

1/30/80

A-2-56-33

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
(FOR SINGLE FAMILY LOTS)

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THIS DECLARATION, Made on the date hereinafter set forth by MARLBOROUGH DEVELOPMENT CORPORATION, an Arizona corporation, hereinafter referred to as "Declarant" and sometimes as "MDC", and by PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee ("Pioneer").

W I T N E S S E T H:

WHEREAS, Declarant is the beneficial owner of certain property in Tempe, County of Maricopa, State of Arizona, ("Phase One of Marlborough Park Estates"), which is more particularly described as:

Lots 1 through 41 and Tracts D, F, G, H, I and J of MARLBOROUGH PARK ESTATES, a subdivision recorded in Book 219 of Maps, Page 4, Records of Maricopa County, Arizona (located within Section 10, Township 1 North, Range 4 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona; and

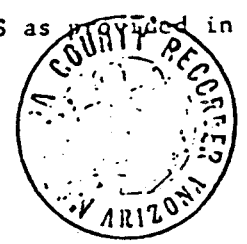
WHEREAS, Pioneer, as Trustee, holds legal title to that property; and

WHEREAS, Declarant desires to provide for the construction of a planned unit development consisting of single family homes and common areas; and

WHEREAS, Declarant at this time includes in this Declaration and imposes these covenants, conditions and restrictions upon only those lots and those tracts described above ("Phase One of Marlborough Park Estates"), but may, subsequent to the date of this Declaration, desire to include in or annex to this Declaration additional phases of MARLBOROUGH PARK ESTATES, that is to say, additional tracts and lots in MARLBOROUGH PARK ESTATES as provided in Article XIII Section 5 below;

EXHIBIT:

A--Parking and Storage Easements Reserved



NOW, THEREFORE, Declarant hereby declares that the lots and tracts described above, together with any other tracts and lots in MARLBOROUGH PARK ESTATES hereafter included under this Declaration as provided herein, shall be held, sold and conveyed subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "covenants and restrictions") 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 lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean MARLBOROUGH PARK ESTATES OWNERS ASSOCIATION, INC., which will hereafter be incorporated by Declarant and others as a non-profit Arizona corporation, and that Association's successors and assigns.

Section 2. "Common Area" shall mean Tracts D, F, G, H, I and J of MARLBOROUGH PARK ESTATES which shall be owned by the Association when the first lot is conveyed to a Class A Member as herein defined. In addition "common area" shall include all other real property hereafter owned by the Association for the common use and enjoyment of the Owners.

Section 3. "Declarant" shall mean MARLBOROUGH DEVELOPMENT CORPORATION, an Arizona corporation, and its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of resale and shall execute and record a supplemental declaration declaring itself as a succeeding Declarant hereunder.

Section 4. "Lot" shall mean any one of the lots described above and any other lot of MARLBOROUGH PARK ESTATES hereafter included in this Declaration as provided herein.

Section 5. "Once Occupied Lot" is a lot with a dwelling thereon which is or has been occupied by someone living therein.

Section 6. "Never Occupied Lot" is any lot which is not a once occupied lot.

Section 7. "Member" shall mean the Owner of a lot in MARLBOROUGH PARK ESTATES which is or has become by supplemental declaration under Article XIII Section 5 subject to this Declaration (that is to say which is or has become a lot as defined herein).

Section 8. "Mortgage" shall mean the conveyance or assignment of any lot to secure the performance of an obligation, and the instrument thereof, and may include a deed of trust, mortgage, assignment or agreement as now known or hereafter devised for the purpose of creating a lien to secure an obligation or duty.

Section 9. "Mortgagee" shall mean a person or entity to whom a mortgage is made.

Section 10. "Mortgagor" shall mean a person or entity who mortgages his or its property to another, i.e., the maker of a mortgage.

Section 11. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any lot, including without limitation, one who is buying a lot under a recorded contract, but excluding others having an interest merely as security for the performance of an obligation. In the case of lots wherein the fee simple title is vested of record in a Trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the Trustor.

Section 12. "Lease" shall include the leasing or rental of property.

Section 13. "MARLBOROUGH PARK ESTATES" refers to the said subdivision plat recorded in Book 219 of Maps, Page 4, Records

of Maricopa County as it may be amended from time to time.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREA

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and pass with the title to every lot, subject to the following provisions:

(a) Charges. The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Area;

(b) Suspension of Voting and Usage Rights: The right of the Association to suspend the voting rights and to suspend the right to the use of 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 sixty (60) days for any infraction of its published rules and regulations;

(c) Dedication--Transfer: 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. Except as provided in Section 1(c) of Article VI, no such dedications or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by Members owning two-thirds (2/3) of the lots, and has been recorded. Further, the Common Areas and facilities may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the written consent of all holders of first mortgage liens on any of the lots subject to this Declaration.

Section 2. Delegation of Use. Any Owner may delegate, subject to and in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenant, or contract purchasers who reside on the property.

Section 3. The Storage Tract. As recited in Article I Section 2, the Common Area includes Tract D of MARLBOROUGH PARK ESTATES, however that Tract D is subject to parking and access easements set forth on Exhibit A attached hereto. Those easements shall be for the benefit of a homeowners association regarding lots in Marlborough Park Villas, per plat recorded in Book 219 of Maps, Page 5, Records of Maricopa County, Arizona. MARLBOROUGH PARK ESTATES OWNERS ASSOCIATION, INC. will own that tract and will operate and maintain it as an area for the storage of boats, trailers, and other recreational vehicles and equipment owned by the owners of lots in MARLBOROUGH PARK ESTATES and in Marlborough Park Villas. The homeowners association for Marlborough Park Villas shall bear 44% and the MARLBOROUGH PARK ESTATES OWNERS ASSOCIATION, INC. shall bear 56% of the costs attributable to that storage tract.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to

one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members but for all voting purposes and quorum purposes they shall together be considered to be one Member. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on January 31, 1987.

For the purposes of (a) the number of votes shall be based upon the lots initially covered by this Declaration, plus all lots thereafter included in or covered by this Declaration as provided in Article XIII Section 5. If the Declarant's Class B membership is converted to Class A and if sufficient lots owned by Declarant are thereafter included under this Declaration so that three times the number of Declarant's lots exceeds the number of other lots then covered by this Declaration, Declarant's Class B membership shall be automatically restored regarding all lots then owned by Declarant.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed

to covenant and agree to pay to the Association:

- (a) annual assessments or charges;
- (b) special assessments for capital improvements, as provided in Section 4 of this Article;
- (c) an amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner hereunder which he has failed to timely pay or perform. The aforesaid obligations, together with interest, taxable court costs, reasonable attorney's fees and all other collection expenses, shall be a charge and a continuing lien upon the lot against which each such assessment is made, or with reference to which each such charge is incurred. Each assessment or charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such lot at the time when the assessment fell due or charge was incurred. The personal obligation for delinquent assessments or charges shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively

- (a) to promote the recreation, health, safety, and welfare of the residents in the lots,
- (b) for operation of the Common Area,
- (c) for insurance upon and for the maintenance, repair, painting and replacement of improvements in the Common Area and the perimeter walls of MARLBOROUGH PARK ESTATES.

Section 3. Annual Assessment. Until January 1, 1981, the maximum annual assessment shall be ONE HUNDRED FORTY-FOUR DOLLARS (\$144.00) per lot which is equivalent to TWELVE DOLLARS (\$12.00) per

month, or such lesser amount as the Board of Directors may determine. From and after December 31, 1950. (the "base year") the maximum annual assessment shall be determined by the Board of Directors, PROVIDED that the assessment in any given year shall not be increased over the assessment in the base year by more than the increase of the Consumer Price Index in Maricopa County as determined by The Valley National Bank of Arizona (or its successor) for the October next preceeding that given year over that Consumer Price Index for October of the base year, unless any excess increase is approved by a vote of two-thirds (2/3) of the votes cast in person or by proxy by each class of Members at a meeting duly called for that purpose. If Valley Bank (or its successor) ceases to determine and promulgate that Consumer Price Index, the Consumer Price Index published by the US Department of Labor for October of the base year and for the October next preceeding the given year shall govern.

Section 4. Special Assessments for Capital Improvements.

The Association may, in any assessment year, in addition to the annual assessments authorized above, levy a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes cast in person or by proxy by each class of Members at a meeting duly called for that purpose.

Section 5. Notice and Quorum for Any Action Authorized

under Section 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called regarding any given proposal, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall 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 two-thirds (2/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment--25% Rate For a Never Occupied Lot. Both annual and special assessments must be fixed at a uniform rate for all assessable once occupied lots and at a uniform rate for all assessable never occupied lots. The rate for never occupied lots shall be twenty-five percent (25%) of the rate for once occupied lots. Assessments may be collected on a monthly basis. This provision shall not preclude the Association from making a separate or additional charge to an Owner for or on account of special services or benefits rendered to, conferred upon or obtained by or for that Owner or his lot.

Section 7. Date of Commencement of Assessments--Due Date. The annual assessments provided for herein regarding any given lot subject to this Declaration shall commence on the first day of the month following the conveyance of the common areas to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period, however, the assessment shall be binding notwithstanding delay. Written notice of the annual assessment and of any special charges shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments and charges on a specified lot have been paid.

Section 8. Effect of Nonpayment of Assessments--Remedies of the Association. Any assessment or charge not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum or at such other legal interest rate as may be determined from time to time by the Board. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against his lot. No Owner may waive or otherwise escape liability for the assessments or charges provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien for the assessments and charges provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the lien for assessments or charges. However, the sale or transfer of any lot pursuant to foreclosure of an institutional first mortgage or any proceeding or deed in lieu thereof, shall extinguish the lien of such assessments or charges as to payment which became due prior to such sale or transfer but shall not release the delinquent owner from liability for those assessments and charges. No sale or transfer shall relieve such lot from liability for any assessments or charges thereafter becoming due or from the lien thereof.

ARTICLE V  
EXTERIOR MAINTENANCE

Section 1. By Owner. Each lot and the exterior of the buildings and structures thereon shall be maintained in good and reasonable condition by the Owner of that lot; provided, however, that if a lot Owner shall fail to do so, then, upon vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to that lot Owner, the Association shall have the right (but not the obligation) to enter upon or into that lot and provide such maintenance or make such repairs or replacements, and the cost thereof shall be added to the assessments charged to such lot Owner and shall be paid to the Association by that Owner.

Section 2. Access at Reasonable Hours. For the purpose of performing the maintenance authorized by Section 1 of this Article, the Association's agents or employees shall have the right after reasonable notice to a lot Owner, to enter upon his lot and/or to do so without notice at any time in the event of an emergency.

ARTICLE VI  
DUTIES AND POWERS OF THE OWNER'S ASSOCIATION

Section 1. Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) Common Area. Maintain and otherwise manage the Common Area and all facilities, improvements and landscaping thereon, and all property that may be acquired by the Association.

- (b) Legal and Accounting Services. Have authority to obtain legal, accounting and other services necessary or proper in the operation of the Association and the Common Area or the enforcement of these Restrictions.
- (c) Easements. Grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and/or any lot.
- (d) Employ. Have authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.
- (e) Contingency Fund. Have authority to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association. Said fund shall be used by the Association as the Directors shall deem fit to carry out the objectives and purposes of the Association, and shall be added to and made a part of the regular assessments provided for in Section 3 of Article IV hereof.
- (f) Purchase Insurance. Have authority to purchase insurance for the Common Area for such risks, and with such companies, and in such amounts as the Board of Directors of the Association shall determine.
- (g) Other. Have authority to perform other acts authorized expressly or by implication hereunder and/or under the Articles and/or the Bylaws of the Association.

The standard of maintenance to be provided under this Section 1 and the need to replace any tree or other landscaping shall be determined by the Board of Directors in its sole discretion.

Section 2. Insurance.

(a) Liability Insurance. Public liability and Common Area property damage insurance shall be purchased by the Board, or acquired by assignment from Declarant promptly following the Board's election, and shall be maintained in force at all times. The premium thereon shall be paid out of the Association's funds. The insurance shall be carried in reputable companies authorized to do business in Arizona. The minimum amounts of coverage shall be \$500,000 for personal injury to any one person, \$1,000,000 for personal injury to any number of persons sustained in any one accident or mishap, and \$50,000 property damage. The policy shall name the Association, its directors, officers, employees and agents in the scope of their employment as insureds. This policy shall include but need not be limited to insurance against injury or damage occurring in the Common Area.

(b) Fire Insurance--Master Policy for Common Area. A master or blanket fire insurance policy shall be purchased or acquired by the Board promptly following the construction of any building on the Common Area, and shall thereafter be maintained in force at all times. The premium thereon shall be paid out of the Association's funds. Said insurance shall be carried with reputable companies qualified to do business in the State of Arizona and shall insure against loss from fire and other hazards therein covered, for the full insurable value of all of the permanent improvements upon the Common Area. Said policy shall contain extended coverage and replacement cost endorsements, if

available, as well as vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause, and a determinable cash adjustment clause, or a similar clause or clauses to permit cash settlement covering full value of the improvements in the event of partial destruction. The policy shall be in such amounts as shall be determined from time to time by the Board. The policy shall name the Association and any first mortgagee of the insured improvements as insureds, as their respective interests may appear.

(c) Other Insurance. The Board of Directors of the Association may purchase additional insurance as the Board may determine to be advisable including, but not limited to, workmen's compensation insurance, demolition insurance to remove improvements that are not rebuilt, fidelity bonds and insurance on Association owned personal property. All premiums for such insurance and bonds shall be paid out of the Association's funds except that insurance premiums on individual dwelling units shall be assessed to and be promptly paid by the Owners respectively of those units. The Association may assess such Owners monthly in advance for the estimated cost of such insurance.

(d) Mortgagee's Rights. With respect to insurance coverage under Paragraph (b) above, any mortgagee of record may have the option to apply insurance proceeds payable to it in reduction of the obligation secured by its mortgage.

Section 3. Damage and Destruction--Reconstruction. In the event of damage or destruction of any improvements upon the Common Area, the Board of Directors shall contract for repair or reconstruction of such improvements and if the proceeds of any insurance policies payable as a result of such loss are insufficient

for such repair or reconstruction, the deficiency shall be the subject of a special assessment approved by a vote of the Owners as provided in Article IV hereof. Insurance proceeds shall be paid to the contractor or contractors designated by the Board at such times and upon such conditions as may be designated by the Board. All repair or reconstruction on the Common Area or to structures on any lot shall be made in accordance with original plans and specifications therefor, or according to such revised plans and specifications as may be approved by the Board of Directors of the Association.

In the event that improvements in and upon the Common Area shall not be rebuilt because the cost of rebuilding shall exceed the available insurance proceeds, and the Members shall fail to approve a special assessment to cover the deficiency, the Board of Directors shall then cause any remaining portion of such improvement not useable (as determined by the Board) to be removed and the area cleared and landscaped in an aesthetically pleasing manner. In the event that a structure on any lot shall be substantially destroyed by fire or other casualty, and if replacement or demolition and landscaping is not commenced and prosecuted without unreasonable delay, the Board may elect to demolish and remove the damaged structure and clear and landscape the lot until the Owner elects to replace the structure. The cost of such demolition and such other work shall be added to the assessments charged to the Owner of that lot and shall be paid to the Association by that Owner.

In the event that the Board of Directors shall fail to proceed in good faith to repair or rebuild damaged or destroyed improvements upon the Common Area, any individual Owner may call a meeting of the Association upon thirty (30) days notice in writing

to all Owners and such Association may, if a quorum of Members is present, upon a simple majority vote of the Members present, enter into contracts for the repair and reconstruction of any damaged improvements.

Section 4. Other Duties and Powers. The Association and its Board of Directors acting in its behalf shall obtain, provide and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, or pay any taxes or assessments which the Board is required to secure or pay for pursuant to the terms of these restrictions or by law or which in its opinion shall be necessary or proper for the operation of the project or for the enforcement of these restrictions; provided that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are specifically provided for particular lots, the cost thereof shall be specially assessed to the Owners of such lots. The Association may likewise pay any amount necessary to discharge any lien or encumbrance levied against all the lots or any part thereof which may, in the opinion of the Board constitute a lien against the Common Area, rather than merely against the interests therein of a particular Owner, provided that where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Board by reason of said lien or liens, shall be specially assessed to said Owners.

## ARTICLE VII

### UTILITIES

Section 1. Rights and Duties of Owners. The rights and duties of the Owners with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities shall be governed by the following:



(a) Easement. Wherever sanitary sewer or water connections or electricity, gas, telephone or other similar lines or pipes are installed within any lot, which connections, lines or pipes, or any portion thereof, lie in or upon lots owned by other than the Owner of a lot served by said connections, lines or pipes, the Owners of any lot served by said connections, lines or pipes, shall have the right, and are hereby granted an easement to the full extent necessary therefor, at reasonable hours and after reasonable notice, to enter upon the lot within or upon which said connections, lines or pipes, or any portion thereof, lie, to repair, replace and generally maintain said connections, lines and pipes, as and when the same may be necessary, but any such Owner entering another's lot shall restore the other lot and improvements thereon disturbed by such work.

(b) Common Connections, Lines or Pipes. Wherever sanitary sewer or water connections, or electricity, gas or telephone lines or pipes, or similar lines or pipes are installed within any lot, which connections serve more than one lot, the Owner of each lot served by said connections, lines and pipes, shall be entitled to the full use and enjoyment of such portions of said connections, lines and pipes, as service his lot.

(c) Resolution of Disputes. In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, lines or pipes, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners, addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision

of the Board shall be final and conclusive on the parties.

Section 2. Declarant's Easement. Easements over the lots for the installation and maintenance of electric, telephone, water, gas and sanitary sewer or similar lines, pipes and facilities, and for drainage facilities, as shown on the recorded plat of MARLBOROUGH PARK ESTATES and as may be hereafter required or needed to service the Common Area or any lot, are hereby reserved by Declarant, together with the right to grant and transfer the same.

ARTICLE VIII  
USE RESTRICTIONS

In addition to all other covenants contained herein, the use of the lots is subject to the following:

Section 1. Restricted Use. Except as otherwise provided herein, none of the lots shall be used except for residential purposes. No lot shall have more than one living unit thereon.

Section 2. Business and Related Use. No lot shall ever be used or caused, allowed or authorized in any way, directly or indirectly, to be used for any business, commercial, manufacturing, industrial, mercantile, storing, vending, or other such purposes, provided, however, that Declarant, its successors or assigns may use the lots for such facilities as in its or their sole opinion may be reasonably required, convenient or incidental to the construction and sale of living units, including, without limitation, a business office, storage area, construction yards, signs, a model site or sites, and display and sales office during the construction and sales period.

Section 3. Signs. No emblem, sign or billboard of any kind shall be displayed to the public view on any of the lots or

Common Area

(a) except reasonable signs used by Declarant to advertise the lots or living units thereon for sale or lease and

(b) except such other reasonable signs on the Common Area as may be placed and approved by the Board of Directors of the Association, and

(c) except that an Owner may place on any lot one sign not more than eighteen (18) inches by twenty-four (24) inches in size, advertising that lot for sale or rent.

Section 4. Noxious or Offensive Activities. No noxious or offensive activity shall be carried on upon any part of the lots nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners, of his respective lot and improvements thereon or which shall in any way increase the rate of insurance.

Section 5. Restricted Residences. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

Section 6. Vehicles and Recreational Equipment. No trailer, camper, boat or similar equipment shall be permitted to remain upon any lot.

Section 7. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or within any lot or structure thereon except that dogs, cats, or other household pets may be kept on or within the lots, provided they are not kept, bred, or maintained for any commercial purpose, or in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may

be kept on any lot which result in an annoyance to or are obnoxious to other Owners or tenants in the vicinity.

Section 3. Drilling and Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any lot. No derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, maintained or permitted upon any lot.

Section 9. Trash. All rubbish, trash and garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate thereon.

Section 10. Screening and Fencing. All clotheslines, refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any lot, unless in the rear yard and unless obscured from view of the adjoining lot and Common Areas by a fence or appropriate screen approved by the Architectural Committee.

Section 11. Antennas. No alteration to or modification of any radio and television antenna system, as developed by Declarant, shall be permitted and no Owner may be permitted to construct or use and operate his own external radio or television antenna, without the written approval of the Architectural Committee.

ARTICLE IX

RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time while it is the Owner thereof to resubdivide and replat any lot or lots, other than and excluding lots in Phase One (1 through 41), without the consent of the other Members or any of them.

ARTICLE X  
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built in connection with the original construction of the homes upon the lots and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, then, upon written request of one of such Owners, addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

ARTICLE XI

ARCHITECTURAL CONTROL

Section 1. Architectural Approval. No building, fence, wall or other structure shall be commenced, erected or maintained upon any lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, color, shape, height, materials, location and other material attributes of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee established pursuant to the provisions of Section 2 of this Article. In the event the Architectural Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Appointment of Architectural Committee. Declarant shall initially appoint the Architectural Committee, consisting of not less than three (3) persons, who shall hold office whenever there is a Class B Member. When there is no Class B Member, the Architectural Committee shall be composed of the Board of Directors of the Association or by three (3) or more representatives appointed by the Board, who need not be Members of the Association. In the event of the death or resignation of any member of the Committee prior to the time when the Board of Directors of the Association is vested with authority, Declarant shall have the right to appoint such member's successor.

ARTICLE XIIRESERVATION OF EASEMENT

Section 1. Declarant's Easement. Easements over the lots for the installation and maintenance of electric, telephone, water, gas and sanitary sewer or similar lines, pipes and facilities, and for drainage facilities, as shown on the recorded plat of HARLBOROUGH PARK ESTATES and as may be hereafter required or needed to service the Common Area are hereby reserved by Declarant, together with the right to grant and transfer the same.

ARTICLE XIIIGENERAL PROVISIONS

Section 1. Enforcement. The Association, in the first instance, or any Owner, should the Association fail to act within a reasonable time, shall have the right to enforce, by any proceeding at law or in equity, all limitations, restrictions, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto or by the Association's Articles of Incorporation or Bylaws. Failure by the Association or by any Owner to enforce any limitation, condition, reservation, lien, charge, covenant or restriction herein contained or in those Articles and Bylaws shall in no event be deemed a waiver of the right to do so thereafter. Deeds of conveyance of said property, or any part thereof may contain the above restrictive covenants by reference to this document, but whether or not such reference is made in such deeds, or any part thereof, each and all such restrictive covenants shall be valid and binding upon the respective grantees. Violators of any one or more of such covenants may be restrained by any court of competent jurisdiction and damages awarded against such violators, provided, however, that a violation of these restrictive covenants or any one or more of them shall not affect the lien of any mortgage or deed of trust now of record or which hereafter may be placed of record upon said lots or any part thereof.

Section 2. Severability. Invalidation of any one of these covenants or restrictions, or any portion thereof, by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years for so long as the lots shall continue to be used for residential uses.

Section 4. Amendment. This Declaration may be amended as herein provided but no amendment may change the ratio of assessments without prior written approval of the then holders of all first mortgages on any of the lots. During the first twenty (20) year period amendment shall be made by an instrument signed by the Declarant and other Owners who own in the aggregate (Declarant and other Owners) not less than ninety percent (90%) of the lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the lots. Any amendment must be recorded. After having given prior notice to the City Attorney's office of the City of Tempe, Declarant alone may amend this document prior to recordation of the first deed of any lot to an Owner and/or the recordation of a contract to sell a lot to an Owner other than Declarant annexed, provided that any such amendment shall either contain the approval of the Veterans Administration or an affidavit that its approval has been requested in writing and that it has not within thirty (30) days after delivery of that request either approved or disapproved.

Section 5. Inclusion of Additional Phase. Additional phases of lots and common area tracts in the said MARLBOROUGH PARK



ESTATES may be annexed to and included under and be made subject to this Declaration without the consent of Members by recording a Supplemental Declaration signed by the owners thereof describing the lots and tracts to be thus included and expressly referring to this Declaration and reciting that those lots and tracts are thereby added or annexed, provided that any such supplement shall either contain the approval of the Veterans Administration or an affidavit that its approval has been requested in writing and that it has not within thirty (30) days after delivery of that request either approved or disapproved. When a phase has been included (annexed) under this Declaration the Owners of the lots in such additional included phase shall have the same rights and duties under this Declaration as the Owners of lots in the first phase (i.e., the lots initially covered by this Declaration). Any tract thus added as a Common Area shall be added for the benefit of the lot Owners in Phase One and in any previously added phases as well as for the lot Owners added in the same phase as that Tract. Further, upon such addition of a tract, it shall be conveyed to the Association unencumbered by any mortgage lien. The Association shall maintain any such added Common Area tract and all lot Owners shall be assessed for the maintenance and subsequent development of any such tract as though all lots and all Common Area tracts then covered by this Declaration had been initially included with Phase One.

Section 6. Construction. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a planned unit development consisting of single family homes, and common areas with maintenance as herein provided. The provisions hereof shall be construed in a manner which will effectuate the inclusion (annexation) of additional lots pursuant to Section 5 of this Article. The Article and Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration regardless of the number and gender in which they are used shall be deemed and construed to include any other number, and any other gender, masculine, feminine

or neuter, as the context or sense of this Declaration or any Article or Section herein may require, with the same effect as if such number and words had been fully and properly written in the required number and gender. Whenever the words and symbol "and/or" are used in this Declaration, it is intended if consistent with the context that this Declaration be interpreted and the sentence, phrase or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word "and" inserted, and once with the word "or" inserted, in the place of words and symbol "and/or".

Section 7. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed to each person at the address given by such person to the Association for the purpose of service of such notice or to the address of the lot of such person if no address has been given. Such address may be changed from time to time by notice in writing received by the Association.

Section 8. Easements. Each lot and Common Area shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent lots as constructed by the original builder or as reconstructed or repaired in accordance with the original plans and specifications or as a result of repair, shifting, settlement or movement of any such structure.

Section 9. Leases of Lots. Any lease of a lot must be in writing and must provide that the lease is subject in all respects to the provisions of the Declaration, the Articles of Incorporation, and Bylaws of the Association and that any failure by the lessee to comply with those instruments shall be a default under the lease.

Section 10. Management Agreements. Any management agreement made by the Association will be terminable by the Association

for cause upon thirty (30) days written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one year periods.

Section 11. Condemnation. In the event all or any part of the Common Area is condemned the award or negotiated settlement received by the Association shall apply the proceeds thereof to pay the then debts of the Association and the remainder, if any, shall be allocated among the owners of the lots with an equal allocation for each lot; provided that in the event any lot is then subject to a first mortgage lien the aliquot share for that lot shall be paid to the lot owner and the holder of the first mortgage as their interests may appear.

Section 12. No Partition. There shall be no judicial partition of any lot, nor shall Declarant or any Owner or other person acquiring any interest in any lot, or any part thereof, seek any such judicial partition, except that any lot may be split between the Owners of lots adjacent to such lot so that each portion of such lot would be held in common ownership with another lot adjacent to that portion. Any such portion and adjacent lot shall thereafter be considered to be one lot for the purposes of this Declaration.

DATED: Feb 7, 1980.

WITNESS OUR HANDS:

MARLBOROUGH DEVELOPMENT CORPORATION,  
an Arizona corporation

BY: Joseph Davis  
Its VP

Declarant

PIONEER TRUST COMPANY OF ARIZONA, an  
Arizona corporation

BY: Charles P. Johnson  
Its Trust Officer

Trustee

14216-636

STATE OF ARIZONA. )  
County of Maricopa ) ss.

This instrument was acknowledged before me this 7<sup>TH</sup> day  
of FEBRUARY, 1980, by C. SCOTT DAVIS as  
VICE PRESIDENT of MARLBOROUGH DEVELOPMENT CORPORA-  
TION, an Arizona corporation.

My Commission Expires:

10-24-80

*[Signature]*  
Notary Public

\*\*\*\*\*

STATE OF ARIZONA. )  
County of Maricopa ) ss.

This instrument was acknowledged before me this 7<sup>th</sup> day  
of February, 1980, by Charles A. Johnson as  
Trust Officer of PIONEER TRUST COMPANY OF ARIZONA, an Arizona  
corporation.

My Commission Expires:

3/4/83

*[Signature]*  
Notary Public

APPROVED AS TO FORM:

DAVID R. MERKEL, City Attorney  
of City of Tempe

BY: \_\_\_\_\_

FEB 12 1980 - 8 00

STATE OF ARIZONA }  
County of Maricopa } ss

I hereby certify that the with-  
in instrument was filed and re-  
corded, at request of  
PIONEER NATIONAL TITLE INS. CO.

in Docket 14216  
on case 608-636

Witness my hand and official  
seal this 12th day of February, 1980.  
Bill Egan

County Recorder  
By: *[Signature]*  
County Recorder

15.00

ANNEXATION SUPPLEMENT TO  
AND CORRECTION OF  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MARLBOROUGH PARK ESTATES

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THIS ANNEXATION SUPPLEMENT is dated \_\_\_\_\_, 1981.  
It is made by MARLBOROUGH DEVELOPMENT CORPORATION, an Arizona corporation, herein referred to as "Declarant", by PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation as Trustee ("Pioneer"), and by MARLBOROUGH PARK ESTATES OWNERS ASSOCIATION, INC., a non-profit Arizona corporation ("Owners Association").

W I T N E S S E T H:

WHEREAS, Declarant and Trustee have heretofore signed and caused to be recorded a certain "Declaration of Covenants, Conditions and Restrictions" regarding certain lots and tracts in ~~Marlborough-Park Estates~~, a subdivision, recorded in Book 219 of Maps, Page 4, Records of Maricopa County, Arizona, which Declaration was recorded in Docket 14216, Page 608 through 636, Records of Maricopa County, Arizona; and

WHEREAS, that plat of Marlborough Park Estates was corrected by Certificate of Correction recorded February 17, 1981 in Docket 15027, Page 948-957; and

WHEREAS, Declarant as the beneficial owner and Pioneer as Trustee holding legal title to Tract C and to all of the lots of that subdivision not covered by that Declaration and Owners Association as the owner of all other tracts of that subdivision not covered by that Declaration now wish to have those lots and tracts covered by and made subject to that Declaration; and

WHEREAS, Article XIII, Section 5 of that Declaration makes specific provision for such coverage and annexation of additional

lots and tracts in Marlborough Park Estates,

NOW, THEREFORE,

1. Declarant and Pioneer hereby correct the Declaration by declaring, and they do hereby declare, that all references in the Declaration to the plat of Marlborough Park Estates refer to the said plat as corrected by the said Certificate of Correction; and

2. Declarant, Pioneer and Owners Association hereby declare that the following lots and tracts,

Lots 42 through 177 and Tracts A, B, C and E of MARLBOROUGH PARK ESTATES, a subdivision recorded in Book 219 of Maps, Page 4, as corrected by Certificate of Correction recorded in Docket 15027, Page 948-957, Records of Maricopa County, Arizona,

are now and shall henceforth be covered by and shall be subject to the Declaration of Covenants, Conditions and Restrictions described above, corrected as aforesaid.

WITNESS OUR HANDS:

MARLBOROUGH DEVELOPMENT CORPORATION  
an Arizona corporation

BY: [Signature]  
Its PRESIDENT  
Declarant

APPROVED THIS 25 day  
of March, 1981:

VETERANS ADMINISTRATION  
BY: [Signature]  
Its Contractor - Analyst

PIONEER TRUST COMPANY OF ARIZONA,  
an Arizona corporation as Trustee

BY: \_\_\_\_\_  
Its \_\_\_\_\_  
Trustee

APPROVED AS TO FORM:

DAVID R. MERKEL  
CITY ATTORNEY  
CITY OF TEMPE

BY: \_\_\_\_\_

MARLBOROUGH PARK ESTATES OWNERS  
ASSOCIATION, INC., a non-profit  
Arizona corporation

BY: [Signature]  
Its VICE PRESIDENT

STATE OF ARIZONA, )  
County of Maricopa ) ss.

This instrument was acknowledged before me this 28th day of  
April, 1981, by Larry S. Benson as  
President of MARLBOROUGH DEVELOPMENT CORPORATION,  
an Arizona corporation.

My Commission Expires:  
May 22, 1983

*Patricia A. Mansfield*  
Notary Public

\* \* \* \* \*

STATE OF ARIZONA, )  
County of Maricopa ) ss.

This instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 1981, by \_\_\_\_\_ as  
\_\_\_\_\_ of PIONEER TRUST COMPANY OF ARIZONA, an  
Arizona corporation as Trustee.

My Commission Expires:  
\_\_\_\_\_

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

\* \* \* \* \*

STATE OF ARIZONA, )  
County of Maricopa ) ss.

This instrument was acknowledged before me this 28th day of  
April, 1981, by Larry S. Benson as  
Vice President of MARLBOROUGH PARK ESTATES OWNERS  
ASSOCIATION, INC., a non-profit Arizona corporation.

My Commission Expires:  
May 22, 1983

*Patricia A. Mansfield*  
Notary Public

EASEMENTS RESERVED  
 VEHICLE PARKING AND STORAGE AREA  
 FOR  
 MARLBOROUGH PARK VILLAS

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The Declarant reserves the following two easements with the understanding that these easements are intended for the benefit of a homeowners association regarding Marlborough Park Villas, per plat recorded in Book 219 of Maps, Page 5, Records of Maricopa County, Arizona, and that that association when it becomes the owner of these easements will thereafter pay forty-four percent (44%) of the costs of operating and maintaining Tract D.

1. EXCLUSIVE EASEMENT:

Declarant has reserved and does hereby reserve an exclusive easement in gross for vehicle parking and for storage purposes over such parking spaces as may hereafter be designated on the ground (subject to and consistent with the access easement twenty-five feet wide described in the Non-Exclusive Easement reserved below) from time to time by the owner of this easement, on that portion of Tract D of Marlborough Park Estates, a subdivision recorded in Book 219 of Maps, Page 4, Office of the County Recorder, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Northeasterly corner of said Tract D; thence bearing S 01°11'13" W a distance of 58.67 feet to the TRUE POINT OF BEGINNING; thence continuing bearing S 01°11'13" W a distance of 116.72 feet; thence bearing S 60°38'57" W a distance of 120.00 feet; thence bearing N 60°01'42" W a distance of 87.82 feet; thence bearing N 60°38'57" E a distance of 149.07 feet; thence bearing N 29°21'03" W a distance of 25.00 feet; thence bearing N 60°38'57" E a distance of 75.05 feet to the TRUE POINT OF BEGINNING.

2. NON-EXCLUSIVE EASEMENT:

Declarant has reserved and does hereby reserve a non-exclusive easement in gross for vehicular and pedestrian ingress and egress twenty-five (25) feet wide to and from each of the parking spaces hereafter designated as provided in the foregoing Exclusive Easement to and from La Rosa Drive which adjoins Tract D on the West over driveways hereafter designated on the ground from time to time by the owner of Tract D consistent with this Easement and the Exclusive Easement set forth above.

**EXHIBIT A**