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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
PINNACLE ESTATES**

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July 12, 2002

TABLE OF CONTENTS

RECITALS

1.0	<u>DEFINITIONS</u>	2
1.1	Architectural committee	2
1.2	Articles	2
1.3	Assessments	2
1.4	Association	2
1.5	Association Rules	2
1.6	Board	2
1.7	Building Envelope	2
1.8	Bylaws	2
1.9	Common Area	2
1.10	Common Expenses	3
1.11	Declarant	3
1.12	Declarant's Personal Lot	3
1.13	Declaration	4
1.14	Default Rate of Interest	4
1.15	Design Guidelines	4
1.16	Dwelling Unit	4
1.17	Encroachment Easement Agreement	4
1.18	Exhibit	4
1.19	First Mortgagee	4
1.20	Improvement(s)	4
1.21	Lot	4
1.22	Member	4
1.23	Mortgage	4
1.24	Mortgagee	5
1.25	Owner	5
1.26	Person	5
1.27	Plat	5
1.28	Private Street	5
1.29	Project	5
1.30	Proportionate Share	5
1.31	Public Purchaser	5
1.32	Purchase	5
1.33	Real Property	5
1.34	Related Property	5
1.35	Residence	5
1.36	Single Family	5
1.37	Subdivision	6
1.38	Visible From Neighboring Property	6
2.	<u>DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION</u>	6
2.1	Description of Project	6
2.2	Name of Project	6
2.3	No Severance of Residence Estate	6
2.4	Water and Sewer Service Facilities	6
2.5	Disclaimer of Representations	6
2.6	Confirmation of Declarant's Personal Lot	6

NO PORTION OF THIS DOCUMENT IS TO BE REPRODUCED

3.	<u>THE ASSOCIATION</u>	7
	3.1 General Duties and Powers	7
	3.2 General Duties of the Association	7
	3.3 General Powers of the Association	7
	3.4 Association Rules	8
	3.5 Indemnification	8
	3.6 Non-Liability of Officials	9
	3.7 Easements	9
	3.8 Accounting	9
	3.9 Records	9
	3.10 Delegation of Powers	9
	3.11 Emergency Power	9
4.	<u>ASSOCIATION MEMBERS</u>	9
	4.1 Membership	9
	4.2 Transfer	10
	4.3 Voting Rights	10
	4.4 Classes of Voting Membership	10
	4.5 Corporate Membership	10
	4.6 Suspension of Voting Rights	11
5.	<u>COVENANT FOR ASSESSMENT</u>	11
	5.1 Creation of the Lien and Personal Obligation	11
	5.2 Purpose of Assessment	11
	5.3 Annual Assessments	11
	5.4 Supplemental Assessments	12
	5.5 Special Assessments	12
	5.6 Notice and Quorum for Any Action on Assessment	13
	5.7 Uniform Rate of Assessment	13
	5.8 Date of Commencement of Assessments; Due Dates	13
	5.9 Effect of Nonpayment of Assessments	13
	5.10 Subordination of the Lien to Mortgages	14
	5.11 Exemption of Owner	14
	5.12 Unallocated Tax Assessments	14
	5.13 Certificate of Payment	14
	5.14 Establishment of Reserve Fund	15
6.	<u>RIGHTS OF ENJOYMENT</u>	15
	6.1 Members' Right of Enjoyment	15
	6.2 Delegation of Use	15
	6.3 Waiver of Use	15
	6.4 Limitations	15
	6.5 Private Street	15
7.	<u>USE RESTRICTIONS</u>	15
	7.1 Scope	15
	7.2 Residential Use	15
	7.3 No Commercial Use	16
	7.4 Minimum Dwelling Unit Size and Dwelling Height	16
	7.5 Roofing Material	16

2015-01-01 10:50:53 AM

10.2	Maintenance of Lots by Owners	24
10.3	Damage or Destruction by Owners	25
10.4	Nonperformance by Owners	25
10.5	Total or Partial Destruction	25
10.6	Payment of Utility Charges	25
11.	<u>INSURANCE</u>	25
11.1	Scope of Coverage	25
11.2	Insurance on Lots	26
11.3	Certificates of Insurance	26
11.4	Fidelity Bonds	26
11.5	Payment of Premiums	27
11.6	Payment of Insurance Proceeds	27
11.7	Annual Insurance Review	27
12.	<u>DESTRUCTION OF IMPROVEMENTS</u>	27
12.1	Duty of Association	27
12.2	Automatic Reconstruction	27
12.3	Reconstruction by Vote of Members	27
12.4	Excess Insurance Proceeds	28
12.5	Use of Special Assessments	28
12.6	Repair of Private Street	28
13.	<u>EMINENT DOMAIN</u>	28
13.1	Definition of Taking	28
13.2	Representation by Board in Condemnation Proceedings	28
13.3	Inverse Condemnation	28
13.4	Award for Common Area	28
14.	<u>GENERAL PROVISIONS</u>	28
14.1	Enforcement	28
14.2	No Waiver	28
14.3	Cumulative Remedies	29
14.4	Severability	29
14.5	Violations and Nuisances	29
14.6	Violation of Law	29
14.7	Joint and Severable Liability	29
14.8	Attorney's Fees	29
14.9	Binding Effect	29
14.10	Notices	29
14.11	Leases	30
14.12	Construction by Declarant	30
14.13	Nonliability of Officials	30
14.14	Term	31
14.15	Amendments	31
14.16	Gender	32
14.17	Section Headings	32
14.18	Survival of Liability	32
14.19	Statutory Construction	32
14.20	Right To Use Similar Name	32
14.21	Gated Entrances	33

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
PINNACLE ESTATES

This Declaration of Covenants, Conditions, and Restrictions (the "Declaration") is executed to be effective as of the 12th day of July, 2002 (the "Effective Date"), by PINNACLE PARTNERS, L.P., a Texas limited partnership (the "Declarant"). Declarant does hereby COVENANT, AGREE and DECLARE that the hereinafter described property, which is part of THE PINNACLE SUBDIVISION, is subject to the covenants, conditions, restrictions, easements, charges and liens of the Declaration upon the use, occupancy, and enjoyment thereof.

RECITALS

The Real Property. Declarant is the owner of certain property located in El Paso County, Texas, more particularly described as follows (the "Real Property"):

Parcel One: Lots 17 through 26, inclusive, of Block 1, and Lot 2, Block 2, PINNACLE SUBDIVISION, a subdivision in the City of El Paso, El Paso County, Texas, according to the subdivision map recorded in Volume 77, Pages 11, 11A and 11B, Real Property Records, El Paso County, Texas, with the associated common areas.

Parcel Two: Lot 8, Block 1, Stanton Park Addition, an addition to the City of EL Paso, Texas, according to the plat thereof recorded in Volume 77, Page 4 of the Real Property Records, El Paso County, Texas, which is referred to herein as the *Mesa Hills Drive Property*.

General Plan and Declaration. Declarant desires to impose a general plan for the benefit of all future owners of lots for the development of the Real Property, for the purpose of enhancing and protecting the value, desirability, and attractiveness thereof.

The Association. For the efficient preservation of the value and amenities in the Real Property, Declarant deems it desirable to provide for an agency to which will be delegated and assigned the powers of maintaining and administering all Common Areas and amenities, and enforcing and administering the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, and therefore, Declarant shall cause a nonprofit corporation to be incorporated under the laws of the State of Texas to which such powers may be delegated in the future. The Pinnacle Estates Homeowners Association, a nonprofit corporation, has been incorporated under the laws of the State of Texas for the purpose of exercising such powers and functions mentioned herein. No more than one such non-profit corporation shall be in existence at any one time.

Beneficiaries. Declarant desires and intends that the owners, mortgagees and other beneficiaries, occupants and all other persons hereinafter designated who acquires any interest in the Real Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote the Property.

NOW, THEREFORE, Declarant, for the purposes above set forth, declares that the Property hereafter shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions,

DECLARATION

restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with and be binding upon the Real Property and all parties having or acquiring any right, title or interest in or to the Real Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association and each member of the Association.

1. DEFINITIONS

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms should appear throughout this Declaration with the initial letter of such term capitalized.

1.1 "*Architectural Committee*" means the architectural committee or committees established by the Board (as hereafter defined) pursuant to Section 3.2(e) and Article 8 of this Declaration.

1.2 "*Articles*" means the Articles of Incorporation of the Association, which have been, or will be, filed with the Secretary of State of the State of Texas, as such Articles may be amended from time to time.

1.3 "*Assessments*" means the charges levied and assessed pursuant to Section 5 of this Declaration.

1.4 "*Association*" means the ***Pinnacle Estates Homeowners Association***, a Texas nonprofit corporation, its successors, assigns or replacements which has jurisdiction over all properties located within the land encumbered under this Declaration, as same may be amended.

1.5 "*Association Rules*" means the rules and regulations adopted by the Association pursuant to Section 3.4 of this Declaration, as may be amended from time to time.

1.6 "*Board*" means the Board of Directors of the Association.

1.7 "*Building Envelope*" means that area designated on each Lot by the Architectural Committee within which a Residence, including without limitation the Dwelling Unit, may be constructed by an Owner.

1.8 "*Bylaws*" means the Bylaws of the Association (or of any successor thereto) adopted in accordance with the Articles, as such Bylaws may be amended from time to time.

1.9 "*Common Area*" means the following parts of the Real Property:

- (a) The Private Street;
- (b) The areas included in all drainage easements, which are shown on the Plat, and utility easements which are shown on the Plat;
- (c) Common and private landscape easements, which are shown on the Plat;
- (d) The areas depicted in the Encroachment Easement Agreement;
- (e) Other areas dedicated in easements granted to the Association or leased from time to time by the Association, for the common use and enjoyment of the Members, and
- (f) The Improvements located on such areas, including without limitation, and by way of example only, the following: the entry way improvements, private storm drains, walls or fences adjacent to any Common Areas and any common facilities within the Project.

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Upon recording of this Declaration, Declarant shall convey to the Association by Special Warranty Deed title to the Mesa Hills Drive Property and Agave Canyon Court, free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), and title exceptions of record.

1.10 "Common Expenses" means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Common Areas of the Project, including but not limited to, the following:

- (a) maintenance, management, operation, repair and replacement of the Common Areas, and all other areas of the Real Property which the Association is entitled to maintain, as provided in Section 5.5(b) hereof;
- (b) unpaid Assessments;
- (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
- (d) the costs of utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Project;
- (e) the costs of fire, casualty, liability, workmen's compensation and/or other insurance covering the Common Area;
- (f) the costs of any other insurance obtained by the Association;
- (g) reasonable reserves, as deemed appropriate by the Board;
- (h) the costs of bonding of the members of the Board, the Association officers, and professional managing agent or any other person handling the funds of the Association;
- (i) taxes paid by the Association;
- (j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Area or portions thereof;
- (k) costs incurred by the Architectural Committee or other committees established by the Board; and
- (l) other expenses incurred by the Association or the costs of any other items provided for by Special Assessments for any reason whatsoever in connection with the Common Area, or the costs of any other items designated by this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.11 "Declarant" means **Pinnacle Partners, L.P.**, or any Person to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned in connection with the sale to the assignee of Declarant's rights of all or part of the Lots then owned by Declarant to be held for sale to Public Purchasers. The Declarant's rights shall only be assigned by a written instrument recorded in the Official Public Records of Real Property of El Paso County, Texas, expressly assigning those rights.

1.12 "Declarant's Personal Lot" means solely one Lot, which either Declarant retains title to, or Declarant conveys title to a Related Party, and such party declares such Lot as his homestead in order to obtain an exemption for payment of ad valorem taxes, except as otherwise provided in Section 2.6 hereof.

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In such instance such party which owns such Lot shall become a "Class A" member of the Association and entitled to all of the privileges and rights by reason thereof, and shall be responsible for paying Annual, Supplemental or Special Assessments on the same basis as any other Owner.

1.13 "*Declaration*" means this instrument, as from time to time may be amended.

1.14 "*Default Rate of Interest*" means an annual rate of interest equal to the national prime rate as quoted in the "Money Rates" section of the Wall Street Journal then in effect at the time of question (the "Prime Rate"), plus 4%. Should the Wall Street Journal fail for any reason to quote a prime rate, the Association may select as a substitute any prime lending rate quoted by a national banking association. Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said periods shall be the highest lawful rate.

1.15 "*Design Guidelines*" means the rules, guidelines, standards and procedures adopted by the Architectural Committee (which may be amended from time to time), governing architectural control of the Project.

1.16 "*Dwelling Unit*" means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

1.17 "*Encroachment Easement Agreement*" means that certain Encroachment Easement Agreement between the Declarant and Stanton Park, LLC, dated as of July __, 2002, recorded in Clerk's File No. _____ of the Deed Records of El Paso County, Texas. The Encroachment Easement Agreement depicts an area designated as a "Retaining Wall", which is included in the Common Area and Improvements, and is referred to in Section 9.5 hereof.

1.18 "*Exhibit*" means the documents designated herein and attached hereto and each of which is by this reference incorporated in this Declaration.

1.19 "*First Mortgagee*" means a Person, including a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution regulated by federal or state law. If the First Mortgagee is a Person which is **not** an institutional lender (which as part of its normal business practice makes residential loans), then such Person shall qualify as a First Mortgagee only if the original loan it makes to an Owner does not exceed 80% of the value of the Residence which is collateral for such loan, as determined by an independent appraisal firm at the time such loan is made.

1.20 "*Improvement(s)*" shall mean each and every physical improvement of any kind whatsoever to any portion of the Real Property, including, but not limited to, the entry way improvements, any excavation, grading, fill work, building, Dwelling Unit, walkway, driveway, road, parking area, wall, fence, swimming pool, utility installation, drainage facility, stairway, patio, courtyard, pole, sign, retaining walls, or landscaping and any and all components of any of the foregoing (including, but not limited to, exterior paint, texture, color and finish scheme) and any and all modifications, alterations of, or additions to, any of the foregoing.

1.21 "*Lot*" means any parcel of real property designated as a numbered lot on the Plat and any Improvements located thereon. The platted lots are referred to collectively herein as "Lots".

1.22 "*Member*" means every Person who qualifies for membership pursuant to Article 4.1 of this Declaration, entitled "Membership", including Declarant so long as Declarant qualifies for membership pursuant to said Article.

ENCROACHMENT EASEMENT

1.23 "*Mortgage*" means any duly recorded mortgage or deed of trust encumbering a Lot. A "First Mortgage" shall refer to a Mortgage which has priority over all other Mortgages encumbering a specific Lot.

1.24 "*Mortgagee*" means the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall mean the holder of a Mortgage that has priority over all other Mortgages encumbering a Lot.

1.25 "*Owner*" means one or more Persons who are alone or collectively the record owner of a fee simple title to a Lot, including Declarant, or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation. If fee title to a Lot is owned other than by Declarant, the Owner of the fee title and not the lessee of such Lot shall be deemed the Owner regardless of the term of the lease.

1.26 "*Person*" means an individual, corporation, partnership, limited liability company, trust or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.27 "*Plat*" means the plat of subdivision of the Real Property as recorded in the Official Public Records of Real Property of El Paso County, Texas, in Volume 77, Pages 11, 11A and 11B, and as thereafter from time to time amended or supplemented.

1.28 "*Private Street*" means the Mesa Hills Drive Property and Agave Canyon Court which is designated as a "Private" roadway on the Plat. If the members elect to dedicate the Private Street to public use, as provided in Section 6.5 hereof, and if expenses must be incurred for the purpose of bringing the Private Street into conformance with the specifications of the City of El Paso, such expenses shall be considered costs of capital improvements and shall be subject to the provisions hereof for Special Assessments hereunder.

1.29 "*Project*" means the Real Property located in El Paso County, Texas, together with all improvements located thereon or to be located thereon and all easements, rights, and appurtenances belonging thereto.

1.30 "*Proportionate Share*" means, as to one Lot, a fraction, the numerator is one and the denominator is 10.

1.31 "*Public Purchaser*" means a Person who purchases a Lot, and does not include (i) Declarant or any Related Party who acquires a Lot by sale or distribution, or (ii) a Person who acquires title to more than one Lot contemporaneously with the assignment by Declarant to such Person of Declarant's rights reserved in the Declaration, as contemplated under Section 1.11 hereof.

1.32 "*Purchase*" means any Person other than Declarant who by means of a voluntary transfer acquires a legal or equitable interest in a Lot other than (a) a leasehold interest or (b) as security for an obligation.

1.33 "*Real Property*" means all the real property described in the Recitals of this Declaration, and all easements, rights and appurtenances belonging thereto, and not any other portion of the Subdivision.

1.34 "*Related Party*" means as of the date hereof (i) any Person owning or holding an interest or position in Declarant or the Designated Owner, as provided in Section 14.15(c), as the case may be; or (ii) any Person owning or holding an interest in any Person described in (i).

1.35 "*Residence*" means any subdivided Lot shown on the Plat, together with the residential Dwelling Unit, garage, patio and other improvements thereon and all rights and easements appurtenant thereto granted pursuant to this Declaration and to the deed of conveyance.

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1.36 "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 persons not all so related, together with their domestic servants, who maintain a common household.

1.37 "Subdivision" means Pinnacle Subdivision, a subdivision in the City of El Paso, El Paso County, Texas, according to the subdivision map recorded in Volume 77, Pages 11, 11A and 11B, Real Property Records, El Paso County, Texas.

1.38 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property (which may include a Lot or any portion of the Common Area) at an elevation no greater than the elevation of the base of the object being viewed.

2. DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION

2.1 Description of Project. The Project shall be composed of the Real Property, together with all Improvements located thereon or to be located thereon and all easements, rights and appurtenances belonging thereto. Upon conveyance of a Lot to an Owner, each Owner shall have the a nonexclusive right to use the Common Area.

2.2 Name of Project. The Project shall be referred to as "**Pinnacle Estates**".

2.3 No Severance of Residence Estate. No Owner shall be entitled to sever or partition his interest in his Lot from his right and easement to use and enjoy the Common Area. The right to use the Common Area as established by this Declaration shall not be separated, severed, partitioned or separately conveyed, encumbered, or otherwise transferred, and such right to use the Common Area shall conclusively be deemed transferred or encumbered with the Lot to which they are appurtenant even though the description in the instrument of conveyance or encumbrance may refer only to the Lot. Nothing contained in this Article shall be construed to preclude an Owner from creating a cotenancy in the ownership of a Lot with any other Person or Persons.

2.4 Water and Sewer Service Facilities.

(a) Declarant is hereby authorized to dedicate easements over the Common Areas not heretofore shown on the Plat and convey by fee title to such areas in the Common Areas and the Lots owned by Declarant, which the Public Service Board (the "PSB") and the other utility companies may require to order for the PSB and such utilities to furnish water, sewer, electrical, gas and other utility services to the Project and the Owners, without the consent of the Association or any Owner.

(b) To the extent there are other associations (the "Other Associations") created for the owners of lots out of the remaining portion of the Subdivision, the Association agrees to appoint a representative to confer with the representatives of the Other Associations to resolve any such matters pertaining the use, operation, maintenance or repair of the Facilities, the allocation of costs to use, operate, maintain and repair the Facilities not paid by the PSB, and such other matters which affect the use, operation, maintenance and repair of such other facilities, if any, common to one or more of the Other Associations and the Association.

2.5 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever, and specifically disclaims any such representation or warranty, whether written or oral, express or implied, to any Owner or any other Person that the Project or any Improvements will be constructed in accordance with any plans and specifications for the Project, including without limitation those plans which exist on the Effective Date hereof.

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PLANNING DIVISION

2.6 Confirmation of Declarant's Personal Lot. Notwithstanding the provisions of Section 1.12 hereof to the contrary, if Declarant has not declared the sole remaining Lot it owns as the Declarant's Personal Lot within the four year period following the Effective Date hereof, the Association has the right to require the Declarant to confirm for purposes of this Declaration whether or not such sole remaining Lot is Declarant's Personal Lot, which request for confirmation shall be effectuated by the Association delivering written notice to the Declarant requesting such confirmation (the "Notice to Confirm"). The Association has the right to require such confirmation at any time after the end of such four year period following the Effective Date hereof, and not more frequently that once every 9 month period thereafter until Declarant designates its sole remaining Lot as his Personal Lot. Upon Declarant's receipt of the Notice to Confirm, Declarant must confirm in writing with the Association whether or not such sole remaining Lot is its Personal Lot within six months of the date such notice is delivered to it, as provided in Section 14.10 hereof. Failure of the Declarant to respond to the Notice to Confirm shall be deemed Declarant's confirmation that its sole remaining Lot constitutes Declarant's Personal Lot for purposes hereof.

3. THE ASSOCIATION

3.1 General Duties and Powers. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

3.2 General Duties of the Association. The Association, through its Board, shall have the duty and obligation to:

- (a) Enforce the provisions of this Declaration, the Articles, Bylaws, Association Rules and Design Guidelines by appropriate means and carry out the obligations of the Association hereunder.
- (b) Maintain and otherwise manage the following:
 - (i) the Common Area and all Improvements thereon, in which the Association holds an interest, subject to terms of any instrument transferring such interest to the Association;
 - (ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and
 - (iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration.
- (c) Pay all real and personal property taxes and other charges assessed to or payable by the Association.
- (d) Obtain for the benefit of the Common Area, water, electric, refuse collections and other services.
- (e) Establish an Architectural Committee to govern issues set forth in this Declaration as being within the purview of the Architectural Committee as well as other issues the Board deems suitable for the Architectural Committee.
- (f) Appoint a representative to confer with the representatives of the Other Associations to resolve any matters pertaining to the Facilities and the provision of water and sewer service to the Subdivision, as provided in Section 2.5(b) hereof.

3.3 General Powers of the Association. The Association, through its Board, shall have the power but not the obligation to undertake each of the following:

- (a) employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of residential developments similar to the Project, to perform all or any part of the duties and responsibilities of the Association;
- (b) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Project, for the administration of the affairs of the Association or for the benefit of the Members;
- (c) borrow money as may be needed in connection with the discharge by the Association of its powers and duties;
- (d) provide maintenance of other items to the extent determined desirable by the Board;
- (e) negotiate and enter into contracts with First Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Project; and
- (f) expend any funds for the installation, construction, reconstruction, repair or replacement of capital Improvements of the Common Areas, so long as funds are available to the Association from any source (subject to compliance with the provisions of Section 6.5), including without limitation the Association's operating account and reserves, and funds from Special Assessments.

3.4 Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Common Area or any other part of the Project. After Declarant's Class B Membership terminates, the Declarant has the right to appoint one member to the Board so long as it owns one Lot which is not a Personal Lot. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area; provided, however, that the Association Rules may not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be available to each Owner. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and all other Persons having any interest in, or making any use of, the Real Property, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

3.5 Indemnification. To the fullest extent permitted by law, the Association shall indemnify and defend the officers, directors and every other person serving as an employee or direct agent of the Association or on behalf of the Association as a member of a committee or otherwise, and Declarant, including its partners or any Related Party to it (to the extent a claim may be brought against Declarant by reason of its appointment, removal or control of members of the Board), against all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity

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on behalf of the Association (or, in the case of Declarant, by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement thereof, whether or not he is a director, officer or serving in such other specified capacity at the time such expenses are incurred, unless the Board determines, in good faith, that such officer, director, or other person, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

3.6 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board, any other committees of the Association nor any member thereof, nor any directors or officers of the Association, shall be liable to any owner, tenant, the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board, or such committees or Persons reasonably believed to be within the scope of their respective duties.

3.7 Easements. In addition to the blanket easements granted in Articles 6 and 9 hereof, the Association is authorized and empowered to grant upon, over, across, through or under Common Area owned or controlled by the Association such permits, licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Area or for the preservation of the health, safety, convenience and welfare of the Owners provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

3.8 Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners at reasonable times during regular business hours, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

3.9 Records. The Association shall, upon reasonable written requests and during reasonable business hours, make available for inspection by each Owner the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws and Association Rules. Declarant shall be under no obligation to make its own books and records available for inspection by any Owner, Member, or other Person.

3.10 Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles, Bylaws and Association Rules; provided, however, no such delegation to a professional management company or otherwise shall relieve the Association of its obligation to perform any such delegated duty.

3.11 Emergency Powers. The Association or any person authorized by the Association may enter any Lot (other than any Improvements situated thereon) in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association unless covered by insurance carried by the Owner.

4. ASSOCIATION MEMBERS

4.1 Membership. Every Owner shall be a Member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws, Association Rules and Design Guidelines to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall

REC'D FOR RECORDS

be the sole qualification for membership; provided, however, a Member's voting rights or privileges in the Common Area, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership shall exist based upon ownership of a single Lot.

4.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the purchaser of the interest of an Owner in a Lot. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. To help defray the administrative expenses involved with the transfer of memberships, the Association shall assess a transfer fee for every transfer of membership associated with a Lot after the conveyance by Declarant of such Lot to an initial purchaser. The transfer fee shall initially be \$40.00 for each transfer and shall be payable by the purchaser of the Lot being conveyed. The amount of the transfer fee shall be subject to adjustment by the Association.

4.3 Voting Rights. An Owner's right to vote shall vest immediately upon the date Annual Assessments commence upon such Owners Lot as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

4.4 Classes of Voting Membership. The Association shall have two classes of voting membership.

Class A. Class A Members shall be all Owners with the exception of the Declarant (except as provided for hereinafter). Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. After termination of its Class B membership interest, Declarant shall also be a Class A Member, if it continues to own a Lot, including any Personal Lot. When more than one Person owns a portion of the interest in a Lot required for membership, each such Person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. The vote for each Lot shall be cast as a unit, and fractional votes shall not be allowed. If joint Owners are unable to agree among themselves as to how their vote or votes should be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote 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 that more than one vote is cast for a particular Lot, none of such votes shall be counted and such votes shall be deemed void.

Class B. The Class B Member shall be Declarant. The Class B Member is entitled to 10 votes for each Lot in which it holds the interest required for membership; provided that the Class B membership terminates and is converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When Declarant or a Related Party to it, owns, either separately or jointly, a total of not more than three Lots, one of which may be a Personal Lot, or
- (b) When Declarant notifies the Association in writing that it relinquishes its Class B membership.

If the next annual meeting of Members is not scheduled within 90 days following the date the Class B membership interests terminate, the Board of Directors shall call a special meeting of Members within 90 days of such termination for the purpose of electing a new Board of Directors.

4.5 Corporate Membership. If any Lot is owned by a corporation, partnership, trust, or other entity (the "Ownership Entity"), such Ownership Entity 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. In the absence of such designation and until such designation is made, the chief executive officer, if any, of the Ownership Entity shall have the power to vote the membership, and if there is no chief executive officer, then the board of

UNION COUNTY RECORDS

directors or general partner of such Ownership Entity shall designate who shall have the power to vote the membership.

4.6 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 Declaration, the Articles, Bylaws, Association Rules or Design Guidelines for a period of 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 attorney's fees, are brought current. If any Owner is in default of any obligation of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, and remains in default for more than 15 days after written notice from the Association to cure same, said Member's right to vote shall be suspended until said default is cured.

5. COVENANT FOR ASSESSMENT

5.1 Creation of the Lien and Personal Obligation.

(a) Each Owner of a Lot and the Declarant, except as otherwise expressly provided in this Declaration, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, 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, Annual Assessments, Supplemental Assessments, and Special Assessments, such Assessments and other fees to be fixed, established and collected from time to time as provided in this Declaration. Such Assessments and other fees, together with interest thereon, late charges, attorney's fees, court costs, and other costs of collection thereof, shall be a continuing lien upon the Lot against which each such Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time when such Assessment and other fees becomes due.

(b) Notwithstanding anything contained in Section 5.1(a) to the contrary, and except as to the Lots owned by Declarant, no Lot will be subject to any assessments or other charges under this Declaration until construction of the street up to boundary line of the Lot, as shown on the Plat, is completed and utilities are installed in the street adjoining such Lot (the "Required Improvements"). Unless the Declarant states in the deed conveying to an Owner of title to a Lot that construction of the Required Improvements have not been completed, by virtue of the conveyance of such title, construction of such Required Improvements shall be deemed complete. If the Required Improvements associated with any Lot have not been completed, Annual, Supplemental and Special Assessments for such Lot shall commence as of the first day of the month following such construction completion date, as designated by Declarant in its written notice to the Owner of such Lot and the Association.

5.2 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively for (a) payment of Common Expenses in connection with the upkeep, maintenance and improvement of the Common Area and such portion of the Lots and such Improvements located thereon as the Association is obligated to maintain under the provisions of the Declaration, and (b) promotion of the health, safety and welfare of the Owners and residents of Lots within the Real Property.

5.3 Annual Assessments.

(a) Each Owner shall pay, as his Annual Assessment, such Owner's Proportionate Share of the Common Expenses which shall be equal to the share payable by every other Owner. Payment of Annual Assessments shall be in such amounts and at such times as may be provided in Section 5.8 of this Declaration.

(b) Not later than 60 days prior to the beginning of each fiscal year of the Association, the Board shall make available for review by each Owner at the Association's office during reasonable times a *pro forma* operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board shall at that time determine the amount of the Annual Assessment to be paid by each Owner for his Lot by determining such Owner's Proportionate Share of the estimated Common Expenses set forth in such budget, subject to the approval of such assessments provisions of Section (d) below. The Board shall then notify each Owner of the amount of the Annual Assessment to be paid by such Owner. Each Owner shall thereafter pay to the Association his Annual Assessment in quarterly installments or such other periodic basis as may be fixed by the Board. Each installment shall be due and payable on the date set forth in the written notice sent to Owners.

(c) If the Board determines during any fiscal year that the total Annual Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Board shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Annual Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. If the estimated total Annual Assessments for the current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Annual Assessments for the succeeding year, or abate collection of Annual Assessments for such period as the Board deems appropriate. No reduction or abatement of Annual Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based. The Declarant is not obligated or liable to pay its Proportionate Share associated with the Lots it owns, except for his Personal Lot, of any portion of the budgeted Common Expenses which represents a reserve established by the Association for Common Expenses.

(d) For the first fiscal year of the Association, the Declarant shall prepare a budget which shall contain its good faith estimate of the total Annual Assessments for the first fiscal year of the Association. Each Owner is obligated to pay such estimated Annual Assessments, which are subject to adjustment, reduction or abatement in the same manner granted to the Board in Section 5.3(c) hereof.

5.4 Supplemental Assessments. If the Board determines that its funds budgeted or available in any fiscal year are or will become inadequate to meet all expenses of the Association, for any reason, including without limitation, nonpayment of assessments by the Members, it shall determine the approximate amount of such inadequacies for such fiscal year and prepare a supplemental budget and may levy a Supplemental Assessment against each Lot in such amount as the Board deems necessary in order to obtain the amount of such inadequacies. Notice of any such Supplemental Assessment shall be given to each Owner. The Supplemental Assessment shall be paid on such dates and in such installments as may be determined by the Board.

5.5 Special Assessments.

(a) In addition to the Annual and Supplemental Assessments, the Association may levy, in any assessment year, a Special Assessment applicable only to that fiscal year for the purpose of defraying, in whole or in part, the cost of any installation, construction, reconstruction, repair or replacement of capital Improvements of the Common Areas, including fixtures and personal property related thereto, or for any other lawful Association

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purpose (except as otherwise provided in Section 5.3 and 5.4 hereof), in accordance with the following provisions:

(i) Notwithstanding anything contained in this Declaration to the contrary, in no event shall the Declarant be obligated to pay any Special Assessment for any reason whatever, except in respect to Declarant's Personal Lot.

(ii) Any Special Assessments shall require the consent of (A) the Members having at least two-thirds 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, and (B) the Declarant so long as it owns at least one Lot which is not a Personal Lot.

(iii) Except for a Special Assessment contemplated by Section 5.5(b) hereof, while the Declarant owns the Class B membership interests, if Declarant on its own motion requests the levy of a Special Assessment, such Assessment shall require the written consent of the Members holding 100% of the votes entitled to be cast by Members (other than the Declarant) who are voting in person or by proxy at a meeting duly called for such purpose. If any Member dissents from Declarant's motion approving such Special Assessments, the other Members are free to authorize such assessment so long as the members, except for the Declarant, agree to pay their Proportionate Share of such dissenting Member's Special Assessment and Declarant's share thereof.

(b) A Special Assessment may also be a charge against a particular Owner and his Lot directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, Association Rules and/or Design Guidelines, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, Association Rules and/or Design Guidelines, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of the Declaration, plus interest thereon as provided for in this Declaration. A Special Assessment against a particular Owner and his Lot may be perfected by the Association in the manner prescribed in Section 5.9 of the Declaration.

5.6 Notice and Quorum for Any Action on Assessment. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.3, 5.4 or 5.5 shall be sent to all Members not less than 15 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 60% of all the votes of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

5.7 Uniform Rate of Assessment. Except for Special Assessments levied pursuant to this Declaration with respect to a specific Lot(s) under Section 5.5(b), or elsewhere in this Declaration, as it pertains to the Declarant, Annual, Supplemental and Special Assessments must be fixed as a uniform rate for all Lots based upon the Proportionate Share.

5.8 Date of Commencement of Assessments: Due Dates. Except as otherwise provided in Section 5.1(b) hereof, the Annual Assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the first Lot to the purchaser thereof. The first Annual Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the Annual Assessment against each Lot at least 30 days in advance of the fiscal year, and the Annual Assessment for the current fiscal year shall remain in effect until the thirtieth day after the Board fixes the Annual Assessment for the upcoming fiscal year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto prior to the commencement of the fiscal

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year, provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessments as fixed by the Board. The Board may require that the Annual, Supplemental or Special Assessments be paid in installments. Unless otherwise specified by the Board, Special and Supplemental Assessments shall be due 30 days after they are levied by the Association and notice of the assessment is sent to each Owner, provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessments as fixed by the Board. Except for the prorated Annual Assessment payable upon the closing of the sale of a Lot to an initial purchaser, the Annual Assessments shall be payable in advance in equal semi-annual installments.

5.9 Effect of Nonpayment of Assessments. Any Assessment, or any installment of any Assessment, not paid within 30 days after the Assessment, or the installment of the Assessment first became due, shall be deemed delinquent and shall bear interest from the due date at the Default Rate of Interest. Each Owner shall also pay a late charge as established by the Board for each delinquent Assessment or installment of an Assessment. Any Assessment, or any installment of any Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (a) the name of the delinquent Owner as shown on the records of the Association, (b) the legal description, street address and number of the Lot against which the claim of lien is made, (c) the amount claimed as of the date of the recording of the notice including interest, collection costs, late charges, lien recording fees and attorneys' fees, and (d) the name and address of the Association. The Association's lien priority shall relate back to the date of recordation of this Declaration and shall have priority over all liens or claims created subsequent, except for tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal or other governmental body and any First Mortgage.

Before recording a lien against any Lot, the Association shall present to the defaulting Owner a written demand for payment. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within 10 days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, interest, lien fees, late charges and attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

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

5.10 Subordination of the Lien to Mortgages. The lien of the Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgagee. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure by a First Mortgagee, shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or the Owner thereof from liability for any Assessments thereafter becoming due or from the lien thereof.

5.11 Exemption of Owner. Except as otherwise expressly provided in Section 5.5(a)(ii) hereof, no Owner of a Lot may exempt himself from liability for Annual, Supplemental or Special Assessments levied against his Lot or for other amounts which he may owe to the Association under this Declaration, the Articles, Bylaws or Association Rules by waiver or non-use of any of the Common Area or by the abandonment of his Lot.

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5.12 Unallocated Tax Assessments. If any taxes are assessed against the personal property of the Association, said taxes shall be included in the Assessments made under the provisions of this Article, and, if necessary, a Supplemental or Special Assessments may be levied against the Lots in an amount equal to said taxes, which assessment shall be due 30 days before the due date of such taxes.

5.13 Certificate of Payment. The Association shall, within 15 days of a request from an Owner, furnish to such Owner a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a particular Lot have been paid and the amount of any unpaid Assessments. The Association may charge the Owner requesting a certificate a reasonable fee (as established by the Board) for each such certificate. Such certificate shall be conclusive evidence of payment of any Assessment described in the certificate as having been paid.

5.14 Establishment of Reserve Fund. For the purpose of establishing a reserve fund to be utilized by the Association for the periodic maintenance, repair and replacement of Improvements to the Common Area, upon purchase of a Lot, the Public Purchaser (except Declarant) shall pay to the Association immediately upon becoming an Owner of the Lot a sum equal to 1/4 of the full Annual Assessment then in effect, or, if later, when the first Annual Assessments are determined as provided in Section 5.3(a) hereof.

6. RIGHTS OF ENJOYMENT

6.1 Members' Right of Enjoyment. Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Area, and such right shall be appurtenant to and shall pass with the fee interest in every Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions of record and as contained in this Declaration, including without limitation, the following:

(a) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Area.

(b) The right of the Association to borrow money for the purposes of improving, replacing, restoring or expanding the Common Area, but not to mortgage the Common Area, provided that the prior affirmative vote or approval of the Members entitled to cast two-thirds of the voting power of the membership has been obtained to mortgage said property, and provided further that the rights of the lender thereunder shall be subordinate to the rights of the Members.

(c) The right of the Declarant and its agents and representatives, in addition to Declarant's rights set forth elsewhere in this Declaration, to the nonexclusive use, without charge, of the Project (except for the Lots owned by Persons other than the Declarant), for display and exhibit purposes, for the maintenance of sales facilities, and for purposes of selling Lots and/or constructing Dwelling Units.

6.2 Delegation of Use. Any Member may delegate his right of enjoyment to the Common Area to the members of his family or his tenants who reside in his Residence, or to his guests, subject to rules and regulations adopted by the Board.

6.3 Waiver of Use. No Member may exempt himself (and no Member shall be exempt) from personal liability for Assessments or release any Lot owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, the Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of such Member's right to the use and enjoyment of the Common Area or the abandonment of such Member's Lot.

6.4 Limitations. An Owners right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot.

DECLARATION

6.5 Private Street. The dedication of the Private Street for public use, or the transfer, mortgage or pledge of the Private Street shall require the unanimous written consent of the members of the Association.

7. USE RESTRICTIONS

7.1 Scope. Except as otherwise specified, the provisions of this Article shall apply to all of the Project.

7.2 Residential Use. All Lots shall be used, improved and devoted exclusively to residential use. Each Residence constructed on the Real Property may be occupied only by a Single Family.

7.3 No Commercial Use. Except for Declarant's use of the Project as provided in Sections 6.1(c) and 7.34 hereof and the use of a Residence in compliance with any "home office use" rules promulgated by the City of El Paso or any agency thereof, no part of a Lot shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or any nonresidential purposes; provided, however, that the Association shall have the right to provide or authorize such services on the Common Area as it deems appropriate for the enjoyment of the Common Area or for the benefit of the Members. Nothing herein shall be deemed to prevent the leasing of a Residence to a Single Family from time to time by the Owner thereof, subject to all of the provisions of this Declaration, the Articles, Bylaws, Association Rules and Design Guidelines. Any Owner who leases his Residence shall promptly notify the Association and shall advise the Association of the term of the lease and the name of each tenant.

7.4 Minimum Dwelling Unit Size, and Dwelling Height. Any Dwelling Unit erected, permitted or maintained on any Lot shall have a minimum livable square footage, excluding garage, porches, guest house, and patios, of 3,500 square feet. The maximum dwelling height shall be the lesser of the height limitations prescribed in the applicable municipal ordinances or in the Design Guidelines. The number of stories of the Dwelling Units shall be limited as provided in the Design Guidelines.

7.5 Roofing Material. All roofing material used on pitched or sloping roofs shall be clay or concrete tile, unless otherwise authorized and approved in writing by the Architectural Committee. Dwelling Units constructed with flat or substantially flat roofs shall have a parapet wall, screening the flat roof portions from view, on the front, side and rear elevations of the Dwelling Unit. Parapet walls may be interrupted by design accents of projecting flat sections of the roof with the prior written authorization and approval of the Architectural Committee.

7.6 Walls and Fences. Perimeter fences or walls constructed upon the dividing property line or boundary between Lots (the "Boundary Fence") or near or adjacent to said dividing property line when existing easements prevent a fence from being located on the dividing property line, shall be prohibited. Notwithstanding the foregoing, fences or walls which are a part of an entry way to the Lot are permitted, with the prior written authorization and approval of the Architectural Committee.

7.7 New and Permanent Construction. All Dwelling Units and other structures on the Property shall be of new and permanent construction, and no structure shall be moved from any location on or off the Property onto any portion of the Property.

7.8 Mechanical Equipment. All mechanical equipment including evaporative coolers, air conditioning and heating equipment, ducts, wherever placed, are subject to the provisions of the Design Guidelines.

7.9 Solar Panels. No solar panels shall be installed on any Dwelling Unit or Lot without the prior written approval and authorization of the Architectural Committee. If such approval is granted, the Architectural Committee may specify the size and type of solar panels allowed, and the location where they may be installed.

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7.10 Planting and Landscaping. Except for (i) such planting and landscaping which is installed in accordance with the initial construction of Lots, or in replacement of the same vegetation previously approved by the Architectural Committee as part of such initial construction, and (ii) such planting and landscaping as is Not Visible From Neighboring Property and is in an area not maintained by the Association, no planting or landscaping shall be done. These restrictions shall not apply to Declarant's activities in connection with construction of the Project.

7.11 Outside Speakers and Amplifiers. No radio, stereo or other broadcast units of any kind and no amplifiers or loudspeakers of any kind shall be placed, allowed or maintained outside, or be directed to the outside of any Dwelling Unit without the prior written approval and authorization of the Architectural Committee.

7.12 Installation of Landscaping Improvements. Within 90 days after the date on which the City of El Paso issues a Certificate of Occupancy for a Dwelling Unit on a Lot, the Owner of the Lot shall install such landscaping as required under the Design Guidelines adopted by the Architectural Committee.

7.13 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, which in any manner will allow light to be directed or reflected on the Common Area, or any part thereof, or any other Lot, except as may be expressly permitted by the Association Rules or the Design Guidelines.

7.14 Antennae. The installation of television, radio, or other electronic antennae or satellite dish or device of any type shall be subject to compliance with the provisions of the Design Guidelines.

7.15 Utility Service. Except as approved in writing by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electronic current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Dwelling Units or other structures approved by Declarant or the Architectural Committee.

7.16 Temporary Structures. No structure of a temporary character, trailer, basement of an incomplete building or Dwelling Unit, tent, shack, garage or other out-building shall hereafter be used at any time, on any portion of the Property for a residence, either temporarily or permanently. Temporary buildings or structures, may be approved by the Architectural Committee at its sole and absolute discretion for use during the construction of a Dwelling Unit. If such approval is granted, the temporary building or structure shall be removed immediately after the completion of construction.

7.17 Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other Improvement or other obstruction (a) which would interrupt the normal drainage of the land or (b) within any area designated on the Plat (or other binding document) as a "Drainage Easement", except that, with the prior consent of the Architectural Committee, non-permanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

7.18 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Dwelling Unit, appurtenant structures, or other Improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Common Areas.

7.19 Signs. No sign of any kind shall be displayed to the public view from any Lot or the Common Area without the approval of the Association as to size and design, except; (a) such signs as may be used by Declarant in connection with the development and sale of Lots and/or Residences in the Project; (b) such

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signs as may be required by legal proceedings; (c) such signs as may be required for traffic control and regulation of the Common Area: or (d) such other signs (including, but not limited to, construction job identification signs, builders' signs, "for sale" signs, "for lease" signs and temporary "rent" signs) as are in conformance with the requirements of the City of El Paso and which have been approved in advance and in writing by the Architectural Committee as to size, colors, design, message content, number and location.

7.20 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within each Dwelling Unit.

7.21 Window Covers. Interior curtains, drapes, shutters or blinds may be installed as window covers. No aluminum foil, reflective material, newspaper or other materials not customarily made for use as window covers may be installed or placed upon the inside or outside of any Dwelling Unit or other structure. Exterior awnings, canopies, shutters and similar items may not be installed without prior written approval of the Architectural Committee as to color and style.

7.22 Vehicles. All automobiles, vans, pick-up trucks of less than one ton capacity, motorcycles and motor vehicles owned by any Owner, members of such Owner's family, or tenants should be parked in the garage of such Owner's Residence, and no such vehicle may be parked overnight on any street or on any portion of the Common Area where parking spaces are provided. Except with the prior approval of the Architectural Committee, no mobile home, motor home, trailer, truck with a capacity of one ton or more, camper, boat or other type of recreational vehicle shall be kept, placed, maintained, constructed, reconstructed or repaired within the Project. The provisions of this section shall not apply to emergency vehicle repairs, periodic social gatherings, the loading or unloading of household articles, or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Project including the assessment of charges to Owners who violate or whose invitees violate such rules. Any charges so assessed shall be Special Assessments. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

7.23 Garages. No garage doors shall be permitted to remain open except for a temporary purpose, and the Board may adopt rules for the regulation of the opening of garage doors, including the assessment of charges to Owners who violate or whose tenants or invitees violate such rules.

7.24 Animals. No animals, including horses or other domestic farm animals, fowl, or poisonous reptiles of any kind, may be kept, bred or maintained on any Lot or in any Dwelling Unit, or in or upon any Common Area, except a reasonable number of generally recognized household pets and in accordance with the Association Rules. No animals shall be kept, bred or raised within the Project for commercial purposes. In no event shall any domestic pet be allowed to run freely outside its owner's Lot without a leash, or so as to create a nuisance. No animals shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals exceeds the maximum number permitted. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained in this Declaration.

7.25 Garbage, Trash, Debris and Hazardous Materials. No trash, rubbish, hazardous materials, or debris of any kind shall be placed, stored, or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion of the Project unsanitary, unsightly, offensive or detrimental to any other Lot in the Project or to its occupants. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible

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From Neighboring Property except to make the same available for collection and then only for the time reasonably necessary to effect such collection. The Board shall have the right, in its sole discretion, to require all Owners to place their garbage or trash containers at a specific location for collection or to require all Owners to subscribe to a trash collection service, unless such Owner subscribes for his own private trash collection service. All rubbish, trash and garbage shall be removed from the Lots and Common Area and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area. During construction of a residence on a Lot, the Owner of such Lot shall provide enclosed rubbish container for each Lot and shall keep its Lot clean of construction trash at all times. In addition, each Owner shall during such construction be responsible to immediately clean up any trash, rubbish, debris, mud and dirt brought or tracked onto the Project in connection with such construction.

7.26 Fires. Other than barbecues in properly constructed barbecue pits or grills, and firepits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in such rules, no open fire shall be permitted on the Project nor shall any other similar activity or condition be permitted.

7.27 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Project, which may cause the insurance to be cancelled or the premiums of such insurance to be increased for any Lot or the Common Area, or which may obstruct or interfere with the rights of other Owners, or persons authorized to the use and enjoyment of the Common Area, or annoy them by reasonable noises or otherwise, nor will he commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner shall comply with the Association Rules, the requirements of all health authorities and other governmental authorities having jurisdiction over the Project. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

7.28 Diseases and Insects. No Owner shall permit anything or condition to exist within the Project which shall induce, breed or harbor infectious plant diseases or noxious insects.

7.29 Mining. No Portion of the Project shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

7.30 Safe Condition. Without limiting any other provision in this Article, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Area.

7.31 Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of 12 feet, without the prior approval of the Architectural Committee.

7.32 Variances.

(a) Subject to the provisions of Section 7.32(b) hereof, which provisions shall govern and control, the Architectural Committee may, at its sole option and in extenuating circumstances, grant variances from restrictions set forth in the Design Guidelines and Articles 7 and 8 of this Declaration, except for any variance or other instrument which would constitute an Amendment to this Declaration or contravene any prior variance or Amendment and would permit the reduction of the minimum livable square footage of a Dwelling Unit, as prescribed in Section 7.4 hereof, if the Committee determines, in its sole discretion:

(1) That either (A) enforcement of a particular restriction would create a substantial non-economic hardship on an Owner, or (B) a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete; and

(2) That the activity permitted under the variance will not have any substantial adverse effect on one or more the Owners and is consistent with the high quality of life intended for residents of *Pinnacle Estates*.

(b) Notwithstanding the provisions of Section 7.32 (a) hereof to the contrary, Declarant has the right in its sole discretion to grant any variance whatsoever from the restrictions set forth in the Design Guidelines and Articles 7 and 8 of this Declaration, except for any variance or other instrument which would constitute an Amendment to this Declaration or contravene any prior variance or Amendment and would permit the reduction of the minimum livable square footage of a Dwelling Unit, as prescribed in Section 7.4 hereof (i) so long as Declarant owns at least one Lot which is not a Personal Lot, or (ii) at any time as it pertains solely to Declarant's Personal Lot.

7.33 Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board.

7.34 Declarant's Exemption. Notwithstanding any other provision of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, it shall be expressly permissible for Declarant or its duly authorized agents, employees and representatives to maintain during the period of construction and sale of Lots and/or Dwelling Units such facilities, structures, signs or other sales-related items as are necessary or convenient, in the sole opinion of the Declarant, to the sale of the Lots and/or Dwelling Units, including without limitation, a business office, storage area, construction yards, model units or homes and sales offices; provided, however, that such use of the Common Area by the Declarant must not unreasonably interfere with any Owner's use and enjoyment of the Common Area.

7.35 Enforcement. The Association or its authorized agents may, upon reasonable written notice, enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to this Declaration, the Articles, Bylaws, and Membership Rules, shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article 5 hereof. All remedies available at law or equity shall be available in the event of any breach of any provision of this Article by any Owner, tenant or other person.

7.36 Modification. Except where Declarant's or Designated Owner's rights are involved or Declarant's or Designated Owner's consent is required, or so long as the Declarant owns at least one Lot which is not a Personal Lot, the Board may modify or waive the foregoing restrictions contained in this Article 7 or otherwise restrict and regulate the use and occupancy of the Project, the Lots and the Residences by reasonable rules and regulations of general application adopted by the Board from time to time which shall be incorporated into the Association Rules, so long as such rules or regulations do not amend this Article 7 or contravene any prior variance or Amendment.

8. ARCHITECTURAL

8.1 Establishment and Appointment of Architectural Committee. The Architectural Committee shall consist of a minimum of three members who shall be appointed from time to time by the Board. The Declarant shall initially appoint the members of the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until the Declarant's Class B membership terminates. Thereafter, members of the Architectural Committee shall be appointed by the Board, except that Declarant has the right to appoint one member, or a replacement for such member, of the Architectural Committee so long as it owns one Lot which is not a Personal Lot. Persons appointed to the Architectural Committee, other than those persons appointed by Declarant, must be Members or satisfy such other requirements as may be set forth in the Design Guidelines or in this Declaration. The Declarant voluntarily may (but shall not be required to) permit the Members to appoint one or more members of the

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Architectural Committee at any time. The members of the Architectural Committee need not be architects, Owners or occupants, and do not need to possess any special qualifications. Architectural Committee members shall serve for a term of one year and may be reappointed or reelected; provided that such members may be removed by the Board at any time during their term of office, with or without cause. Upon removal of a member of the Architectural Committee, the Board shall appoint a replacement member of the Architectural Committee as soon as possible, such that the Committee consists of the minimum number of members designated in this Section 8.2.

8.2 Design Guidelines. The Architectural Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (collectively, the "Design Guidelines") which the Architectural Committee may, from time to time, amend, subject to the final approval of the Board. So long as the Declarant owns at least one Lot, which is not a Personal Lot, any such amendment to the Design Guidelines is subject to the approval of Declarant. The Design Guidelines are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners, Members, Occupants or other Persons as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

- (a) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required pursuant to the Design Guidelines.
- (b) Designation of a Building Envelope within a Lot, thereby establishing the remaining location of the developable area of the Lot.
- (c) Procedures for assuring conformity of completed Improvements to plans and specifications approved by the Architectural Committee; provided, however, as to purchasers and encumbrancers in good faith and for value, the completed Improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee and in compliance with the architectural standards of the Association and this Declaration, unless (a) notice of noncompletion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Architectural Committee, shall be sent to the Owner of such Lot within the later of (i) one year after the expiration of the time limitation described in Section 8.2(a) hereof, or (ii) one year following completion of the Improvements, or (b) legal proceedings shall have been instituted to enforce compliance or completion within the one year period described in said Section 8.2(a).
- (d) Such other limitations and restrictions as the Board or Architectural Committee in its reasonable discretion shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibitions of certain types of landscaping, trees and plants), and regulation of all construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, but not limited to, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement.
- (e) So long as the Declarant owns one Lot which is not a Personal Lot, the Declarant reserves the right on behalf of the Architectural Committee to designate, hire, or fire outside architectural consultants to review and approve plans submitted to the Architectural Committee for review and approval.

8.3 Meetings. The Architectural Committee shall hold regular meetings. A quorum for such meetings shall consist of a majority of the 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.

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8.4 General Provisions.

- (a) The Architectural Committee may assess a fee of \$500 or whatever additional reasonable fee the Architectural Committee sets in connection with its review of plans and specifications, and may require a cash deposit in connection with alteration of the existing topography and construction of Improvements on a Lot in order to assure compliance with all requirements provided for in Section 8 of this Declaration and the Design Guidelines.
- (b) The Architectural Committee may delegate its plan review responsibilities, except final review and approval as may be required by the Design Guidelines, to one or more of its members or architectural consultants retained by the Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Architectural Committee.
- (c) The address for the Architectural Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines. Such address shall be the place for the submittal of plans and specifications and the place where the current Design Guidelines shall be kept.
- (d) The establishment of the Architectural Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declaration, the Bylaws or Association Rules.
- (e) The Architectural Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Design Guidelines within such period as may be specified in the Design Guidelines.
- (f) Any consent or approval of the Architectural Committee which is required under this Declaration of the Design Guidelines shall not be effective unless it is in writing and signed by the Architectural Committee or the Persons to whom responsibility for the particular consent or approval has been delegated under Section 8.

8.5 Approval and Conformity of Plans. No excavation, fill or other alteration of the topography or drainage of any Lot shall be begun and no building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property or any Lot, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, but not limited to, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee.

The Architectural Committee shall have the right to refuse to approve any grading plans or plans and specifications which are not suitable or desirable, in its sole opinion, for aesthetic or any other reasons, and in passing upon such grading plans, plans and specifications, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building, structure or other improvement or landscaping, in light of Declarant's development plan for the Project as an exclusive residential development of custom homes. No changes or deviations in or from such grading plans and plans and specifications once approved shall be made without the prior written approval of the Architectural Committee.

8.6 Compensation; Delegations. Unless authorized by the Board, the members of the Architectural Committee shall not receive any compensation for services rendered. All members of the

Architectural Committee shall be entitled to reimbursement 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 which it retains.

8.7 Non-Liability and Release. The Association, and its directors, officers , or employees; the Declarant, its partners, or the shareholders, officers and directors of any such partner, and any Person who is a Related Party of the Declarant; any member of the Architectural Committee, or any agent, employee or other party providing architectural consulting services to the Architectural Committee (the "Released Parties") shall be liable in damages to anyone submitting plans for approval by the Architectural Committee, the Declarant, 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 such plans, and each Owner or other person submitting plans agrees, by submission of such plans and specifications, that he will not bring any action or suit against any of the Released Parties to recover damages as above described, including, without limitation, to recover damages arising out of or in connection with flooding, natural disaster or soil conditions, or failure to comply with the applicable federal, state and municipal zoning or building ordinances, including without limitation the provisions of the Planned Mountain Development Code and the Mountain Development Area of the City of El Paso which governs the construction, use, repair and maintenance of Residences (collectively called the "Applicable Laws"). Approval by the Declarant or the Architectural Committee shall not be deemed to be a representation or warranty that the Owner's plans (i) are free from defects (design, construction or otherwise), (ii) are free from hazards, such as flooding, natural disaster or adverse soil conditions or (iii) comply in whole or part with applicable governmental ordinances or regulations, including, but not limited to, the Applicable Laws. It shall be the sole responsibility of the Owner, or other person submitting plans to the Architectural Committee or performing any construction of the Residences to comply with all such ordinances, regulations and codes including without limitation the Applicable Laws. Each Owner understands that due to the location and condition of the Owner's Lot there may be certain inherent risks and specific requirements including, but not limited to, those related to flooding, soil conditions or natural disaster and compliance with the Applicable Laws, agrees for himself, his family, guests and invitees (the "Releasing Parties") to release the Released Parties, from any and all liability arising from any damage or injury to the person or property of the Releasing Parties rising out of or in connection with each of the aforesaid matters.

9. EASEMENTS

9.1 Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

9.2 Utility Easement. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, natural gas, telephones, electricity and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain any necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area.

9.3 Easement for Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachments created by construction, settling, overhangs, and discrepancies between the Plat and construction, as originally designed or as constructed by Declarant or its agents or contractors. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does

exist. In the event a building containing an encroachment is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Residence due to construction shall be permitted and that a valid easement for said encroachments and maintenance thereof shall exist. Notwithstanding any provisions in this section to the contrary, any encroachment permitted by this section shall not exceed one foot.

9.4 Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their families, guests, tenants, and invitees for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Area, and for vehicular traffic over, through and across such portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

9.5 Encroachment Easement Agreement. Under the terms of the Encroachment Easement Agreement, Stanton Park LLC has granted to the Declarant for the benefit of the Owners and the Association an easement for the purpose of permitting the installation, maintenance, repair and replacement of an underground retaining wall as shown on the Encroachment Easement Agreement to the completion of construction of the entry way which forms a part of the Improvements. The Association hereby assumes all of the rights, privileges, obligations and liabilities of the Declarant under the Encroachment Easement Agreement and agrees to perform the obligations of the Declarant thereunder and as otherwise provided therein after the date hereof. Nothing contained in this Declaration to the contrary shall be construed as a prohibition, limitation, or restriction of the Association's duties, obligations or liabilities arising under the Encroachment Easement Agreement.

9.6 Association's Right of Entry. During reasonable hours, the Association, any member of the Architectural Committee, any member of the Board or any authorized representative of them, shall have the right to enter upon and inspect any land surrounding any residential structure on the Real Property, excluding the interior of any Dwelling Unit located thereon, for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules and the Design Guidelines are being complied with by the Owner of each Lot.

9.7 Association's Easement for Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and those portions of the Lots which the Association is obligated to maintain.

10. MAINTENANCE

10.1 Maintenance of Common Area By Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without the approval of the Owners, do any of the following:

- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any Common Area (to the extent that such work is not done by a government entity, if any, the Association shall be responsible for the maintenance and upkeep of such area);
- (b) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway or parking area;
- (c) Replace injured and diseased trees or other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

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(d) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration. The Board shall be the sole judge as to the appropriate maintenance of the Common Area.

10.2 Maintenance of Lots by Owner. Each Owner of a Lot shall be solely responsible for the maintenance of all portions of his Lot. The Owner of each Lot shall at all times perform his obligations under this Section so that the land and Improvements comprising his Lot shall be in good condition and repair. Such obligations of Owner shall include keeping all shrubs, trees, grass, plantings and landscaping of every kind properly cultivated and free of trash, weeds and other unsightly material. All maintenance of the exterior of the Residence, including without limitation walls, fences and roofs, shall be accomplished in accordance with the Design Guidelines and, if required by the Design Guidelines, only after approval of the Architectural Committee.

10.3 Damage or Destruction by Owners. Each Owner shall be responsible for the repair or replacement of any damage or destruction to the Common Area or to any other Lot which is caused by such Owner or its family members, guests, invitees, subcontractors, agents or a employees, including without limitation, any damage or destruction to concrete, paving or curbing or other Improvement within the Project. In the event such damage or destruction is not immediately repaired or replaced to the satisfaction of the Association, the Association may undertake such repair or replacement, in which case any expenses incurred by the Association in connection therewith shall be paid by said Owner to the Association upon its demand, and such amounts shall be a lien on any Lot(s) owned by such Owner, and the Association may enforce collection of any such amounts in the same manner as provided in Article 5 of this Declaration for the collection and enforcement of Assessments.

10.4 Nonperformance by Owners. If any Owner fails to maintain any portion of the Lot and Improvements comprising his Residence which he is obligated to maintain under the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, then the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by such Owner upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot and the Association may enforce collection of such amounts in the same manner and to the same extent as provided in Article 5 of this Declaration for the collection and enforcement of Assessments.

10.5 Total or Partial Destruction. If any Residence is totally or partially destroyed, the Owner shall either rebuild the structure in a timely manner or demolish the same and remove the debris from the Project in a timely manner. If the Owner fails to comply with this Section, the Association may undertake the work on the Owner's behalf and charge the Owner therefor. The Association may enforce collection of such amounts in the same manner and to the same extent as provided in Article 5 of this Declaration for the collection and enforcement of Assessments.

10.6 Payment of Utility Charges. Each Lot shall be separately metered for water, sewer, cable television, telephone, gas, and electrical service, and all charges for such service to the Lot shall be the sole obligation and responsibility of the Owner of each Lot. All bills for utility service to the Common Area shall be billed to the Association, and the Association shall be responsible for the payment of such charges. The cost of utility service to the Common Area shall be a common expense of the Association and shall be included in the budget of the Association.

11.2 Insurance on Lots. The Association shall not be obligated to obtain property insurance, liability insurance, flood insurance or any other type of insurance covering the Lots or the Improvements located thereon. The procurement and maintenance of insurance on each Lot, including all Improvements on such Lot shall be the sole obligation of the Owner thereof. Each Owner shall also be responsible for obtaining all liability insurance, personal property insurance and any other type of insurance to the extent desired by such Owner.

11.3 Certificates 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, at the requesting party's expense to any Owner. Any insurance obtained pursuant to this Article may not be cancelled until 30 days after notice of the proposed cancellation has been mailed to the Association and to each Owner to whom certificates of insurance have been issued.

11.4 Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, without limitation, any management agent to whom the Association has delegated some or all of the responsibility for the handling of such funds. The total amount of fidelity bond coverage shall be based upon the best business judgment of the Board, and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. In no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three months of Annual Assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also:

- (a) Name the Association as an obligee;
- (b) Contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and
- (c) Provide that they may not be cancelled (including cancellation from non-payment of premium) or substantially modified without at least 10 days prior written notice to the Association.

11.5 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Sections 11.1 and 11.4 of this Article shall be included in the budget of the Association and shall be paid by the Association.

11.6 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association. Subject to the provisions of Article 12 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

11.7 Annual Insurance Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Area in light of increased construction costs, inflation, practice in El Paso County, Texas, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

12. DESTRUCTION OF IMPROVEMENTS

12.1 Duty of Association. If partial or total destruction of Improvements upon the Common Area, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this

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Article. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose.

12.2 Automatic Reconstruction. If (a) the amount available from the proceeds of such insurance policies for the restoration and repair of such Improvements are at least 65% of the estimated cost of restoration and repair or (b) the cost not covered by insurance proceeds is less than the sum of \$750.00 per year per Lot, a Special Assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damaged or destroyed Common Area to be restored as closely as practical to its condition prior to the destruction or damage.

12.3 Reconstruction by Vote of Members. If the amount available from the proceeds of such insurance policies for the restoration and repair of such Improvements (except for the Private Street, as provided in Section 12.6 hereof) are (a) less than 65% of the estimated cost of restoration and repair or (b) greater than the sum of \$750.00 per year per Lot, the Improvements shall not be replaced, or restored unless a majority of the voting power of the Association agrees in writing to such replacement or restoration or gives its affirmative vote at a meeting duly called therefor. Such majority vote must include at least a two thirds majority of the Class A Members. If the Members approve such replacement or restoration, the Board shall cause the damaged or destroyed Common Area to be restored as closely as practical to its former condition prior to the destruction or damage.

12.4 Excess Insurance Proceeds. If any excess insurance proceeds remain, after any reconstruction by the Association pursuant to this Article, the Board, in its sole discretion, may retain such sums in the general funds of the Association or distribute pro rata all or a portion thereof to the Members.

12.5 Use of Special Assessments. All amounts collected as Special Assessments pursuant to this Article shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

12.6 Repair of Private Street. If partial or total destruction of any of the Private Street occurs, the Board shall cause such damaged or destroyed Private Street to be restored as closely as practical to its condition prior to the destruction or damage. The Association shall have the right to levy a Special Assessment, as provided in Section 5.5 hereof, to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose.

13. EMINENT DOMAIN

13.1 Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Area.

13.2 Representation by Board in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Area, the Members hereby appoint the Board or such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

13.3 Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

13.4 Award for Common Area. Any awards received on account of a taking of the Common Area shall be paid to the Association. The Board may in this sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Members.

20110101 09:44:10 AM

14. **GENERAL PROVISIONS**

14.1 **Enforcement.** The Association, or any Owner, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. The Association, or any Owner, shall also have the right to enforce, by proceedings at law or in equity, the provisions of the Articles or Bylaws and any amendments thereto. With respect to Assessment liens or any other liens or charges and Association Rules, the Association shall have the exclusive right to enforcement thereof.

14.2 **No Waiver.** Failure by the Association, or by any Member, to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws, or Association Rules in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

14.3 **Cumulative Remedies.** All right, options and remedies of Declarant, the Association, or the Owners under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, or the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

14.4 **Severability.** Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

14.5 **Violations and Nuisances.** Every act or omission whereby any provision of the Declarant is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner.

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

14.7 **Joint and Severable Liability.** In the case of joint ownership of a Residence, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

14.8 **Attorney's 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 this Declaration, the Articles, Bylaws, and/or Association Rules, the Association shall be entitled to recover from the defaulting Member the reasonable attorneys' fees and related costs incurred by the Association in connection therewith.

14.9 **Binding Effect.** By acceptance of a deed or by acquiring any ownership interest in any Lot subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferee and assigns, binds himself, his heirs, personal representatives, successors, transferee 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 improvement and development of the Project 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 transferee thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants

DECLARATION

and agrees that the interest of each Owner by virtue of his purchase of a Lot or Residence within the Project (specifically, fee ownership of the Lot or Residence including all rights and easements granted to him by this Declaration and by the deed of conveyance) 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 or Residence even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Residence.

14.10 Notices. Any notice to be given under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United State mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's residence. In the case of co-owners, any such notice may be delivered or sent to any one of the co-owners on behalf of all co-owners and shall be deemed delivered to all such co-owners.

(b) Notice to the Association shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, addressed as follows:

Pinnacle Estates Homeowners Association
300 East Main, Suite 900
El Paso, Texas 79901

(c) Notice to the Declarant shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, addressed as follows:

Pinnacle Partners, L.P.
c/o Bissell Management, Inc.
300 East Main, Suite 900
El Paso, Texas 79901

Any of the above notices so deposited in the mail shall be deemed delivered 72 hours after such deposit.

14.11 Leases. Any agreement for the leasing or rental of a Residence (hereafter in this Section referred to as a "Lease") shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, the Association Rules, the Design Guidelines and applicable agreements between the Association and any state, local municipal or federal agency. Said Lease shall further provide that any failure by the tenant thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. All Leases shall be in writing. Any Owner who shall lease or rent his Residence shall be responsible for assuring compliance by such Owner's tenant with this Declaration, the Articles, the Bylaws, the Association Rules and the Design Guidelines, and shall be jointly and severally responsible for any violation thereof by his tenant. No Residence shall be leased for transient or hotel purposes, which shall be defined as rental for any period less than 30 days, or any rental whatsoever, if the occupants of the Residence are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. No Residence shall be leased or rented to more than one Single Family at any time.

14.12 Construction By Declarant. Subject to the provisions of Section 14.15 hereof and so long as the exercise by Declarant of its rights in this Section 14.12 do not unreasonably interfere in any material respect with the Members' rights to use and enjoy the Common Areas, nothing else in this Declaration shall prohibit or limit the right of Declarant at any time so long as it owns one Lot, other than a Personal Lot, to establish in the Common Areas or on any Lot prior to the sale thereof by the Declarant to a Public Purchaser any of the following:

07/14/03 10:00 AM

- (a) To construct additional Improvements as Declarant deems advisable in the Common Area or on any Lot prior to the sale of such Lot, including the right to erect, construct and maintain on the Real Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise; and
- (b) To grant additional licenses, reservations and rights-of-way in the Common Area or on any Lot prior to the sale of such Lot, to itself, utility companies or others, as may from time to time be reasonably necessary to the proper development and disposal of the Project; and
- (c) To alter its construction plans and designs for the Project as it deems appropriate.

14.13 Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any committees of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

14.14 Term. The covenants and restrictions of this Declaration shall run with and bind the Project for a term of 50 years from the date this Declaration is recorded. Thereafter they shall be automatically extended for successive periods of 10 years each, unless there is an affirmative vote to terminate this Declaration by the then Members or their proxies casting 75% of the total votes cast at an election held for such purpose within six months prior to the expiration of the initial effective period hereof or any 10 year extension.

14.15 Amendments. Subject to the other provisions of this Declaration, this Declaration may be amended under the following terms:

(a) **Association's Right to Amend.** Except as otherwise provided in Sections 14.15(b), (c) and (d), any proposed amendments or modifications to the Declaration (an "Amendment") must be approved by a majority of the Board before its adoption, and the approval of (i) not less than 51% of the voting power of the Members, and (ii) the Declarant so long as it owns at least one Lot which is not a Personal Lot.

(b) **Unanimous Vote Requirement.** Notwithstanding the requirement to obtain the consent of not less than 51% of the voting power of the Members under Section 14.15(a), 100% of the voting power of the Members shall be required for any Amendment which amends or changes any of the following provisions of this Declaration:

- (1) Subdivide any Lots, as provided in Sections 1.27 and 7.35;
- (2) Amend the Plat as it pertains solely to the Real Property, but not any other portion of the Subdivision;
- (3) Dedicate for public use, convey or encumber the Private Street, as provided in Section 6.5;
- (4) Change the right of each Member to cast one vote for each Lot which such Owner owns, as provided in the second sentence of Section 4.4, Class A; and,

2025 RELEASE UNDER E.O. 14176

- (5) The uniform rate assessed against each Lot which is the Proportionate Share, as provided in Section 5.7.

(c) **Approval Rights of Owner of Lot 23.** Any Amendment adopted by the Members under Section 14.15(a) hereof, which amends the following provisions of the Declaration shall also require the approval of Agave Canyon Development, LLC, a Texas limited liability company (the "Designated Owner", which term for purposes of this subsection shall include its Related Party, or any member of the immediate family of such Related Party), so long as the Designated Owner is the Owner of Lot 23, Block 1 of the Subdivision (the "Designated Lot"):

- (1) Change Section 5.2, Purpose of Assessment.
- (2) Amend the first sentence of Section 7.4 by reducing the size of the minimum livable square footage of any Dwelling Unit referred to in said first sentence.
- (3) Broaden the definition of Common Expenses in Section 1.10.

So long as the Designated Owner casts its vote in favor of any Amendment which is subject to the provisions of this Section 14.15(c), the computation of the aforesaid 51% of the Member's voting power may include the affirmative vote of the Designated Owner; and upon sale of the Designated Lot to a Person who is not a Related Party to the Designated Owner, the approval rights granted to the Designated Owner under this Section 14.15(c) automatically terminate.

(d) **Declarant's Right to Amend.** Until Declarant's Class B Membership terminates, the Declarant reserves the right to amend this Declaration without the approval of the Association, the Members, or any other Person, except that no such amendment shall have the effect of:

- (1) Changing the Plat of an Owner's Lot without the consent of the Owner thereof; or
- (2) Changing the Proportionate Share of the Owners for the purpose of levying Assessments, as provided in Section 5.7 hereof; and
- (3) Amending provisions of Sections 14.15 (b) and (c).

(e) **General.** An Amendment that requires the vote and written assent of the Members as herein above provided shall be effective when executed by the President and Secretary of the Association who shall certify that the Amendment has been approved as herein above provided, and when recorded in the Official Public Records of Real Property of El Paso County, Texas. Any Amendment which the Declarant is authorized to adopt as provided in Section 14.15(d) shall be effective when executed by Declarant and when recorded in the Official Public Records of Real Property of El Paso County, Texas.

14.16 **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.

14.17 **Section 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 Articles, Sections or this Declaration.

DECLARATION

14.18 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.

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

14.20 Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Declarant is hereby authorized and empowered without any further consent on the part of the Association to execute and deliver such letters, documents or other writings as may be required by the Secretary of State of Texas in order for any other corporation formed or incorporated by Declarant to use a corporate name which is the same deceptively similar to the name of the Association.

14.21 Gated Entrances. Declarant intends to construct gated entrances to the Project in order to limit access and provide more privacy to the Owners and other occupants of Lots. Each Owner and occupant, and their families, guests and invitees acknowledge that the gated entry ways may restrict or delay entry into the Project by the police, fire department, ambulances and other emergency vehicles or personnel. Each Owner and other occupant and their families, guests and invitees agree to assume the risk that the gated entries will restrict or delay entry to the Project by emergency vehicles and personnel. Neither Declarant nor the Association nor any director, officer, agent or employee of Declarant or the Association shall be liable to any Owner or other occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence, maintenance or adequacy of the gated entries. It is contemplated that the gated entrances shall be operated by remote openers and the Association shall have the right to impose rules in the Association Rules governing the issuance of remote units and the cost to purchase and re-issue such remote units.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first written above.

SIGNATURE PAGE ANNEXED HERETO

DECLARATION RECORDS 2011-12

SIGNATURE PAGE ANNEXED TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
PINNACLE ESTATES

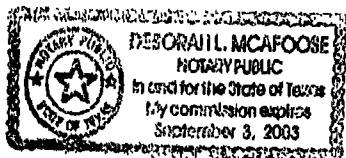
PINNACLE PARTNERS, L.P., a Texas limited partnership

By: Bissell Management, Inc.
Its: General Partner

By: _____
Ronald L. Bissell, President

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on July 12, 2002, by Ronald L. Bissell, President of Bissell Management, Inc., a Texas corporation, on behalf of said corporation, as general partner of Declarant.



Notary Public in and for the
State of Texas
My commission expires: _____

After recording, return to:

Merton B. Goldman, Esq.
James, Goldman & Haugland, P.C.
P.O. Box 1770
El Paso, Texas 79949-1770

080000400000000000000000

2002 JUN 13 09:34 AM

Return:
Merton S. Goldman
James, Goldman & Kaufman, P.C.
201 E Main
Suite 800
El Paso, TX 79901-1334

FILED
JUL 22 2002
EL PASO COUNTY, TEXAS
OFFICE OF THE CLERK
1000 MAIN ST
EL PASO, TEXAS 79901

END OF INSTRUMENT

ANY PROVISIONS HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW STATE OF TEXAS COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the Official Public Record of Real Property El Paso County.



EL PASO COUNTY, TEXAS

1+ c [Signature]
JUL 22 2002

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

This FIRST AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS, is executed to be effective for all purposes as of the 12th day of July, 2002, by PINNACLE PARTNERS, L.P., a Texas limited partnership ("**Declarant**").

RECITALS:

WHEREAS, Declarant executed and delivered that certain Declaration of Covenants, Conditions and Restrictions dated as of January 4, 2002 (the "**Declaration**"), recorded in Volume 4167, Page 1702 of the Deed Records of El Paso County, Texas, against the following described property:

PINNACLE SUBDIVISION, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 77, Pages 11, 11A and 11B, Real Property Records, El Paso County, Texas (the "**Subdivision**");

WHEREAS, Declarant now desires to release a portion of the Subdivision from the terms of the Declaration;

WHEREAS, Declarant has the right to amend the Declaration under the provisions of Section 9.3 of the Declaration without the consent of any party.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Declarant hereby amends the Declaration as follows, to-wit:

1. Capitalized Terms. The capitalized terms as used herein have the same meaning assigned to such terms in the Declaration, unless the text of this First Amendment states otherwise.

2. Partial Release. The following described property is hereby released and relieved from the terms of the Declaration:

Lots 17 through 26, inclusive, of Block 1, and Lot 2, Block 2, PINNACLE SUBDIVISION, a subdivision in the City of El Paso, El Paso County, Texas, according to the subdivision map recorded in Volume 77, Pages 11, 11A and 11B, Real Property Records, El Paso County, Texas, with the associated common areas.

3. Ratification. Except as modified hereby, the terms and conditions of the Declaration are hereby ratified and confirmed by the Declarant.

EXECUTED and effective as of the day, month and year first written above.


SIGNATURE PAGE ANNEXED HERETO

RECORDED IN EL PASO COUNTY TEXAS

DECLARANT:

PINNACLE PARTNERS, L.P., a Texas limited partnership

By: BISSELL MANAGEMENT, INC., a Texas corporation, General Partner

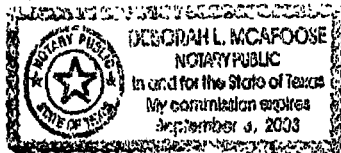
By: 
Ronald L. Bissell, President

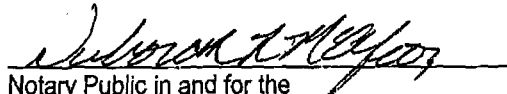
STATE OF TEXAS

COUNTY OF EL PASO

50000000

This instrument was acknowledged before me on July 12, 2002, by Ronald L. Bissell, President of Bissell Management, Inc., a Texas corporation, General Partner of Pinnacle Partners, L.P., a Texas limited partnership, on behalf of said partnership.




Notary Public in and for the State of Texas
My commission expires: _____

After recording, return to:
Merton B. Goldman, Esq.
James, Goldman & Haugland, P.C.
P.O. Box 1770
El Paso, Texas 79949-1770

50000000

EL PASO COUNTY RECORDS

END OF INSTRUMENT

Return:
Merton B. Goldman
James, Goldman & Naigland, P.C.
201 E. Main
Suite 800

El Paso TX 19901-1334

ANY PROVISIONS HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW STATE OF TEXAS COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the Official Public Record of Real Property El Paso County.



EL PASO COUNTY, TEXAS

14 *[Signature]*
JUL 22 2002

FOR DEPOSIT
JUL 22 2002
10:25 AM
FILED & RECORDED IN
OFFICIAL RECORDS OF
EL PASO COUNTY
COUNTY CLERK
EL PASO, TEXAS

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FIRST AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS OF PINNACLE ESTATES

This FIRST AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS (the *First Amendment*), is executed to be effective for all purposes as of the 17th day of December, 2003.

RECITALS:

WHEREAS, PINNACLE PARTNERS, L.P., a Texas limited partnership (the *Declarant*), executed and delivered that certain Declaration of Covenants, Conditions and Restrictions of Pinnacle Estates, dated as of July 12, 2002 (the *Declaration*), recorded in Volume 4899, Page 921 of the Deed Records of El Paso County, Texas, against the following described property (the *Real Property*):

Parcel One: Lots 17 through 26, inclusive, of Block 1, and Lot 2, Block 2, PINNACLE SUBDIVISION, a subdivision in the City of El Paso, El Paso County, Texas, according to the subdivision map recorded in Volume 77, Pages 11, 11A and 11B, Real Property Records, El Paso County, Texas, with the associated common areas.

Parcel Two: Lot 8, Block 1, Stanton Park Addition, an addition to the City of EL Paso, Texas, according to the plat thereof recorded in Volume 77, Page 4 of the Real Property Records, El Paso County, Texas (the *Subdivision*);

WHEREAS, Declarant previously filed a plat of subdivision of the Real Property recorded in the Volume 77, Pages 11, 11A and 11B of the Official Public Records of Real Property of El Paso County, Texas, as thereafter from time to time amended or supplemented (the *Plat*);

WHEREAS, *Agave Canyon Court* is designated on the Plat as a "Private" roadway (the *Private Roadway*), which is owned by the Pinnacle Estates Homeowners Association, a Texas nonprofit corporation (the *Association*), and is maintained by the Association under the terms of the Declaration;

WHEREAS, it has been determined that there is an error in the legal description of the Private Roadway set forth on the Plat, and that the correct legal description of the Private Roadway should have included a portion of Lot 26, Block 1, Pinnacle Subdivision (the portion of the Private Roadway situated a portion of Lot 26 is described more fully on Exhibit "A" annexed hereto and made a part hereof for all purposes and is herein called the *Additional Roadway Area*);

WHEREAS, the Declarant has conveyed to the Association by special warranty deed title to the Additional Roadway Area, so that Private Roadway now includes the Additional Roadway Area;

WHEREAS, the Declarant and all of the Members of the Association now desire to amend the Declaration (i) to revise Section 14.15 (b)(1) of the Declaration to correct the incorrect cross reference made in said section of the Declaration; and (ii) to consent to the Declarant's conveyance to the Association of the Additional Roadway Area, as prescribed in Section 14.15(b) of the Declaration.

WHEREAS, Declarant and the other Members who hold 100% of the voting power of the Association are authorized and empowered to amend the Declaration under the provisions of Section 14.15 of the Declaration.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Declarant and the Association hereby amend the Declaration as follows, to-wit:

RECORDED IN PUBLIC RECORDS

REC'D CIVIL DIVISION

1 Capitalized Terms. The capitalized terms as used herein have the same meaning assigned to such terms in the Declaration, unless the text of this First Amendment states otherwise.

2 Correction. Section 14.15(b)(1) of the Declaration is hereby amended by deleting 7.35, which is the incorrect cross-reference, and substituting 7.35, the correct cross-reference. As a result, Section 14.15(b)(1) is hereby amended to read as follows:

(1) **Subdivide any Lots, as provided in Sections 1.27 and 7.33.**

3 Consent. The Members holding 100% of the voting power of the Association hereby consent to the conveyance by the Declarant to the Association of fee title to the Additional Roadway Area, which consent is hereby granted in accordance with the provisions of Section 14.15(b) of the Declaration.

4 Execution by Association. The President and Secretary of the Association hereby certify that the Members holding 100% of the voting power of the Association have voted in favor of the adoption of this First Amendment by written consent executed by each of the Members, as provided in Section 14.15(e) of the Declaration.

5 Ratification. Except as modified hereby, the terms and conditions of the Declaration are hereby ratified and confirmed by the Declarant.


EXECUTED to be effective as of the day, month and year first written above.

DECLARANT: PINNACLE PARTNERS, L.P., a Texas limited partnership

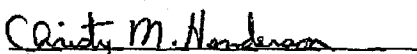
By: Bissell Management, Inc., a Texas corporation
Its: General Partner

By: 
Ronald L. Bissell, President

ASSOCIATION: PINNACLE ESTATES HOMEOWNERS ASSOCIATION

By: 
Ronald L. Bissell, President

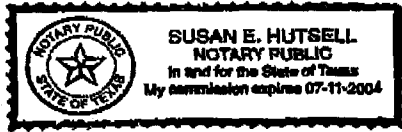
ATTEST

By: 
Christy M. Henderson, Secretary

STATE OF TEXAS
COUNTY OF EL PASO

07/11/04

This instrument was acknowledged before me on December 22, 2003, by Ronald L. Bissell, President of Bissell Management, Inc., a Texas corporation, General Partner of Pinnacle Partners, L.P., a Texas limited partnership, on behalf of said partnership.

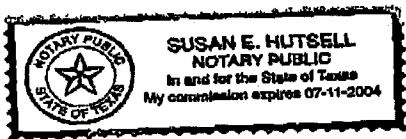


Susan E. Hutsell
Notary Public in and for the
State of Texas
My commission expires: 7-11-2004

STATE OF TEXAS
COUNTY OF EL PASO

07/11/04

This instrument was acknowledged before me on December 22, 2003, by Ronald L. Bissell, President of Pinnacle Estates Homeowners Association, on behalf of said association.



Susan E. Hutsell
Notary Public in and for the
State of Texas
My commission expires: 7-11-2004

After recording, return to:
Merton B. Goldman, Esq.
James, Goldman & Haugland, P.C.
P O. Box 1770
E Paso, Texas 79949-1770

07/11/04

Exhibit "A"
to First Amendment to Declaration

Being a portion of Lot 26, Block 1,
Pinnacle Subdivision,
El Paso County, Texas
Prepared for: Pinnacle Partners, L.P.
December 3, 2003
(Proposed Additional R.O.W.)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Lot 26, Block 1, Pinnacle Subdivision, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing City Monument at the centerline intersection of Stanton Street and Mesa Hills Drive. Thence from said monument North 66°29'31" East a distance of 239.64 feet to a point on the southerly right of way line of Mesa Hills Drive (Private Street) said point also lying on the westerly boundary line of Lot 26, Block 1, Pinnacle Subdivision recorded in volume 77, page 11, 11A, and 11B, Plat records of El Paso County, Texas, for the "TRUE POINT OF BEGINNING".

Thence along the southerly right-of-way line of Mesa Hills Drive (Private Street) the following six courses

10.22 feet along the arc of a curve to the right whose radius is 190.00 feet whose interior angle is 03°04'57" whose chord bears South 89°16'36" East a distance of 10.22 feet to a point;

7.08 feet along the arc of a curve to the right whose radius is 10.00 feet whose interior angle is 40°34'09" whose chord bears South 67°27'03" East a distance of 6.93 feet to a point;

South 47°09'58" East a distance of 10.55 feet to a point;

5.97 feet along the arc of a curve to the left whose radius is 10.00 feet whose interior angle is 34°11'59" whose chord bears South 64°15'58" East a distance of 5.88 feet to a point;

10.00 feet along the arc of a curve to the right whose radius is 179.50 feet whose interior angle is 03°11'28" whose chord bears South 79°46'14" East a distance of 10.00 feet to a point;

South 78°10'30" East a distance of 36.51 feet to a point;

Thence leaving said right-of-way line 20.01 feet along the arc of a curve to the right whose radius is 10.00 feet whose interior angle is 114°37'40" whose chord bears South 20°51'39" East a distance of 16.83 feet to a point on the westerly right-of-way of Agave Canyon Court (Private Street);

Thence along said right-of-way line 3.63 feet along the arc of a curve to the right whose radius is 120.00 feet whose interior angle is 01°43'52" whose chord bears South 37°19'07" West a distance of 3.63 feet to a point;

Thence leaving said right-of-way line 20.31 feet along the arc of a curve to the left whose radius is 10.00 feet whose interior angle is 116°21'33" whose chord bears North 19°59'43" West a distance of 16.99 feet to a point;

Thence North 78°10'30" West a distance of 35.08 feet to a point;

11/10/03 10:00 AM

Thence 9.83 feet along the arc of a curve to the left whose radius is 176.50 feet whose interior angle is $03^{\circ}11'28''$ whose chord bears North $79^{\circ}46'14''$ West a distance of 9.83 feet to a point;

Thence 7.76 feet along the arc of a curve to the right whose radius is 13.00 feet whose interior angle is $34^{\circ}11'59''$ whose chord bears North $64^{\circ}15'58''$ West a distance of 7.65 feet to a point;

Thence North $47^{\circ}09'58''$ West a distance of 9.44 feet to a point;

Thence 7.14 feet along the arc of a curve to the left whose radius is 10.00 feet whose interior angle is $40^{\circ}55'36''$ whose chord bears North $67^{\circ}37'46''$ West a distance of 6.99 feet to a point;

Thence 8.92 feet along the arc of a curve to the left whose radius is 187.00 feet whose interior angle is $02^{\circ}44'04''$ whose chord bears North $89^{\circ}27'37''$ West a distance of 8.92 feet to a point on the westerly boundary line of Lot 26, Block 1, Pinnacle Subdivision;

Thence along said boundary line North $00^{\circ}13'14''$ West a distance of 3.00 feet to the "TRUE POINT OF BEGINNING" and containing in all 0.0066 acres of land more or less.

Note Bearings based on plat of Pinnacle Subdivision recorded in volume 77, pages 11, 11A and 11B Plat records of El Paso County, Texas

RECORDED
INDEXED

R.R.C.
Ron R. Conde
R.P.L.S. No 5152



job #1883-48 R.C
LGL-031100348.LGL

CONDE, INC
ENGINEERING / LAND SURVEYING / PLANNING
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592 0*83

Doc# 20040000351

Pages 5

01/05/2004 11:50 AM

Filed & Recorded in

Official Records of

EL PASO COUNTY

WILDO ALARCON

COUNTY CLERK

Fees \$22.89

ANY PROVISIONS HEREIN WHICH RESTRICT THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW STATE OF TEXAS COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the Official Public Record of Real Property El Paso County.



EL PASO COUNTY, TEXAS

Wildo Alarcon

JAN 05 2004

END OF INSTRUMENT

Return to:
Morton Goldman
201 E. Main St #1
El Paso, TX 79901

RECORDED

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Doc: 20020958455

CERTIFICATION

I, the undersigned, pursuant to Texas Property Code § 202.006 do hereby certify:

That I am the duly elected and acting Secretary of the Pinnacle Estates Homeowners Association (hereinafter the "Association"), a Texas non-profit corporation;

That the attached documents are the current documents that apply to the operation and utilization of property with Pinnacle Subdivision in El Paso County, Texas.

That the property affected by these documents is set out on the attached Exhibit "A".

That the documents which effect the use and operation of the Association are set out on the attached Exhibit "B".

That the attached documents are true and correct copies of the originals.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this the 15th day of July, 2002.

PINNACLE ESTATES HOMEOWNERS ASSOCIATION, a Texas non-profit corporation

Christy M. Henderson
Christy M. Henderson, Secretary

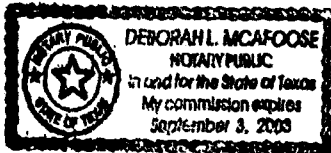
STATE OF TEXAS §
 §
COUNTY OF EL PASO §

Before me the undersigned authority, on this day personally appeared Christy M. Henderson the Secretary of the Pinnacle Estates Homeowners Association, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that she is the person who signed the foregoing document in her representative capacity, and that the statements therein contained are true and correct.

Given under my hand and seal of office this 15th day of July, 2002.

Notary's Official Seal:

Deborah L. McAfoose
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



4299/903

20020958455

EXHIBIT "A"

Parcel One: Lots 17 through 26, inclusive, of Block 1, and Lot 2, Block 2, PINNACLE SUBDIVISION, a subdivision in the City of El Paso, El Paso County, Texas, according to the subdivision map recorded in Volume 77, Pages 11, 11A and 11B, Real Property Records, El Paso County, Texas, with the associated common areas.

Parcel Two: Lot 8, Block 1, Stanton Park Addition, an addition to the City of EL Paso, Texas, according to the plat thereof recorded in Volume 77, Page 4 of the Real Property Records, El Paso County, Texas.

44 01 50 150 40 40 10 10 40 40 10 10 10 10

EXHIBIT "B"

1. Articles of Incorporation of Pinnacle Estates Homeowners Association, a copy of which is annexed hereto.
2. Bylaws of Pinnacles Estates Homeowners Association, a copy of which is annexed hereto.
3. Declaration of Covenants, Conditions and Restrictions for Pinnacle Estates Homeowners Association, a copy of which is recorded in the Real Property Records, El Paso County, Texas.
4. Design Guidelines for Pinnacle Estates Homeowners Association, a copy of which is annexed hereto.

RECEIVED
MAY 14 1998
COUNTY CLERK
EL PASO COUNTY