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DECLARATION OF  
HORIZONTAL PROPERTY REGIME AND  
COVENANTS, CONDITIONS AND RESTRICTIONS  
SHADOW RUN CONDOMINIUMS  
MARICOPA COUNTY, ARIZONA

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DECLARATION OF  
HORIZONTAL PROPERTY REGIME AND  
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SHADOW RUN CONDOMINIUMS  
MARICOPA COUNTY, ARIZONA

THIS DECLARATION, made on the date hereinafter set forth, by Shadow Run Joint Venture, a joint venture group comprised of Dennis H. Harris, M.D., Ronald E. General and Cal Blackledge ("Declarant"), is made with reference to the following facts:

A. Declarant is the owner of a certain tract of land located in the State of Arizona, County of Maricopa, more particularly described in Exhibit "A" attached hereto and incorporated by reference. The property described in Exhibit "A," together with any property annexed thereto under this Declaration, shall be referred to herein as the "Property."

B. Declarant has improved or intends to improve the Property by subdividing the Property and constructing thereon certain residential improvements and recreational facilities, and desires to submit and subject the Project to a Horizontal Property Regime pursuant to Arizona Revised Statutes, Sections 33-551 through 33-561, as the same may be amended.

C. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Condominium Units in the Project and the Owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improvement subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, the Project and every part thereof, in accordance with the plan for the improvement of the Property and the division thereof into Condominium Units. All of the limitations, covenants, conditions, restrictions and easement shall constitute covenants which shall run with the land and shall be binding upon Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the Property or the Project.

## ARTICLE 1

Definitions

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association as amended from time to time.

1.2 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Property which is to be paid by each Unit Owner as determined by the Association and as provided herein.

1.3 "Association" shall mean and refer to the CONDOMINIUM ASSOCIATION, an Arizona nonprofit corporation, the Members of which shall be the Owners of Condominium Units in the Project.

1.4 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.6 "Common Area" shall mean and refer to those portions of the Project for which title is held by all of the Owners as tenants in common, including the Recreational Common Area, but excluding the individual Units as defined herein. The Common Area includes without limitation: Land; interior and exterior driveway areas; bearing walls, columns, girders, subfloors, unfinished floors, walls and ceilings not contained within a Unit; roofs and foundations; central chutes, conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when allocated within the Unit) required to provide power, light, telephone, gas, water, sewage, draining, heat and air-conditioning service, sprinklers, sprinkler pipes and sprinkler heads which protrude into the airspace of the Unit; central television antennas, if any; and all facilities and improvements located within the Recreational Common Area.

1.7 "Common Expenses" means and includes the actual and estimated expenses of operating the Project and the Association and any reasonable reserve for such purpose as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Project Documents.

1.8 "Common Interest" means the proportionate undivided interest in the Common Area which is appurtenant to each Condominium Unit as set forth in the Declaration.

1.9 "Condominium Building" shall mean a residential structure containing Units.

1.10 "Condominium Plan" shall mean and refer to the recorded diagrammatic floor plan or plans of the Units built or to be built on the Property which identifies each Unit and shows its

dimensions as set forth on the Map.

- 1.11 "Condominium Unit" shall mean an estate in real property consisting of title to a Unit within the Horizontal Property Regime hereby established and an undivided one seventy-seventh (1/77) interest in the Common Area, should Phases I, II, III, IV and V be completed, together with a non-exclusive right to use the Recreational Common Area (including any prior or subsequent Phase of the Project) and a membership in the Association. Should Phase I, II, III, and IV only be completed a "Condominium Unit" shall mean an estate in real property consisting of title to a Unit within the Horizontal Property Regime hereby established and an undivided one-sixty second (1/62) interest in the Common Area and a membership in the Association. Should Phases I, II and III only be completed a "Condominium Unit" shall mean an estate in real property consisting of title to a Unit within the Horizontal Property Regime hereby established and an undivided one-forty seventh (1/47) interest in the Common Area and a membership in the Association. Should Phases I and II only be completed a "Condominium Unit" shall mean an estate in real property consisting of title to a Unit within the Horizontal Property Regime hereby established and an undivided one-thirty first (1/31) interest in the Common Area and a membership in the Association. Should Phase I only be completed a "Condominium Unit" shall mean an estate in real property consisting of title to, a Unit within the Horizontal Property Regime hereby established and an undivided one-sixteenth (1/16) interest in the Common Area and a membership in the Association. Each Condominium Unit shall be a separate freehold estate.
- 1.12 "Declarant" shall mean and refer to Shadow Run Joint Venture, their successors and assigns, but shall not include members of the public purchasing completed Condominium Units.
- 1.13 "Declaration" shall mean and refer to this enabling Declaration.
- 1.14 "First Mortgage" shall mean any Mortgage which is a first priority lien on any Condominium Unit.
- 1.15 "First Mortgagee" shall mean the holder of a First Mortgage.
- 1.16 "Map" shall mean and refer to that subdivision map recorded 10/14/85 in Book 289 Page 10 as amended as Document No. 215, of the Official Records of Maricopa County, Arizona, and any subsequently recorded subdivision map and all amendments thereto which cover the Property or a portion thereof. The map is hereby made a part hereof with the same force and effect as is incorporated herein at length.
- 1.17 "Member" shall mean and refer to a Person entitled to membership in the Association as provided herein.
- 1.18 "Mortgage" shall include a recorded deed of trust

as well as a recorded mortgage.

1.19 "Mortgagee" shall include the beneficiary or a holder of a deed of trust as well as a mortgagee.

1.20 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.21 "Owner" shall mean and refer to the record holder of title to a Condominium Unit in the Project. This shall include any Person having a fee simple title to any Condominium Unit, but shall exclude Persons or entities having any interest merely as security for the Performance of any obligation. Further, if a Condominium Unit is sold under a recorded contract of sale to a purchaser who resides in the Unit, the resident purchaser, rather than the fee owner shall be considered the "Owner" as long as he, or a successor in interest, remains the contract purchaser under the recorded contract.

1.22 "Person" means a natural person, a corporation, partnership, a trustee or other legal entity.

1.23 "Phase" shall mean and refer to a particular parcel of Property which is part of the Project or which becomes part of the Project pursuant to the recordation of an appropriate Declaration of Annexation. The Property described in Exhibit "A" to this Declaration shall be deemed to be the first Phase of the Project and any parcel annexed to the Property described in Exhibit "A" under a Declaration of Annexation shall be deemed to be a subsequent Phase of the Project.

1.24 "Project" shall mean and refer to the entire Property, together with all buildings, structures and improvements erected or to be erected thereon, including all Phases thereof.

1.25 "Project Documents" means and includes this Declaration as it may be amended from time to time, the exhibits, if any, attached hereto, the Condominium Plan, the Map, the Articles and Bylaws of the Association and the rules and regulations for the Members as established from time to time.

1.26 "Property" means and includes the real property covered by this Declaration (including property annexed pursuant to this Declaration, if any).

1.27 "Recreational Common Area" shall mean and refer to the area or areas so designated on the Condominium Plan or Map, if any, and all improvements erected thereon. The Recreational Common Area shall be part of the Common Area, and as such shall be owned by all Condominium Unit Owners as tenants in common.

1.28 "Unit" shall mean and refer to the elements of an individual unit as described in Article 2, which are not owned in common with the Owners of other Condominium Units in the Project.



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1.29. "Unit Designation" means the number, letter (or combination thereof) or other official designation shown on the Condominium plan.

## ARTICLE 2

Description of Project, Division of Project  
and Creation of Property Rights2.1 Description of Project

The Project consists of the underlying Property with the residential Units and all other improvements located or to be located thereon, and includes all Phases annexed pursuant to this Declaration. The cubic content space of the Condominium Buildings within the Project with reference to their location on the Property and the cubic content space of each Unit within the Condominium Buildings is described on or can be determined from the Condominium Plan.

2.2 Division of Project

The project is hereby divided into the following:

2.2.1 Units

Each of the Units as separately shown, numbered and designated on the Condominium Plan is bounded by and contained within the interior finished surface of the perimeter walls, floors and ceilings of each Unit, and also includes all windows, doors and electrical outlets located in the perimeter walls thereof. Each Unit includes both the portions of the Condominium Building so described or contained within such boundaries and the airspace so encompassed. Each Unit also includes as appurtenances thereto the adjacent areas encompassing the following, to the extent any such area is shown on the Map as being appurtenant to the Unit:

2.2.1.1 A carport and storage area, the lower boundary of which shall be the finished floor surface thereof, the upper elevation of which shall be the finished ceiling surface thereof, if any, or if there is no finished ceiling surface thereof, a horizontal plane parallel to the floor surface at an elevation equal to the upper elevation of the Unit to which it is appurtenant and the side boundaries of which shall be the finished perimeter walls thereof, if any, or to the extent there is no finished wall surface thereof, vertical planes extending upward from the outside edges of the floor surface. Each area includes both the portions of the Project so described or contained within such boundaries and the airspace so encompassed.

2.2.1.2 A patio, the lower boundary of which shall be the finished floor surface thereof, if any, and if not, the level grade dirt surface and existed at the time the patio was completed by Declarant, the upper boundary of which shall be a horizontal plane parallel to the upper elevation of the Unit to which it is appurtenant and the side boundaries of which shall be the

interior finished surfaces of the walls or fences surrounding the patio or, to the extent there are no such walls or fences, the boundaries designated on the Map. Each patio includes both the portions of the Project so described or contained within said boundaries and the airspace so encompassed. Owners shall have the sole right and obligation to landscape and maintain the landscaping on their patios as defined herein, subject to reasonable rules and regulations adopted by the Association.

The square footage and cubic content of each Unit and the appurtenant carport, storage area and patio, can be independently determined from the Condominium Plan. The Unit does not include those areas and those things which are defined as "Common Area" below. Each Unit is subject to such encroachments as are contained in the Condominium Building of which the Unit is a part. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed substantially in accordance with the original plans therefor, shall be conclusively presumed to be within its boundaries expressed in the deed or plan, regardless of settling or lateral movement of the Condominium Building and regardless of minor variances between boundaries shown on the plan or deed and those of the Condominium Building.

#### 2.2.2 Common Area

The remaining portion of the Property, referred to herein as "Common Area," shall include all of the elements set forth in Subarticle 1.6. Each Condominium Unit Owner shall have, as appurtenant to and a part of his Condominium Unit, an undivided one-seventy seventh (1/77) Common Interest in the Common Area, should Phases I, II, III, IV and V be completed. Each Condominium owner shall have as appurtenant to and a part of his Condominium Unit, an undivided one-sixty second (1/62) Common Interest in the Common Area should Phases I, II, III and IV only be completed. Each Condominium owner shall have as appurtenant to and a part of his Condominium Unit, an undivided one-forty seventh (1/47) Common Interest in the Common Area should Phases I, II and III only be completed. Each Condominium owner shall have as appurtenant to and a part of his Condominium Unit, an undivided one-thirty first (1/31) Common Interest in the Common Area should Phases I and II only be completed. Each Condominium owner shall have as appurtenant to and a part of his Condominium Unit, an undivided one-sixteenth (1/16) Common Interest in the Common Area should Phase I only be completed. The Common Interest appurtenant to each Condominium Unit is declared to be permanent in character and cannot be altered without the consent of all the Condominium Unit Owners and the First Mortgagees of such Condominium Unit Owners, as expressed in an amended Declaration, subject to the terms and provisions of Subarticle 10.4.2 herein, except as provided in Subarticle 2.5.2. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Condominium Unit Owner shall have a nonexclusive right to use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or en-

encroaching upon the rights of any other Condominium Unit Owners, subject to easements and rights created in Subarticle 2.2.1. Notwithstanding the transfer of the Common Area to the Condominium Unit Owners as tenants in common, the Declarant shall reserve and hereby reserves in itself and its successors and assigns, as long as there are two classes of membership in the Association, an easement over and onto the Common Area for common driveway purposes, for drainage and for encroachment purposes, for ingress to and egress from the Common Area for the purpose of completing improvements thereon or for the performance of necessary repair work and for entry onto adjacent Property in connection with the development of additional Phases of the Project.

### 2.2.3 Recreational Common Area

That portion of the Common Area designed and intended to be used for common recreational purposes by the residents of the Project is "Recreational Common Area." The Recreational Common Area shall be operated and maintained by the Association for the use and benefit of Owners of Condominium Units in the Project, subject to reasonable rules and regulations enacted according to the Bylaws.

### 2.3 No Separate Conveyance of Interests and Easements

The interests (including the Common Interest) and easements described in this Article 2 or elsewhere in this Declaration as being part of or appurtenant to each respective Condominium Unit are to be conveyed only as part of or with the respective Condominium Unit and cannot be changed except as set forth herein. Declarant, its successors, assigns and grantees covenant and agree that the fee title to each Condominium Unit conveyed shall include the Unit and all of the interests and easements referred to in the preceding sentence, all of which shall be deemed to be conveyed or encumbered with the Condominium Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Condominium Unit.

### 2.4 Partition Prohibited

The Common Area shall remain undivided as set forth above. Except as provided by Arizona Revised Statutes, Section 33-560, or by an applicable successor statute, and subject to the terms and provisions of Subarticle 10.4.3 herein, no Owner shall bring any action for partition of a Condominium Unit, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium Unit owned by two or more Persons and division of the sale proceeds is not prohibited hereby (but partition of title to a single Condominium Unit is prohibited).

### 2.5 Annexation of Additional Parcels

Additional parcels may be annexed to the Property and become subject to this Declaration by the following method:

#### 2.5.1 Annexation Pursuant to Approval

Upon the vote or written assent of sixty-seven percent (67%) of the total votes residing in Members of the Association other than Declarant, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may record a Declaration of Annexation covering the property to be annexed. Said Declaration shall incorporate this Declaration by reference and may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the scheme of this Declaration.

#### 2.5.2 Consequences of Annexation

Upon annexation of a new Phase, the annexed parcel shall become subject to this Declaration without the necessity of amending individual articles hereof, and the Common Area described herein and the Common Area of the new Phase as described in the Declaration of Annexation shall be merged. Each Condominium Unit in the Project as increased and augmented by the Common Area of the entire Project, including the Common Area in the new Phase, proportionate to the interior square footage sizes of the Units in the Project, and no further or additional approval or authorization for this reallocation of Common Interest shall be required. Upon such annexation, the Association will prepare, execute and record a statement of the Common Interests of the Condominium Units as calculated as provided above, and each Owner hereby appoints the Association his/her true attorney-in-fact for such purposes and shall be bound by the recorded statement of the Common Interests prepared, executed and recorded by the Association in accordance with the foregoing requirements. All Owners shall have rights and access to the Common Area in the entire Project and shall be Members of the Association as provided herein.

#### 2.5.3 Requirements for Annexation

In the event of an annexation pursuant to this sub-article, all intended and planned improvements located or to be located on the property annexed must be substantially completed prior to the annexation and all such improvements must be consistent with the improvements built in the Project as originally constituted under this Declaration in terms of quality of construction. All taxes and other Assessments relating to the property to be annexed for any period prior to annexation must be paid or otherwise satisfactorily provided for by the Person seeking to annex the property.

#### 2.5.4 Staged Developments

Anything contained in this Article 2 notwithstanding, additional land within the area described in Book 227 Page 10, Maricopa County, Arizona, may be annexed by the Declarant without the consent of members within SEVEN (7) years of the date of this instrument provided that the FMA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

## ARTICLE 3

Association, Administration, Membership and Voting Rights3.1 Association to Manage Common Area

The management of the Common Area shall be vested in the Association in accordance with the Bylaws. The Owners of all the Condominium Units covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles and the Bylaws of the Association, subject to the standards set forth in this Declaration and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project.

3.2 Membership

The Owner of a Condominium Unit shall automatically, upon becoming the Owner of same, be a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reasons, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and the Bylaws of the Association.

3.3 Transferred Membership

Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of ownership of the Condominium Unit to which it is appurtenant, and then only to the new Owner as provided in Subarticle 3.2 above. Any attempt to make a prohibited transfer is void. Upon the transfer of an ownership interest in a Condominium Unit, the Association shall record the transfer upon its books, causing an automatic transfer of membership as provided in Subarticle 3.2 above.

3.4 Classes of Membership

The Association shall have two (2) classes of voting membership established according to the following provisions:

3.4.1 Class A Membership

Class A Membership shall be that held by each Owner of a Condominium Unit other than Declarant (while two classes of membership exist), and each Class A Member shall be entitled to one (1) vote for each Condominium Unit owned. If a Condominium Unit is owned by more than one (1) Person, each such Person shall be a Member of the Association but there shall be no more than one (1) vote for each Condominium Unit.

3.4.2 Class B Memberships

Class B Membership shall be that held by Declarant (or its successor) which shall be entitled to three (3) votes for each Condominium Unit owned by Declarant, provided that Class B Membership shall be converted to Class A Membership and shall forever cease to exist on the occurrence of whichever of the following is first in time:

3.4.2.1 One hundred and twenty (120) days after the date by which seventy-five percent (75%) of the units have been conveyed to unit purchasers.

3.4.2.2 The third anniversary of the closing of escrow for the sale of the first Condominium Unit.

### 3.5 Voting Requirements

Any action by the Association which must have the approval of the Association membership before being undertaken shall require the vote of fifty-one percent (51%) of the membership present and voting at a duly called and held meeting of the membership at which a quorum as prescribed herein or in the Bylaws has been constituted or the written assent of fifty-one percent (51%) of the membership unless another percentage is specifically prescribed by a provision within this Declaration, the Bylaws or the Articles of the Association.

### 3.6 Voting Rights

Voting rights attributable to all Condominium Units owned by Declarant shall vest immediately by virtue of Declarant's ownership thereof. Except for Declarant, no Owner of any Condominium Unit shall have any voting rights attributable to that Condominium Unit until an Assessment has been levied against that Condominium Unit and Owner by the Association pursuant to Article 4 below.

### 3.7 Membership Meetings

Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place and in accordance with the provisions of the Bylaws of the Association.

### 3.8 Board of Directors

The affairs of the Association shall be managed by a Board of Directors which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association.



## ARTICLE 4

Assessments and Charges4.1 Creation of the Lien and Personal Obligations  
For Assessments and Charges

Each Owner of any Condominium Unit, by acceptance of a deed or recorded contract of sale therefor, whether or not it shall be so expressed in such document, is deemed to covenant and agree to pay to the Association (a) regular annual Assessments, (b) special Assessments for capital improvements and unexpected expenses and (c) other charges made or levied by the Association against the Owner or Condominium Unit pursuant to this Declaration or the Bylaws, such Assessments and charges to be established and collected as provided herein and in the Bylaws of the Association. Any part of any Assessment (or other amount due from the Owner to the Association, including interest) not paid within thirty (30) days after the due date established in this Article 4, Subarticle 10.15 or elsewhere in this Declaration shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid. The annual and special Assessments and any other charge made against an Owner or a Condominium Unit pursuant to this Declaration or the Bylaws, together with interest, costs and reasonable attorneys' fees incurred by the Association in enforcing compliance with this Declaration (whether or not a lawsuit or other legal action is instituted or commenced) as provided in Subarticle 10.15.2, shall be a charge and a continuing lien upon the Condominium Unit (hereinafter "Assessment lien"). Each such Assessment and charge, together with interest, costs and reasonable attorneys' fees as provided above, shall also be the personal obligation of the Person who was the Owner of such Condominium Unit at the time the Assessment or other charge fell due as provided in this Article 4, Subarticle 10.15 or elsewhere in this Declaration. The Assessment lien on each Condominium Unit shall be prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto and (b) the lien or charge of any First Mortgage on that Condominium Unit. No Owner of a Condominium Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Condominium Unit.

4.2 Purpose of Assessments

The Assessments by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project, for the improvement and maintenance of the Common Area and for the common good of the Project. Annual Assessments shall include an adequate reserve fund for taxes, insurance, maintenance, repairs and replacement of the Common Area, which fund shall be maintained in a separate account of the Association to be drawn upon only for these purposes.

#### 4.3 Annual Assessments

Until January 1 of the year immediately following the conveyance of the first condominium unit to an Owner, the maximum annual assessment shall be SIX HUNDRED SIXTY AND NO/100 DOLLARS (\$660.00) per unit, payable in equal monthly installments.

(a) From and after January 1 of the year immediately following the conveyance of the first condominium unit to an owner the maximum annual assessment may be increased each year not more than the greater of five percent (5%) or the Consumer Price Index -- United States City Average -- All Urban Consumers, as published by the Bureau of Labor Statistics, United States Department of Labor, or its equivalent, if such index is discontinued, above the maximum assessment for the previous year without a vote of the membership.

(b) 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 above the amounts set forth in (a) above, by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount in excess of the maximum.

Until Class B Membership is terminated pursuant to Sub-article 3.4.2 above, Declarant shall be responsible for the prompt payment on a current basis of all costs and expenses related to maintenance and repair of the Common Area as required in Sub-articles 5.1 and 5.2 in the event and to the extent that the funds available to the Association are inadequate for payment of such costs and expenses on a current basis. Declarant's failure to perform the requirements contained in this Subarticle 4.3 shall constitute a default under this Declaration entitling any Condominium Unit Owner or First Mortgagee to record a notice of lien against Declarant's property interest in the Project to enforce the provisions of this subarticle. Prior to the termination of Class B Membership, Declarant shall establish a working capital fund for the Association for the initial months of the Project operations equal to at least two (2) months' estimated monthly Assessments for each Condominium Unit.

#### 4.4 Special Assessments

In addition to the regular annual Assessments authorized above, the Board may levy, in any Assessment year, 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, or to defray any unanticipated or underestimated expense normally covered by a regular Assessment (and, where necessary, for taxes

assessed against the Common Area), provided however, that the aggregate special Assessments for any fiscal year shall not exceed the amounts set forth in paragraph 4.3(a) of the budgeted gross expenses of the Association for that Assessment year, without the vote or written assent, as set forth in paragraph 4.3(b) of the membership present and voting at a meeting at which a quorum equal to sixty percent (60%) of the total voting power of the Association has been constituted. In the absence of such a quorum at any such meeting, a majority of those present in person or by proxy may adjourn the meeting to another time but may not transact any other business. Any adjournment for lack of a quorum under this article shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date. The quorum requirement for such a reconvened meeting shall be thirty percent (30%) of the total voting power of the Association. Special Assessments may also be levied by the Board against an individual Condominium Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Condominium Unit into compliance with the provisions of this Declaration and the Bylaws. Furthermore, special Assessments may be levied against an individual Condominium Unit and its Owner for reasonable monetary penalties for the violation of any of the restrictions or conditions, the breach of any of the covenants or agreements contained herein or the breach of any rules and regulations promulgated by the Board, after notice and hearing according to the Bylaws.

#### 4.5 Allocation of Assessments

The Owner of each Condominium Unit shall bear an equal share of each regular and special Assessment (except for special Assessments levied specifically against an individual Condominium Unit and its Owner under the preceding subarticle and except as provided in Subarticle 4.3 above).

#### 4.6 Date of Commencement of Annual Assessment; Due Dates

The regular annual Assessments provided for herein shall commence as to each Condominium Unit in the Project on the first day of the month following the close of escrow on the sale of the first Condominium Unit in the Project. Regular annual Assessments shall commence as to all Condominium Units on any property annexed to the Project pursuant to this Declaration on the first day of the month following said annexation. Due dates of Assessments shall be established by the Board and notice shall be given to each Condominium Unit Owner at least thirty (30) days prior to any due date, provided that if Assessments are to be due on a monthly basis, no notice shall be required other than an annual notice setting forth the amount of the monthly Assessment and the day of each month on which each Assessment is due.

#### 4.7 Transfer of Unit by Sale or Foreclosure

The sale or transfer of any Condominium Unit shall not

affect the Assessment lien or liability for Assessments due and payable except as provided below. No sale or transfer of a Condominium Unit shall relieve such Condominium Unit from liability for any Assessments thereafter become due or from the lien therefor. Where, however, the first Mortgagee of a First Mortgage of record or another Person obtains title to a Condominium Unit as a result of foreclosure, trustee's sale or deed in lieu thereof of any such First Mortgage, such First Mortgagee or other Person shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Condominium Unit which became due prior to the acquisition of title to such Condominium Unit by such First Mortgagee or other Person, and the Assessment lien therefor on such Condominium Unit shall be extinguished. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Condominium Units. In a voluntary conveyance of a Condominium Unit, the grantee of the same shall not be liable for Assessments or any other charges due to the Association in connection with that Condominium Unit which accrued prior to the conveyance unless liability therefor is specifically assumed by the grantee. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for nor shall the Condominium Unit conveyed be subject to a lien for any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any such statement.

#### 4.8 Enforcement of Assessment and Other Monetary Obligations; Discipline; Remedies Cumulative

##### 4.8.1 Enforcement and Foreclosure of Lien

When any Assessment or other amount due from an Owner to the Association is past due, the lien therefor may be enforced by foreclosure of the lien and/or sale of the Owner's Condominium Unit by the Association, its attorney or other Person authorized by this Declaration or by law to make the sale. The lien may be foreclosed and the Condominium Unit sold in the same manner as a realty mortgage and property mortgaged thereunder, the Condominium Unit may be sold pursuant to the statutory or customary procedures for sales of trust property under deeds of trust (with the Association acting as trustee) or the lien may be enforced or foreclosed in any other manner permitted by law for the enforcement or foreclosure of liens against real property or the sale of property subject to such a lien. Any such enforcement, foreclosure or sale action may be taken without regard to the value of such Condominium Unit, the solvency of the Owner thereof or the relative size of the Owner's default. Upon the sale of a Condominium Unit pursuant to this sub-article, the purchaser thereof shall be entitled to a deed to the Condominium Unit and to immediate possession thereof, and said purchaser may apply to a court of competent jurisdiction for a writ of restitution or other relief for the purpose of acquiring such possession. The proceeds of any such sale shall be applied as pro-

vided by applicable law, but, in the absence of any such law, shall be applied first to discharge costs thereof, including but not limited to court costs, other litigation costs, costs and attorneys' fees incurred by the Association, all other expenses of the proceedings, interest, late charges, unpaid Assessments and other amounts due to the Association, and the balance thereof shall be paid to the Owner. It shall be a condition of any such sale, and any judgments or orders shall so provide, that the purchaser shall take the interest in the Condominium Unit sold subject to this Declaration. The Association, acting on behalf of the Condominium Unit Owners, shall have the power to bid for the Condominium Unit at any sale and to acquire and hold, lease, mortgage or convey the same. In the event the Owner against whom the original Assessment was made is the purchaser or redemptionor, the lien shall continue in effect and said lien may be enforced by the Association for the Condominium Unit's Assessment and other amounts that were due prior to the final conclusion of any such foreclosure, sale or equivalent proceedings. Further, notwithstanding any foreclosure of the lien or sale of the Condominium Unit, any Assessments and other amounts due after application of any sale proceeds as provided above shall continue to exist as personal obligations of the defaulting Owner of the Condominium Unit to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a Member of the Association.

#### 4.8.2 Other Remedies

The rights, remedies and powers created and described in Subarticles 4.8.1, 4.8.3, 10.15 and elsewhere in this Declaration, the Articles or the Bylaws are cumulative and may be used or employed by the Association in any order or combination, except as specifically provided to the contrary herein. Without limiting the foregoing sentence, suit to recover a money judgment for unpaid Assessments, interest, rent, costs, attorneys' fees and/or other amounts due hereunder, to obtain specific performance of obligations imposed hereunder and/or to obtain injunctive relief may be maintained without foreclosing, waiving, releasing or satisfying the liens created for Assessments or other amounts due hereunder.

#### 4.9 Unallocated Taxes

In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the Condominium Units, said taxes shall be included in the Assessments made under the provisions of this article, and, if necessary, a special Assessment may be levied against all of the Condominium Units in an amount equal to said taxes on a pro rata basis equal to the Common Interest appurtenant to each Condominium Unit.

#### 4.10 Tax Assessments

As provided in Arizona Revised Statutes, Section 33-558, no taxes, assessments, or charges which may become liens on

any Condominium Unit prior to any First Mortgage under Arizona law shall affect the Common Area as a whole. Such taxes, assessments or charges shall only be levied separately on each Condominium Unit in its respective appurtenant Common Interest.

## ARTICLE 5

Duties and Powers of the Association5.1 Duties and Powers

In addition to the duties and powers enumerated in the Bylaws and the Articles, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

5.1.1 Except as provided in Subarticle 5.2 and Subarticle 10.5, maintain, repair, replace, restore, operate and manage all of the Common Area, all facilities, improvements, furnishings, equipment and landscaping thereon and all property that may be acquired by the Association in good condition. This obligation shall not extend to the maintenance of any portion or facility of the Common Area required to be maintained by an individual Owner under this Declaration or the Bylaws. The Association shall also paint or otherwise decorate and maintain the interior finished ceiling, wall and floor surfaces of all patios and carports in the Project, but Owners shall have the sole responsibility to landscape and maintain the landscaping on their patios.

5.1.2 Enforce the provisions of this Declaration by appropriate means, including without limitation the expenditure of funds of the Association, the employment of legal counsel and the commencement of legal actions.

5.1.3 Maintain such policy or policies of insurance as are required by this Declaration or as the board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.

5.1.4 Grant and reserve easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Units.

5.1.5 Have the 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, subject to the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.

5.1.6 Adopt reasonable rules not inconsistent with this Declaration, the Articles or the Bylaws relating to the use of the Common Area and all facilities thereon and the conduct of Owners and their tenants and guests with respect to the Project and other Owners.

5.2 Maintenance of Project by Association

The Association shall provide maintenance of the Pro-

ject as provided in this Declaration. The Association shall not be responsible for maintaining and repairing glass surfaces or capital improvements built or placed by an Owner on or within his Unit or within the patio or carport appurtenant thereto. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, tenants or invitees. The repair or replacement of any portion of the Common Area resulting from such excluded items shall be the responsibility of each Owner, provided however, that if an Owner shall fail to make the repairs or replacements which are the responsibility of such Owner, the Association, acting through the Board, shall have the right (but not the obligation) to enter the Unit and make such repairs or replacements, and the cost thereof shall be added to the Assessments chargeable to that Condominium Unit and shall be payable to the Association by the Owner of such Condominium Unit.

### 5.3 Association Easements and Access to Units

For the purpose of performing the maintenance authorized by this article, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association (and its agents and employees) shall have an easement over and onto all portions of the Common Area and shall also have the right, after reasonable notice to the Owner and at reasonable hours, to enter any Unit. The Association shall have the right to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

In the event of an emergency, the Association, its agents and employees, shall have an easement over and onto all portions of the common area and shall also have the right to enter any unit. There may not be any restriction upon any unit owner's right of ingress and egress to his or her unit. This right of ingress and egress from each such unit shall be a perpetual right and appurtenant to the unit ownership.

The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction. All unit owners may transfer his or her unit free of any such restriction.

### 5.4 Custodian Unit

The Association shall have the power and authority, with the vote or written assent of a majority of the Members, to purchase a Condominium Unit (the "Custodian Unit") to be occupied by the custodian of the Project. In such case, during the period the Custodian Unit is owned by the Association:

5.4.1 No right to vote shall be exercised on behalf of the Custodian Unit;



5.4.2 No Assessment shall be assessed or levied against the Custodian Unit; and

5.4.3 Each other Condominium Unit Owner shall be charged, in addition to his usual Assessment, his share of the Assessment that would have been charged to the Custodian Unit but for the provisions of this subarticle.

## ARTICLE 6

Utilities6.1 Owners' Rights and Duties

The rights and duties of the Owners of Condominium Units within the Project with respect to utilities shall be as follows:

6.1.1 Whenever sanitary, sewer, water, electric, gas, television receiving, telephone lines or connections, heating or air-conditioning conduits, ducts or flues are located or installed within the Project, which connections or any portion thereof lie in or upon Units owned by other than the Owner of a Unit served by said connections, the Owners of any Units served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Units or to have the utility companies enter upon the Units in or upon which said connections or any portion thereof lie to repair, replace and generally maintain said connections as and when necessary. An Owner or utility company exercising his/its right of entry pursuant to this subarticle shall give reasonable notice to the Owner of a Unit prior to entering therein.

6.1.2 Whenever sanitary, sewer, water, electric, gas, television receiving, telephone lines or connections, heating or air-conditioning conduits, ducts or flues are located or installed within the Project, which connections serve more than one Unit, the Owner of each Unit served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Unit.

6.1.3 In the event of a dispute between Owners with respect to the repair or rebuilding of said connections 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 which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

6.2 Easements for Utilities and Maintenance

Easements over and under the Property for the installation, repair and maintenance of sanitary, sewer, water, electric, gas, telephone lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping, as shown on the Map of the Property and as hereafter may be required to service the Property, are hereby reserved by Declarant and its successors and assigns, including the Association, together with the right to grant and transfer the same.

6.3 Association's Duties

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The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private or municipal. The Association shall pay all charges for utilities supplied to the project except those metered or charged separately to the Units, which shall be paid by the respective Owners of those Units.

## ARTICLE 7

Use Restrictions

In addition to all of the covenants contained herein, the use of the Property and Project and each Unit therein is subject to the following:

7.1 Use of Individual Units

No Unit shall be occupied and used except for single family residential purposes by the Owners, their tenants and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors or assigns may use any Unit or Units in the Project owned by Declarant for a model home site or sites and display and sales office during construction and until the last Unit in the entire Project is sold.

7.2 Nuisances

No noxious, illegal or offensive activities shall be conducted in any Unit or on any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to, or which may in any way interfere with, the quiet enjoyment of each Owner of his respective Condominium Unit or which shall in any way increase the rate of insurance for the Project or cause any insurance policy to be cancelled or cause a refusal to renew the same or which will impair the structural integrity of any Condominium Building. Any increase in the insurance premiums for the Project caused by an Owner shall be paid for by such Owner.

7.3 Vehicle Restrictions

No trailer, camper, mobile home, commercial vehicle, truck (other than standard size pick-up truck), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Project other than temporarily (for purposes of loading and unloading of passengers or personal property), unless placed or maintained within an enclosed garage or carport or in an area specifically designed for such purpose by the Board. Commercial vehicles shall not include sedans or standard size pick-up trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Property. No off-road, licensed or unlicensed, motor vehicles shall be maintained or operated upon the Property except as reasonably necessary for the execution of the rights or duties of the Association under this Declaration.

7.4 Signs

Signs advertising Condominium Units for sale or rent

may be displayed on the Property, provided that such signs shall be of reasonable and customary size and shall be displayed only at such location or locations within the Common Area as shall be designated for such purpose by the Board. Except as expressly permitted by this Subarticle 7.4, no signs shall be displayed to the public view on any Units or on any portion of the Property unless first approved by the Board or the Architectural Control Committee.

#### 7.5 Animals

No animals or birds of any kind shall be raised, bred or kept in any Unit or on any portion of the Property, except that usual and ordinary household pets such as dogs, cats or birds may be kept, provided that they are kept under reasonable control at all times. The Board may enact reasonable rules respecting the keeping of such animals within the Project and may designate certain areas in which such animals may be taken. The Association, through the Board, reserves the right to have such pets removed if the pets' behavior becomes objectionable to the Members of the Association, which right shall not be unreasonably applied.

#### 7.6 Garbage and Refuse Disposal

All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, woodpiles or storage piles shall be kept screened and concealed from view of the other Units, streets and the Common Area.

#### 7.7 Radio and Television Antennas

No alteration to or modification of a central radio or television antenna system or cable television system, whichever is applicable, if any, shall be permitted, and no Owner may be permitted to construct, use or operate his own external radio or television antenna, including without limitation, satellite receiving dishes, without the consent of the Board.

#### 7.8 Right to Lease

The respective Units shall not be rented by the Owners thereof for transient or hotel purposes which shall be defined as (a) rental for any period less than thirty (30) days or (b) any rental if the occupants of the Unit are provided customary hotel service such as room service for food and beverages, maid service, laundry and linen service and bellboy service. Subject to the foregoing restrictions, the Owners of the respective Units shall have the absolute right to lease the Units, provided that the lease is in writing and is specifically made subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and the Bylaws and any reasonable rules and regulations published by the Association.

### 7.9 Clothes Lines; Window Coverings

No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes. Furthermore, no clothing, laundry or other personal items are to be hung out on the patios of the Units. No kind of foil darkening screen shall be placed upon the windows of the Units; shall the patios of the Units be used for storage purposes.

### 7.10 Power Equipment and Car Maintenance

No power equipment, work shops or car maintenance [other than emergency work or minor repairs requiring less than (1) day's work] shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

### 7.11 Liability of Owners for Damage to Common Area

The Owner of each Condominium Unit shall be liable to the Association for all damages to the Common Area or improvement thereon caused by such Owner or any occupant, guest or invitee of or to his Unit to the extent such Owner is responsible therefor under the statutory or case law of the State of Arizona. In addition to the foregoing, damage to party walls is subject to the provisions of Article 9.

### 7.12 No Warranty of Enforceability

While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 7 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Condominium Unit in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by acquiring the Condominium Unit agrees to hold Declarant harmless therefrom.

## ARTICLE 8

Architectural Control8.1 Prohibition of Alteration and Improvement

Subject to the exemption of Declarant under Subarticle 10.9 below, no building, fence, wall, obstruction, balcony, screen patio, patio cover, tent, awning, carport, carport cover, improvement or structure of any kind shall be commenced, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by an Architectural Control Committee (the "Committee") appointed by Declarant or elected by the Board as provided in this article. There shall be no construction, alteration or removal of any structure or improvement in the Project which would impair or affect the integrity or stability of any existing structure. No Owner shall install or replace an air-conditioning unit without the prior written approval of the Committee which shall have the right to approve or disapprove the size, shape, noise level and proposed location of such air-conditioning unit.

8.2 Plans and Approval

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements or alterations shall be submitted to the Committee for approval as to quality of workmanship, design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography and finished grade elevation. No permission or approval shall be required to rebuild in accordance with plans and specifications previously approved by the Committee. No landscaping of patios or yards visible from the street or from the Common Area shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Committee. In the event the Committee fails to approve or disapprove such plans, specifications, and proposed improvement or alteration within forty-five (45) days after said plans and specifications have been submitted to it, written approval by the Committee will not be required and this article will be deemed to have been fully complied with.

8.3 Architectural Control Committee

The number, appointment and term of members of the Committee shall be as follows:

8.3.1 There shall be three (3) members on the Committee.

8.3.2 Declarant may appoint all of the original and replacement members of the Committee and, at any time, may

remove and replace any of the members of the Committee until the termination of Class B Membership as provided in Subarticle 3.4.2. The Board shall thereafter have the power to appoint replacements for or remove and replace any or all of the members of the Committee. Subject to the right and power of the Board to remove and replace, at any time, any member of the Committee, Committee members or replacements appointed by the Board shall serve one (1) year terms.

8.3.3 Committee members appointed by Declarant need not be Members of the Association. Committee members appointed by the Board shall be Members of the Association. Officers and Directors of the Association can be members of the Committee.



## ARTICLE 9

Party Walls9.1 Creation of Party Wall Rights and Duties

Each wall, including patio walls, which is constructed as part of the original construction of a Condominium Building or as part of any reconstruction thereof, any part of which is placed on the dividing line between separate Units, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

9.2 Damage by Act of Owner

In the event any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his guests, tenants, licensees, agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good a condition as formerly existed without cost to the adjoining Owner, association or Declarant.

9.3 Negligence

Notwithstanding any other provision of this article, an Owner who, by his act, causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

9.4 Alterations or Modifications

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 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 and the Committee.

9.5 Disputes

In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third arbitrator to be chosen within five (5) days by any judge of the Superior Court

of Maricopa County, Arizona. A determination of the matter signed by any two of the three 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 personal receipt of a request in writing for arbitration from the other Owner, then said requesting Owner shall have the right and power to choose both arbitrators.

#### 9.6 Benefit and Binding Effect

These covenants shall be binding upon the heirs and assigns of every Owner but no Person shall be liable for any act or omission respecting any party wall except such as took place while said Person was an Owner.

## ARTICLE 10

General Provisions10.1 Invalidity of Any Provision

Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

10.2 Amendments

Subject to the standards set forth in any applicable laws, regulations or ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project and the rights of the Owners and First Mortgagees provided herein, this Declaration may be amended only by the vote or written assent of seventy-five percent (75%) on a one vote per Unit basis, or more of the total voting power of the Association, provided, however, that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. The requirements of Subarticle 10.2.1 for the amendment of certain provisions of the Project Documents shall be in addition to the requirements set forth in this Subarticle 10.2.

Declarant may alter the interior design of the Units, the size of and boundaries between Condominium Units and the percentage interest which Condominium Units bear to the entire Horizontal Property Regime at any time so long as (a) such altered Units are owned by Declarant, (b) all First Mortgagees then encumbering such altered Units agree in writing to such alterations and (c) such alterations do not modify or change the size, the boundaries, the Common Interest or the share of the Common Expenses of any Units not owned by Declarant.

10.2.1 Additional Requirements for Amendment of Certain Provisions

The following subarticles do not apply to amendments to the Project Documents or termination of the Horizontal Property Regime made as a result of destruction, damage or condemnation pursuant to Subarticle 10.4.2 or similar provisions in the Project Documents:

10.2.1.1 The consent of all Owners of Condominium Units and the approval of all Eligible First Mortgagees (as set forth in Subarticle 10.4.3) and any other valid lienholder shall be required to terminate the legal status of the Project as a statutory Horizontal Property Regime under Arizona law and expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; changing boundaries;

of any Unit; changing Common Interest of the Condominium Units; convertibility of Units into Common Area or of Common Area into Units; any provisions which are for the express benefit of Mortgagees, Eligible First Mortgagees or Eligible Insurers or Guarantors (as defined in Subarticle 10.4.3) of First Mortgages on Condominium Units.

10.2.1.2 The consent of Owners of Condominium Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible First Mortgagees holding First Mortgages on Condominium Units which have at least fifty-one percent (51%) of the votes of Condominium Units subject to First Mortgages held by Eligible First Mortgagees shall be required to add to or amend any "material" provisions of the Project Documents which establish, provide for, govern or regulate any of the following:

10.2.1.2.1 Voting;

10.2.1.2.2 Assessments, assessment liens or subordination of such liens;

10.2.1.2.3 Reserves for maintenance, repair and replacement of the Common Area;

10.2.1.2.4 Insurance or fidelity bonds;

10.2.1.2.5 Rights to use of the Common Area;

10.2.1.2.6 Responsibility for maintenance and repair of the various portions of the Project;

10.2.1.2.7 Leasing of Condominium Units;

10.2.1.2.8 Imposition of any right of first refusal or similar restriction on the right of a Condominium Unit Owner to sell, transfer, or otherwise convey his/her Condominium Unit; and

10.2.1.2.9 Establishment of self-management by the condominium association where professional management has been required by any of the agencies or corporations.

10.2.1.3 An addition or amendment to the Project Documents shall not be considered "material" if it is for the purpose of correcting technical errors or for clarification only. An Eligible First Mortgagee which receives a written request to approve additions or amendments under Subarticle 10.2.1.1 or 10.2.1.2 and which does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

### 10.3 Encroachment Easements

Each Unit within the Project is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of buildings or any other similar cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting, provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a Unit or Condominium Building is partially or totally destroyed and then repaired or rebuilt, the Owners of all Units agree that minor encroachments over adjoining Units or the Common Area shall be permitted and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

### 10.4 Mortgagee Protection Clause

#### 10.4.1 Rights of First Mortgagees

10.4.1.1 No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Condominium Unit, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

10.4.1.2 All amenities pertaining to the Project and located on the Property (such as parking, recreation and service areas) are a part of the Project and shall be covered by and subject to a Mortgage on a Condominium Unit to the same extent as is the Common Area.

10.4.1.3 An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchaser who has acquired title through foreclosure of a First Mortgage and the subsequent sheriff's sale (or through any equivalent proceedings) and the successor in interest to said purchaser if the breach continues to exist after the time said purchaser acquired an interest in such Condominium Unit.

10.4.1.4 During the pendency (including any period for redemption) of any proceedings to foreclose a First Mortgage (or from the time a trustee under a first deed of trust has given notice of sale pursuant to the power of sale conferred under the deed of trust and pursuant to law), the First Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner of the

Condominium Unit in default, including but not limited to the right to vote as a Member of the Association in the place and stead of the defaulting Owner.

10.4.1.5 Notwithstanding anything contained herein to the contrary, at such time as the First Mortgagee shall become record Owner of a Condominium Unit, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including but not limited to the obligation to pay all Assessments and charges accruing thereafter in the same manner as any other Condominium Unit Owner.

10.4.1.6 The consent of owners of units to which at least sixty-seven percent (67%) of the votes in the owners association are allocated and the approval of eligible holders of first mortgages on units to which at least fifty-one percent (51%) of the votes of units subject to a mortgage appertain, shall be required to amend any provisions included in the declaration, bylaws or equivalent documents of the condominium which are for the express benefit of holders of insurers of first mortgages on units in the condominium.

#### 10.4.2 Changes Requiring Approval of Mortgagees

Notwithstanding anything to the contrary contained in this Declaration, without the prior written approval of Declarant (while Declarant is an Owner of any Units) and of all of the First Mortgagees [based upon one (1) vote for each First Mortgage held] or of the Owners other than Declarant (except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Area of the Project), the Association or Owners shall not be entitled to and no provision of this Declaration shall be applied, effective, interpreted or construed to (or entitle the Association or Owners to):

10.4.2.1 Change the Common Interests of the Condominium Units, the share of Assessments charged to any Condominium Unit or the method of determining such Assessments;

10.4.2.2 By act or omission, seek to terminate or abandon the status of the Project, as a statutory Horizontal Property Regime;

10.4.2.3 Allow partition or subdivision of any Condominium Unit except as provided in Subarticle 2.4;

10.4.2.4 Change the interest of any Condominium Unit in the allocation or distribution of hazard insurance proceeds or condemnation awards;

10.4.2.5 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any portion or element of the Common Area (the granting of easements for public

utilities or for other public purposes consistent with the intended use of such Property shall not be deemed a transfer within the meaning of this clause);

10.4.2.6 Use hazard insurance proceeds for loss or damages to any portion of the Project for other than the repair replacement or reconstruction thereof;

10.4.2.7 Change the provisions of this Declaration so as to give an Owner, or any other party, priority over any rights of First Mortgagees pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or the Common Area.

The foregoing requirements are in addition to the requirements set forth in Subarticle 10.2.

10.4.3 Rights of First Mortgagees and Insurers or Guarantors of First Mortgages

A holder, insurer or guarantor of a first mortgage, upon written request to the owners association, (such request to state the name and address of such holder, insurer or guarantor and the unit number) will be entitled to timely written notice of:

(1) Any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the owners association appertaining to any unit or (iv) the purposes to which any unit or the common elements are restricted;

(2) Any proposed termination of the condominium regime;

(3) Any condemnation loss or any casualty loss which affects a material portion of the condominium or which affects any unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;

(4) Any delinquency in the payment of assessments or charges owed by an owner of a unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;

(5) Any lapse, cancellation or material modification of any insurance policy maintained by the owners association.

10.4.3.1 Any proposed action which would require the consent of a specified percentage of "Eligible First Mortgagees" (meaning First Mortgagees who have filed a written request as described above in this Subarticle 10.4.3) as specified

in Subarticle 10.4.3 or in Subarticle 10.2.

#### 10.4.4 Mortgage Priority

Notwithstanding any language contained in this Declaration to the contrary, no Condominium Unit Owner and no other party shall have priority over any rights of First Mortgagees pursuant to their Mortgages in the case of a distribution to Condominium Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Condominium Units and/or any portion or element of Common Area.

10.4.4.1 Other Provisions for First Lien Holders. To the extent possible under applicable law, the following protections for the benefit of first mortgage holders must be legally binding with respect to their condominium by virtue of the constituent documents, applicable law or otherwise:

(1) Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on units to which at least fifty-percent (51%) of the votes of units subject to mortgages held by such eligible holders are allocated, is obtained.

(2) Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominium property must require the approval of the eligible holders of first mortgages on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders are allocated.

(3) Unless the formula for reallocation of interests in the common elements after a partial condemnation or partial destruction of the condominium project is fixed in advance by the declaration or by applicable law, no reallocation of interests in the common elements resulting from a partial condemnation or partial destruction of the condominium project may be effected without the approval of the eligible holders of first mortgages on units to which at least fifty-one percent (51%) of the votes of units subject to mortgages held by such eligible holders are allocated.

10.4.4.2 As used in this section, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage on a unit in a condominium which has requested notice in accordance with the provisions of Section 10.4.3 above.

#### 10.4.5 Compliance with VA, FHA, FHLMC and FNMA Regulations

The Declarant intends that the Project shall comply with all requirements of the Federal Home Loan Mortgage Corporation:



(FHLMC) and the Federal National Mortgage Association (FNMA) pertaining to the purchase by the FHLMC VA, FHA and FNMA of conventional home loans. Declarant and all Unit Owners therefore agree that, in the event the Project or any of the Project Documents do not comply with the VA, FMA, FHLMC and FNMA requirements, the Board shall have the power (on behalf of the Association) to enter into any agreement with the VA, FMA, FHLMC or FNMA (or its designee) reasonably required by the VA, FMA, FHLMC or FNMA to allow the Project to comply with such requirements and make such changes in the Project Documents to effectuate the same.

#### 10.4.6 Payment of Taxes and Insurance Premiums by Mortgagees

First Mortgagees may, jointly or singly, pay any taxes, Assessments or other charges which are in default and which may or have become a lien or charge against the Common Area and may pay overdue premiums on hazard insurance policies (or secure new hazard insurance coverage on the lapse of a policy) for the Common Area. Any First Mortgagee making such payments shall be entitled to immediate reimbursement therefor from the Association.

#### 10.4.7 Owner's Right to Sell Condominium Unit

The right of any Owner to sell, transfer or otherwise convey his Condominium Unit shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

#### 10.4.8 Right to Inspect Documents; Audited Financial Statements

The Association shall make available to owners, mortgagees, insurers, guarantors of first mortgages, other lenders and prospective purchasers, copies of the Declaration, any amendments thereto, articles, by-laws, rules of the Association, and the books, records, and financial statements of the Association including the most recent annual audited financial statement, if one has been prepared. "Available" means available for inspection (and copying at the expense of the requesting party), upon request, during normal business hours or under other reasonable circumstances. In addition, upon the receipt by the Association of a written request from the VA or FHA, the Association will provide, within a reasonable period of time, an audited, financial statement of the Association for the immediately preceding fiscal year, if one is not otherwise available.

10.4.9 All of the rights reserved to Declarant are set forth in this Declaration.

#### 10.5 Owner's Right and Obligation to Maintain and Repair

Except for those portions of the Project which the

Association is required to maintain and repair, each Unit Owner shall, at his sole cost and expense, maintain and repair his Unit, keeping the same in good condition. Additionally, each Owner shall maintain, repair and replace as necessary any separate air-conditioning, cooling, heating and/or water-heating units (and all wires and connections therefor) which service his Unit, and further, the Owner shall repair any glass surfaces of a Unit which are damaged within seven (7) days of such damage. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his Condominium Unit. In the event an Owner fails to maintain his Unit as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify such Owner of the work required and request that it be done within thirty (30) days from the giving of such notice. In the event an Owner fails to carry out such maintenance within said period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner and collect and enforce said Assessment as provided in Article 4 above.

#### 10.6 Entry for Repairs

The Board or its agents may enter any Unit when necessary in connection with any repairs, maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made upon reasonable notice, unless it would be impractical to give notice in an emergency, and with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the Association. No Owner shall do any act or create any obstruction which would unreasonably interfere with the right or ability of the Association to perform any of its obligations or exercise any of its rights under this Declaration.

#### 10.7 Insurance; Damage or Destruction

##### 10.7.1 Reconstruction by Unit Owners

Subject to other provisions of this Declaration, in the event of damage to or destruction of any part of a Unit, the Owner shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications therefor. Each Owner shall have an easement of reasonable access into any adjacent Unit for purposes of repair or reconstruction of his Unit as provided in this subarticle.

##### 10.7.2 Association Liability Insurance

The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant, the agents and employees of each and the Owners and their respective family members, guests and invitees against any liability incident to the ownership or use of the Common Area and

facilities in the Recreational Common Area, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners or the Association. Such insurance shall be in amounts deemed appropriate by the Board but, in any event, shall be in amounts which satisfy FHLMC and FNMA requirements as amended from time to time.

#### 10.7.3 Master Hazard Insurance

Additionally, the Association shall obtain and continue in effect a master or blanket policy of multi-peril insurance on the Project, providing at a minimum fire and extended coverage and all other coverage in the kinds and amounts required by FHLMC and FNMA regulations as amended from time to time, said coverage to be obtained on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of all improvements in the Project. Such policy shall contain extended coverage and replacement cost endorsements, if available, and may also contain vandalism and malicious mischief coverage, stipulated amount clause and a determinable cash adjustment clause or a similar clause to permit cash settlement covering the full value of the improvements in the Project in the event of destruction and a decision not to rebuild pursuant to this Declaration. If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project shall be maintained in an amount equal to the aggregate outstanding principal balance of all Mortgage loans on the individual Condominium Units or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. Such policies shall be in form and amount as determined by the Board but, in any event, shall always satisfy FHLMC and FNMA requirements as amended from time to time, shall name as insured the Association, the Owners, Declarant (so long as Declarant is an Owner of any Condominium Units) and all Mortgagees as their respective interests may appear, and shall provide that any proceeds be paid to the Association for the use and benefit of the Owners and Mortgagees as their interests may appear. Such policy shall not be required to insure the personal property within any individual Unit, which insurance shall be the responsibility and risk of the Unit Owners.

#### 10.7.4 Additional Association Insurance

The Association may purchase such other insurance as it may deem necessary, comply with VA, FHA, FNMA and FHLMC including without limitation plateglass, workmen's compensation, directors liability and errors and omissions insurance, and shall purchase fidelity coverage against dishonest acts by any directors, managers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity insurance shall name the Association as

the insured and shall provide coverage in an amount not less than the Association's estimated operating expenses and reserves; and, not less than required by VA, FHA, FNMA or FHLMC.

#### 10.7.5 Choice of Carriers; Insurance Premiums

The insurance policies required under this Subarticle 10.7 shall be acquired from carriers meeting the qualifications specified by the FHLMC and FNMA from time to time. Insurance premiums shall be a Common Expense to be included in the Assessments levied by the Association, provided that the Association shall have the right, but not the obligation, to specially assess each Condominium Unit and the Owner thereof for all premiums for policies paid for by the Association attributable to custom-built items, additions or improvements in or to the Condominium Unit or any part thereof. The acquisition of insurance by the Association shall be without prejudice to the right of any Condominium Unit Owner to obtain additional individual insurance.

Neither the Declarant, the Association or any officer or director thereof shall be liable to any Owner or other party if any risk or hazard is not covered by insurance or the amount is inadequate. Each Owner is responsible for ascertaining the Association's coverage and for procuring such additional coverage as such Owner deems necessary. First Mortgagees may pay overdue premiums and may secure new insurance coverage upon the lapse of any policy with respect to any insurance required to be maintained by the Association or by any Owner under this Declaration, and any First Mortgagee making such an expenditure shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

#### 10.7.6 Proceeds from Insurance

If any of the Project improvements are damaged by fire or other casualty, insurance proceeds payable to the Association shall be used to rebuild or repair such damage substantially in accordance with original plans and specifications therefor. Items added by Owners to their Units after the initial construction thereof shall be rebuilt or replaced at the expense of the Owners or their insurers to the extent insurance proceeds payable to the Association are insufficient therefor. Any excess insurance proceeds shall be deposited to the general funds of the Association. In the event the proceeds of the Association's insurance policy are insufficient to rebuild or repair the damaged Project improvements (not including custom-built items for which individual Owners are responsible), then the Association may use funds from its general account or, if necessary, from levying a special Assessment on all Unit owners to restore or rebuild said improvements. The Association's use of funds from its general account or levy of a special Assessment shall not constitute a waiver of the Association's or any Owner's right to institute any legal proceeding or suit against the Person or Persons responsible, purposely or negligently, for the damage.

### 10.7.7 Total Destruction

In the event the Property subject to this Declaration is totally or substantially damaged or destroyed, the First Mortgagees shall receive timely notice thereof. The Property shall be repaired or reconstructed unless all of the votes of each class of membership and all First Mortgagees [based on one (1) vote for each Mortgage held], vote otherwise.

### 10.7.8 Additional Insurance Requirements

It is the intent of Subarticle 10.7 of this Declaration to generally set forth the insurance requirements for the Project which are, at all times, to comply with FHLMC and FNMA requirements. Because FHLMC and FNMA Project insurance requirements are very lengthy and subject to change from time to time, it is impractical to set forth all of those requirements herein. Therefore, the Association, Board and Owners shall at all times carry, maintain in good standing and pay for all hazard, liability, fidelity and other insurance policies, binders and bonds required by the FHLMC or FNMA, or FHLMC or FNMA regulations or guidelines as such requirements change from time to time, including but not limited to all insurance and bonds required by Section 3.203 of the FHLMC Sellers' Guide Conventional Mortgages, and shall provide satisfactory evidence thereof promptly to any First Mortgagee or insurer or guarantor of any First Mortgage which requests such evidence. All such policies, binders and bonds shall comply with and be consistent in form and substance with all such FHLMC or FNMA requirements as they change from time to time, and shall include all mortgage clauses and endorsements of any kind or nature required by the FHLMC or FNMA, or FHLMC or FNMA regulations or guidelines as such requirements change from time to time.

### 10.8 Condemnation

Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Project is to be taken by any governmental body by exercise of the power of condemnation or eminent domain, all Owners and First Mortgagees shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of any part of the Project, and every Owner appoints the Association his/her attorney-in-fact for this purpose. The entire award made as compensation for such taking, including but not limited to any amount awarded as severance damages, or the entire amount received and paid in anticipation and settlement for such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including but not limited to attorneys' fees, appraisers' fees and court costs (which net amount shall hereinafter be referred to as the "Award"), shall be paid to the Association as trustee for the use and benefit of the Owners and their First Mortgagees as their interests may appear. If the portion of the Project taken or con-

veyed does not include all or any part of a Condominium Building, the Association shall, as it is practicable, cause the Award to be utilized for the purpose of repairing and restoring the Project, including, if the Association deems it necessary or desirable, the replacement of any improvements so taken or conveyed. If the portion of the Project taken or conveyed is comprised of or includes all or any part of a Condominium Building, the Association, after its receipt of notice of the final amount of the Award, shall call a special meeting of the Members of the Association, with notice thereof to all First Mortgagees, to determine whether the parts of the Project taken shall be restored, reconstituted or replaced and, if so, in what manner. These matters, together with the use, disposition and distribution of the Award, shall be as provided by an agreement approved by not less than fifty-one percent (51%) of the votes of each class of membership and not less than fifty-one percent (51%) of all First Mortgagees [based on one (1) vote for each First Mortgage held]. The Owners and First Mortgagees, in determining the disposition of the Award, shall give careful consideration to the complete loss of value (measured by fair market value prior to the taking) by Owners whose Units will be vacated by the taking and not replaced pursuant to the agreement as provided above. Condominium Unit Owners whose Units will be taken and not replaced shall, as part of the implementation of any agreement described above, be divested of all interest in the Project, and all remaining Condominium Unit Owners will automatically have their Common Interests in the reduced Project proportionately increased. In the event any Condominium Unit Owner disagrees with the proposed allocation, he/she may have the matter submitted to arbitration under the rulers of the American Arbitration Association.

10.9 Limitation of Restrictions on Declarant;  
Additional Restrictions on Declarant.

Declarant is undertaking the work of construction of the Units and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of the Condominium Units are essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

10.9.1 Prevent Declarant, its contractors or subcontractors from doing on the Project or any Unit whatever is reasonably necessary or advisable in connection with the completion of the work;

10.9.2 Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and disposing of the same in parcels by sale, lease or otherwise;

10.9.3 Prevent Declarant from conducting on any part of the Project its business of completing the work and of establishing a plan of Condominium Unit ownership and of disposing of said Project in Condominium Units by sale, lease or otherwise, or

10.9.4 Prevent Declarant from maintaining such sign or signs on any portion of the Project as may be necessary for the sale, lease or disposition thereof.

So long as Declarant or its successors or assigns owns one or more of the Condominium Units established and described in this Declaration and, except as otherwise specifically provided herein, Declarant and its successors or assigns shall be subject to the provisions of this Declaration. Declarant shall not, and shall not have authority or power to, bind the Association prior to termination of Class B Membership, either directly or indirectly, to contracts or leases (including management contracts) unless the Association is provided with a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after such termination upon not more than ninety (90) days' notice to the other party thereto.

#### 10.10 Termination of Any Responsibility of Declarant

In the event Declarant shall convey all of its right, title and interest in and to the Project to any partnership(s), individual(s) or corporation(s), then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership(s), individual(s) or corporation(s) shall be obligated to perform all such duties and obligations of the Declarant.

#### 10.11 Owner's Compliance

Each Owner, tenant or occupant of a Unit shall comply with the provisions of the Project Documents and all decisions and resolutions of the Association or its duly authorized representative(s), and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due, for damages (including costs and attorneys' fees) and/or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws shall be deemed to be binding on all Condominium Unit Owners, their successors and assigns.

#### 10.12 Conflict of Project Documents

If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail. Thereafter, priority shall be given to Project Documents in the following order: Condominium Plan, Map, Articles, Bylaws and rules and regulations of the Association.

### 10.13 Termination of Horizontal Property Regime

This Horizontal Property Regime may be terminated by the agreement of all of the Owners and First Mortgagees pursuant to Arizona Revised Statutes, Section 33-556, any amendment thereto. After termination of the Horizontal Property Regime, the Owners shall own the Project and all assets, and their respective First Mortgagees and lienors shall have First Mortgages and liens upon the respective undivided shares of the Owners. Such undivided shares in the Common Area appurtenant to the Owners' Condominium Units prior to the termination (unless otherwise expressly set forth herein).

### 10.14 Persons Entitled to Enforce Declaration

The Association, any Owner and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court, provided however, that an individual Owner shall have no right to enforce the collection of any Assessment levied against any other Owner under Article 4 above. Failure by any such Person to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter.

### 10.15 Remedies for Violation of Declaration

The following provisions are in addition to and not in lieu of any other terms and conditions contained in the Declaration relating to remedies, including but not limited to those contained in Subarticle 4.8.

10.15.1 Violation of any of the covenants, conditions or restrictions, the breach of any of the covenants or agreements contained herein or the breach of any rules and regulations promulgated by the Board, whether by an Owner or occupant of any Unit, shall enable the Association, acting through the Board or an authorized agent, to enter the Unit as to which said violation or breach may exist and summarily enforce such covenants, conditions, restrictions, agreements, rules and regulations and to abate and remove the thing or condition which may exist thereon contrary to the provisions hereof, at the sole expense of the Owner of said Unit, without being deemed guilty of having trespassed in any manner.

10.15.2 In the event of any default by an Owner or occupant under the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the Association, its successors and assigns, acting through the Board or an authorized agent, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Arti-



cles, the Bylaws and said rules and regulations or which may be available at law or in equity, including but not limited to an action for the appointment of a receiver for the Condominium Unit without regard to the value of such Condominium Unit or the solvency of such Owner, or for damages, injunction, specific performance or for a judgment for payment of money and collection thereof. Nothing contained in this Declaration shall preclude the Association, its agents, the Board, Declarant, an aggrieved Owner, a First Mortgagee or other Person having an interest in the Project from exercising any available remedy at law or in equity. All costs and attorneys' fees incurred by the Association in enforcing compliance with this Declaration (whether or not a lawsuit or other legal action is instituted or commenced) or in connection with any legal action or proceedings in connection with any default under this Declaration by an Owner or an occupant of any Condominium Unit and all damages, liquidated or otherwise, together with interest as provided in Subarticle 4.1, shall be charged to and paid by such defaulting Owner as provided in Subarticle 4.1. The Association, acting through the Board or its authorized agent, shall have the authority to correct any default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and paid by such defaulting Owner, and such charges shall be part of and be secured by the lien against the defaulting Owner's Condominium Unit as provided in Subarticle 4.1. Any amounts charged to an Owner of a Condominium Unit pursuant to this Subarticle 10.15 or Subarticle 4.1 or 4.8 shall be immediately due and payable upon notice to the Owner unless a specific due date is established therefor pursuant to this Declaration.

10.15.3 Anything to the contrary herein notwithstanding, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration shall not defeat or adversely affect the lien of any First Mortgagee upon any Condominium Unit but, except as herein specifically provided, each and all of said covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any lessee or Owner of a Condominium Unit whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

#### 10.16 Waiver; Remedies Cumulative

No failure or delay on the part of any Person in exercising any right, power or privilege hereunder and no course of dealing between or among the Persons subject hereto shall operate as a waiver of any provision hereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which any Person subject hereto would otherwise have. No notice to or demand upon any Person in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances or constitute a waiver of rights to any other or fur-

ther action in any circumstances.

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10.17 Judicial Proceedings

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 to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail. For the purpose of instituting or defending any action with respect to the Common Area, or with respect to any matter affecting the Owners with respect to the Common Area, and further in connection with enforcing this Declaration the Articles, the Bylaws and any rules and regulations adopted pursuant to this Declaration, the Articles or the Bylaws, or in any other instance where the Board and/or the Members of the Association deem it is necessary for the best interest of the Project as a whole, the Association, acting by and through its Board, shall be deemed the real party in interest and is hereby authorized to commence and prosecute any such proceedings or to defend any such action. Nothing contained in this Subarticle 10.17 shall be deemed or construed to impose upon the Association, its Members or the Board any liabilities or obligations nor grant to any third party or parties any rights that any of said above-named parties would not otherwise have if this article were not contained herein.

10.18 Governing Law

This Declaration and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this 18<sup>th</sup> day of OCTOBER, 1985.

SHADOW RUN CONDOMINIUMS, a joint venture group,

BY [Signature]

Its Managing Venture

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STATE OF ARIZONA

COUNTY OF MARICOPA

On 18th Day of October, 1985, before me, the undersigned Notary Public in and for said state and county, personally appeared Dennis H. Harris, Managing Venturer for SHADOW RUN CONDOMINIUMS, whose name is subscribed to the within Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions and known to me to be the person who executed the within instrument.

Witness my hand and official seal.

R. D. Flower  
Notary Public

My Commission Expires:

July 25, 1989

LEGAL DESCRIPTIONS FOR SHADOW RUN HORSE RANCH TRACT PROPERTY REGIME PHASING

TOTAL PROPERTY:

THE EAST 250 FEET OF THE WEST 850 FEET OF THE SOUTH 650 FEET OF THE SOUTHWEST QUARTER OF SECTION EIGHT (8), TOWNSHIP ONE (1) SOUTH, RANGE FIVE EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA EXCEPT: THE SOUTH 50 FEET FOR A ROADWAY AND EXCEPT: A 15.00 FOOT BY 15.00 FOOT TRIANGLE IN THE NORTHEAST CORNER OF THE PROPERTY.

PHASE ONE (1):

A PART OF THE ABOVE DESCRIBED PROPERTY COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPERTY -- SAID POINT BEING THE TRUE POINT OF BEGINNING;
THENCE NORTH 01 DEGREES, 22 MINUTES, 18 SECONDS WEST A DISTANCE OF 237.50 FEET
THENCE NORTH 88 DEGREES, 37 MINUTES, 42 SECONDS EAST A DISTANCE OF 48.00 FEET
THENCE SOUTH 01 DEGREES, 22 MINUTES, 18 SECONDS EAST A DISTANCE OF 7.50 FEET
THENCE NORTH 84 DEGREES, 00 MINUTES, 00 SECONDS EAST A DISTANCE OF 47.37 FEET
THENCE NORTH 29 DEGREES, 28 MINUTES, 30 SECONDS EAST A DISTANCE OF 8.55 FEET
THENCE SOUTH 60 DEGREES, 31 MINUTES, 30 SECONDS EAST A DISTANCE OF 23.00 FEET
THENCE SOUTH 29 DEGREES, 28 MINUTES, 30 SECONDS WEST A DISTANCE OF 7.39 FEET
THENCE SOUTH 59 DEGREES, 46 MINUTES, 07 SECONDS EAST A DISTANCE OF 32.42 FEET
THENCE NORTH 75 DEGREES, 16 MINUTES, 32 SECONDS EAST A DISTANCE OF 34.13 FEET
THENCE NORTH 84 DEGREES, 53 MINUTES, 33 SECONDS EAST A DISTANCE OF 27.11 FEET
THENCE SOUTH 42 DEGREES, 07 MINUTES, 35 SECONDS EAST A DISTANCE OF 71.32 FEET
THENCE SOUTH 01 DEGREES, 22 MINUTES, 18 SECONDS EAST A DISTANCE OF 159.88 FEET
THENCE SOUTH 88 DEGREES, 13 MINUTES, 20 SECONDS WEST A DISTANCE OF 250.00 FEET
TO THE TRUE POINT OF BEGINNING.

AND ALSO COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPERTY--
THENCE NORTH 01 DEGREES, 22 MINUTES, 18 SECONDS WEST A DISTANCE OF 349.65 FEET
THENCE NORTH 88 DEGREES, 37 MINUTES, 42 SECONDS EAST A DISTANCE OF 58.02 FEET
THENCE NORTH 77 DEGREES, 17 MINUTES, 59 SECONDS EAST A DISTANCE OF 34.52 FEET
TO THE TRUE POINT OF BEGINNING;
THENCE NORTH 06 DEGREES, 00 MINUTES, 00 SECONDS WEST A DISTANCE OF 19.43 FEET
THENCE NORTH 71 DEGREES, 17 MINUTES, 09 SECONDS EAST A DISTANCE OF 28.37 FEET
THENCE NORTH 26 DEGREES, 17 MINUTES, 09 SECONDS EAST A DISTANCE OF 27.63 FEET
THENCE SOUTH 71 DEGREES, 01 MINUTES, 48 SECONDS EAST A DISTANCE OF 35.31 FEET
THENCE SOUTH 04 DEGREES, 38 MINUTES, 30 SECONDS WEST A DISTANCE OF 10.70 FEET
THENCE SOUTH 40 DEGREES, 21 MINUTES, 30 SECONDS EAST A DISTANCE OF 11.03 FEET
THENCE SOUTH 04 DEGREES, 38 MINUTES, 30 SECONDS WEST A DISTANCE OF 22.51 FEET
THENCE SOUTH 75 DEGREES, 16 MINUTES, 32 SECONDS WEST A DISTANCE OF 47.14 FEET
THENCE NORTH 51 DEGREES, 02 MINUTES, 39 SECONDS WEST A DISTANCE OF 30.91 FEET
THENCE SOUTH 84 DEGREES, 00 MINUTES, 00 SECONDS WEST A DISTANCE OF 13.15 FEET
TO THE TRUE POINT OF BEGINNING.



LEGAL DESCRIPTION OF SHADOW RUN (CONTINUED)

PHASE TWO (2)

A PART OF THE ABOVE DESCRIBED PROPERTY COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPERTY THENCE NORTH 01 DEGREES, 22 MINUTES, 18 SECONDS, WEST A DISTANCE OF 237.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 01 DEGREES, 22 MINUTES, 18 SECONDS, WEST A DISTANCE OF 112.15 FEET; THENCE NORTH 88 DEGREES, 37 MINUTES, 42 SECONDS, EAST A DISTANCE OF 58.02 FEET; THENCE NORTH 77 DEGREES, 17 MINUTES, 59 SECONDS, EAST A DISTANCE OF 34.52 FEET; THENCE NORTH 84 DEGREES, 00 MINUTES, 00 SECONDS, EAST A DISTANCE OF 13.15 FEET; THENCE SOUTH 51 DEGREES, 02 MINUTES, 39 SECONDS, EAST A DISTANCE OF 28.91 FEET; THENCE NORTH 75 DEGREES, 16 MINUTES, 32 SECONDS, EAST A DISTANCE OF 47.14 FEET; THENCE SOUTH 40 DEGREES, 21 MINUTES, 30 SECONDS, EAST A DISTANCE OF 26.59 FEET; THENCE NORTH 88 DEGREES, 37 MINUTES, 42 SECONDS, EAST A DISTANCE OF 66.49 FEET; THENCE SOUTH 81 DEGREES, 22 MINUTES, 18 SECONDS, EAST A DISTANCE OF 172.53 FEET; THENCE NORTH 42 DEGREES, 07 MINUTES, 35 SECONDS, WEST A DISTANCE OF 71.32 FEET; THENCE SOUTH 84 DEGREES, 53 MINUTES, 33 SECONDS, WEST A DISTANCE OF 27.11 FEET; THENCE SOUTH 75 DEGREES, 16 MINUTES, 32 SECONDS, WEST A DISTANCE OF 34.13 FEET; THENCE NORTH 59 DEGREES, 46 MINUTES, 07 SECONDS, WEST A DISTANCE OF 32.42 FEET; THENCE SOUTH 29 DEGREES, 28 MINUTES, 30 SECONDS, EAST A DISTANCE OF 7.39 FEET; THENCE NORTH 60 DEGREES, 31 MINUTES, 30 SECONDS, WEST A DISTANCE OF 23.00 FEET; THENCE SOUTH 29 DEGREES, 28 MINUTES, 30 SECONDS, WEST A DISTANCE OF 9.55 FEET; THENCE NORTH 84 DEGREES, 00 MINUTES, 00 SECONDS, WEST A DISTANCE OF 47.37 FEET; THENCE SOUTH 01 DEGREES, 22 MINUTES, 18 SECONDS, WEST A DISTANCE OF 7.50 FEET; THENCE SOUTH 88 DEGREES, 37 MINUTES, 42 SECONDS, WEST A DISTANCE OF 48.00 FEET TO THE TRUE POINT OF BEGINNING.

PHASE THREE (3)

A PART OF THE ABOVE DESCRIBED PROPERTY COMMENCING AT THE SOUTHWEST CORNER OF SAID PROPERTY THENCE NORTH 01 DEGREES, 22 MINUTES, 18 SECONDS, WEST A DISTANCE OF 349.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 01 DEGREES, 22 MINUTES, 18 SECONDS, WEST A DISTANCE OF 189.15 FEET; THENCE NORTH 88 DEGREES, 37 MINUTES, 42 SECONDS, EAST A DISTANCE OF 249.99 FEET; THENCE SOUTH 01 DEGREES, 22 MINUTES, 18 SECONDS, EAST A DISTANCE OF 204.61 FEET; THENCE SOUTH 88 DEGREES, 37 MINUTES, 42 SECONDS, WEST A DISTANCE OF 66.49 FEET; THENCE NORTH 40 DEGREES, 21 MINUTES, 30 SECONDS, WEST A DISTANCE OF 26.59 FEET; THENCE NORTH 84 DEGREES, 00 MINUTES, 00 SECONDS, EAST A DISTANCE OF 22.51 FEET; THENCE NORTH 40 DEGREES, 21 MINUTES, 30 SECONDS, WEST A DISTANCE OF 11.03 FEET; THENCE NORTH 71 DEGREES, 01 MINUTES, 48 SECONDS, EAST A DISTANCE OF 10.70 FEET; THENCE SOUTH 26 DEGREES, 17 MINUTES, 09 SECONDS, WEST A DISTANCE OF 35.31 FEET; THENCE SOUTH 71 DEGREES, 17 MINUTES, 09 SECONDS, WEST A DISTANCE OF 27.63 FEET; THENCE SOUTH 06 DEGREES, 00 MINUTES, 00 SECONDS, WEST A DISTANCE OF 28.37 FEET; THENCE SOUTH 77 DEGREES, 17 MINUTES, 59 SECONDS, EAST A DISTANCE OF 19.42 FEET; THENCE SOUTH 88 DEGREES, 37 MINUTES, 42 SECONDS, WEST A DISTANCE OF 34.52 FEET TO THE TRUE POINT OF BEGINNING



LEGAL DESCRIPTION OF SHADOW RUN (CONTINUED)

85 497234

PHASE FOUR (4)

A PART OF THE ABOVE DESCRIBED PROPERTY COMMENCING AT THE SOUTHWEST CORNER SAID PROPERTY THENCE NORTH 01 DEGREES, 22 MINUTES, 18 SECONDS, WEST A DISTANCE OF 538.80 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH DEGREES, 22 MINUTES, 18 SECONDS, WEST A DISTANCE OF 75.92 FEET; THENCE NORTH 88 DEGREES, 37 MINUTES, 42 SECONDS, EAST A DISTANCE OF 127.68 FEET; THENCE NORTH 06 DEGREES, 18 MINUTES, 29 SECONDS, EAST A DISTANCE OF 67.10 FEET; THENCE NORTH 88 DEGREES, 37 MINUTES, 42 SECONDS, EAST A DISTANCE OF 113.35 FEET; THENCE SOUTH 01 DEGREES, 22 MINUTES, 18 SECONDS, EAST A DISTANCE OF 142.42 FEET; THENCE SOUTH 88 DEGREES, 37 MINUTES, 42 SECONDS, WEST A DISTANCE OF 249.99 FEET TO THE TRUE POINT OF BEGINNING.

PHASE FIVE (5)

A PART OF THE ABOVE DESCRIBED PROPERTY COMMENCING AT THE SOUTHWEST CORNER SAID PROPERTY THENCE NORTH 01 DEGREES, 22 MINUTES, 18 SECONDS, WEST A DISTANCE OF 614.72 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 01 DEGREES, 22 MINUTES, 18 SECONDS, WEST A DISTANCE OF 185.28 FEET; THENCE NORTH 88 DEGREES, 13 MINUTES, 20 SECONDS, EAST A DISTANCE OF 235.00 FEET; THENCE SOUTH 46 DEGREES, 34 MINUTES, 29 SECONDS, EAST A DISTANCE OF 21.14 FEET; THENCE SOUTH 01 DEGREES, 22 MINUTES, 18 SECONDS, EAST A DISTANCE OF 185.56 FEET; THENCE SOUTH 88 DEGREES, 37 MINUTES, 42 SECONDS, WEST A DISTANCE OF 113.35 FEET; THENCE SOUTH 06 DEGREES, 18 MINUTES, 29 SECONDS, WEST A DISTANCE OF 67.10 FEET; THENCE SOUTH 88 DEGREES, 37 MINUTES, 42 SECONDS, WEST A DISTANCE OF 127.68 FEET TO THE TRUE POINT OF BEGINNING



ON RACE, COLOR, RELIGION, SEX, ETHNICITY,  
FAMILIAL STATUS, OR NATIONAL ORIGIN.

85 497233

WHEN RECORDED, MAIL TO:

BENTLEY, BRANDES & BRANDES, P.C.  
3003 N. Central, Suite 2300  
Phoenix, Arizona 85012

CMOD RSTR

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA	
OCT 18 1985-3 45	
KENNETH POLLYNS, County Recorder	
FEE 6.50	PGS 3

85 559918

~~MOD RSTR~~

*PIP Development*  
*1212 W. Camelback*  
*Ste # 100*

DECLARATION OF ANNEXATION

*PK 85013*

This Declaration of Annexation is made this 18<sup>th</sup> day of OCTOBER, 1985, by SHADOW RUN CONDOMINIUMS, a joint venture group consisting of Dennis H. Harris, Ronald E. General and Cal Blackledge, (hereinafter referred to as the "Declarant").

RECITALS

A. On OCTOBER 18, 1985, the Declarant caused to be recorded with the County Recorder of Maricopa County, Arizona, as Instrument No. 85-497234, a Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions for SHADOW RUN CONDOMINIUMS (the "Declarant"), submitting the real property located in Maricopa County, Arizona, described on Exhibit A attached to the Declaration to a Horizontal Property Regime and imposing certain covenants, conditions and restrictions upon said real property.

B. Article 2.5.4 of the Declaration reserved to the Declarant the right, until seven (7) years from the date of the recording of the Declaration, to expand the Horizontal Property Regime by annexing all or any portion of the real property described in Exhibit A attached to the Declaration, which real property includes the real property, and all improvements located thereon, described on Exhibits A(1) through A(5) attached hereto (the "Annexed Property").

C. The Declarant desires to annex the Annexed Property into the Horizontal Property Regime created by the recording of the Declaration subject to the terms and conditions of this Declaration of Annexation.

D. The Terms in all capital letters used in this Declaration of Annexation shall have the meanings specified for such terms in the Declaration.

NOW, THEREFORE, pursuant to Article 2.5.4 of the Declaration, the Declarant hereby declares as follows:

1. Subject to the terms and conditions set forth in Paragraph 2 and 3 below, the Annexed Property is hereby annexed into the Horizontal Property Regime known as SHADOW RUN CONDOMINIUMS created by the recording of the Declaration and shall hereafter be subject to the terms and provisions of the Declaration.

2. The Annexed Property shall be divided into separate phases. The legal description of each phase within the Annexed Property is set forth in Exhibit A(1) through A(5) attached hereto. Each phase shall become irrevocably committed to the Horizontal Property Regime on the date (the "Commitment Date") on which the first Unit within each phase is conveyed to a Purchaser; provided, however, that no conveyance of a Unit by the Declarant to a grantee in connection with an assignment of the Declarant's rights under the Declaration shall cause the phase in which such Unit is located to be irrevocably committed to the Horizontal Property Regime. The Declarant shall have the right to amend this Declaration of Annexation to change the description of the phases within the Annexed Property; provided, however, that the Declarant may not change any phases which has already been irrevocable committed to the Horizontal Property Regime in accordance with the provisions of this Paragraph.

3. At any time prior to the date which is seven (7) years after the recording of the Declaration, the Declarant may withdraw any part of the Annexed Property from the Horizontal Property Regime which has not been irrevocable committed to the Horizontal Property Regime under Paragraph 2 of this Declaration of Annexation. The withdrawal of any portion of the Annexed Property shall be accomplished by the recording with the County Recorder of Maricopa County, Arizona, of a Declaration of Withdrawal describing the portion of the Annexed Property being withdrawn. Upon the recording of the Declaration of Withdrawal, the portion of the Annexed Property described in the Declaration of Withdrawal shall no longer be part of the Horizontal Property Regime or subject to the Declaration.

4. Upon the Commitment Date of each phase within the Annexed Property, the fractional interest of each Unit in the General Common Elements shall be adjusted so that the fractional interest of each Unit shall be the fraction the numerator of which shall be one (1) and the denominator of which shall be the total number of all Units which have then been irrevocably committed to the Horizontal Property Regime.

5. Ownership of a Unit within the Annexed Property shall entitle the Owner of such Unit to the exclusive use of the following portions of the General Common Elements, which areas shall be Restricted Common Elements in accordance with Section 2.2.1, et seq., of the Declaration:

(a) the patio, entrance, or patio and entrance designated on the Floor Plan on the Plat with the same letter designation as the Unit and which are designed for the exclusive use of one Unit; each Type "A" Unit shall have the exclusive use of two patios and an entrance and each Type "B" Unit shall have the exclusive use of a patio and entrance.



(b) the covered parking space designated on the Plat by the letters "PS" followed by the same number designation as the Unit;

(c) any parking space assigned to the exclusive use of the Unit by the Board pursuant to Section 7.3 of the Declaration.

(d) all shutters, awnings, window boxes, doorsteps, stoops, porches, entry ways and all exterior doors and windows or other fixtures designed to serve a single Unit but which are located outside the boundaries of the Unit.

6. In accordance with Section 4.3 of the Declaration, the annual assessments for all Units within the Annexable Property shall not commence until the first day of the first month following the month in which the phase of the Annexable Property within which such Unit is located is irrevocably committed to the Horizontal Property Regime in accordance with Paragraph 2 of this Declaration of Annexation, and no annual, special or supplemental assessments may be levied against any such Unit until such time.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Annexation on the day and year first above written.

SHADOW RUN CONDOMINIUMS, a joint venture group,

By D.H. Harris, MD  
Its Managing Venture

STATE OF ARIZONA )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of October, 1985, by D.H. HARRIS M.D., the Managing Venture of SHADOW RUN CONDOMINIUMS, on behalf of the joint venture.

[Signature]  
NOTARY PUBLIC

My Commission Expires:

July 25, 1989

RECORDED IN OFFICIAL RECORDS  
OF MARICOPA COUNTY, ARIZONA  
NOV 25 1985 - 1 30  
KEITH POLETIS, County Recorder  
FEE 650 PGS 3 LD.

When recorded, return to:

Phyllis H. Parise, Esq.  
LAW OFFICES OF PHYLLIS H. PARISE, P.C.  
5125 N. 16th Street, Ste. B223  
Phoenix, Arizona 85016

**AMENDMENT TO DECLARATION OF HORIZONTAL PROPERTY REGIME  
AND COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SHADOW RUN CONDOMINIUMS  
TO ALTER UNIT SIZE AND BOUNDARIES**

**THIS AMENDMENT TO DECLARATION** (the "Amendment") is made and entered to be effective as of this 31 day of May, 1996, by WALTER JAMES CORPORATION, an Arizona corporation (the "Current Declarant"), and is as follows:

**RECITALS:**

- A. Current Declarant, through mesne conveyances, acquired the remaining unsold Condominium Units in the Horizontal Property Regime known as Shadow Run Condominiums according to the Amended Plat of Shadow Run Condominiums recorded in Book 317, page 34, Records of Maricopa County, Arizona (the "Amended Plat") from the Resolution Trust Corporation solely in its capacity as Receiver for Pima Federal Savings and Loan Association.
- B. Immediately prior hereto, Current Declarant recorded that certain Rescission of Termination of Plat and Amendment to Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Shadow Run Condominiums (the "Corrective Amendment") and all recitals set forth in the Corrective Amendment are incorporated herein by this reference.
- C. Current Declarant recorded the Corrective Amendment in accordance with Section 10.2 of the Declaration and the Arizona Horizontal Property Regime statutes, A.R.S. §§33-551 *et seq.* (the "Act") in part to clarify that the first Phase of the Project as identified in the Corrective Amendment has been constructed in accordance with the Amended Plat.
- D. As permitted by Section 10.2 of the Declaration, Current Declarant desires to alter the interior design of the Units and the size and boundaries between Condominium Units for those Units in Phase II of the Project owned by Declarant and which are not yet constructed or are currently under construction. Current Declarant represents that all such altered Units are owned by Declarant, there are no First Mortgagees holding First Mortgages encumbering the altered Units, and the alterations do not modify or change the size, boundaries, the Common Interest or the share of the Common Expenses of any Units not owned by Declarant.

E. All initially capitalized terms used in this Amendment without definition shall the meanings ascribed to such terms in the Declaration and/or the Corrective Amendment.

**NOW, THEREFORE,** pursuant to the provisions of Section 10.2 of the Declaration and the Act, Current Declarant hereby amends the Declaration as follows:

**AMENDMENTS:**

1. Alteration of Units. Current Declarant hereby amends the Declaration to alter the Unit design, size and boundaries of those Units within Phase II of the Project (namely, Units located in Buildings D, E, F, and G as shown on the Amended Plat). The definition of "Map" in the Declaration is hereby amended to refer to the Original Plat of Shadow Run recorded on October 16, 1985 in Book 289 of Maps, page 10, Records of Maricopa County, Arizona as to those Units described in Exhibit A only. As provided under Arizona law and Section 2.1 of the Declaration, the cubic content space of the Condominium Buildings within the portion of the Project altered hereby and the cubic content space of each Unit within said Condominium Buildings is described on or can be determined from the Condominium Plan reflected on the Original Plat. As provided in the Declaration, the Original Plat is incorporated into the Declaration as if set forth at length.

2. Description of Horizontal Property Regime. As a result of this Amendment and the Corrective Amendment the legal description for the entire Project shall be as set forth on Exhibit B attached hereto and incorporated herein by this reference.

**IN WITNESS WHEREOF,** Current Declarant has amended the Declaration as set forth herein to be effective as of the date first set forth above.

**CURRENT DECLARANT:**

WALTER JAMES CORPORATION, an  
Arizona corporation

By 

Its WJS

# PHASES

## EXHIBIT A

Original Plat of Shadow Run recorded in Book 289 of Maps, page 10, M.C.R.  
Amended Plat of Shadow Run recorded in Book 317 of Maps, page 34, M.C.R.

- BUILDING D** Units 116 through 120, inclusive, Units 218 through 220, inclusive, per the Original Plat (formerly Units 117 through 120, inclusive, Units 217 through 220, inclusive per the Amended Plat.)
- BUILDING E** Units 121 through 124, inclusive, Units 221 through 223, inclusive, per the Original Plat
- BUILDING F** Units 125 through 129, inclusive, Units 227 through 229, inclusive, per the Original Plat (formerly Units 126 through 129, inclusive, Units 226 through 229, inclusive, per the Amended Plat)
- BUILDING G** Units 130 through 133, Units 230 through 232, inclusive, per the Original Plat

**EXHIBIT B**

**Present Legal Description of Shadow Run Horizontal Property Regime as a Result of this  
Amendment and Corrective Amendment**

**ORIGINAL PLAT:**

Units 116 through 133, inclusive, Units 218 through 223, inclusive, and Units 227 through 232, inclusive, according to the Declaration of Horizontal Property Regime for SHADOW RUN CONDOMINIUMS recorded at Instrument No. 85 497234 and Declaration of Annexation recorded at Instrument No. 85 497233 and re-recorded at Instrument No. 85 559918 and corrected at Instrument No. 85 569721 and the plat of SHADOW RUN recorded in Book 289 of Maps, page 10, on October 16, 1985 in the Official Records of Maricopa County, Arizona;

TOGETHER WITH an undivided interest in the Common Elements as set forth in said Declaration and Plat.

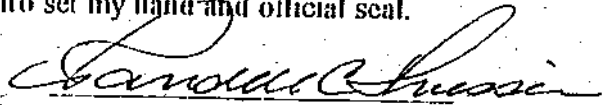
**AMENDED PLAT:**

Units 101 through 109, inclusive, Units 112 through 115, inclusive, Units 134 through 137, inclusive, Units 139 through 147, inclusive, Units 203 through 209, inclusive, Units 212 through 215, inclusive, Units 234 through 237, inclusive, Units 239 through 241, inclusive, and Units 243 through 245, inclusive, according to the Declaration of Horizontal Property Regime of SHADOW RUN CONDOMINIUMS recorded at Instrument No. 85 497234 and Declaration of Annexation recorded at Instrument No. 85 497233 and re-recorded at Instrument No. 85 559918 and corrected at Instrument No. 85 569721 and the AMENDED PLAT OF SHADOW RUN in Book 317, of Maps, page 34, on December 1, 1987 in the Official Records of Maricopa County, Arizona;

PROVINCE OF ALBERTA )  
 )ss.  
COUNTY OF LETHBRIDGE )

On this 31 day of MAY, 1996, before me, the undersigned notary public in and for said county and state, personally appeared MARVIN GATES, who acknowledged himself to be the Pres. of WALTER JAMES CORPORATION, an Arizona corporation, and that he as such Pres., being authorized so to do, executed the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



NOTARY PUBLIC

RANDELL L. THIESSEN

My commission expires:

NO EXPIRY