

Minnesota Title Company

04210

RECORDING REQUESTED BY:

Cunningham, Goodson, Tiffany
& Weltsch, Ltd.

PROP RSTR (PR)

2700 Arizona Bank Building
101 North First Avenue
Phoenix, Arizona 85003

DKT 15747 PG 13

Attention: Christopher C. Wooten

WHEN RECORDED MAIL TO:

(Same as above)

DECLARATION OF
HORIZONTAL PROPERTY REGIME AND
COVENANTS, CONDITIONS AND RESTRICTIONS

HAYDEN VILLA CONDOMINIUMS

MARICOPA COUNTY, ARIZONA

JAN 6 - 1982 - 2 45

STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the within
instrument was filed and re-
corded at request of

in Doc# 15747
on page 13 - 59

Witness my hand and official
seal this 6th day of January 1982.

Bill Elmsy
County Recorder

By *C. Michael*
Deputy Recorder

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DKT15747 PG 14

DECLARATION OF
HORIZONTAL PROPERTY REGIME AND
COVENANTS, CONDITIONS AND RESTRICTIONS
HAYDEN VILLA CONDOMINIUMS
MARICOPA COUNTY, ARIZONA

THIS DECLARATION, made on the date hereinafter set forth, by PAUL I. NELSON and ELLEN E. NELSON, his wife dba Paul I. Nelson Co. ("Declarant"), is made with reference to the following facts:

A. Declarant is the beneficial owner of a certain tract of land located in the County of Maricopa, State of Arizona, more particularly described in Exhibit A attached hereto and incorporated by reference, which land is held in trust under that certain Deed dated October 28, 1981, and recorded on Nov. 12, 1981, in Docket 15636, Page 1030 of the Official Records of Maricopa County, wherein Title Insurance Company of Minnesota, a Minnesota corporation ("Minnesota Title") is trustee and Declarant is Beneficiary (the "Trust"). 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 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, Section 33-551 through 33-561, as same may be amended.

C. The development shall be referred to as the "Project". The Owner of each Unit shall receive title to his individual condominium Unit, plus an undivided 1/29 interest as tenant in common in the Common Area. Each Unit shall have appurtenant to it a membership in the HAYDEN VILLA CONDOMINIUM ASSOCIATION.

D. 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 said Units and the Owners thereof.

NOW, THEREFORE, Declarant hereby declares, with the assent of Minnesota Title, that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, 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, and the Project, and every part thereof, in accordance with the plan for the improvement of the Property and the division thereof into condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and

shall be binding upon Declarant and 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.

1.3 "Association" shall mean and refer to the HAYDEN VILLA CONDOMINIUM ASSOCIATION, an Arizona nonprofit corporation, the members of which shall be the Owners of 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 Property of which title is held by all of the Owners as tenants in common, including the Recreational Common Area and the Limited Common Area, but excluding the individual condominium Units as defined herein. The Common Area includes, without limitation: land; interior and exterior parking and driveway areas; stairs; bearing walls, columns, girders, subfloors, unfinished floors, roofs, and foundations; central heating and chutes, conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the Unit) required to provide power, light, telephone, gas, water, sewage, drainage, heat, air-conditioning and elevator service; sprinklers, sprinkler pipes, and sprinkler heads which protrude into the airspace of the condominium Unit; central television antenna, 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 Property and the Association and any reasonable reserve for such purposes 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 Unit as set forth in this Declaration.

1.9 "Condominium" shall mean an estate in real property consisting of title to a Unit within the Horizontal Property Regime hereby established and a 1/29 undivided interest in the Common Area. The ownership of each condominium shall include (1) the ownership of a Unit; (2) a 1/29 undivided interest in the Common Area; (3) exclusive use of the portion of the Limited Common Area appurtenant to that Unit; (4) a non-exclusive right to use the Recreational Common Area; and (5) membership in the Association. Each Unit shall be a separate freehold estate consisting of the cubic space described and defined in Article 2 hereof.

1.10 "Condominium Building" shall mean a residential structure containing condominium Units.

1.11 "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.

1.12 "Declarant" shall mean and refer to Paul I. Nelson and Ellen E. Nelson, his wife dba Paul I. Nelson Co., and 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 "Institutional Lender" shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded first mortgage on any Unit.

1.15 "Limited Common Area" shall mean and refer to those portions of the Common Area set aside for exclusive use of a Unit Owner or Owners, pursuant to Article 2 hereof.

1.16 "Map" shall mean and refer to that condominium map recorded January 5, 1992, in Book 238, Pages 38 through ~~39~~ of 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 if 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 "Minnesota Title" shall mean and refer to Title Insurance Company of Minnesota, a Minnesota corporation and any successor trustees to that certain Deed dated October 28 1981 and recorded on Nov. 12, 1981 in Docket 15636, Page 1030 of the Official Records of Maricopa County.

1.19 "Mortgage" shall include a deed of trust as well as a mortgage.

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

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

1.22 "Owner" or "Owners" shall mean and refer to the record holder or holders of title of a Unit in the Project. This shall include any person having a fee simple title to any Unit, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a 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 resides in the Unit as a contract purchaser.

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

1.24 "Project" shall mean and refer to the entire Property including all structures and improvements erected or to be erected thereon.

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, 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" or "Properties" means and includes the real property covered by this Declaration and all improvements erected thereon and all property, real, personal or mixed, intended for or used in connection with the Project.

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

1.28 "Trust" shall mean and refer to that certain deed dated Oct. 28, 1981 and recorded on Nov. 12, 1981 in Docket 15636, Page 1030 of the Official Records of the Maricopa County Recorder, wherein Minnesota Title is trustee and Declarant is Beneficiary.

1.29 "Unit" shall mean and refer to the elements of an individual condominium, as defined in Article 2, which are not owned in common with the Owners of other condominiums in the Project.

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1.30 "Unit designation" means the number, letter, or combination thereof or other official designation shown on the Condominium Plan.

End of Article 1 Entitled
Definitions

ARTICLE 2

Description of Project, Division of Property,
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. The cubic content space of the buildings within the Project with reference to their location on the land, and the cubic content space of each Unit within the buildings is described on the Condominium Plan.

2.2 Division of Property

The Property is hereby divided into the following freehold estates and areas:

2.2.1 Dwelling 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 building so described or contained within such boundaries, and the air-space so encompassed. Each Unit also includes as an appurtenance thereto: (1) the adjacent area encompassing an entry court, patio or balcony, if any, as the case may be, the lower boundary of which shall be the finished floor surface thereof the elevation of which is equal to the lower elevation of the Unit to which it is appurtenant, the upper elevation of which shall be 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 vertical planes extending upward from the outside edges of the floor surface, but not including any exterior wall bounding such patio or balcony area (but including the interior finished surface of any such walls); and, (2) an exclusive (except as against the Association) easement to use for vehicle parking purposes, the parking space specifically designated in the Condominium Plan or assigned by the Declarant or Board to the Owner as being appurtenant to and included with that Unit. The square footage and cubic content of each Unit, excluding that contained in the appurtenant entry court, patio or balcony is set forth and described within the Condominium Plan. The square footage and cubic content space of the appurtenant entry court, patio or balcony can be independently determined from the Condominium Plan. The parking area and garage or carport structures are to be maintained by the Association and are Common Areas and the Association shall have

access thereto at all times for the maintenance, replacement and repair thereof. The Unit does not include those areas and those things which are defined as "Common Area" below. 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 thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the 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 Article 1.6. Each Unit Owner shall have, as appurtenant to his Unit, a 1/29 undivided interest in the Common Area. The common interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Unit Owners and the first mortgagees of such Unit Owners, as expressed in an amended declaration, subject to the terms and provisions of Article 10.5.3 herein. Such common interest cannot be separated from the Unit to which it is appurtenant. Each Unit Owner shall have a non-exclusive right to use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the rights of any other Unit Owners. Notwithstanding the transfer of the Common Area to the 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 encroachment purposes and for ingress to and egress from the Common Area for the purpose of completing improvements thereon or for the performance of necessary repair work.

2.2.3 Limited Common Area

Portions of the Common Area referred to as "Limited Common Area" are hereby set aside and allocated for the exclusive use of the Owners of individual Units. The aggregate Limited Common Area shall be designated as such on the Condominium Plan or Map. The rights of an individual Owner in the Limited Common Area shall consist of:

- (1) an exclusive easement to use for vehicle parking purposes, the parking space or spaces specifically assigned by Declarant or the Board to the Owner or designated on the Condominium Plan or Map as being appurtenant to that Unit (except that where a garage area is enclosed and attached to a Unit, that area shall be part of the Unit as defined in this Declaration);

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(2) an exclusive easement to use the storage space, if any, specifically assigned by Declarant or the Board to the Owner or designated on the Condominium Plan or Map as being appurtenant to that Unit;

(3) an exclusive easement for ingress and egress over and for the use and enjoyment of the exterior stairs and landing area adjacent and appurtenant to the Unit (provided, however, that such easement shall be shared with any other Unit to which such stairs and landing area are also adjacent and appurtenant).

This right of exclusive use shall be, and is hereby declared to be, an appurtenance to the ownership of the Unit. While the right to use at least two parking spaces and a storage area, if any, is declared to be an appurtenance to ownership of the Unit, unless a specific assignment is made by the Condominium Plan or Map no right to a particular parking space and storage area is being created hereby, it being the intent that reasonable reassignments of parking spaces and storage areas, reasonably convenient to the Unit Owners to which they are assigned, may be made by the Declarant or subsequently by the Board.

The use of the parking spaces assigned to the Units referred to above, as well as all other parking spaces and storage areas, if any, shall be subject to the reasonable rules and regulations of the Board.

2.2.4 Recreational Common Area

That portion of the Property designated on the Condominium Plan or Map as "Recreational Common Area", if any, shall be part of the Common Area, and as such shall be owned by all Unit Owners as tenants in common. The Recreational Common Area shall be operated and maintained by the Association for the use and benefit of Owners of Units in the Project, subject to reasonable rules and regulations enacted according to the Bylaws.

2.3 No Separate Conveyance of Undivided Interests

The foregoing interests and exclusive easements are hereby established and are to be conveyed only with the respective Units, and cannot be changed, except as herein set forth. Declarant, its successors, assigns and grantees covenant and agree that the undivided interests in the Common Areas, the exclusive easements of the Limited Common Areas, and the fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each such undivided interest and exclusive easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the 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 Article 10.5.3 herein, no Owner shall bring any action for partition, 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 Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby (but partition of title to a single Unit is prohibited).

2.5 Annexation of Additional Parcels

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

2.5.1 Annexation Pursuant to Plan

Property may be annexed to and become a part of the Project, subject to this Declaration, and subject to the jurisdiction of the Association, without the assent of the Association or its Members, on condition that:

2.5.1.1 Any annexation pursuant to this Subarticle shall be made prior to three (3) years from the date of the original issuance of the most-recently-issued public report for any phase of the Project.

2.5.1.2 A Declaration of Annexation shall be recorded by Declarant covering the applicable portion of the Property to be annexed. Said Declaration shall incorporate this Declaration by reference and may contain such complementary additions and modifications of the covenants 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. The Declaration of Annexation shall contain, among other things, an appropriate exhibit setting forth the percentage interest in the Common Area of that phase to be transferred to the Owner of each Unit in that phase.

2.5.2 Annexation Pursuant to Approval

Upon the vote or written assent of Declarant (while Declarant is an Owner) and of two-thirds (2/3) 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 in the manner described in the preceding Subarticle.

Upon annexation of a new phase, the annexed parcel shall become subject to this Declaration without the necessity of amending individual sections hereof. The Owners of the Units in a pre-existing phase will continue to have the same interest in the Common Area of their phase, will have a nonexclusive easement for ingress and egress over the Common Area of the new phase that is not a part of a condominium building, and will have a non-exclusive easement for the use and enjoyment of any Recreational Common Area located within the new phase. Owners of Units in the new phase will have such an interest in the Common Area of that phase as shall be set forth on an exhibit to the Declaration of Annexation, will have a nonexclusive easement for ingress and egress over the Common Area of all pre-existing phases that is not a part of a condominium building, will have a nonexclusive easement for the use and enjoyment of any Recreational Common Area located within all pre-existing phases, and will become Members of the Association. Declarant hereby reserves to itself, its successors and assigns, the right to, and agrees that it will, grant to the Owners of Units in any new or pre-existing phase, the nonexclusive easements for ingress, egress, use and enjoyment described in this paragraph.

2.6 De-annexation of Parcels

Any parcel annexed to the Property pursuant to the plan of Declarant, in accordance with Subarticle 2.5.1 above, may be de-annexed by Declarant and removed from the Project and the jurisdiction of this Declaration and the Association at any time by the recordation of an appropriate Declaration of De-annexation; provided that such de-annexation shall take place (1) before any Unit in the annexed parcel has been sold by Declarant to a member of the general public; (2) before any vote has been exercised on behalf of any such Unit; and (3) before any such Unit has incurred any assessment obligation to the Association.

End of Article 2 Entitled
Description of Project, Division of Property, and
Creation of Property Rights

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 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 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 reason, 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 Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

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 Unit other than Declarant and each Class A Member shall be entitled to one (1) vote for each Unit owned. If a 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 vote for each Unit.

3.4.2 Class B Membership

Class B Membership shall be that held by Declarant (or its successor) who shall be entitled to three (3) votes for each 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 The total outstanding votes held by Class A Members equal the total outstanding votes (tripled as above) held by the Class B Member; or

3.4.2.2 The second anniversary of the original issuance of the subdivision public report for the Project.

3.4.2.3 The close of escrow of the sale of the last Unit held by Declarant (or his successor).

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 or written consent of 51% of the membership unless another percentage is specifically prescribed by a provision within this Declaration, or the Bylaws or Articles of the Association.

3.6 Commencement of Voting Rights

Voting rights attributable to any Unit not owned by Declarant shall not vest until an assessment has been levied against that Unit by the Association, pursuant to Article 4, below. Voting rights attributable to all Units owned by Declarant shall vest immediately by virtue of Declarant's ownership thereof.

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.

End of Article 3 Entitled
Association, Administration, Membership and Voting Rights

ARTICLE 4

Maintenance and Assessments4.1 Creation of the Lien and Personal Obligations of Assessments

Each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) regular annual assessments or charges, and (2) special assessments for capital improvements and unexpected expenses; such assessments to be established and collected as provided herein and in the Bylaws of the Association. The annual and special assessments and any other charge made on a Unit pursuant to this Declaration and the Bylaws, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Unit against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. No Owner of a 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 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.

4.3 Annual Assessments

The Board shall annually determine and fix the amount of the annual (calendar year) assessment against each Unit other than those owned by Declarant while two classes of membership exist pursuant to Article 3.4, and shall notify the owner of each Unit in writing as to the amount of such annual assessment not less than 45 days prior to the date that such assessment is to commence. Except as to the first annual assessment, the annual assessment may be neither increased by more than ten percent (10%) above, nor decreased by more than ten percent (10%) below the annual assessment for the previous year, without the vote or written assent of the association membership (other than Declarant) pursuant to Article 3.5 hereof. All annual assessments shall be payable in twelve equal monthly installments. In the year prior to January 1 of the year immediately following the close of escrow on the sale of the first Unit in the Project, the

annual assessment shall be prorated based on the number of months remaining before January 1 of such year, as well as any partial months remaining.

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 five percent (5%) of the budgeted gross expenses of the Association for that assessment year, without the vote or written assent of fifty-one percent (51%) of the membership (other than Declarant) present and voting at a meeting at which a quorum equal to fifty-one percent (51%) 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-five percent (35%) of the total voting power of the Association. Special assessments may also be levied by the Board against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Unit into compliance with the provisions of this Declaration and the Bylaws. Furthermore, special assessments may be levied against an individual Unit and its Owners for reasonable monetary penalties for the violation of any of the restrictions or conditions, or breach of any of the covenants or agreements contained herein or breach of any rules and regulations promulgated by the Board, after notice and hearing according to the bylaws.

4.5 Allocation of Assessments

The Owners of each Unit, other than those owned by Declarant while two classes of membership exist pursuant to Article 3.4, shall bear an equal share of each regular and special assessment (except for special assessments imposed for disciplinary reasons under the preceding Subarticle and as set forth in Article 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 Unit in the Project on the first day of the

month following the close of escrow on the sale of that Unit. When Class B Memberships terminate pursuant to Article 3.4 herein, assessments shall commence as to all remaining Units in the Project, or any phase thereof. Units owned by Declarant shall not be subject to any lien until the obligation of Declarant to pay assessments commences as provided herein. While two classes of memberships exist pursuant to this Declaration, Declarant may impose and collect the assessments and charges provided for herein, and all such amounts collected by Declarant may be comingled with Declarant's general funds and no accounting, budget, application of funds, or justification of any sort shall be required of Declarant. Due dates of assessments shall be established by the Board and notice shall be given to each Unit Owner at least forty-five (45) 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

Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Where the mortgagee of a first mortgage of record obtains title to a Unit as a result of foreclosure of any such first mortgage, such mortgagee shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such mortgagee. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such mortgagee. In a voluntary conveyance of a Unit the grantee of the same shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. 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 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 Obligation; Priorities; Discipline

Any part of any assessment not paid within ten (10) days after the due date shall bear interest at the rate of eighteen percent (18%) per annum from the due date until paid. The assessment lien on each respective Unit shall be prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust) made in good faith and for value. Such lien, when delinquent, may be enforced by sale by the Association, its attorney or other person authorized by this Declaration or by law to make the sale, after failure of the Owner to pay such assessment, in accordance with the provisions of Arizona Revised Statutes Section 33-721 - 33-730, applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by law; however, the right to foreclose the same shall be in addition to and not in substitution of all of the rights and remedies which the Association and Board may have in accordance with the provisions of this Declaration or otherwise. The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. In the event the Owner against whom the original assessment was made is the purchaser or redemptioner, the lien shall continue in effect and the said lien may be enforced by the Association, or by the Board for the Association, for the respective Unit's assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid assessment shall continue to exist as a personal obligation of the defaulting Owner of the respective 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. Suit to recover a money judgment for unpaid common expenses, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties and may temporarily suspend the Association membership rights of a Unit Owner who is in default in payment of any assessment according to the Bylaws.

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 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 Units in an amount equal to said taxes, on a pro rata basis equal to the percentage interest in the Common Area which is appurtenant to each 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 Unit prior to any first mortgage under Arizona laws, shall affect the Common Area as a whole; such taxes, assessments or charges shall only be levied separately on each Unit in its respective appurtenant percentage share of the Common Area.

End of Article 4 Entitled
Maintenance and Assessments

ARTICLE 5

Duties and Powers of the Association

5.1 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 Maintain, repair, replace, restore, operate and manage all of the Common Area, Limited Common Area and 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.

5.1.2 Enforce the provisions of this Declaration by appropriate means, including without limitation, the expenditures 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 Property and other Owners.

5.2 Maintenance of Project by Association

The Association shall provide maintenance of the Project as provided in the Bylaws. The Association shall not be responsible for maintaining and repairing capital improvements built or placed by an Owner on or within his Unit or within the entry court, patio or balcony space or repairs or replacements caused by any of the perils covered by a standard form fire insurance

policy with extended coverage endorsement thereon, including, but not limited to, glass surfaces. 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 or Limited 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 such Unit and shall be payable to the Association by the Owner of such Unit.

5.3 Maintenance of Project by Declarant

While two classes of membership exist pursuant to Article 3.4, and Declarant commingles assessments and charges pursuant to Article 4.6, 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 Articles 5.1 and 5.2.

5.4 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.

5.5 Custodian Unit

The Association shall have the power and authority, with the vote or written consent of a majority of each class of Members, to purchase a 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:

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

5.5.2 No assessment shall be assessed or levied on the Custodian Unit; and

5.5.3 Each other 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.

End of Article 5 Entitled
Duties and Powers of The Association

Utilities6.1 Owners' Rights and Duties

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

6.1.1 Whenever sanitary sewer, water, electric, gas, television receiving, or 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 its right of entry pursuant to this Article 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, or 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 connection 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, and 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 may be hereafter 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

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.

End of Article 6 Entitled
Utilities

ARTICLE 7.

Use Restrictions

In addition to all of the covenants contained herein, the use of the Property 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.

7.1.1 Adult Residential Project

No Child under sixteen (16) years of age shall be permitted as a permanent resident of any Unit (permanent residence being defined as any continuous residence for longer than one (1) month); provided, however, that this age restriction shall not apply to any child resident in a Unit in which he also resided under a lease or tenancy agreement immediately prior to the sale of that Unit by Declarant to the Owner.

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 of the Owners of his respective Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any 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 pickup truck) inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Property, 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 designated for such

purpose by the Board. Commercial vehicles shall not include sedans or standard size pickup 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 to the execution of the rights or duties of the Association under this Declaration.

7.4 Signs

Signs advertising 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, by and 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 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 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 30 days, or (b) any rental if the occupants of the Unit are provided customary hotel service such as room service for food and beverage, maid service, furnishing laundry and linen, 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 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

No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

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 one (1) day's work) shall be permitted on the Property 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 Unit shall be liable to the Association for all damages to the Common Area or improvements thereon caused by such Owner or any occupant of his Unit or guest.

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 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 Unit agrees to hold Declarant harmless therefrom.

End of Article 7 Entitled
Use Restrictions

ARTICLE 8

Architectural Control

8.1 Prohibition of Alteration and Improvement

Subject to the exemption of Declarant under Article 10.10 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 Property, 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 Owners as provided in this Article. No kind of foil or darkening screen shall be placed upon the windows of the Units, nor shall the balconies or patios, if any, of the Units be used for storage purposes. Furthermore, no clothing, laundry, or other personal items are to be hung out on the balconies or patios of the Units. 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 and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish 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 alteration or improvement within 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, election and term of members of the Committee shall be as provided in the Bylaws, subject to the following limitations:

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

8.3.2 Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of a public report for the Project. Thereafter, Declarant reserves to itself the power to appoint a majority of the members of the Committee, until ninety percent (90%) of all Units in the overall Project have been sold or until the fifth anniversary of the issuance of the final public report for the Project, whichever first occurs. Committee members appointed by the Declarant need not be Members of the Association.

8.3.3 After one (1) year from the date of issuance of a public report for the Project, the Board shall have the power to appoint all members of the Committee not appointed by Declarant under Subarticle 8.3.2, above, until ninety percent (90%) of all of the Units in the overall Project have been sold or until the fifth anniversary date of the issuance of the final public report for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee. Committee members appointed by the Board shall be from the membership of the Association. Committee members appointed by the Board shall serve one (1) year terms.

End of Article 8 Entitled
Architectural Control

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 the multi-family structure, 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 condition as formerly, without cost to the adjoining Owner.

9.3 Damage by Other Cause

In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agent, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

9.4 Negligence

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

9.5 Covenant of Contribution

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

9.6 Alterations or Modifications

In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regu-

lations 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.

9.7 Disputes

In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall 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 arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the owners and the third arbitrator 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 party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

9.8 Benefit and Binding Effect

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

End of Article 9 Entitled
Party Walls

ARTICLE 10

General Provisions10.1 Enforcement

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 restrictions, conditions, covenants, 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 or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

10.2 Invalidity of Any Provision

Should any provisions 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.

10.3 Amendments

Subject to the standards set forth in any applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project, and the rights of the Owners and Institutional Lenders provided herein, this Declaration may be amended only by the vote or written assent of sixty-seven percent (67%) 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 provisions shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause, and further provided, that all Institutional Lenders shall have consented, in writing, to such change, modification or rescission which affects a Unit upon which they have a first priority lien. Until the first Unit is sold (or a contract for sale entered into), the Declarant shall have the unlimited right to amend this Declaration.

Declarant may alter the interior design of the Units, the size and boundaries between Units, and the percentage interest which Units bear to the entire Horizontal Property Regime at any time so long as (i) such altered Units are owned by Declarant; (ii) all Institutional Lenders then encumbering such altered Units agree in writing to such alterations, and (iii) such alterations do not modify or change the size, the boundaries, the percentage interest in and to the Common Area, or the share of the Common Expenses of any Units not owned by Declarant.

10.4 Encroachment Easements

Each Unit within the Property 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 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 structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units or 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.

10.5 Mortgage Protection Clause

10.5.1 Rights of First Mortgages

10.5.1.1 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 (meaning a mortgage with first priority over any other mortgage) on any Unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

10.5.1.2 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 Unit to the same extent as are the Common Elements.

10.5.1.3 Institutional Lender shall not in any case or manner be personally liable for the payment of any assessment or charge, nor the observance or performance of any covenant, restriction, regulation, rule, Association Articles of Incorporation or Bylaws, or management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as provided herein to the contrary.

10.5.1.4 An action to abate the breach of any of these covenants, restrictions, reservations and conditions may be brought against the purchasers who have acquired title through foreclosure of a first mortgage and the subsequent Sheriff's sale (or through any equivalent proceedings), and the successors in

interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Unit.

10.5.1.5 During the pendency of any proceedings to foreclose a first mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the Institutional Lender, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default of a Unit including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner.

10.5.1.6 At such time as the Institutional Lender shall become record Owner of a Unit, the Institutional Lender 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 Unit Owner.

10.5.2 Notice to Lenders

All institutional lenders that have filed with the Association an appropriate request, shall be entitled to receive the following notices in writing from the Association pertaining to any Unit in which they have an interest:

10.5.2.1 Notice of any proposed change in the Project documents, which notice shall be given thirty (30) days prior to the effective date of such change;

10.5.2.2 Notice of default by the Owner or trustor of any deed of trust on a Unit (the beneficial interest in which is held by said institutional lender) in the performance of such Owner's or trustor's obligations under the Project Documents, which default is not cured within sixty (60) days;

10.5.2.3 Notice of any damage or destruction to any individual Unit subject to a mortgage (the beneficial interest in which is held by said institutional lender), which damage exceeds One Thousand Dollars (\$1,000.00), which notice shall be given immediately upon the Board's obtaining knowledge of such damage or destruction;

10.5.2.4 Notice of any damage or destruction to any portion of the Common Area or facilities or improvements thereon, which damage or destruction is substantial or may be restored only at a cost exceeding Ten Thousand Dollars (\$10,000.00), which notice shall be given immediately upon the Board's obtaining knowledge of such damage or destruction;

10.5.2.5 Notice of any proceeding or other action taken or proposed for the acquisition of any Unit or portion thereof or the Common Area or any portion thereof by any condemnation, eminent domain or similar proceeding, shall be given immediately upon the Board's obtaining knowledge of such proceeding;

10.5.2.6 Notice of all meetings of the Association, which notice shall be given thirty (30) days prior to the date of any such meeting, and each Institutional Lender shall be permitted to designate a representative to attend all such meetings.

10.5.3 Changes Requiring Lender Approval

Without the prior written approval of Declarant (while Declarant is an Owner of any Units) and of at least seventy-five percent (75%) of the institutional lenders (based upon one (1) vote for each mortgage or deed of trust owned) or of the Owners other than Declarant, the Association shall not be entitled to:

10.5.3.1 Change the undivided interests in the ownership of the Common Area, the share of assessments charged to any Unit, or the method of determining such assessments;

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

10.5.3.3 Allow partition or subdivision of any Unit, except as provided in Subarticle 2.4;

10.5.3.4 Change the interest of any Unit in the allocation of distributions of hazard insurance proceeds or condemnation awards;

10.5.3.5 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);

10.5.3.6 Use hazard insurance proceeds for losses or damages to any portion of the Property for other than the repair, replacement or reconstruction thereof, except as provided by law in case of substantial loss or damage to the Units and/or the Common Area;

10.5.3.7 By act or omission change, waive or abandon the scheme of regulation and enforcement of architectural control over the Property, as described in Article 8, above;

10.5.3.8 Fail to maintain fire and extended coverage insurance on all insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

10.5.3.9 Change the provisions so as to give an Owner, or any other party, priority over any rights of Institutional Lenders 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 Common Area.

10.5.4 Mortgage Priority: Right to Inspect Records

Notwithstanding any language contained in this Declaration to the contrary, no Unit Owner and no other party shall have priority over any rights of institutional lenders pursuant to their mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Units and/or any portion or element of the Common Area. Institutional lenders shall have the right to examine the books and records of the Association during normal business hours and to receive the annual financial statement of the Association within ninety (90) days following the end of the fiscal year of the Association.

10.5.5 Compliance with FHLMC Regulations

The Declarant intends that the Project shall comply with all requirements of the Federal Home Loan Mortgage Corporation (FHLMC) pertaining to the purchase of FHLMC 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 FHLMC requirements, the Board shall have the power (on behalf of the Association) to enter into any agreement with FHLMC (or its designee) reasonably required by FHLMC to allow the Project to comply with such requirements, and make such changes in the Project Documents to effectuate the same.

10.5.6 Payment of Taxes and Insurance Premiums by Mortgagees

Institutional lenders 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 institutional lender making such payments shall be entitled to immediate reimbursement therefor from the Association.

10.5.7 Owner's Right to Sell Unit

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

10.6 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 and any Limited Common Area appurtenant to his Unit, keeping the same in good condition. Additionally, each Owner shall maintain, repair and replace as necessary any separate air conditioning and/or water heating unit which services his Unit, and further, any glass surfaces of a Unit which are damaged shall be repaired within seven 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 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 Owner of the work required and request it be done within thirty (30) days from the giving of such notice. In the event 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, if necessary lien his Unit for the amount thereof.

10.7 Entry for Repairs

The Board or its agents may enter any Unit when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made upon reasonable notice 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.

10.8 Insurance: Damage or Destruction

10.8.1 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 onto any adjacent Unit for purposes of repair or reconstruction of his Unit as provided in this Subarticle.

10.8.2 Association Liability Insurance

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

10.8.3 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 as a minimum fire and extended coverage and all other coverage in the kinds and amounts required by institutional lenders according to FHLBC regulations, 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 on the Project. Such policy shall contain extended coverage and replacement costs endorsements, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause and a determinable cash adjustment clause, or a similar clause to permit cash settlement covering full value of the improvements on 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 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, shall name as insured the Association, the Owners and Declarant (so long as Declarant is an Owner of any Units), and all mortgages 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 or customized items within any individual Units, which shall be the responsibility and risk of the Unit Owners.

10.8.4 Additional Association Insurance

The Association may purchase such other insurance as it may deem necessary, including without limitation

plate-glass insurance, worker'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 one and one-half (1½) times the Association's estimated annual operating expenses and reserves.

10.8.5 Choice of Carriers; Insurance Premiums

The insurance policies required under this Article 10.8 shall be acquired from carriers meeting the qualifications of the Federal Home Loan Mortgage Corporation. Insurance premiums shall be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right of any Unit Owner to obtain additional individual insurance.

Neither the Declarant, the Association, nor 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 to ascertain the Association's coverage and to procure such additional coverage as such Owner deems necessary. Institutional Lenders 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 Institutional Lender making such an expenditure, shall be entitled to immediate reimbursement from the Association or Owner or whose behalf the expenditure was made.

10.8.6 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 the original plans and specifications therefor. Custom-built items added by Owners to their Units shall be rebuilt or replaced at the expense of Owners or their insurers. 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 rights to institute any legal proceeding or

suit against the person or persons responsible, purposely or negligently, for the damage.

10.8.7 Total Destruction

In the event the Property subject to this Declaration is totally or substantially damaged or destroyed the institutional lenders shall receive timely notice thereof. The repair, reconstruction or disposition of the Property and insurance proceeds shall be as provided by an agreement approved by more than fifty-one percent (51%) of the votes of each class of membership and not less than two-thirds (2/3) of all Institutional Lenders.

10.8.8 Personal Liability Insurance

In addition to the master policies which the Association shall carry, the Board shall have the power to require each Unit Owner, at his expense, to carry personal liability insurance covering damage to property or injury to the person of others within the Project resulting from negligence of the Owner or his agents, in an amount up to One Hundred Thousand Dollars (\$100,000.00) for each occurrence.

10.8.9 Waiver of Subrogation; Notice of Cancellation

All property and liability insurance carried by the Association or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, officers, and directors, and any Members, their guests, agents and employees. All insurance carried by the Association shall contain a provision requiring the insurer to notify Institutional Lenders requesting such notice, at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

10.9 Condemnation

In the event of any taking of any Unit in the Project by eminent domain, the Owner of such Unit shall be entitled to receive the award for such taking and after acceptance thereof he and his mortgagee shall be divested of all interest in the Project if such Owner shall vacate his Unit as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of more than one Unit at the same time, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Units are not valued separately by the condemning authority or by the court. The Association should give

careful consideration to the allocation of percentage interests in the Common Area in determining how to divide lump sum proceeds of condemnation. In the event any Unit Owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under the rules of the American Arbitration Association.

10.10 Limitation of 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 said Units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

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

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

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

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

So long as Declarant, its successors and assigns, owns one or more of the Units established and described in this Declaration and except as otherwise specifically provided herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration.

10.11 Termination of Any Responsibility of Declarant

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

10.12 Owners' 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, and failure to comply with any such provisions, decision, 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 Owners of Units, their successors and assigns.

10.13 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.

10.14 Termination of Horizontal Property Regime.

This Horizontal Property Regime may be terminated by the agreement of all of the Owners and Institutional Lenders pursuant to Arizona Revised Statutes Section 33-556, or any amendment thereto, or as provided herein. After termination of the Horizontal Property Regime, the Owners shall own the Property and all assets of the Association as tenants in common in undivided shares, and their respective Institutional Lenders and lienors shall have first mortgages and liens upon the respective undivided shares of the Owners. Such undivided shares of the Owners shall be the same as the undivided shares in the Common Area appurtenant to the Owners Units prior to the termination (unless otherwise expressly set forth herein).

10.15 Violation of Declaration; Remedies.

The following provisions are in addition to and not in lieu of any other terms and conditions contained in the Declaration relating to remedies.

10.15.1 Violation of any of the restrictions or conditions, or breach of any of the covenants or agreements contained herein or breach of any rules and regulations promulgated by the Board shall enable the Association, acting through the board or an authorized agent, or an encumbrance holder in the event that the Association refuses to act, to enter a Unit as to which said violation or breach may exist and summarily enforce such restrictions, conditions, covenants, agreements, or 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 or 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 Articles, the Bylaws or said rules and regulations, or which may be available at law, and may prosecute any action or other proceedings against such defaulting Owner and/or occupant for enforcement or foreclosure of its lien and the appointment of a receiver for the Unit without notice, without regard to the value of such Unit or the solvency of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or take possession of the Unit and to rent the Unit and apply the rent received to payment of unpaid assessments, late charges, if any, and interest accrued thereon, or to sell the same as provided herein, or for any combination of remedies or for any other relief. Nothing contained in this Declaration shall preclude the Association, its agents, the Board, Declarant, an aggrieved Owner, an Institutional Lender or other person having an interest in the Property from exercising any available remedy at law or in equity. The proceeds of any judicial sale foreclosing the lien of the Association shall first be paid to discharge court costs, other litigation costs including but without limitation reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds, after satisfaction of all charges, unpaid assessments, interest, late charges, and other liens, shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration. All expenses of the Association in connection with any action or proceedings, including court costs and reasonable attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the highest rate which may be charged individuals under law shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and shall be a lien upon the Unit of such defaulting Owner and upon all of his additions and improvements thereto. 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 assessed against such defaulting Owner, and such assessment shall constitute a lien against the defaulting Owner's Unit. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise. The liens provided for in this Article 10 shall be and are junior and subordinate to

first mortgage, and shall be foreclosed in the same manner as a realty mortgage, deed of trust or a mechanic's lien in the State of Arizona.

10.15.3 If any Owner (either by his conduct or by the conduct of any Occupant of his Unit) shall violate any of the provisions of this Declaration, or the provisions of the Articles, Bylaws or the rules and regulations, as then in effect, and such violation shall continue for fifteen (15) days after notice in writing, or shall occur repeatedly during any fifteen-day period after written notice or request to cure such violation, then the Association, acting through the Board, or any authorized agents, or any other Owner, or an encumbrance holder, shall have the power to file an action against the defaulting Owner for a judgment or injunction against the Owner or Occupant requiring the defaulting Owner to comply with the provisions of this Declaration, the Articles, or the Bylaws or the rules and regulations, and granting other appropriate relief including money damages, reasonable attorneys' fees, and court costs. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration shall not defeat or adversely affect the lien of any Institutional Lender upon any Unit, but except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a 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 nor 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 on 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 further action in any circumstances.

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 arbit-

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tration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail. For the purposes 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 of the members of the Association deem it is necessary for the best interests 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 paragraph 10.17 shall be deemed or construed to impose upon the Association, its members or the Board, any liabilities or obligations not grant to any third party or parties any rights that any of said above-named parties would not otherwise have if this paragraph were not contained herein.

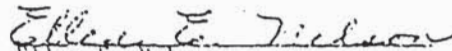
10.18 Governing Law

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, has executed this Declaration this 5th day of January, 1982.

DECLARANT:


Paul I. Nelson


Ellen E. Nelson

ASSENT OF MINNESOTA TITLE TO RECORDATION OF DECLARATION

Minnesota Title, as trustee of the Trust, hereby approves, ratifies and confirms without reservation, the foregoing Declaration and all of the terms and provisions contained therein.

TITLE INSURANCE COMPANY
OF MINNESOTA, a Minnesota corporation,
as Trustee

By 
Its Trust Officer

STATE OF ARIZONA)
) ss. ACKNOWLEDGEMENT OF
County of Maricopa) PAUL I. NELSON

On January 5, 1982, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Paul I. Nelson, whose name is subscribed to the within Covenants, Conditions and Restrictions, and known to me to be the person who executed the within instrument and acknowledged to me that he executed such instrument.

Witness my hand and official seal.

Allen McManis
Notary Public

My commission expires:
6-6-82

STATE OF ARIZONA)
) ss. ACKNOWLEDGEMENT OF
County of Maricopa) Ellen E. Nelson

On January 5, 1982, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ellen E. Nelson, whose name is subscribed to the within Covenants, Conditions and Restrictions, and known to me to be the person who executed the within instrument and acknowledged to me that he executed such instrument.

Witness my hand and official seal.

Allen McManis
Notary Public

My commission expires:
6-6-82

STATE OF ARIZONA)
County of Maricopa)

DK115747 PG 57

) ss. ACKNOWLEDGEMENT OF
) Benny Gonzales

On January 5, 1982, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Benny Gonzales, Trust Officer, of Title Insurance Company of Minnesota, ^{as trustee} and in his representative capacity, and known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed such instrument.

Witness my hand and official seal.

Atlein McNamee
Notary Public

My commission expires:
6-6-82

EXHIBIT "A"

PARCEL NO. 1:

Being a portion of the Northwest quarter of Section 36, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 36; thence South 0 degrees 24 minutes 00 seconds East along the West line of said Northwest quarter for a distance of 900.85 feet to the true point of beginning; thence North 89 degrees 37 minutes 32 seconds East for a distance of 265.14 feet to a point on the West line of Village Grove Twelve as recorded in Book 88 of Maps, page 29, records of Maricopa County, Arizona; thence South 0 degrees 24 minutes 03 seconds East along the aforementioned line and along the West line of Village Grove Thirteen as recorded in Book 90 of Maps, page 36, records of Maricopa County, Arizona, for a distance of 290.41 feet; thence South 89 degrees 37 minutes 22 seconds West for a distance of 265.14 feet to a point on the West line of said Northwest quarter, Section 36; thence North 0 degrees 24 minutes 00 seconds West along the aforementioned line for a distance of 290.42 feet to the true point of beginning.

EXCEPT the West 65.00 feet thereof.

PARCEL NO. 2:

Being a portion of the Northwest quarter of Section 36, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 36; thence South 0 degrees 24 minutes 00 seconds East along the West line of said Northwest quarter for a distance of 1191.27 feet; thence North 89 degrees 37 minutes 22 seconds East for a distance of 195.14 feet to the true point of beginning; thence continuing North 89 degrees 37 minutes 22 seconds East for a distance of 70.00 feet to a point on the West line of Village Grove Thirteen as recorded in Book 90 of Maps, page 36, records of Maricopa County, Arizona; thence South 0 degrees 24 minutes 03 seconds East along the West line of said Village Grove Thirteen for a distance of 60.00 feet to the Northeast corner of that parcel conveyed to Gerald Zimmerman, et al, by Deed recorded in Docket 3915, page 250; thence South 89 degrees 37 minutes 22 seconds West along the North line of said parcel for a distance of 70.00 feet; thence North 0 degrees 24 minutes 03 seconds West for a distance of 60.00 feet to the true point of beginning.

EXHIBIT A

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PARCEL NO. 3:

Being a portion of the Northwest quarter of Section 36, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 36; thence South 0 degrees 24 minutes 00 seconds East along the West line of said Northwest quarter Section 36 for a distance of 1191.27 feet; thence North 89 degrees 37 minutes 22 seconds East for a distance of 265.14 feet to a point on the West line of Village Grove Thirteen as recorded in Book 90, page 36, Maricopa County Recorder, Maricopa County, Arizona; thence South 0 degrees 24 minutes 03 seconds East along the aforementioned line for a distance of 60.00 feet to the Northeast corner of that parcel of land conveyed to Gerald Zimmerman, et al, by Deed recorded in Docket 3915, page 250, Maricopa County Recorder, Maricopa County, Arizona and said point being the true point of beginning; thence South 0 degrees 24 minutes 03 seconds East for a distance of 65.00 feet; thence South 89 degrees 36 minutes 12 seconds West for a distance of 51.95 feet to the beginning of a tangent curve concave Northerly and having a radius of 200.00 feet; thence Westerly along the arc of said curve through a central angle of 5 degrees 10 minutes 41 seconds and a distance of 18.07 feet; thence North 0 degrees 24 minutes 03 seconds West for a distance of 64.21 feet; thence North 89 degrees 37 minutes 22 seconds East for a distance of 70.00 feet to the true point of beginning.

6

TITLE INSURANCE COMPANY OF MINNESOTA

00-985,086

83 250295

When recorded, mail to:
Robert Nielebeck
State Savings & Loan Association
P.O. Drawer D
Stockton, California 95201

AGREEMENT

RECORDING OFFICIAL RECORDS
OF MARICOPA COUNTY, ARIZONA

JUN 28 1983 -8 00

MARICOPA COUNTY RECORDER

FEE \$5.00 FCS \$5.00

COVENANT REGARDING OPERATION AND MAINTENANCE OF
REAL PROPERTY AND THE USE OF A HOMEOWNERS ASSOCIATION

THIS COVENANT, made this 21 day of June,
1983 by and between State Savings & Loan Association, a Calif-
ornia corporation (hereinafter referred to as "State") and Paul
I. Nelson, a married man dealing with his sole and separate
property (hereinafter referred to as "Nelson"), is as follows.

WHEREAS, State is the owner of the following described
real property located in Maricopa County Arizona:

Units 101-128, inclusive, Hayden Villa, according
to the Declaration of Horizontal Property Regime recorded
in Docket 15747, page 13, and as shown on the plat of rec-
ord in Book 238 of Maps, page 38, records of Maricopa
County, Arizona, together with, for each unit, an undiv-
ided interest in and to the common elements, as set forth
in said Declaration and on said plat.

(hereinafter referred to as "State Property"); and

WHEREAS, Nelson is the owner of the following described
real property located in Maricopa County, Arizona:

Unit 129, Hayden Villa, according to the Declaration
of Horizontal Property Regime recorded in Docket 15747,
page 13, and as shown on the plat of record in Book 238
of Maps, page 38, records of Maricopa County, Arizona,
together with an undivided interest in and to the common
elements, as set forth in said Declaration and on said
plat.

(hereinafter referred to as "Nelson Property"); and

WHEREAS, State and Nelson are the owners of all the condo-
minium units at Hayden Villa, a 29 unit condominium project
located in Scottsdale, Arizona; and

WHEREAS, the property is subject to a Declaration of Hori-
zontal Property Regime recorded in Docket 15747, page 13 (here-
inafter referred to as "Declaration"), and operation, management
and control of the property is vested by the Declaration in
Hayden Villa Condominium Association (hereinafter referred to
as "Association") pursuant to Articles of Incorporation of
Hayden Villa Condominium Association filed on November 24, 1982

as File No. 151805 of the Arizona Corporation Commission and the Bylaws of Hayden Villa Condominium Association dated December 8, 1982; and

WHEREAS, because the property is entirely owned by the two parties to this Covenant and the parties deem it impractical, uneconomical and unnecessary for the Association to actually manage, operate and control the property because of the significant additional costs which would have to be borne by the parties for the Association to actually become involved in those matters; and

WHEREAS, the portions of the property owned by the respective parties are logically divided such that the parties can individually be responsible for maintenance, operation and control of their respective portions of the property without hindering the ultimate viability of the project as a condominium project; and

WHEREAS, the parties desire to set forth the terms and provisions of their agreement concerning maintenance, operation and control of the property for a time period ending as provided in this Covenant.

NOW, THEREFORE, the parties specifically agree as follows:

1. During the term of this Covenant, State shall be solely entitled to and responsible for maintenance and repair of all portions of the property, except for those portions to be maintained by Nelson as described in paragraph 2 below, in good, safe and operational condition and repair, in accordance with all the requirements of the Declaration and the Articles of Incorporation and Bylaws of the Association and all applicable laws, ordinances of governmental or quasi-governmental agencies or entities having jurisdiction over the property.

2. During the term of this Covenant, Nelson shall be solely entitled and responsible to maintain Unit 129 and its appurtenant carport as shown on the plat of record recorded in Book 238 of Maps, page 38 in good, safe and operational condition and repair, in accordance with all requirements of the Declaration and the Articles of Incorporation and Bylaws of the Association and all applicable laws and ordinances of governmental or quasi-governmental agencies or entities having jurisdiction over the property, as well as consistently with the rest of the project in terms of quality of maintenance and repair. This maintenance and repair obligation of Nelson extends to the unit and carport as defined and described in the Declaration as well as the exterior walls, roof, floors, structural elements of the unit and carport and all utility service facilities commencing at the point where those facilities enter into the exterior walls, roofs and floor of the unit

and carport. Nelson specifically acknowledges that notwithstanding the terms and provisions of the Declaration, he shall be solely responsible and obligated to maintain and repair Unit 129 and its appurtenant carport, including exterior features as described above, during the term of this Covenant.

3. During the term of this Covenant, State, as to State Property, and Nelson, as to Nelson Property, shall be required and obligated to maintain casualty and liability insurance. Casualty insurance shall be for full insurable value and shall provide coverage against all normal and usual insurable casualty losses. Liability insurance shall provide personal injury coverage in amount not less than \$1,000,000.00 per person/per incident. All insurance shall be with reputable carriers and shall name both parties and the Association as insureds. Each party shall provide copies of all such policies and endorsements to the other, from time to time. In the event either party has difficulty in obtaining the necessary insurance because of the condominium nature of the property, the parties shall cause the Association to obtain the insurance for the entire property with State to pay 28/29 of the cost and Nelson to pay 1/29 of the cost thereof from time to time.

4. In the event either party fails to maintain or insure the portions of the property assigned to its maintenance and insurance responsibilities as described in paragraph 1, 2 or 3 above, the other party, after giving at least ten (10) days written notice to the defaulting party of the existence of the default and the required corrective action except in the event of an emergency in which case no notice shall be required, the non-defaulting party shall be entitled to have the maintenance and repair or insurance required performed and completed and the reasonable costs and expenses thereof shall immediately be reimbursed by the defaulting party to the other party whether or not this Covenant is terminated for default as provided below. In this regard, the parties agree and acknowledge that their respective property interests are mutually dependent because of the inherent structure and nature of the condominium project and, therefore, that the provisions of this paragraph are expressly necessary and essential for the benefit of the parties.

5. During the term of this Covenant, neither party shall be required to pay any assessments, dues or other amounts to the Association. Nelson will be required to pay assessments according to the Declaration and Articles of Incorporation and Bylaws of the Association commencing on the day of the next month succeeding the termination of this Covenant and State, as successor declarant, will

be required to pay assessments on its units according to the terms and provisions of the Declaration and Articles of Incorporation and Bylaws of the Association.

6. This Covenant shall be in force and effect until the close of escrow of the first sale of a unit falling within units 101 through 128 to a person or entity other than the owner of the rest of those units as evidenced by the recordation of a deed or agreement of sale with the Maricopa County, Arizona Recorder transferring legal or equitable title to a person or entity other than the owner of the rest of the units within the group of units falling within 101 through 128. Either party may terminate this Covenant if the other party defaults hereunder concerning maintenance, repair or insurance of the property and the non-defaulting party has given at least thirty (30) days prior written notice of intent to terminate unless the defaulting party cures by either causing the necessary maintenance, repairs or insurance to occur or reimbursing the non-defaulting party for the cost and expenses incurred by said party in curing the defaulting party's breach, as applicable. Upon termination by the non-defaulting party, that party may record a termination of this Covenant with the Maricopa County, Arizona Recorder.

7. In the event either party to this Covenant institutes legal action to enforce any of the terms and provisions of this Covenant, the prevailing party in such litigation shall be entitled to recover its costs incurred in such litigation together with reasonable attorneys' fees fixed by the court.

8. This Covenant and all of its terms and provisions shall be governed by the laws of the State of Arizona.

9. This Covenant shall be binding on the respective heirs, successors and assigns of the parties and shall run with and bind the property. Duties accruing under this Covenant after the date of a recorded transfer by either party hereto of its entire interest in the property shall be the sole obligation of the successor in interest of the transferring party and the transferring party shall have no further obligations in connection therewith.

10. To the extent necessary for this Covenant to be fully enforced in accordance with its terms and provisions, this Covenant shall constitute an amendment to the Declaration and the Articles of Incorporation and Bylaws of the Association but in all other instances, all of the terms and provisions of those documents shall remain in full force and effect. In the event of a conflict between the terms and provisions of this Covenant and the other documents described above, the terms and provisions of this Covenant shall prevail.

IN WITNESS WHEREOF, the undersigned parties have caused this Covenant to be executed effective as of the date first written above.

STATE SAVINGS & LOAN ASSOCIATION,
a California corporation


Paul I. Nelson
Paul I. Nelson

By: William J. Wright
Its: Exec. V.P.

STATE OF California)
County of San Joaquin) ss.

The foregoing instrument was acknowledged before me this 21st day of June, 1983 by William J. Wright the Executive V.P. of State Savings & Loan Association, a California Corporation for and on behalf of said corporation.

My Commission Expires:
August 5, 1983

Darlene A. Wahl
Notary Public


STATE OF California)
County of San Joaquin) ss.

The foregoing instrument was acknowledged before me this 21st day of June, 1983 by Paul I. Nelson.

My Commission Expires:
August 5, 1983

Darlene A. Wahl
Notary Public
