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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
PINON WOODS III

THIS DECLARATION of Covenants, Conditions and Restrictions is made this 4<sup>th</sup> day of April, 1995 by HPR, Investors, LC an Arizona Limited Liability Company, herein referred to as "Declarant".

WITNESSETH

WHEREAS Declarant is the owner of both legal and equitable title of the following described real property, situated within the County of Yavapai, State of Arizona, to wit:

Lots 63 through 132 inclusive, PINON WOODS III, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, in Book 31 of Maps, Page 86, thereof;

and,

WHEREAS, Declarant desires to develop the above described real property and additional properties which may be acquired or annexed hereafter by it into a uniquely planned residential subdivision, and,

WHEREAS, for the lands now owned or hereafter acquired, Declarant intends, without obligation, to develop a subdivision upon the above described real property which, as of the date of recordation of the Declaration, is owned by Declarant and shall comprise the "Property"; and it is intended, without obligation, that other lands may be added to the Property to expand and more fully develop the subdivision; and

WHEREAS, a non-profit corporation for the purpose of benefiting the Property and the Owners thereof, known as the PINON WOODS III HOMEOWNER'S ASSOCIATION (herein referred to as the "Association) may be created and may upon completion of Unit III,

(1) acquire, construct, operate, manage and maintain any common area and facilities;

(2) establish, levy, collect and disburse the assessments and other charges as may be imposed hereunder, and

(3) as the agent and representative of the Owners of the Property, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of the Property; and

WHEREAS, until such time as Unit III is fully sold to lot buyers, Declarant desires to and hereby does reserve to itself, its successors and assigns the right to exercise the powers and duties in regards to Unit III granted in this Declaration to the Association; and

WHEREAS, in order to enable Declarant and the Association to accomplish the purposes outlined above, all of the Property is hereby subjected to and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall enure to the benefit of each owner thereof.

NOW, THEREFORE, HPR INVESTORS, LC, hereby declares, covenants and agrees as follows:

## ARTICLE I

### Definitions

The following words, phrases or terms used in this Declaration shall have the following meanings:

1.1 "Additional Properties" shall mean properties added in accordance with Article IX hereof.

1.2 "Association" shall mean and refer to the PINON WOODS III HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, if and when organized by the Declarant, to administer and enforce these covenants and to exercise the rights, powers and duties set

forth in this Declaration. Until the corporation is organized or in the event Declarant elects not to organize the corporation, the term "Association" shall mean the Declarant.

1.3 "Common Area" shall mean all real property owned or acquired by the Association for the common use and enjoyment of all or a part of the owners, if any.

1.4 "Declarant" shall mean HPR Investors, LC., an Arizona Limited Liability Company, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

1.5 "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as it may from time to time be amended or supplemented.

1.6 "Developer" shall mean and refer to the Declarant.

1.7 "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of any common Area.

1.8 "Owner(s)" shall mean and refer to the record Owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged), of any Lot. Owner shall include the purchaser of a Lot under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot merely as a security for the performance of an obligation nor shall the term "Owner" include a Developer, or Contractor other than Declarant.

1.9 "Property" shall mean and refer to that certain real property herein before described.

## ARTICLE II

### Property Rights

2.1 Owner easements of Enjoyment: Every Owner of a Lot within PINON WOODS III, and within Additional Properties as may be annexed from time to time shall have a right and easement of enjoyment in and to the common areas, if any, which shall be

appurtenant to and shall pass with the title of said Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area:

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations:

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

2.2 Declaration of Use: Any Owner may delegate, in accordance with any Association Bylaws, rules, or these Covenants, Conditions and Restrictions, his right of enjoyment to any Common Area and facilities, to the members of his family, his tenants, or contract purchasers who reside on the Property.

### ARTICLE III

#### Permitted Uses and Restrictions

3.1 Residential Use: The lots in PINON WOODS III shall be known and described as residential lots. No structure whatever, other than one private residence and garage for not more than three (3) cars, a guest house and servants' quarters, shall be erected, placed or permitted to remain on any of the Lots. No store, office or other place of business or entertainment of any kind, nor any church, shall ever be erected or permitted upon any of the Lots, or any part thereof, and no business or commercial venture or enterprise of any kind or character whatever shall be conducted in or from any residence on the Lots.

**3.2 Division of Lots:** No lot shall be resubdivided into smaller lots nor be conveyed or encumbered in less than the full original dimension of the Lot as shown by the plat of PINON WOODS III of which it is a part, except for public utilities, unless said resubdividing has been approved in writing by the Architectural Control Committee, hereinafter described.

**3.3 Parking:** Automobiles of the private passenger class and pickup trucks not exceeding three-quarter ton may be parked on the side of any Lot; provided that any such parking area shall comply with the same set back requirements as the residential dwellings and be subject to required approval by the Architectural Control Committee. No campers, trailers, motorhomes, RV's or boats may be parked on any Lot, unless concealed within an enclosed garage, and then only with the prior approval of the Architectural Control Committee. No other trucks, vehicles or equipment shall be kept on any Lot or street except in a garage. No motor vehicle which is under repair or not in operating condition shall be placed or permitted to remain on any street or streets, or any portion of any Lot, or Lots in PINON WOODS III, unless it is within an enclosed garage or structure.

**3.4 Pets:** No animals, reptiles, fish or birds of any kind shall be raised, bred or kept on any Lot; provided, however, that a reasonable number of dogs, cats, birds or fish may be kept on a Lot as household pets if such pets are not a nuisance or threat to other Lot Owners and are not kept, bred or maintained for commercial purposes.

**3.5 Completion of Construction:** No temporary house, trailer, tent, garage, or other building shall be occupied in any manner at any time prior to completion. All dwellings upon which construction has started shall have the exteriors completed within 6 months after construction has started, and all construction, including approved landscaping, within 9 months of commencement of construction.

**3.6 Signs:** No exterior signs or advertisements of any kind shall be placed, allowed or maintained on any Lot, except that mailboxes, residential nameplates and "for sale" and "for rent" signs of a size not in excess of 480 square inches may be placed and maintained on a Lot in conformity with common specifications.

Exceptions to the restriction will be the Developer's signs during construction and sale of property.

3.7 Nuisances: No lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the surrounding property. Each Lot shall be kept and maintained free from weeds, underbrush, or other unsightly growth.

3.8 Incinerators: No incinerators shall be kept or maintained on any Lot.

3.9 Radio and Television Antennas: No exposed or exterior radio or television transmission or receiving antennas shall be erected, placed or maintained on any part of a lot; provided, that the temporary use of television antennas shall be permitted only until cable is installed.

3.10 Tanks: No elevated tanks of any kind shall be erected, placed, or permitted upon any Lot; provided, that nothing herein shall prevent the Declarant, its successors and assigns, from erecting, placing, or permitting the placing of tanks and other water system apparatus on such premises for use of the water company, person, or organization serving such premises. Any tank for use in connection with any residence on the Lots, including tanks for storage of gas, fuel oil, gasoline, or oil, must be buried or kept screened by adequate planting or fencework, which planting or fencework must be first approved by the Architectural Control Committee, to conceal the tank or tanks from neighboring Lots or streets.

3.11 Sewage: All bathrooms, toilets or sanitary conveniences shall be connected to sewers constructed in accordance with the requirements and standards of County and State laws, rules and regulations in accordance with sound engineering, safety and health practices. There shall not be allowed any outside portable lavatories, outside toilets or open plumbing; provided however that Health Department approved portable toilets shall be maintained on-site for workmen during periods of subdivision and house construction.

**3.12 Clotheslines and Other Structures:** No clotheslines, equipment, service yards, wood piles or storage piles, other than those approved by the Architectural Control Committee shall be kept or maintained on any Lot.

**3.13 Pools:** Swimming pools must be enclosed by a six (6) foot fence with self closing gates to be locked when pool is not in use, and all plans for pools must first be approved by the Architectural Committee.

**3.14 Approval of Plans:** No building, fence, wall, or other structure shall be commenced, erected, or maintained, until the plans and specifications and plot plan, showing the nature, kind, shape, height, materials, floor plans, exterior color scheme, location and approximate cost of such structure and the grading of the Lot to be built upon, including location and size, shall have been submitted to and approved by the Architectural Control Committee, hereinafter described, and a copy thereof, as finally approved, lodged permanently with said Committee. The Committee shall have the right to refuse to approve any such plans, or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, and the effect of the building or other structure, as planned on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, shall be subject to the prior approval of the Committee, and said Committee shall not be subject to any personal or legal liability for its refusal to approve any such plans and specifications or plat plans, including lawn area and landscaping. The Committee shall not be responsible for any structural defects in such plans or specifications or in any structure or building erected according to such plans and specifications.

**3.15 Native Growth and Terrain:** Excepting for the purposes of actual construction upon a Lot, no stone, sand, gravel, soil, or natural growth shall be removed from any Lot; provided, however, that the Declarant, its successors or assigns, in



carrying out the improvement and development of PINON WOODS III, shall have the right of ingress and egress upon all Lots for the purpose of grading and excavating thereon, constructing and completing street improvements, installation of public utilities, and to do any and all things necessary to complete the said general plan of improvement. Unless suitable retaining walls are constructed to support the earth, the natural angle of repose of the ground shall not be altered by excavation within seven (7) feet of any boundary line or any Lot by other than a slope of one and one-half (1-1/2) feet horizontal to one (1) foot vertical; provided, however, that nothing in this paragraph shall be construed to prevent any such alteration in any manner with or without retaining walls by the Declarant, its successors or assigns, in carrying out the development and improvement of PINON WOODS III. Any alterations to the above must be approved by the Architectural Control Committee.

**3.16 Size of Dwelling:** No dwelling house shall be constructed on a Lot which does not occupy above ground level, a floor area of actually and fully enclosed structure, excluding attached garage or porches, of not less than one thousand six hundred (1,600) square feet of actual living area.

**3.17 Two-Story Dwellings:** Two-story dwellings may be constructed on hillside Lots only and must be designed in such a manner as to not interfere with the view of another homesite.

**3.18 Roof:** Only the following types of roofs will be permitted: Shake shingles, slate, tile, architectural grade textured asphalt and fiberglass shingles, or dark stone. No light color roofs of any kind will be allowed. All metal flashings and roof accessories, or other bare metal surfaces, must be painted or stained to blend with roof materials. Samples of proposed roofing must be submitted to the Architectural Control Committee with plans requesting approval.

**3.19 Building Permits:** All building permits are to be approved by the Architectural Control Committee and signed by the Owner, contractor and the Committee before construction can begin. The permit must include the design and plan, the exterior materials to be used, and the type of material used for the roof.

**3.20 Upkeep Assessment:** The Owners of all lots shall keep the same reasonably clean and clear of weeds and trash, so as not to cause an unsightly or dangerous condition, and if such Owner

should fail after ten (10) days written notice from the Architectural Control Committee to do so, the Committee shall have the right to enter upon such lot and cause the same to be cleaned four times yearly, if necessary, and charge the actual cost thereof to the Owner of such lot and said charges shall be a lien against the property until paid.

**3.21 Drainage:** The developer has established appropriate grades as required by the proper governmental authorities within PINON WOODS III, and said final grades shall not be disturbed in any manner which may adversely affect any other residential unit or property, whether within the subdivision or elsewhere; nor shall any Owner divert or cause diversion of the surface water from the street adjacent to his property onto any other property. All surface water shall be left free to its natural flow unless lawfully diverted to a drainage ditch. The provisions of this paragraph shall be subordinate to the appropriate Yavapai County subdivision regulations governing such drainage.

**3.22 Diseases, Insects, and Animals:** No owner shall permit any thing or condition to exist upon any property with PINON WOODS III, which shall induce, breed or harbor infectious plant diseases, noxious insects, or objectionable animals.

**3.23 Air-Conditioning Equipment:** No heating, air conditioning or refrigeration equipment shall be placed, allowed or maintained anywhere other than on the ground unless screened or concealed (subject to required approvals by the Architectural Control Committee) in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece or pieces of machinery, fixtures or equipment.

**3.24 Utility and Service Lines:** No gas, electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Lot, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.

**3.25 Fences:** Any fence, wall, privacy screen or other similar installation, structure or construction, whether free-

standing, supported or attached to a structure which extends more than 36 inches above ground level, and which was not included for approval on the original house and site plans approved by the Architectural Committee, shall be submitted to the Architectural Committee for review prior to construction.

#### ARTICLE IV

##### Architectural Control Committee

4.1 Organization: There shall be an Architectural Control Committee organized, which shall consist of three members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board or an officer of the Association.

4.2 Initial Members: The following persons are hereby designated as the initial members of the Architectural Control Committee:

Douglas Roddick  
Stephen, F. Patterson  
Eugene Chesson

4.3 Terms of Office: Unless the initial members of the Architectural Control Committee have resigned or been removed, their terms of office shall expire at the time all Lots are developed, sold and recorded, in Units II and III, but shall continue thereafter until the appointment of their respective successors. Thereafter the term of each member of the Committee shall be for a period of three years and until the appointment of his successor.

4.4 Appointment and Removal: The right to appoint and remove all regular and alternate members of the Architectural Control Committee at any time, shall be and is hereby vested fully in the Board of the Association (or Statutory Agent of the Declarant, until all lots have been sold). Any member of the Architectural Control Committee may resign at any time by giving written notice thereof to the Board (or to the Statutory Agent of the Declarant if the Association is not organized).

4.5 Duties: The Architectural Control Committee shall have the authority and responsibility to review the plans and

specifications of all single-family residences, garages, sheds, fences and other structures to be constructed in the subdivision pursuant to the terms hereof, and perform such other duties as may be delegated to it by the Association.

The Architectural Control Committee shall have the right to refuse to approve any plans or specifications or grading plans, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitations of the foregoing, shall have the right to take into consideration the suitability of the proposed building or other structure, and the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure including exterior colors and materials, shall be subject to the prior approval of the Architectural Control Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Control Committee. All decisions of the Architectural Control Committee shall be final and no Lot Owner or other party shall have recourse against the Architectural Control Committee for its refusal to approve any such plans and specifications or plot plans, including lawn area and landscaping.

**4.6 Time for Approval:** Two copies of the complete plans and specifications of any proposed structure must be submitted to the Architectural Control Committee. At least one copy of said plans and specifications shall be retained by the Architectural Control Committee.

The Committee shall have the authority to use the services of an architect as a consultant, and to charge the applicant a sum not exceeding one hundred dollars (\$100.00) for each set of plans and specifications submitted to it for approval to defray the fees of the consultant. The consultant shall not have the right to vote in passing upon the plans and specifications.

In the event that a written request for such approval is not acted upon within thirty (30) days of the receipt by the Committee of said request, then such approval will not be required; provided, however, that no structure may be

constructed pursuant to this paragraph which conflicts with any specifically delineated restriction contained herein.

**4.7 Waiver:** The approval by the Architectural Control Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval of the Architectural Control Committee, nor shall it be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

**4.8 Meetings and Compensations:** The Architectural Control Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any two regular members at a meeting, or otherwise, shall constitute the act of the Committee. Members of the Architectural Control Committee shall not be entitled to compensation for their services.

**4.9 Committee Rules:** The Architectural Control Committee may, from time to time, and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as the Architectural Control Committee Rules. The Rules may set forth the Standards and procedures for Committee review and guidelines for architectural design, placement of buildings, landscaping, color scheme, exterior finishes and materials and similar features which are recommended for use within PINON WOODS III.

**4.10 Liability:** Neither the Architectural Control Committee nor any member thereof, shall be liable to the Association, any Owner, or to any other party for any damage, loss or prejudice suffered or claimed on account of:

- (a) Approval or disapproval of any plans, drawings, or specifications, whether or not defective,
- (b) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications,
- (c) The development of any property within PINON WOODS III,

(d) The execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him.

Without any way limiting the generality of any of the foregoing provisions of this section, the Architectural Control Committee, or any member thereof, may, but is not required to, consult with, or hear the views of the Association or any Owner with respect to any plans, drawing, specification, or any other proposal submitted to the Committee for review.

## ARTICLE V

### PINON WOODS III Homeowners Association

5.1 The Association: The PINON WOODS III HOMEOWNERS ASSOCIATION, if and when formed, shall be a non-profit Arizona Corporation charged with the duties and invested with the powers prescribed by law and set forth in its Articles, Bylaws and the Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 Board of Directors and Officers: The affairs of the Association shall be conducted by a Board of nine (9) directors who need not be members of the Corporation. The initial Board of Directors shall consist of nine directors, three of which shall serve until the election of their successors at the third annual meeting. Beginning with the first annual meeting, the members, at each annual meeting, shall elect three (3) directors, each for a term of three (3) years.

5.3 Powers and Duties: The association shall have such rights, duties and powers as set forth in the Articles and Bylaws, as they may be adopted and amended from time to time. Such rights, duties and powers shall include, but not be limited to, the following:

(a) Appoint and remove members of the Architectural Control Committee as permitted herein;

(b) Hold title to any Common Areas and such other areas as may be acquired by it and set aside and maintained for the use, enjoyment or convenience of the Owners of Lots within PINON WOODS, III; and

(c) Maintain and manage all Common Areas.

X 5.4 Rules: By a majority vote of the Board, the Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the PINON WOODS III Rules. The Rules may restrict and govern the use of any area by any Owner, or by any invitee, <sup>tenant</sup> licensee or lessee of such Owner; provided, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Bylaws or Articles. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, said Rules shall have the same force and effect as if they were set forth in and were a part of Declaration. *Be recorded*

5.5 Personal Liability: No member of the Board or any Committee of the Association, or any officer of the Association, or the manager, (or any Partner or Managing Agent of Declarant, if the Association is not organized), shall be personally liable to any owner, or to any other party, including the Association, for any damage, loss of prejudice suffered or claimed on account of any acts, omission, error or negligence of the Association, the Board, the Manager, or any other representative or employee of the Association, or the Architectural Control Committee, or any other committee or any officer of the Association, (or the Declarant, any Partner, Partners, Member, Members or Statutory Agent thereof, if the Association is not organized), provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

## ARTICLE VI

### Membership and Voting Rights

6.1 If the Association is organized, every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant and may not be

separated from ownership of any Lot which is subject to assessment.

6.2 The Association shall have three classes of voting membership:

Class A: Class A members shall be all Owners of Lots within PINON WOODS III and such Owners of Lots within Additional Properties as may be so designated in the Supplemental Declaration annexing such Additional Properties with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any such Lot, all such persons shall be members. Their vote shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B members shall be such Owners of Lots within Additional Properties as may be so designated in the Supplemental Declaration annexing such Additional Properties with the exception of the Declarant. The Class B members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any such Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. The Class B members shall, in addition, be entitled to such other rights and obligated by such other restrictions as may be specifically set out in the Supplemental Declaration annexing their properties and designating them as Class B Members.

Class C: The Class C member shall be the Declarant and shall be entitled to three votes for each Lot owned, whether voting on a matter presented to the Class A members, Class B members, or both. The Class C membership shall cease and be converted into Class A and Class B memberships, as appropriate, on the happening of either of the following events, whichever first occurs;

(a) When the total combined votes outstanding of the Class A and Class B members equal the total votes outstanding in the Class C membership, or

(b) On January 1, 1998.



6.3 The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner(s), cast a vote representing a certain Lot it will thereafter be conclusively presumed for all purposes that he or they are acting with the authority and consent of all other Owners of the same Lot. In the event more than one is cast for a particular Lot, none of said votes shall be counted, and said votes shall be deemed void.

6.4 In any election of the members of the Board, cumulative voting shall be permitted.

6.5 The Association membership of each Owner of a Lot within PINON WOODS Unit III, or within any Additional Properties, shall be appurtenant to said Lot and shall run with the title to said Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to the Owner's Lot, and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, or foreclosure of a mortgage or record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws in the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of said Lot shall operate to transfer said membership to the new Owner thereof.

#### ARTICLE VII

#### Permitted Uses and Restrictions

#### Common Area

7.1 Maintenance By Association: The Association may, at any time, as to any common area, converged, leased or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board of Directors of the Association, without any prior approval of the Owners being required:

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area in accordance with original design, finish or standard or construction of such improvement or in accordance with the last plans thereof approved by the Architectural Control Committee; and

(b) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs, and ground cover to the extent deemed necessary by the Board for the conservation of water and soil and for aesthetic purposes; and

(c) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

(d) Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified herein.

(e) The Board shall be the sole judge as to the appropriate maintenance of all grounds and improvements within common areas.

7.2 Damage or Destruction of Common Area By Owners: In the event any Common Area is damaged or destroyed by an Owner or his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for the collection enforcement of assessments.

7.3 Use of Common Area: The common area shall be operated for the use and enjoyment of the Owners and the Association shall have the right to make, promulgate, supplement, amend, change or revoke rules pertaining to the use and operation of the common areas as deemed necessary by the Board.

#### ARTICLE VIII

#### Covenant for Maintenance Assessments

8.1 Creation of Lien and Personal Obligation of Assessments: The Declarant for each Lot owned within PINON WOODS and Additional Properties hereby covenants, and each Owner of any Lot by acceptance of a Deed therefore, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay the Association:

1. Annual assessments or charges consisting of a pro rata share of the actual cost to PINON WOODS III HOMEOWNERS ASSOCIATION (or the Declarant, if the Association is not organized), relating to or incurred as a result of the upkeep, repair, maintenance or improvement of common areas, and a pro rata share of any and all taxes paid by the Association relating to or incurred as a result of the common areas.

2. A pro rata share of such sums as the Board of Directors of the Association (or the Statutory Agent of Declarant, if the Association is not organized), shall determine to be fair and prudent for the establishment of necessary reserves for expenses, maintenance and the payment of taxes, all as herein required.

3. A pro rata share of any special assessment or capital improvements, such assessments to be established and collected as herein provided.

The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successor in title unless expressly assumed by said successor in title.

**8.2 Purpose of Assessment:** Assessments levied by the Association or Declarant shall be used exclusively to promote the recreation, health, safety and welfare of the residents within PINON WOODS III and annexed Additional Properties, and for the improvement and maintenance of the common areas.

**8.3 Maximum Annual Assessment:** Until January 1, 1994, the maximum annual assessment for all Lots within PINON WOODS III, shall be the sum of Two Hundred Dollars (\$200.00). From and after January 1, 1994, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year, without a vote of the membership. From and after January 1, 1999, the maximum annual assessment may be increased more than five percent (5%) above the maximum assessment for the previous year by a vote of two-thirds (2/3) of each class of members who are voting in person or by

proxy, at a meeting duly called for this purpose. The Board may fix the annual assessment at an amount not in excess of the maximum.

**8.4 Special Assessments For Capital Improvements:** In addition to the annual assessments authorized above, the Association (or Declarant, if the Association is not organized), may levy, in any assessment year, a special assessment applicable to that year only for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on any common area, including fixtures, and personal property relating thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**8.5 Notice and Quorum for any Action Authorized Under Paragraph 8.3 and 8.4:** Written notice for any meeting called for the purpose of taking any action authorized under paragraph 8.3 or paragraph 8.4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of members of proxy's entitled to cast sixty percent (60%) of all the votes of each class membership constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**8.6 Uniform Rate of Assessment:** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of any common area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in that calendar year. The Board shall fix the amount of annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors.

**8.7 Commencement of Assessments:** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of any common area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in that calendar

year. The Board shall fix the amount of annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors.

**8.8 Effective No-Payment of Assessment; Remedies of the Association:** Each Owner of any Lot shall be deemed to covenant and agree to pay to the Association the assessment provided for herein, and agree to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for the collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and member agrees to pay reasonable attorneys fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or member. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association (or the Declarant, if the Association is not organized) may enforce each such obligation in any manner provided by law or in equity or without any limitation of the foregoing, by either or both of the following procedures:

(a) **Enforcement by Suit:** The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgement rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of fifteen percent (15%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner.

(b) **Enforcement by Lien:** There is hereby created a claim of lien, with power of sale, on each and every Lot within PINON WOODS III to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under these restrictions, together with interest thereon at the rate of fifteen percent (15%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within ninety days after the

occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. 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 or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten days after delivery of such demand, or even without such a written demand being made, the Association may elect to file such a claim of lien of behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

1. The name of the delinquent Owner;
2. The legal description and street address of the Lot against which claim of lien is made;
3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys' fees (with any proper offset allowed);
4. That the claim of liens is made by the Association pursuant to these restrictions; and
5. That a lien is claimed against said Lot in an amount stated.

Upon Recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the Recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, and the liens which are specifically described in Paragraph 8.9 hereinafter. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the

benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot in PINON WOODS III hereby expressly waives any objection to the enforcement and foreclosure of a lien in this manner.

8.9 Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, 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 from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE IX

##### Subjecting Additional Lands to the Declaration

9.1 Additions in Accordance with General Plan of Development: The Declarant or the Developer, their heirs and assigns, shall have the right to bring within the scheme of this Declaration Additional Properties in future stages of the development without the consent of the members within ten years of the date of this Declaration.

The additions authorized under this and the succeeding subparagraph, shall be made by recording Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the scheme of covenants and restrictions of this Declaration to such property.

Such Supplementary Declarations may contain complimentary additions and modifications to the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, or development scheme of the added properties. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing Property.

**9.2 Other Additions:** If the owner of lands other than those owned by Declarant desires such land to be added to the scheme of this Declaration and subjected to the jurisdiction of the Association, he shall present a petition to the Board of the Association (or Statutory Agent of Declarant, if the Association is not organized) describing his land and requesting that his land be so annexed. Upon approval in writing of the Association (or Declarant, if the Association is not organized) pursuant to a vote of its members, the owner may record a Supplementary Declaration of Covenants, Conditions and Restrictions as described in Paragraph 9.1. Any such Supplementary Declaration shall be approved as to form and signed by or on behalf of the Board of the Association.

**ARTICLE X**  
**General Provisions**

**10.1 Enforcement:** The Association, Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.

**10.2 Interpretation of the Covenants:** Except for judicial construction, the Association, by its Board (or Declarant, if the Association is not organized), shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's (or Declarant's) construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Covenants and provisions hereof.

**10.3 Severability:** Invalidation of any of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall be in full force and effect.

**10.4 Rule Against Perpetuities:** If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the



period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

10.5 Amendment: The covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2015, after which they shall be automatically extended for successive periods of ten years. This Declaration may be amended at any time prior to December 31, 2015, by an instrument signed by not less than eighty percent (80%) of Lot Owners, and thereafter by an instrument signed by not less than seventy percent (70%) of the Lot Owners. Any amendment must be recorded.

10.6 Violations and Nuisances: Every act or omission whereby any provision in this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the release sought is for negative or affirmative action, by Declarant, the Association, or any Owner or Owners of a Lot within PINON WOODS III. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agent of any of them, may enforce by self help any of the provisions of this Declaration.

10.7 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 PINON WOODS III is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth therein.

10.8 Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

10.9 Delivery of Notices and Documents: Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after copy of same has been deposited in the United States mail, postage pre-paid, addressed to the last known address or addressee.

10.10 References to the Covenants in Deeds: Deeds to and instruments affecting any Lot or any part of the Property may contain the Covenants herein set forth by reference to this Declaration: but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

10.11 Declaration: By acceptance of a Deed or by acquiring any ownership interest in any of the real property within this Declaration, each person or entity; for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereinafter imposed by this Declaration and any amendments thereof. In addition, each person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and care of the real property covered thereby and hereby evidences his interest in all of the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees 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.

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

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

IN WITNESS WHEREOF the undersigned HPR Investors, L.C., an Arizona Limited Liability Company has caused its name to be

signed by the signature of a duly authorized agent, on this  
7<sup>th</sup> day of APRIL, 1995.

Liability Company, HPR INVESTORS, L.C., an Arizona Limited  
By: Stephen F. Patterson  
Stephen F. Patterson, Statutory Agent

STATE OF ARIZONA     )  
                                  )   ss.  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me on  
April 7, 1995 by Stephen F. Patterson, Statutory  
Agent, on behalf of HPR INVESTORS, L.C., an Arizona Limited  
Liability Company.

Patricia J. Needer  
Notary Public

My Commission Expires:

My Commission Expires Jan. 29, 1996

SEAL