

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

PINNACLE PEAK ESTATES UNIT THREE

MARICOPA COUNTY, ARIZONA

THIS DECLARATION, made this 25 day of October, 1979 by PINNACLE PEAK DEVELOPERS, a joint venture. PINNACLE PEAK DEVELOPERS, its successors and assigns, are hereinafter referred to as the "Declarant".

RECITALS

A. Declarant is the fee owner of the real property described in Exhibit "A" to this Declaration (the "Subdivision").

B. Declarant has deemed it desirable to establish covenants, conditions and restrictions upon the subdivision and each and every Parcel, 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 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. Declaration will hereafter hold an convey title to all of the Subdivision, and each and every Parcel, Lot or portion thereof, subject to certain protective covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the property described above 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 such property, 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 said property or any part thereof, to be for the benefit of all of the property described above and its owners, their heirs, successors, grantees and assigns.

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

2. 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 a plot plan and plans and specifications of the proposed structure, showing the extent and character of the proposed construction (including all exterior colors), location thereof on the lot, landscaping, kinds of materials to be used, and the surrounding walls and fences, if any, have been approved in writing by the Architectural Committee as being in conformance with the requirements of this Declaration and with the architectural standards, if any, adopted from time to time by the Architectural Committee. It shall be the general 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 applicable governmental building codes and other 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. The plans and specifications shall also include lot grading plans prepared by a licensed civil engineer or architect in conformance with the grading plan for the

Subdivision as approved by Maricopa County. All permanent structures shall be constructed within the building envelopes as shown on the final recorded plat. In the event the Architectural Committee fails to approve or disapprove the proposed construction 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. Anything herein to the contrary notwithstanding, it is expressly declared that the Architectural Committee's review of the plans and specifications is for the purpose of assuring that construction within the Subdivision is in character and harmony with the present and proposed development of the Subdivision and Pinnacle Peak Village; the Architectural Committee's acceptance of any plans and specifications shall not constitute or be construed as a warranty or representation to any person whomsoever that the structure (or any part thereof) to be constructed on a lot complies with any governmental codes, restrictions or regulations affecting the lot or is structurally sound and free from defects.

3. Architectural Committee. The Architectural Committee shall consist of not less than three (3) individuals to be appointed from time to time by Declarant, until such time as Pinnacle Peak Estates Unit Three Homeowners' Association is formed as provided in Paragraph 18 hereof. Thereafter, the Architectural Committee shall be appointed by the Board of Directors of such Association.

4. Construction Materials, Color of Exterior Walls. All structures on the lots within the Subdivision shall be of new construction and no building shall be moved from any other location onto any of the lots. All exterior walls of all structures on the lots shall be earth tone in color.

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

6. 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 and a private garage and outbuildings as permitted by Paragraph 5, each structure to be one (1) story, in height not to exceed eighteen (18) feet, six (6) inches.

7. Size of Dwelling House. No four (4) bedroom dwelling house having a ground floor area of less than twenty-four hundred (2,400) square feet and no dwelling house containing less than four (4) bedrooms and having a ground floor area of less than two thousand (2,000) 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, attached garages, or other similar extensions or projections. 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.

8. Roofs. Sloped roofs of all buildings erected, constructed or maintained on said lots shall be of barrel-type or mission red tile, unless otherwise permitted by the Architectural Committee. No roof mounted appliances will be permitted. No visible aerials or antennas shall be erected or maintained on premises. All flat roofs must have parapets on all four (4) sides.

9. Height of Walls and Fences. No solid wall or fence over two and one-half (2-1/2) feet high shall be constructed or maintained closer to the front street line of any lot than the closest portion of the building erected on such lot. Where no residence has been constructed on a lot, no solid wall or fence over two and one-half (2-1/2) feet high 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 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 to the same color and texture as the dwelling unless otherwise approved by the Architectural Committee.

10. 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 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, including, but not being limited to, the standard Federal Housing Administration specifications. 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.

11. Re-subdivision. None of the lots in the Subdivision shall be re-subdivided into smaller lots nor conveyed in less than the full original dimensions of such lots as shown by the plat, except for public utilities, in which event, the remaining portion of said lot shall be treated as a whole lot for the purpose of this provision provided that this restriction shall not prevent the conveyance of a part of a lot to an adjacent owner of a whole lot, after which time the whole lot and the adjacent part of a lot in such common ownership shall be considered as one (1) lot for the purposes of these restrictions.

12. 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.

13. 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.

14. Signs. No advertising signs (except "For Sale" signs), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any of the lots, nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner of any lot in the Subdivision.

15. Easements. No structure of any kind shall be erected, permitted or maintained on the easements for utilities as shown on the plat of Pinnacle Peak Estates Unit Three.

16. Landscaping. Inasmuch as it is the intention to preserve, insofar as possible, the present natural desert state 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 and except as otherwise approved by the Architectural Committee. Pinnacle Peak Estates Unit Three was selected

for its clean air and dust free environment. All landscaping plans for any lot must be submitted to and approved by the Architectural Committee in the manner provided in Paragraph 2 hereof. The use of any Bermuda grass, organic or allergy producing fertilizers, or allergy producing plants which are identified or defined by local authorities as allergy producing, is not allowed. The Architectural Committee shall have the authority to restrict or prohibit any other activity within the Subdivision which would be inconsistent with the clean air and natural desert environment of the Subdivision.

17. Large Animals. No poultry, sheep, goats, horses, cattle, or other large animals shall be kept on any of the lots.

18. Homeowners' Association. In furtherance of the purposes of this Declaration, a homeowners' association shall be formed pursuant to this Paragraph. Accordingly it is declared that all property owners of record shall be members of Pinnacle Peak Estates Unit Three Homeowners' Association ("Association") upon its formation pursuant to Subparagraph (f) hereof. The Association shall be incorporated as a non-profit corporation pursuant to the laws of Arizona, for the purposes and with such rights and obligations as are set forth below:

a) Membership in the Association shall be limited to the property owners of record in the Subdivision. Each owner of record of a lot in the Subdivision shall automatically be a member of the Association and shall be issued a certificate of membership in the Association. In the case of property sold under an installment land sales contract where the seller has retained legal title, the buyer shall be considered the owner for purposes of this Declaration. Ownership shall not include persons or entities which hold title as security for the performance of an obligation. If any lot is owned by two (2) or more persons, a single membership certificate shall be issued in the names of all owners of record and they shall designate in writing to the Association one (1) of their number who shall have the power to vote that certificate. Membership in the Association further shall be subject to the terms of the Association's Articles of Incorporation and Bylaws.

b) The Association shall have the power and shall undertake and perform within the Subdivision the following duties and obligations:

- i) 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;
- ii) Acquire, own, manage and operate 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 owner of it; and pay all premiums for property, hazard and public liability insurance;
- iii) Levy and collect the assessments which are set forth below.

c) In order to provide funds to enable the Association to perform the obligations and render the services provided above, all lots within the Subdivision shall be subject to an annual assessment which shall be fixed and levied in advance by the Association from year to year and shall be paid to the Association annually by the owners of record of each lot in the Subdivision. The Association shall from year to year determine the total amount required to perform its obligations and shall levy and collect an annual assessment not exceeding Two Hundred Dollars (\$200.00) for each lot within the Subdivision. The assessment for each lot shall include the owner's pro rata share of such sums as the Association shall determine proper for the establishment and maintenance of a reserve for repair, replacement, maintenance and for the payment of administration costs, taxes, insurance and other expenses of the Association, and shall be in the ratio that one (1) Lot bears to the total number of lots within the Subdivision. The aforesaid maximum assessment to each lot owner may be increased by the Association only with the prior written consent of two-thirds (2/3) of the lot owners of record by number in said Subdivision.

d) The aforesaid assessments for each year shall be fixed, levied and paid at such times and in such manner as may be prescribed in the Bylaws of the Association (or by the Declarant until the Association is incorporated).

e) Each owner of a lot in the Subdivision, for himself, his heirs, executors, administrators, successors and assigns, covenants and agrees, by acceptance of a deed or other instrument (and regardless of whether it is expressed in any such deed or other conveyance, and regardless of whether such owner accepts such deed in writing), that he shall pay to the Association the annual assessments or charges as provided in Paragraph (c) above. The annual assessment (together with interest at the highest lawful rate, if any such assessments are delinquent, and costs of collection, including reasonable attorney's 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 assessment, together with such interest, costs and attorneys' fees, shall be the personal obligation of the person who was the record owner of such lot at the time when the assessment fell due, but such personal obligation of the owner shall not be deemed to limit or discharge the charge on the land and continuing lien upon the lot against which such assessment is made. No owner shall escape liability for the assessment which fell due while he was the owner by nonuse of any common facilities or transfer or abandonment of his lot. The owner's personal obligation for assessments which fell due while he was the owner shall not pass to a successor owner. The Association, as the agent and representative of the owners of lots in the Subdivision, shall have the right to enforce the provisions of this Declaration. If the owner of any lot fails to pay an assessment when due, the Association may enforce the payment of the assessment, or enforce the lien against the lot, by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies set forth below, the Association does not prejudice or waive its right to exercise the other remedy): (i) Bring an action at law against the owner personally obligated to pay the assessment; (ii) Foreclose the assessment lien against the lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the lot may be redeemed after foreclosure sale as provided by law. If any lot subject to such assessment lien shall become subject to the lien of a purchase money or construction mortgage or deed of trust, the foreclosure of the assessment lien shall not affect or impair the lien of any such mortgage or deed of trust. The assessment lien shall be junior and subordinate to the lien of any such mortgage or deed of trust; however, such subordination shall not otherwise affect or impair the assessment lien or discharge the land from the servitude of the assessment lien. Any mortgage foreclosure purchaser, any grantee taking by deed in lieu of foreclosure, or any purchaser at a trustee's sale shall take free of the assessment lien for all charges that have accrued up to the date of trustee's sale, the deed of issuance of a sheriff's deed or deed given in lieu of foreclosure, but shall take subject to all charges accruing subsequent to those events.

f) Until such time as the Association is incorporated (i.e., when fifty (50) lots within the Subdivision have been conveyed by Declarant to bona fide purchasers, or December 31, 1982, whichever first occurs), the Declarant shall have the right to exercise the powers and duties granted in this Declaration to the Association, including, but not by way of limitation, the right to perform all or any part of the duties, assume the obligations, levy and collect the assessments and otherwise exercise the powers given to the Association by this Declaration in the same way and manner as though all of such powers and duties so given were given directly to the Declarant. Upon incorporation of the Association, the Declarant shall turn over any accumulated funds or assets to the Association and be released and divested of any and all such rights, powers and obligations provided for the Association in this Declaration; and the Association promptly shall perform the duties, assume the obligation, levy and collect the assessments and otherwise exercise the powers provided for the Association.

19. Extension of Declaration and Amendment. The foregoing covenants, conditions and restrictions run with the land and shall be binding on all persons owning any of the said lots in the Subdivision until February 15, 1995, at which time said covenants, conditions and restrictions shall be automatically extended for successive ten (10) year periods, unless by a vote of two-thirds (2/3) of the then owners of the lots described, it is agreed to change said covenants, conditions or restrictions in whole or in part. This Declaration may be amended from time to time by a vote of two-thirds (2/3) of the then owners of lots within the Subdivision; provided, however, that prior to February 15, 1995, this Declaration may only be amended by a vote of Declarant and two-thirds (2/3) of the then owners of lots, excluding Declarant.

20. Binding Effect. 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 the respective grantees, their heirs, successors and assigns.

21. Violations. If there shall be a violation or threatened or attempted violation of any of these covenants, conditions or restrictions, it shall be lawful for 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 or restrictions contained in this Declaration. 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 proceedings, 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. 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 Paragraph 18(e) hereof, the same as if said lien were as assessment lien.

22. Severability. Invalidation of any one or more of these covenants, conditions and restrictions shall in no way affect any of the other provisions which shall remain in full force and effect.

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

PINNACLE PEAK DEVELOPERS, A joint venture

AMENDMENT – March 26, 1980 – Paragraph 1 to read as follows:

1. Single Family Residences. All of the lots in the subdivision shall be used exclusively for single family residences.

AMENDMENT – January 3, 1984 Paragraph 6 is deleted and substituted with the following:

6. 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 and a private garage and outbuildings as permitted by paragraph 5, each structure to be one (1) story, in height not to exceed twenty (20) feet.

AMENDMENT – February 27, 2001 The following is added under Section 18. (b)

(iv) Maintain, repair or remove as needed, the monument signs located at the various entrances to the Subdivision.

(v) Maintain, repair, rebuild or replace as need, the group mailbox structures at various locations within the Subdivision.