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VIVIAN SCHILIRO  
C/O DAN SCHWARTZ REALTY, INC.  
201 E. Camelback Road  
Phoenix, Arizona 85012

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

## NINA VILLA

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**NINA VILLA  
A Patio Home Subdivision**

This Declaration of Covenants, Conditions and Restrictions for Nina Villa (the Declaration) is made this 19th day of October 2001, by Michael Schiliro. (the "Declarant").

**WITNESSETH**

Whereas, Declarant is the owner of certain real property situated within the County of Maricopa, State of Arizona, which is more particularly described as Lots 1 through 60 and Tracts A, B, C, D, E and F, NINA VILLA SUBDIVISION, according to the plat thereof, recorded in Book 522 of maps at page 29 and Certificate of Correction recorded in Instrument No. 00-0307681, records of the Office of the County Recorder of Maricopa County, Arizona (hereinafter referred to as the "Plat").

Now, Therefore, the Declarant desires to create thereon a residential community with recreational areas, open spaces, access areas, and a general plan for the improvement, development use and enjoyment of the Development (as defined below) hereby declares that the Development shall be held, sold and conveyed subject to the following Covenants, Conditions, Restrictions and Easements, which are for the purpose of protecting the value and desirability of, and which run with, the Properties and be binding on all parties having or acquiring any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1**

**DEFINITIONS**

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this article.

- 1.1 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot.
- 1.2 "Association" shall mean the Arizona non-profit corporation to be organized by the Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration. Prior to the incorporation of the Association, Declarant may without obligation, seek approval of this Declaration and the incorporating documents from FHA and any other governmental agencies or financial institutions whose approval Declarant deems necessary or desirable. Declarant, which hereby reserves the exclusive right to cause such Association to be incorporated, intends to name the Association "NINA VILLA HOMEOWNERS ASSOCIATION, INC." if that name is available for use when the Association is incorporated.
- 1.3 "Areas of Association Responsibility" means (i) all Common Area; (ii) all real property, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association; and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Arizona or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such a time as the State of Arizona or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.
- 1.4 "Articles" shall mean the Articles of Incorporation of the Association, as amended or supplemented from time to time.

- 1.5 "Assessment" shall mean an Annual Assessment or a Special Assessment.
- 1.6 "Assessment Period" shall mean the period set forth in Article 6. of this Declaration.
- 1.7 "Board" shall mean the Board of Directors of the Association.
- 1.8 "Bylaws" shall mean the Bylaws of the Association, as amended or supplemented from time to time.
- 1.9 "Common Area" shall mean Tracts A through F, inclusive, of the Plat, and all real property, together with all Improvements situated thereon, which the Association at any time owns in fee or a leasehold interest, except that the Common Area shall not include any Lot which the Association may acquire through foreclosure of the Assessment Lien or any deed in lieu of foreclosure.
- 1.10 "Common Expenses" shall mean the actual or estimated expenses incurred, or anticipated to be incurred, by the Association, together with any allocations to reserves.
- 1.11 "Covenants" shall mean the covenants, conditions, assessments, charges, servitude, liens, and reservations set forth herein.
- 1.12 "Declarant" shall mean Michael Schiliro and his specifically designated successors in interest and any person or entity to whom it may transfer any or all his rights under this Declaration by a Recorded instrument.
- 1.13 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.
- 1.14 "Deed" shall mean a deed or other recorded instrument conveying fee simple title in a Lot.
- 1.15 "Development" shall mean and refer to the real property described in the Plat and subject to this Declaration.
- 1.16 "Dwelling Unit" shall mean any portion of a building situated upon the property designed and intended for use and occupancy as a residence by a single family.
- 1.17 "First Mortgage" shall mean any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.
- 1.18 "Improvement" shall mean any building, fence, wall or other structure (including, without limitation, any sheds, basketball poles/hoops, play structures, patio covers and balconies), and any swimming pool, Jacuzzi, road, driveway, parking area (paved or unpaved) and any trees, plants, shrubs, grass, and other landscaping improvements of every type and kind, except that as used in Article 2 of the Declaration.
- 1.19 "Lot" shall mean each portion of the Property which is assessed as a unit by the appropriate officials (presently the County Assessor of Maricopa County, Arizona).
- 1.20 "Maintenance Charges" shall mean any and all costs assessed associated with Common Area upkeep.
- 1.21 "Member" shall mean all owners.

1.22 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) in any lot which is part of the Development, but excluding those having such interest merely as security for the performance of an obligation.

1.23 "Plat" shall mean and refer to the Plat defined above in the Witnesseth section of this Declaration.

## ARTICLE 2

### USE RESTRICTIONS

2.1 **RESIDENTIAL USE.** Each lot shall be used only for single family residential purposes and no more than one single family residence shall be constructed on any lot.

2.2 **TEMPORARY STRUCTURES.** No structures of a temporary character shall be permitted on the Development, and no trailers (except those permitted to be parked pursuant to 2.7 of this Article), tents, shacks or barns shall be permitted on the Development, neither temporarily nor permanently.

2.3 **BUSINESS OR OFFENSIVE ACTIVITIES.** No noxious or offensive activity may be carried on or permitted on any part of the Development, and nothing shall be done thereon which may be or become an annoyance or nuisance to the other owners. No part of the Development may be used for business, professional, commercial, rest home (including but not limited to care or treatment of the physically or mentally sick or disabled), religious or institutional purposes. This Section does not apply to the activities of the Association in furtherance of its powers and purposes as set forth in this Declaration. Nothing herein shall be deemed to prevent any of the following (a) Lease of a Unit or portion thereof from time to time by the Owner subject to all the provisions of this Declaration. (b) any promotional, sales, leasing, construction or management activities on the property by the Declarant, whether in a Unit or elsewhere. (c) Use of one or more Units as models of offices by a broker, manager or other agent of the Association or Declarant

2.4 **SIGNS.** No sign of any nature whatsoever shall be displayed or placed upon any Lot. No "For Sale", "For Rent" or "Garage/Estate Sale" signs of any nature shall be permitted on any part of the Development, and no other signs shall be permitted on the common area without the prior written consent of the Board.

2.5 **OUTSIDE LIGHTING.** Except as may be initially installed by Declarant, no spotlights, floodlights or similar type of high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or upon the Common Area or any part thereof without the written consent of the Board.

2.6 **ANIMALS.** No animals, birds, fowl, poultry, reptile or livestock, other than a reasonable number of domestic house pets shall be maintained in any Unit and then only if they are kept therein solely as domestic pets and not for commercial purposes. No pet shall be allowed to make an unreasonable amount of noise, nor to become a nuisance. No animal shall be chained or tied outdoors. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be visible from a neighboring Unit or street. Upon the written request of any Owner, Lessee or Resident, the Board shall determine, in its sole and absolute discretion, whether for the purposes of this Section (1) a particular animal or bird is a generally recognized household pet, or a nuisance, or whether the size and number of animals or birds in any Unit or the Common Elements is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration. Dogs and other animals must be kept on a leash when not confined in the Owner's Unit. No Owner shall permit its dog or animal to create unsanitary conditions anywhere on the Common Elements. When such conditions are created, the Owner will be assessed Twenty-five dollars (\$25.00) per incident for cleanup expenses by the Association or any Owner may seek other satisfaction as permitted by law and this Declaration. The amount of assessment may be changed by the Board without amending this Declaration.

**2.7 VEHICLES and PARKING.** No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area so as to be visible from neighboring property, except for: (i) the temporary parking of a motor home, camper, recreational vehicle or boat and boat trailer on the concrete driveway situated on a Lot for a period of not more than seventy-two (72) consecutive hours within any consecutive seven (7) day period for the purpose of loading or unloading such vehicle or equipment; (ii) temporary construction of trailers or facilities maintained during, and used exclusively in connection with the construction of any Improvement approved by the Board; (iii) boats and motor vehicles parked in carports on Lots so long as such vehicles are in good operating condition and appearance and are not under repair; or (iv) motor vehicles which are parked under the carport on the concrete driveway on a Lot. Motor vehicles of residents or guests of a resident parked within the Development shall be parked on the concrete driveway of such resident's Lot at all times.

Subject to the above restrictions, all vehicles must be operated in the Development by licensed operators.

**2.8 MOTOR VEHICLES.** Except for emergency vehicle repairs, no automobile or other motor vehicle including but not limited to watercraft shall be constructed, reconstructed or repaired upon a Lot or other property in the Development, and no inoperable vehicle may be stored or parked on any such Lot or other property so as to be visible from a neighboring property or to be visible from any Common Area or any street.

**2.9 SUBDIVIDING.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Board. No further covenants, conditions restrictions or easements shall be Recorded by any Owner, Lessee, or other Person other than the Declarant against any part of the property without the provisions thereof having been first approved in writing by the Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any person other than the Declarant unless the application has been approved by the Board and the proposed use otherwise complies with this Declaration.

**2.10 DRIVEWAYS.** Driveways situated on Lots shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written consent of the Board.

**2.11 COMMUNITY POOL and RAMADA.** Use and enjoyment of the Locked Community Pool will be restricted to Lot Owners. Guests of Owners must be accompanied at all times. Permitted Pets are not allowed access to the swimming pool. Any persons under the age of sixteen (16) must be accompanied by an adult. There will not be a lifeguard on duty, swimming will be at the risk of the Owner who is entering the pool/ramada areas and the Owner will also be responsible for the safety of his/her guests. The Association and or Declarant shall not be responsible for injuries incurred in these common areas. Owners and guests are at their own risk.

**2.12 PRIVATE POOL and JACUZZI.** Private pools and or Jacuzzis or spas, are subject to all local, state and federal governmental requirements, are allowed but such Owner will still be liable for their share of assessments on the common property pool.

**2.13 BROKER ASSIGNMENT.** No vacant Lot or Lot with a dwelling unit thereon shall be sold or resold through any licensed real estate broker or salesman except that real estate broker or salesman designated by the Declarant, his/her heirs or assigns, and such deed restrictions shall exist only until January 1, 2004. It is the intention of this restriction that the Declarant, his/her heirs or assigns, should exclusively transact all sales and resales, except those for direct sales by Owner of any property to the new Owner who is actually to live in that dwelling unit, and such deed restriction shall exist only until January 1, 2004. All

real estate commissions charged by the Declarant, his/her heirs or assigns, on resale shall be equal to the average real estate commissions in Phoenix on similar type property at the time of resale.

**2.14 DISEASES and INSECTS.** No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

**2.15 OVERHEAD ENCROACHMENTS.** No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other are from ground level to a height of eight (8) feet.

**2.16 CLOTHES DRYING FACILITIES.** No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be visible from neighboring property.

**2.17 DRAINAGE.** No structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Development, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Development is located. No person shall alter the grading of a Lot or alter the natural flow of water over and across a Lot without the prior written approval of the Board.

**2.18 WINDOW COVERINGS.** No window which would be visible from neighboring property shall at any time be covered with aluminum foil, bed sheets, newspapers or any other like materials. No reflective materials shall be installed or used on any Improvement without the prior written consent of the Board.

**2.19 LEASING OF RESIDENTIAL UNITS.** An entire Residential Unit may be leased to a Lessee from time to time by an Owner. The lease between an Owner and a Lessee shall contain a provision that the Lessee has received and agrees to be bound by the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration.

**2.20 UNDERGROUND UTILITIES.** All electric, gas, power, telephone, water and other service and utility lines, pipes and/or other structures and media for transmission thereof shall be placed and maintained underground, except above-ground service pedestals and switch cabinets, and except to the extent (if any) such underground placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Declarant or as may be otherwise approved with the prior written consent of the Board.

**2.21 ANTENNAS and SATELLITE DISH.** No satellite dishes, television, radio and other antennas of any kind or nature shall be placed and maintained upon any Lot of the Development or any part thereof (of the improvements located thereon) unless approved with the prior written consent of the Board.

**2.22 MAINTENANCE and TRASH REMOVAL.** Owners shall regularly maintain their Lots. Such maintenance shall include the painting, repair and replacement of roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and shall also include the care of all landscaping on the Lots, in such a manner that the appearance of the Development shall at all times be that of a first-class residential community. The colors of all exterior walls shall be similar to those used on exterior walls in the Development as part of the original construction. An Owner shall do no act, work nor Improvement which will impair the structural soundness or integrity of the Development, nor allow any condition to exist which will adversely affect the other Units, Lots or Owners. Owners shall keep their Lots free of all weeds, trash, garbage and other rubbish. Rubbish, trash and garbage shall not be burned or allowed to accumulate on any Lot, nor shall incinerators be permitted on any Lot. All trash, garbage or other waste shall be kept in closed, sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and screened from public view, including surrounding Lots.

**2.23 VIOLATION of LAW or INSURANCE.** No Owner shall permit anything to be done or kept in or upon a Lot which will result in the cancellation or increase in premium, or reduction in coverage, of insurance maintained by any Owner or the Association or which would be in violation of any law.

**2.24 VARIANCES.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 2 if the Board determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Development and is consistent with the high quality of life intended for the Residents of the Development. If any restriction set forth in this Article 2 is adjusted or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restrictions to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

**2.25 DECLARANT EXEMPT.** Notwithstanding anything contained herein to the contrary or otherwise, none of the use restrictions contained in this Article 2 or any other restriction contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, or its employees, agents and subcontractors or parties designated by it in connection with the construction, completion, sale or leasing of the Units and Lots.

### ARTICLE 3

#### COMMON AREA

**3.1 USE OF COMMON AREAS.** The Common Areas designated on the Plat as Tracts A,B,C,D, E and F. Subject to the rights granted in Article 4, Section 4.3, the Association shall have the right to restrict access to the Common Area. The association shall have the right 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; provided, however, that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by at least seventy-five (75) percent of Members, has been recorded.

### ARTICLE 4

#### EASEMENTS

**4.1 BLANKET EASEMENT for UTILITIES.** There is hereby created a blanket easement upon, across, over and under the Development for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, garbage collection, emergency, telephone, cable television, electricity and service type vehicles. By virtue of said easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary facilities and equipment on the Development and to affix and maintain wires, circuits, conduits and related facilities and equipment on, above, across and under the roofs and exterior walls of the Units. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any sewers, electrical lines, water lines, or other facilities for utilities be installed or relocated on the Development except as initially created, programmed and approved by Declarant or thereafter created or approved by Declarant or the Association. This provision shall in no way effect any other recorded easements on the Development.

**4.2 ENCROACHMENTS.** Each Lot, Unit and the Common Area shall be subject to an easement for encroachments, including but not limited to encroachments of patios, balconies, ledges, roofs, walls

fences, driveways and trellises, created by construction, settling and overhangs, as designed or constructed by Declarant or its nominee. In the event any Unit or structure is partially or totally destroyed and then rebuilt, the Owners of Units agree that similar encroachments of parts of the adjacent Units or Common Area due to construction, settling and overhangs shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

**4.3 COMMON AREA EASEMENTS.** There is hereby created a blanket easement upon and across the Common Area in favor of (i) each Owner and his/her tenants, guests and invitees for the sole purpose of providing ingress and egress to the Lot owned by said Owner, to the extent such is absolutely necessary, (ii) the Association and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Area, and (iii) the Declarant and its invitees, employees or independent contractors for the purpose of providing landscaping or other maintenance to the Common Area and for any activities related to the promotion and sale of any of the Lots.

**4.4 INTERFERENCE.** Except as may be constructed by Declarant or its nominee or as specifically allowed by this Declaration and the Plat, no building or other structures shall be placed or erected on any easements nor interference made with the free use thereof for the purposes intended.

## ARTICLE 5

### ASSOCIATION, MEMBERSHIP and VOTING RIGHTS

**5.1 PURPOSE.** The Association shall be a nonprofit corporation organized under and by virtue of the laws of the State of Arizona for the general welfare and benefit of the Property Owners in the Development. The Association, through its Members and Board, shall take the appropriate action to manage and maintain, repair, replace and improve the Common Area together with Improvements located thereon, if any, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, all in accordance with this Declaration and with the Association's Articles of Incorporation and Bylaws.

**5.2 MEMBERSHIP.** Membership in the Association shall be limited to the Owners of Lots as herein above defined, and such membership shall be subject to all the provisions of the Declaration and to the Association's Articles of Incorporation and Bylaws. An Owner of a Lot shall be automatically, upon becoming the Owner of a Lot, be a Member of the Association (Member). An Owner shall remain a Member of the Association until such time as his/her ownership for any reason ceases, at which time his/her membership in the Association automatically shall cease. Ownership of a Lot shall be the sole qualification and criterion for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. A membership in the Association shall not be transferred, pledged or alienated in any way except by the sale of such Lot and then only to such purchaser who shall automatically become a member of the Association after such conveyance, or by interstate succession, testamentary disposition, foreclosure of a Mortgage or Deed of Trust of record, or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. At the discretion of the Board, no certificates of membership need be issued, and if certificates are not issued, membership shall be evidenced by an official list of Members kept by the Secretary of the Association.

**5.3 VOTING RIGHTS.** The Association shall have two (2) classes of voting memberships:

**CLASS A.** Class A members shall be all Owners, with the exception of the Declarant (until Declarant's Class B membership converts to Class A membership as provided below), and shall be entitled to one vote for each Lot owned. In the event any such Lot is owned by two (2) or more persons, the membership as to such Lot shall be joint, and a single membership for such Lot shall belong to all Owners, and they shall designate to the Association in writing one of their number who shall have the



power to vote said membership, and in the absence of such designation, and until such designation is made, the Board shall make such designation. In no event shall more than one vote be cast with respect to any Lot.

**CLASS B.** The Class B member 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 first to occur of the following events: (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or (ii) five (5) years following the conveyance of the first Lot to an Owner by Declarant, or (iii) the date the Declarant notifies the Board in writing that Declarant is terminating its Class B membership.

## ARTICLE 6

### COVENANT for MAINTENANCE ASSESSMENTS

#### 6.1 CREATION of the LIEN and PERSONAL OBLIGATION for ASSESSMENT.

The Declarant, for each Lot owned within the property, hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association; (i) Annual Assessments or charges, and (ii) Special Assessments for capital Improvements, such assessments to be established and collected as hereinafter provided. The Annual and Special Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each assessment, 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 assessments shall not pass to such Owner's successor in title unless expressly assumed by them.

**6.2 PURPOSE of ASSESSMENTS.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the general benefit, recreation, health, safety and welfare of the residents in the Development. Such purposes shall include, but shall not be limited to, and the Association's rights and powers shall include (in addition to the rights and powers set forth in this Declaration and in the Association's Articles of Incorporation and Bylaws) provision for the improvement, construction, repair, maintenance, care upkeep and management of the Common Area and the Improvements and facilities thereon, if any; and further, shall include the payment of charges and assessments, if any, which may be assessed against and levied upon any property owned by the Association, and all premiums for hazard and public liability insurance, together with all other costs and expenses related to the management and maintenance of the Common Area.

**6.3 BASIS of ASSESSMENTS.** The Board, subject to the provisions of this Article, shall determine and establish a budget and make assessments upon the Owners of Lots on the basis of costs and expenses incurred or estimated to be incurred by the Association. The Owner of each Lot for said Owner and for Owner's heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees that each Lot shall be subject to an assessment in an amount to be determined, which amount shall be the said Lot's pro rata share of the following: (i) the actual cost to the Association of all taxes and improvement assessments (if any), water, utilities, insurance, repairs, construction, replacement and maintenance of Common Area and the improvements and facilities located thereon, if any, and all other charges necessary or appropriate to carry out the purposes of the Association as set forth in this Declaration, the Articles of Incorporation and Bylaws of the Association, and the Association's rules and regulations; and (ii) such sums as the Board shall determine to be fair and prudent for the establishment and maintenance of a reserve fund for repair, maintenance, taxes, insurance, management and administrative costs and other charges as specified herein.

**6.4 MAXIMUM ANNUAL ASSESSMENTS.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Four Hundred Twenty

and No/100 Dollars (\$420.00){\$35.00 per month} per Lot; (I) from and after January of the year immediately following the conveyance of the first Lot to an Owner, the Board may, without a vote of the Members, increase the maximum Annual Assessment during each fiscal year of the Association by an amount equal to ten percent (10%) of the maximum Annual Assessment for the immediately preceding fiscal year. (ii) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by an amount greater than the maximum increase allowed pursuant to (ii) above, provided that any such change 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, written notices of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation. (iii) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**6.5 SPECIAL ASSESSMENTS for CAPITAL IMPROVEMENTS.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or 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, providing that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class members who are voting in person or by proxy at a meeting duly called for such purpose.

**6.6 NOTICE and QUORUM for ANY ACTION AUTHORIZED UNDER SECTIONS 6.4 and 6.5.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.4 or 6.5 of this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose of the meeting. At the first such meeting called, the presence of members or of proxies entitles to cast sixty percent (60%) of all the votes of each class of 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 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.

**6.7 UNIFORM RATE of ASSESSMENT.** Both annual and special assessments must be fixed at a uniform rate for all Lots and must be collected on a quarterly or annual basis.

**6.8 DATE of COMMENCEMENT of ANNUAL ASSESSMENTS:** The period for which the Annual Assessments is to be levied shall be the calendar year, except that the first Assessment Period, and the obligation of the Owner to pay Annual Assessments shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The first annual assessments 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. Written notice of the annual assessment 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 on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. The Board in its sole discretion from time to time may change the Assessment Period.

**6.9 EFFECT of NONPAYMENT of ASSESSMENTS; REMEDIES of the ASSOCIATION.**  
Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his/her Lot.

**6.10 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 effect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments 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.

**6.11 REDUCED ASSESSMENT for DECLARANT.** Notwithstanding the provisions of Section 7 of this Article 6, the Annual and Special assessments for Lots owned by the Declarant shall not participate in the Annual or Special Assessment established by the Board pursuant to this Article. Each Lot owned by the Declarant shall be entitled to the reduced assessment provided for in this Section 6.11 until the earlier of (I) the date on which that Lot is conveyed to a purchaser other than Declarant, or (ii) the date on which any residential structure on that Lot is first occupied for residential purposes. At such time as a Lot ceases to qualify for the reduced assessment in accordance with this Section 6.11, the assessment for such Lot shall automatically increase to the assessment fixed by the Board for all Lots not owned by the Declarant.

**6.12 INDIVIDUAL ASSESSMENT for RESTORATION of OWNER'S LOT.** (I) In the event the Owner of a Lot fails to maintain his/her Lot in first-class, neat and clean condition, and generally in a manner satisfactory to the Board, the Association or the Board, through its agents, employees and/or independent contractors, shall have the right, and each Owner expressly grants and assigns the Association the right (subject to prior notice as hereinbelow set forth) to enter upon such Owner's Lot and repair, maintain, rehabilitate and restore the Lot (including, without limitation, the landscaping thereon), and the exterior of any and all buildings and/or other structures located thereon to the condition deemed satisfactory to the Board, or to remove structures therefrom which are, in the opinion of the Board or the Association, in such a state of disrepair or in such a condition as to be objectionable to surrounding Lot Owners. The cost thereof shall be charged against and collected from the Owner of the Lot, the amount thereof to be paid by the Owner within thirty (30) days from the date of the invoice sent to the Owner, and said amount further shall be secured by and subject to all provisions regarding the assessment line as provided in this Article 6. (ii) Prior to exercising the aforesaid right of restoration, the Board shall give written notice to the Owner of said Lot specifying the necessary repairs, maintenance, rehabilitation or restoration to be undertaken, and granting the Owner thirty (30) days to accomplish the same. If, at the end of said period, the work required to be performed has not been completed (or has been completed in a manner unsatisfactory to the Board), or if, in the opinion of the Board, sufficient action has not been taken to effect same, then the Association or the Board shall have the right, as above set forth, to make such repairs, maintenance, rehabilitation or restoration. (iii) Nothing herein contained shall be construed as granting to the Association or the Board any right to enter into or inside of any building or buildings located on a Lot without the consent of the Owner thereof.

## ARTICLE 7

### MAINTENANCE

**7.1 RIGHTS and OBLIGATIONS of ASSOCIATION.** The sole obligation of the Board, acting for and on behalf of the Association, shall be to maintain, repair and replace the Common Area (except any portion now or hereafter maintained by any governmental agency with jurisdiction over said portion), and all landscaping, recreational facilities and other improvements located thereon, if any, in accordance with the terms and conditions hereof. The powers, rights and duties of the Association and Board shall be as contained in this Declaration, and as may be adopted in its Articles of Incorporation and Bylaws not inconsistent herewith.

**7.2 IMPROVEMENTS.** The Association will participate in an improvement district for the 27th street improvements per the City of Phoenix.

## ARTICLE 8

### PARTY WALLS

- 8.1 **GENERAL RULES of LAW to APPLY.** Each wall which is built as a part of the original construction of the homes upon the Development 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 8, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- 8.2 **SHARING of REPAIR and MAINTENANCE.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- 8.3 **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.
- 8.4 **NEGLIGENCE.** Notwithstanding any other provision of this Article 8, in the event a party wall is damaged or destroyed as a result of the negligent or willful act or omission by an adjoining Owner, his agents, tenants, licensees, guests or family, in such event, such Owner shall bear the entire cost of rebuilding and/or repairing such party wall.
- 8.5 **RIGHT to CONTRIBUTION RUNS with LAND.** The right of any Owner to contribution from any other Owner under this Article 8 shall be appurtenant to the land and shall pass to such Owner's successors in title.
- 8.6 **EXTENSION or ALTERATION.** In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his/her Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.
- 8.7 **ARBITRATION.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article 8, each Owner shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then any Judge of the Superior Court of Maricopa County, Arizona shall choose the additional arbitrator. A determination of the matter signed by any two (2) of the three (3) arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one Owner fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other Owner, then said Owner shall have the right and power to choose both arbitrators.
- 8.8 **COVENANTS BINDING.** These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any party wall except as took place while an Owner.
- 8.9 **IMPROVEMENTS.** The Association will participate in an improvement to the perimeter wall along the Southern border of Lots 1 through 16 and Tract B. Existing wall is part of the commercial pad and not owned by the Declarant.

## ARTICLE 9

### GENERAL PROVISIONS

20010514900

9.1 **ENFORCEMENT.** The Association, the 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 hereafter imposed by the provisions of the Declaration. In the event any such person employs an attorney or attorneys to enforce compliance with or specific performance of the terms and conditions of this Declaration, and prevails in such action, the Owner or Owners against whom the action is brought shall pay all attorneys' fees and costs incurred in conjunction with such action. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The foregoing shall apply regardless of whether any person effected thereby (or having the right to enforce these Restrictions) had knowledge of the breach or violation.

9.2 **SEVERABILITY.** Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

9.3 **AMENDMENT.** The Covenants and Restrictions of this Declaration shall run with and bind the land and shall be binding upon each Owner and his/her heirs, executors, administrators, successors and assigns and all other persons claiming an interest in and to the Development, 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. This Declaration may be changed, modified or rescinded during the first twenty (20) year period by an instrument in writing setting forth such change, modification or rescission, executed as follows: (i) If the Class B membership then exists, such instrument shall bear the sole signature of the Declarant and zero percent (0%) of the Owners of Lots not owned by the Declarant; (ii) If the Class B membership does not exist, such instrument shall bear the signature of not less than ninety percent (90%) of the Owners of all Lots.

Subsequent to the first twenty (20) year period, this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, executed as follows: (i) If the Class B membership then exists, such instrument shall bear the signatures of Declarant and not less than seventy-five percent (75%) of Owners of all Lots not owned by Declarant; (ii) If the Class B membership does not then exist, such instrument shall bear the signatures of not less than seventy-five percent (75%) of Owners of all the Lots.

Any amendment must be recorded in the office of the County Recorder of Maricopa County, Arizona. Notwithstanding the provisions of the foregoing paragraph, if this Declaration, the Articles of Incorporation, or the Bylaws require the consent or agreement of a greater percentage of Owners or require the consent or agreement of a specified percentage of Mortgage Holders, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by such percentage of Owners and/or Mortgage Holders, as required by this Declaration.

9.4 **CONSTRUCTION and INTERPRETATION of DECLARATION.** Except for judicial construction, the Association 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 construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by these Restrictions.

9.5 **GENDER.** Whenever the context of this Declaration so requires, words in masculine gender shall include the feminine and neuter genders. Words used in the neuter gender shall include the masculine and feminine, words in the singular shall include the plural, and words in the plural shall include the singular.

9.6 **CAPTIONS, TITLES and HEADLINES.** All captions, titles and heading of the Articles and Sections of this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise effect any of the provisions hereof, or to be used in determining the intent or contents hereof.

9.7 JURISDICTION. All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court or courts of the State of Arizona or of the United States of America having jurisdiction in the State of Arizona, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter; provided, however, as to those matters, if any, to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail.

9.8 PERPETUITIES and RESTRAINTS on ALIENATION. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States on the Date hereof.

9.9 FHA, VA, FNMA, and FHLMC APPROVAL. It is the intent of the Declarant that the Development shall comply with all requirements of the Federal National Mortgage Association (FNMA) and of the Federal Home Loan Mortgage Corporation (FHLMC) and of the Veterans Administration (VA) pertaining to the insurance by FHA and VA mortgages on individual Lots. In furtherance of that intent and notwithstanding any other provisions of this Declaration or any provision of any other applicable documents, Declarant expressly reserves the right and shall be entitled by unilateral amendment as long as Declarant owns more than twenty-five percent (25%) of the Lots in the Development to incorporate any provisions that are, in the opinion of FNMA, FHLMC, FHA, or VA required to conform this Declaration, the Articles, the Bylaws or the Project to the requirements of FNMA, FHLMC, FHA or VA. Each Owner and each Mortgagee by acceptance of a deed or encumbrance agrees to be bound by any such provisions. The Board, each Owner and Mortgagee shall take any action or shall adopt or consent to any resolutions required by of FNMA, FHLMC, FHA or VA to conform this Declaration, the other applicable documents or the Development to the requirements of FNMA, FHLMC, FHA or VA.

Executed at Bank One Pnc Az, this 19 day of October, 2001.

BY Michael Schiliro  
Michael Schiliro, Declarant

STATE OF ARIZONA  
County of Maricopa

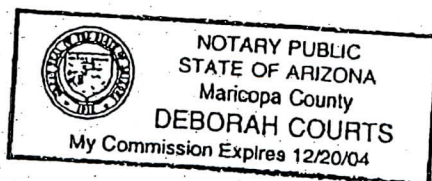
On this 19 day of October, 2001 before me, the undersigned Notary Public, personally appeared Michael Schiliro, the Declarant, who is known to me, and acknowledged that he executed the within instrument for the purposes therein stated.

IN WITNESS WHEREOF, The undersigned, being the Declarant herein, has hereunto set its hand and seal this 19 day of October, 2001.

Deborah Courts  
Notary Public

My Commission Expires:

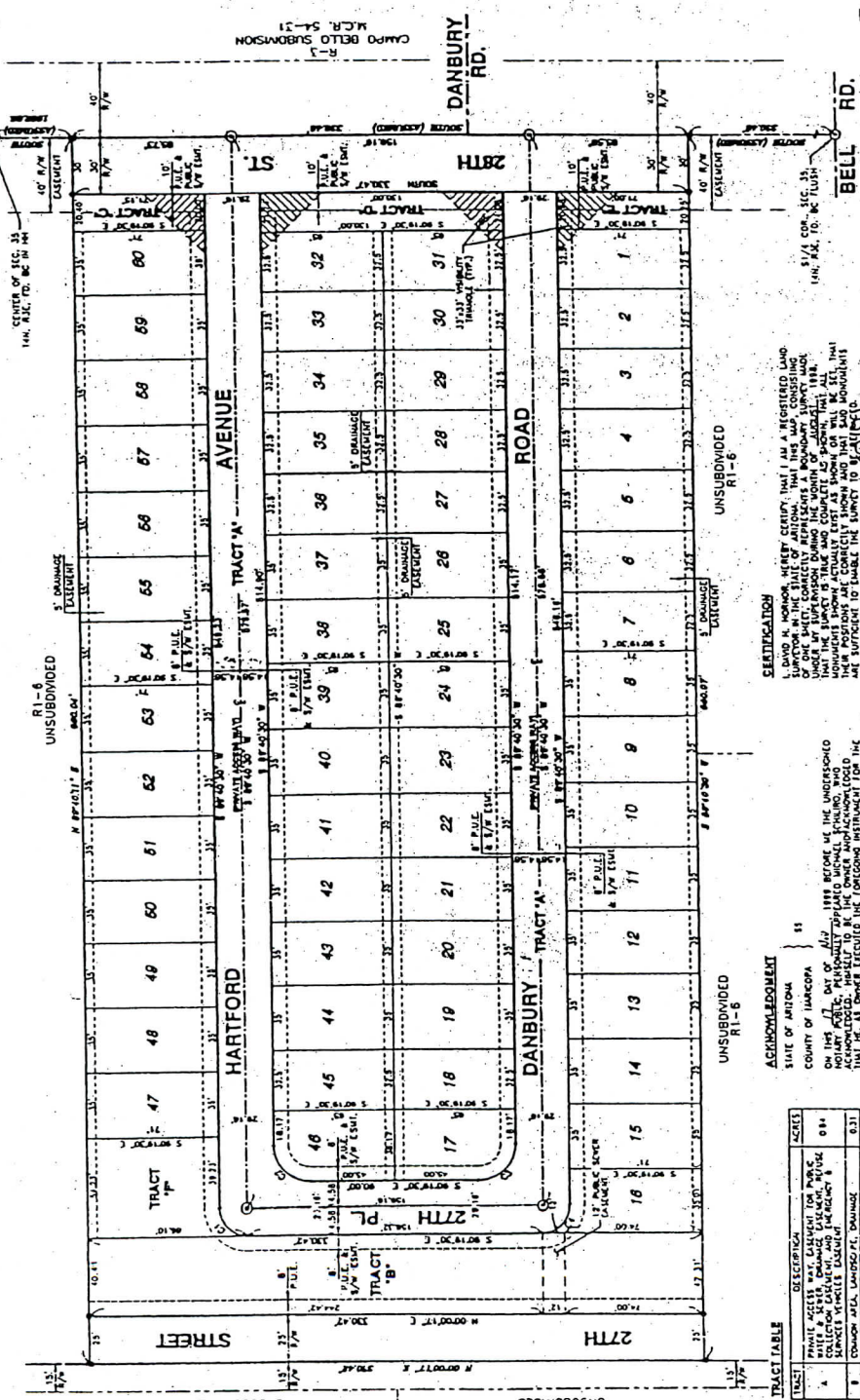
12/20/04



# FINAL PLAT "NINA VILLA SUBDIVISION"

A PLANNED RESIDENTIAL DEVELOPMENT  
LOCATED WITHIN A PORTION OF THE NORTH HALF OF THE SEVENTH QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 NORTH, RANGE 8 EAST, OF THE GILA AND GALT RIVER BASIN AND MERIDIAN, MARICOPA COUNTY, ARIZONA

STREET	D	R	L
C1	1000.00'	18.00'	2338'
C2	1000.00'	20.00'	3112'
C3	1000.00'	20.00'	3112'
C4	1000.00'	15.00'	2338'



**ACKNOWLEDGMENT**  
STATE OF ARIZONA  
COUNTY OF MARICOPA  
I, DAVID H. HONOR, being duly sworn, depose and say that I am the owner of the above described premises and that I have authorized the undersigned to execute and deliver the foregoing instrument for the purposes and consideration therein expressed. My commission expires on SEP 11 2000.

**DEED**  
I, DAVID H. HONOR, being duly sworn, depose and say that I am the owner of the above described premises and that I have authorized the undersigned to execute and deliver the foregoing instrument for the purposes and consideration therein expressed. My commission expires on SEP 11 2000.

**RECORDED PLAT SURVEYOR**  
At 11:11 AM  
MICHAEL SCHILBERG  
PLAT NO. 522-29

**PROFESSIONAL LAND SURVEYOR OF ARIZONA**  
MICHAEL SCHILBERG  
PLAT NO. 522-29  
TEL. NO. (602) 943-3335

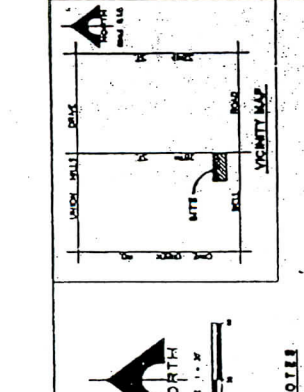
**OWNER**  
DAVID H. HONOR  
1441 N. GILBERT ST.  
PHOENIX, ARIZONA 85020  
TEL. NO. (602) 943-3335

**SURVEYOR**  
MICHAEL SCHILBERG  
PLAT NO. 522-29  
TEL. NO. (602) 943-3335

**ENGINEER**  
MICHAEL SCHILBERG  
PLAT NO. 522-29  
TEL. NO. (602) 943-3335

**DEED**  
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**NOTES**

1. THE CENTERLINE AND WIDTH OF THIS SITE WILL CORRESPOND TO ALL APPLICABLE CODES AND ORDINANCES.
2. THIS PROJECT IS LOCATED IN THE CITY OF PHOENIX WATER SERVICE AREA AND HAS BEEN DESIGNATED AS HAVING AN ASSURED WATER SUPPLY.
3. ALL NEW OR RELOCATED UTILITIES SHALL BE PLACED UNDERGROUND.
4. THE CITY OF PHOENIX HAS REVIEWED THIS PROJECT AND HAS ISSUED A PERMIT TO CONSTRUCT AND A PERMIT TO OCCUPY FOR THE PROPOSED DEVELOPMENT. THE CITY OF PHOENIX HAS REVIEWED THIS PROJECT AND HAS ISSUED A PERMIT TO CONSTRUCT AND A PERMIT TO OCCUPY FOR THE PROPOSED DEVELOPMENT.
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**DEED**  
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