lot or to any other address last furnished by the Owner to the Association; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

8.8 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the date of the last survivor of the now living descendants of the person who is president in the United States as of the date this Declaration is recorded.

8.9 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

8.10 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or this Declaration.

8.11 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incident thereto.

90 157379

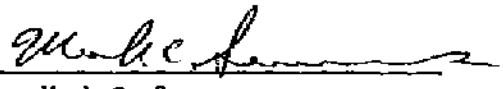
8.12 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, or Association Rules, the provisions of this Declaration shall prevail.

8.13 Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.

8.14 Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees incurred in any such action.


SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership

By: J.F. Shea Co., Inc, a Nevada
Unofficial Document Corporation, general partner

By: 
Mark C. Summers
Its: Assistant Secretary

By: 
Linda J. Nyborg
Its: Assistant Secretary

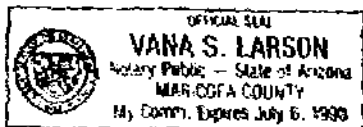
PINNACLE PEAK LAND COMPANY, an Arizona corporation

By: 
Its: VICE PRESIDENT

90 157379

STATE OF ARIZONA)
County of Maricopa) ss.:

The foregoing instrument was acknowledged before me this 9 day of MARCH, 1990, by MACK C. SUMMERS, the ASST. SECRETARY of J.F. Shea Co., Inc., a Nevada corporation, as general partner of Shea Homes Limited Partnership, a California limited partnership, on behalf of the limited partnership.

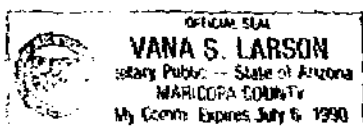


Vana S. Larson
Notary Public

My Commission Expires:
7/6/90

STATE OF ARIZONA)
County of Maricopa) ss.: Unofficial Document

The foregoing instrument was acknowledged before me this 9 day of MARCH, 1990, by LINDA J. WIGGERS, the ASST. SECRETARY of J.F. Shea Co., Inc., a Nevada corporation, as general partner of Shea Homes Limited Partnership, a California limited partnership, on behalf of the limited partnership.



Vana S. Larson
Notary Public

My Commission Expires:
7/6/90

90 157379

STATE OF ARIZONA }
County of MARICOPA } ss.:

The foregoing instrument was acknowledged before me this 3rd day of APRIL, 1990, by DOUGLAS G. SIMPSON the VICE PRESIDENT of Pinnacle Peak Land Company, an Arizona corporation, on behalf of the corporation.



Roxey Wood
Notary Public

My Commission Expires:

Aug. 2, 1991

CONSENTED TO AND APPROVED BY:

THE VALLEY NATIONAL BANK OF ARIZONA,
a national banking association Unofficial Document

By: (Not Applicable)

Its: _____

Date: _____