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DECLARATION OF HORIZONTAL PROPERTY REGIME

ARIZONA DEPARTMENT OF LAND AND WATER

PARK PALISADES HOMEOWNERS ASSOCIATION, INC.

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This Declaration is made this 15 day of June, 1979, by Park Palisades Homeowners Association, Inc., hereinafter referred to as "Declarant", as sole owner of the real property described below. Declarant executes this Declaration of Reservation, Covenants, Conditions and Restrictions, and Horizontal Regime, hereinafter referred to as "Declaration", to run with said real property with and for the purposes as set forth herein. This Declaration shall create a separate ownership in fee simple of the real property as Condominium use. This Declaration shall create a condominium to be known as:

Park Palisades Townhouses, According to Book 213 of maps, page 9.

WHEREAS, Declarant will convey said properties and units, subject to those certain protective covenants, conditions, reservations, restrictions, uses, easements and charges as hereafter and more fully set forth; and

WHEREAS, Declarant hereby establishes a plan for the individual ownership of the real property estates in fee simple consisting of the area or space contained in each of the units in each building, and the coownership by the individual and separate owners thereof, as tenants in common and as hereafter set forth, of all the real property which is hereinafter defined and referred to as the "common areas", and for the maintenance thereof.

NOW THEREFORE, Declarant declares that all of the properties described above shall be held, sold and conveyed subject to the following covenants, conditions, charges, liens, restrictions, easements and reservations (hereinafter collectively sometimes called "restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property, and all of which are hereby declared to be for the benefit of all of the property described herein and the owners thereof, their heirs, successors, grantees and assigns. These restrictions shall run with the real property and shall be binding on all parties having or acquiring any right, title, or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof. Said restrictions establish and impose a general plan for the improvement and development of said property described herein and the adoption and establishment of covenants, conditions, charges, liens, easements and restrictions upon said land and upon any and all units constructed thereon, and upon the use, occupancy and enjoyment thereof. Every conveyance of any of said units, or property or portion thereof shall be and is subject to these covenants, conditions, charges, liens, restrictions and easements as follows:

ARTICLE I  
DEFINITIONS

1. "Declarant": Park Palisades Homeowners Association, Inc. an Arizona corporation, the owner and promoter.

2. "Properties", or "Premises", or "Project" shall mean and refer to that certain real property heretofore described.

3. "Common area" and "common elements" shall be synonymous, however, common elements" and are defined as follows:

A. The "general common elements" are defined to be all of the Properties except the Units and the "limited common elements".

B. The "limited common elements" are defined to be that portion of the Properties except the units, covered by, included within, or forming a part of any building, the use of which portion is reserved to the lawful occupants of that building by this Declaration or the Association.

Said "limited common elements" shall include, but not be limited to, the land on which the building is situated, outside lighting system and fixtures, general water systems, lighting systems and fixtures of the common elements in any building, fire extinguishers, gutters and downspouts, areaways, the structural elements of the building, including the foundation slabs, exterior walls, roof and attic, interior load bearing walls, walls dividing apartments, and other structural elements of the building not reserved to an apartment as defined herein, all sewer, water, electrical, gas, telephone and other utility or service lines, wiring, ducts, conduits, piping, facilities or systems for purposes of utility or other services such as ventilation, exhaust, heating, air conditioning, to or for an apartment, as distinguished from the actual machine or piece of equipment to which they are confined so long as the same is connected to common wiring, line or the like.\* The "limited common elements" shall include easements to apartments for all such lines, wiring, ducts and the like above referred to for the furnishing of utility and the other services or systems to the other apartments and to the limited common elements and easements of support in every portion of an apartment which contributes to the support of the improvements and including two covered parking spaces per unit.

4. "Unit" shall be synonymous with townhouse or apartment and shall mean and refer to a separately designated and legally described freehold estate consisting of the apartment units in each building, each separately shown, numbered and designated on the Condominium Plan referred to in Article II, Section 8 hereof and shall be a separate freehold estate consisting of the space bounded by and contained within and includes the interior surfaces of the perimeter walls, floors, roofs, and windows of each unit, each of such spaces being defined and referred to herein as a "unit". Each unit shall include both the portions of the building so described and the airspace so encompassed, including patio and balcony and the air-conditioning equipment attached to and servicing each unit. The units in each building are collectively referred to as a group.

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In interpreting deeds, Declarations and plans, the existing physical boundaries of the unit or of a unit constructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds (or other descriptions) expressed in the deed, plan or declarations, regardless of minor variance between boundaries shown on the plan or in the deed and Declaration and those of the building.

5. "Condominium Project": All of the interest in the real property and improvements initially and subsequently submitted to this Declaration.

6. "Common Expenses": Common expenses means and includes expenses of administration, operation, and management of the units, and the expenses of maintenance, repair or replacement of the common elements; expenses declared common expenses by other provisions of this Declaration or the by-laws of the Association; and all sums lawfully assessed against the common elements by governmental authorities, county, state or federal.

7. "Association": The Park Palisades Homeowners Association, Inc., a non-stock non-profit Arizona Corporation, its successors and assigns, the Articles of Incorporation and By-Laws of which shall govern the administration of this condominium property, the members of which shall all be owners of the condominium units. The Board of Directors of the Association is referred to herein as the Board of Directors.

8. "Buildings": The structures or improvements thereto that are defined on the map as A, B, C, and D. Any one or each of the buildings may be referred to as "building".

\*NOTE: No individual unit TV antennae will be exposed.

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9. "Map", "Condominium Map", "Horizontal Property Regime Plat": The engineering survey of the land located thereon all of the buildings and other improvements, the floor plans; and any other drawing or diagrammatic plans depicting a part of or all of the buildings and other improvements, the floor plans or Condominium Plan.

10. "Member": Member shall mean and refer to every person or entity who holds membership in the Association.

11. "Owner": Owner shall mean and refer to the record owner as recorded in the Maricopa County, Arizona Recorder's Office whether there is one or more persons or entities of equitable title (or legal title if equitable title has merged) of any unit which is part of the properties.

12. "Submitted Property": Submitted Property shall mean and refer to:

Lot 9, Bloc 1, Fountain Hills, Arizona, Final Plat No. 103 according to book of maps, page 3, Records of Maricopa County, Arizona.

## ARTICLE II DECLARATION

1. Declarant, owner in fee of the above described submitted real property, hereby makes the following Declaration as to division, easements, rights, liens, charges, covenants, restrictions, limitations, conditions, and use to which the project may be subjected, hereby specifying that such Declaration shall constitute covenants to run with the land and shall be binding on Declarant, its successors and assigns, and all subsequent owners of all or any part of the project, together with their grantees, successors, heirs, personal representatives administrators, Unofficial Document c assigns.

2. Declarant in order to establish a plan of condominium ownership for the project in accordance with the Horizontal Property Regime statutes of Arizona, Sec. 33-551 through 33-556, Arizona Revised Statutes, declares, covenants, and agrees that it hereby divides the submitted property, pursuant to said sections of the statutes, into the following separate freehold estates:

A. Unit as defined in Article I, Section 4 hereinabove set forth.

B. "General Common Elements" and "Limited Common Elements" are defined in Article I, Section 3, hereinabove set forth.

3. Each unit together with respective undivided interest in the common areas specified and established in Article II, Section 5 hereof, is defined and hereinafter referred to as a condominium, and the ownership of each condominium shall include a unit and an undivided interest in the general and limited common areas.

4. The 18 individual units hereby established and which shall be individually conveyed, together with their respective undivided fractional interest in the general and limited common areas, are described as follows:

A. Units 1-18, inclusive; Park Palisades Homeowners Association, Inc.

5. The undivided interest in the "general common areas" and the "limited general common areas" hereby established and which shall be conveyed with each respective unit shall be 1/18 of general common areas and limited common areas.

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6. The above undivided interest established and to be conveyed with the units cannot be changed except as provided in Article XVI, Section 8, or as otherwise provided herein, and Declarant, its successors and assigns, and grantees, covenant and agree that undivided interest in the common areas and the fee titled to the respective units conveyed therewith shall not be separated or separately conveyed or encumbered with its respective unit even though the description in the instrument of conveyance or encumbrances may refer only to the fee title to the unit.

7. The proportionate shares of the separate owners of the respective condominium in the profits and common expenses in the common areas, shall be the same as their respective interest in the common areas as shown in Article II, Section 5.

8. Incorporated herein by this reference thereto is that certain Condominium Plan referred to as Park Palisades Homeowners Association, Inc., consisting of one sheet, which is attached hereto and made a part hereof as Exhibit B.

#### ARTICLE III MEMBERSHIP

1. Membership in the Association, except for membership of the Declarant and the first Board of Directors, shall be limited to owners of units constructed on the property described above. An owner of a unit shall automatically, upon becoming the owner of a unit, be a member of the association, and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease. Ownership of a unit shall be the sole qualification and criteria for membership.

2. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of such unit and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure <sup>Unofficial Document</sup> or mortgage of record or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the owner of any unit should fail or refuse to transfer the membership registered in his name to the purchaser of such unit, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership for the purchaser and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered; and further each Association member agrees to give the Association right of first refusal on the sale of any unit, said refusal shall be in writing without which any sale is void. The terms of such right of first refusal shall be set forth in the By-Laws of the Association.

3. The owner of each unit shall be entitled to one membership in the Association, and there shall be no more than one membership for each unit, (the owner of each two-story unit shall have only one membership but two votes - See Article VI, Section 1), which membership shall be subjected to all of the provisions of the Association's By-laws, attached hereto and made a part hereof as Exhibit "A", Management Agreement, and this Declaration, as now in effect or fully adopted and amended.

#### ARTICLE IV VOTING RIGHTS

1. The Association shall have two classes of voting membership:

Class A: Class A member shall be all those owners other than the Declarant as defined in Article III. Class A member shall be entitled to ~~two~~ votes for each unit owned by said member.

Class B: The Class B member shall be the Declarant. The Class B member shall be entitled to seven (7) votes for each unit in which it holds the interest required for membership by Article III, provided that the Class B membership shall cease and be converted to Class A membership upon the happening of either of the following event, whichever occurs earlier:

A. When the total votes outstanding in the Class A membership within all buildings of this condominium project equal the total votes outstanding in Class B membership, or

B. Five years from the date of this Declaration.

ARTICLE V  
PROPERTY RIGHTS

1. Member's Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the "common elements" and "limited common elements" within their building, and such easement shall be appurtenant to and shall pass with title to each and every unit. It is expressly acknowledged and agreed by all parties concerned that this Article is for the mutual benefit of all members and of the Park Palisades Homeowners Association, Inc., or owners of units, and is necessary for the protection of said members and owners. It is understood and agreed that the rights of use and enjoyment of the common elements and limited common elements within their building, may be exercised by any person legally in possession of a unit in a manner not in violation of the provisions hereof but nothing herein shall be deemed to alter or amend the definition of owner under Article I, Section II, hereof, or to affect the provisions of Article III hereof with respect to voting rights. Such rights and easements of enjoyment shall be subject to reasonable rules and regulations as from time to time are promulgated by the Board of Directors, and which may include, but shall not be limited to:

A. The right of the Association to limit the number of guests of members;

B. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common areas;

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C. The right of the Association to borrow money.

ARTICLE VI  
COVENANT FOR ASSESSMENT

1. Maintenance of units. All maintenance, upkeep, and repairs of a unit shall be the sole responsibility and obligation of the owner of that unit. All fixtures and equipment installed within a unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the interior walls of a unit, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor allow any condition to exist which will adversely affect the other units or their owners.

In the event an owner defaults in his obligation of maintenance of the unit, the association may perform the necessary maintenance, upkeep, or repairs, and costs thereof shall be a special assessment against that unit collectible in the same manner as other assessments under Article VI, Section 3. Such assessments shall be subject to the provisions of Article VI (13).

2. Maintenance of common elements. The Association, or its duly delegated representative, shall maintain and otherwise manage all common elements, including, but not limited to the landscaping, exterior of the buildings, recreational facilities, roofs, and covered parking areas (said parking should be numbered and assigned to the units individually) located upon the properties. The Board of Directors shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property, so that said project will reflect a high pride of ownership.

3. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each unit owned within the properties, hereby covenants, and each owner of any unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments, together with such interest thereon and costs of collection thereof, as herein-after provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. This lien shall be subordinate to the lien of any first mortgage.

Each such assessment, together with such interest, costs and reasonable attorney's fees incurred pursuant to Article VI (13) shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due, but such personal obligation and liability of the owner shall not be deemed to limit or discharge the charge on the land and continuing lien upon the property against which such assessment is made.

The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other owners.

4. Primary Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the primary purpose of promoting the recreation, health, safety and welfare of the residents in the properties and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common areas, and of the units situated upon the properties.

5. Share of Assessments. Declarant and the owner of each such unit, for themselves, their heirs, successors and assigns, further covenant that each such unit shall be subject to an assessment in an amount to be determined by the Association, in the following manner:

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A. Such unit's share of the actual costs to the Association of all repair, construction, replacement and maintenance of the general and limited common elements, whether referred to in Article VI (1) and (2) or otherwise, and other facilities and activities, including, but not limited to, mowing grass, caring for the grounds, sprinkler system, and other charges by this Declaration.

B. Such unit's share of the actual costs to the Association of such recreational facilities as may from time to time be provided by the Association.

C. Such unit's share of such sum as the Board of Directors of the Association shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, and other charges as hereinafter provided, and insurance policies as required in Article X.

D. Such unit's share of such additional sums as the Board of Directors of the Association shall determine to be necessary to meet the primary purposes of the Association.

E. Each unit's share of the total amount determined under subparagraph A, B, C, and D above shall be the same as its undivided interest in the general or limited common elements, as the case may be, as provided in Article II.

6. Establishment of Assessments. The amount to be shared among the members of the Association pursuant to the subparagraph A, B, C, D and E above, shall be established annually by the Board of Directors. Said amount shall be established after the Board of Directors has met with the management corporation, as hereinafter provided, and has examined the annual report to be prepared by said management corporation, and the annual audit prepared by a certified public accountant. The assessments shall be on an assessed calendar year basis, except the first period may be for a period shorter than a twelve-month period. The annual report and the assessments shall be based upon an accrued method of accounting using accounting procedures which are normally accepted to reflect income and expenses in a reasonable manner.

7. Annual Report. An annual report shall be prepared by the management corporation or by such other party as the Board of Directors shall order. The exact date for the annual report shall be determined by the Board of Directors.

8. Annual Assessment. At the time of the first conveyance of each unit and from time to time thereafter, the Board of Directors or the designated representative shall notify the owner or owners of each unit as to the amount of the estimated annual assessment and shall each month collect for each unit one-twelfth (1/12) of said units proportional share of said annual assessment, except that for the first annual assessment the monthly assessments shall be pro-rated equally for the months in such year.

9. Maximum Assessment. Until the end of the first year immediately following the conveyance of the first unit to an owner, the maximum annual assessment shall be \$ \_\_\_\_\_ per unit. From and after the end of said first fiscal year, the maximum monthly assessment may be increased by an amount up to 10 percent per annum, effective the first day following the end of each fiscal year by a majority vote of the duly elected Directors of the Association so acting at any regular or special meeting of the Directors. Any greater annual increase in the maximum assessment shall require a majority vote of the members as set forth in Section 10 following <sup>Unofficial Document</sup> assessments made pursuant to Article VI(1) shall not be subject to these limitations.

10. Special Assessments. In addition to any other assessments authorized by this Declaration, the Board of Directors shall have the right and power to provide for the construction of additional recreational and other common facilities, or the alteration, demolition or removal of existing recreational and other common facilities, from time to time, as in their discretion appears to be in the best interests of the Association and the Project. Any such alterations, demolition, removal, constructions, improvements or additions, increasing the owners' annual assessments over the then maximum limitation, shall first be authorized by an affirmative vote of a majority of the Board of Directors at a duly called meeting at which a quorum is present, and then ratified and approved by the affirmative vote of over 50 percent of the members present at a duly called meeting at which a quorum is present. However, if the assessment is with respect to limited common elements then a majority of the Board must first approve and then over 50 percent of the affected members at such a meeting must ratify and approve of such assessment.

11. Quorum. For purposes of these Sections, the presence at a duly called meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called by sending written notice to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

12. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a rate for all units as to the assessments for

the general common elements and the limited common elements based on each unit's respective undivided interest in the general common elements and the limited common elements respectively. All of these assessments shall be payable on a monthly basis.

13. Effect of Nonpayment of Assessments and Remedies of the Association. Each unit owner, for himself, his heirs, successors, grantees and assigns, covenants that with respect to assessments so determined during the period that he is an owner, he will remit those assessments directly to the management corporation, or to such other party or parties as directed by the Association's Board of Directors.

A. Any assessments which are not paid when due shall be delinquent. Each unit owner further agrees that these assessments if not paid within twenty (20) days after the due date, shall bear interest from the date of delinquency at the rate of 8 percent per annum and shall be a lien upon said owner's unit as provided in Article VI, Section 3, and shall continue to be such a lien until fully paid.

B. Each such owner expressly vests in the Association, or its agent, the right and power to bring all actions allowed by the laws of the State of Arizona against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien.

The Association, acting on behalf of the owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

In the event the Association or any person, corporation or association, or other entity authorized to enforce the provisions of this Declaration employs an attorney or attorneys to enforce said lien or the collection of any amounts due pursuant to this Declaration, conditions of this declaration, the owner, owners and parties against whom the action is brought shall pay all attorney's fees and costs thereby incurred by said enforcing party in the event all enforcing party prevails in any such action.

14. No Waiver of Use. No owner of a unit may exempt himself from liability for his share of any assessments by waiver of the use of enjoyment or of any of either the common elements or the limited common elements or by the abandonment of his unit.

#### ARTICLE VII COMMON WALLS

1. The rights and duties of the owners with respect to either common walls or walls or both erected between adjoining units shall be governed by the following:

A. Each wall, including patio walls, which is constructed as a part of the original construction of the multifamily structure, any part of which is a bearing wall between separate units, shall constitute a common 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 common walls shall not be applied thereto.

B. In the event any such common 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, the owner shall forthwith proceed to rebuild and repair the same to as good condition as formerly without costs to the adjoining owners.

C. In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his



agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both owners shall bear the responsibility to rebuild or repair the same to as good condition as formerly.

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

E. 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 owners successors in title.

F. In the event of a dispute between owners with respect to the repair or rebuilding of a common 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 by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then 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 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.

#### ARTICLE VIII ARCHITECTURAL CONTROL

1. No improvement, whether <sup>Unofficial Document</sup> building, fence, wall or other structure shall be commenced, erected or maintained on any unit until the plans and specifications for the same showing all construction details, including, the nature, shape, height, materials, floor plans, location and approximate cost thereof shall have been submitted to and approved in writing by the Association. The Association shall have the right to deny approval of any plans or specifications which are not, in its opinion, suitable or desirable for aesthetic or any other reason, and shall have the right to take into consideration the harmony and conformity of the building with the surrounding buildings and the suitability of the same with surrounding area and the effect of such structure or building as seen from adjacent or neighboring properties. All subsequent replacements, alteration, repainting or other improvements of any building, fence, wall or other structure, also shall be subject to the prior approval of the Association.

2. If the Association fails to approve or disapprove such plans and specifications or such replacements, alterations, repainting or other improvements within thirty (30) days after submission thereof, approval will not be required and this Article will be deemed to have been fully complied with; provided, however, that in no event shall any owner have the right to make changes or additions to his or her unit which would exceed in any amount the original square footage of the said unit.

#### ARTICLE IX DAMAGE OR DESTRUCTION OF PROPERTY BY OWNER

1. In the event any general common element or limited common element, including, but not limited to, buildings, landscaping, recreational facilities, carports, or storage facilities are damaged or destroyed by an owner or any of his guests, tenants, licensees, agents, or members of his family, such owner does hereby irrevocably authorize the Association to repair said damaged element, in a good workmanlike manner in conformance with the original design of such damaged element. The amount actually expended for such repairs and any costs and expenses incurred in connection therewith, less any insurance proceeds, shall be assessed to the owner as provided in Article VI, Section I.

2. Nothing contained in this Article IX shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

3. In the event of a dispute between an owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then upon written request of the owner 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 the Board of Directors, one chosen by the owner, and these two arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then by any Judge of the Superior court of Maricopa County, Arizona. A determination by any two of the three arbitrators shall be binding upon the owner and the Association who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator from the other party, then said other party shall have the right and power to choose both arbitrators.

#### ARTICLE X INSURANCE

1. The Board of Directors, or its duly authorized agent shall have the authority to and shall obtain insurance for all the common elements and units including such original fixtures within the units as the Declarant may attach to the interior, including but not limited to built-in ranges, refrigerators, and similar appliances and interior walls and ceilings, against loss or damage by fire or other insurable hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any such hazard, and it shall also obtain a broad form public liability policy covering all <sup>Unofficial Document</sup> units and common elements, and all damage or injury caused by the negligence of the Association or any of its agents, and it shall also obtain such other insurance coverage as it shall deem reasonably necessary. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Board of Directors as trustee for each of the owners. It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit fire, liability insurance, theft and any other insurance covering any additional interior fixtures or improvements he might install or make and personal property.

2. In the event of damage or destruction by fire or other peril to any common element or unit covered by the insurance written in the name of the Board of Directors, the Board of Directors shall, upon the receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the common element or unit to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. Except as provided in Article IX, in the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all owners of the damaged common element or unit to make up any deficiency, except that the special assessment shall be levied against the owners, as established by Article VI, Section 5, paragraph D above, to make up

any deficiency for repair or rebuilding of the common elements not a physical part of a unit.

3. In the event such insurance proceeds exceed the cost of repair and reconstruction such excess shall be paid over to the respective mortgagees and owners as their interest may then appear. Such payments shall be made to all such owners and their mortgagees in proportion to their percentage interests on the damaged units and common elements.

4. At the outset of the delivery of the Properties, including the units, the Declarant or his duly authorized agent, shall have the authority to and shall obtain insurance for all the properties, including the units, as provided above in Article X, Section 1. This policy shall be turned over to the Board of Directors of the Association as soon as it is organized and ready to assume responsibility.

#### ARTICLE XI USE RESTRICTIONS

1. Each unit in the premises shall be known as, and limited in use to a single family condominium unit. The units shall be occupied and used by the respective owners only as a private dwelling for the owner, his family, tenants, and social guests and for no other purpose. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, its successors or assigns to maintain during the period of sale of said units upon such portion of the premises as Declarant, its successors or assigns, may authorize, a temporary office convenient or incidental to the sale of said units. Unofficial Document

3. No noxious or offensive activity may be carried on or permitted on any unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or other units; nor shall any part of the premises be used for business, professional, commercial, religious or institutional purposes. Provided, however, the foregoing restrictions shall not apply to the business activities of the Declarant, its agents, and assigns during the sale period, or the Association in furtherance of its powers and purposes as herein set forth, or other activities approved by the Association.

4. No vehicle shall be left parked in any driveway or private street except those belonging to the owners or their guests, family, or tenants, and if parked on the premises, shall be parked in the area provided for such owner by the Association. All recreational or commercial vehicles shall be parked in an area to be provided for such vehicles.

5. No animals, including fish, reptiles, mammals or birds of any kind shall be raised, bred or kept on the premises; except that commonly accepted household pets may be kept, provided that such pets are not kept, bred or maintained for any commercial purposes and provided that all animals shall be leashed or otherwise retained when outside owner's unit and the owner shall be responsible for cleaning up droppings of and repairing damages caused by such animals.

6. All personal equipment or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring units and street. To the extent feasible, all rubbish, trash or garbage shall be kept in such containers and screened from view of neighboring units and streets until the date of pickup by a trash collection service. No rubbish, trash or garbage shall be burned on the premises. Incinerators of every kind shall be prohibited.

7. Gas, electric, power, telephone, water, sewer, cable television, and other utility or service lines (used for the general benefit of the owners) and other utility or service lines of every kind or character (whether now or hereafter invented or used) shall be placed and kept underground up to the walls of the buildings on the premises (except to the extent, if any, such underground placement may be prohibited by law, or by the nature of the service to be rendered, such underground placement prevents the lines from being functional). This restriction shall apply to the service and utility lines for each and every unit and the common areas, as well as to the distribution lines located in the streets or elsewhere on the premises. However, the foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers.

8. Except in the individual patio areas, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said premises except such as installed on the date of this Declaration or as subsequently approved by the Association.

9. All radio, television, and other antennae of every kind or nature shall be placed and maintained upon the premises (or the improvements located thereon) so that no portion thereof shall be visible from the outside of any unit or common area or other neighboring property or the streets.

10. No sign (other than one sign, not to exceed 16" X 24" in size, for purposes of advertising a unit for sale or rent which may be displaced from the interior of a unit window only) of any nature whatsoever shall be permitted on the premises; provided however, that during the sale of buildings, the Declarant may erect such signs as it deems appropriate; and provided further, that this restriction shall not apply to the activities of the Association in furtherance of its powers and purposes as herein set forth.

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EASEMENTS

1. There is hereby created a blanket easement upon, across, over and under the above described premises, excepting the units, for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to water, sewers, gas, telephone, electricity, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and (subject to the requirement of Article XI, Section 71) to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said buildings. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said premises except as initially provided by the Declarant or thereafter approved by the Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

2. Each unit and the common elements shall be subject to an easement for encroachments created by construction, settling and overhangs, as existing on or after the date of this Declaration. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event a building or buildings are partially or totally destroyed, and then rebuilt, the owners agree that minor encroachments of parts of the adjacent units or common elements due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

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ARTICLE XIII  
RIGHTS AND DUTIES OF  
FIRST MORTGAGEE

1. Notwithstanding and prevailing over any other provisions of this Declaration, of the Association's By-Laws, or any rules, regulations or management agreements, the following provisions shall apply to and benefit each holder of a first mortgage upon a unit (called the first mortgagee);

A. The first mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenants, restrictions, regulation, rule, Association By-Laws, or Management Agreements, except for those matters which are enforceable by injunctive or other equitable actions, nor requiring the payment of money, except as hereinafter provided.

B. During the pendency of any proceeding to foreclosure including any period of redemption, the first mortgagee (or any receiver appointed in such action) may but need not, exercise any or all of the rights and privileges of the owner of the mortgaged unit, including, but not limited to, the obligations to pay for all assessments and charges accruing thereafter, in the same manner as any owner.

C. The first mortgagee, or any other party acquiring title to a mortgaged unit through foreclosure suit or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged unit free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption, except as follows: Any such unpaid assessment against the unit foreclosed against may be treated as an expense common to all of the units, which expense may be collected by pro rata assessments against the remaining unforeclosed upon units, and which pro rata assessment may be enforced as a lien against each unit in the manner provided for other assessments authorized in this Declaration. Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting owner of the respective unit to the Association, and the Board of Directors shall use reasonable efforts to collect the same from the owner even after he is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquires title to a mortgaged unit by foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration which accrue and are assessed after the date the acquirer has acquired title to the unit free and clear of any right of redemption.

ARTICLE XIV  
GENERAL PROVISIONS

1. Binding Effect and Enforcement. The covenants, conditions, charges, liens, reservations, easements and restrictions contained herein shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing or occupying or otherwise having any interest in any unit on said property, their heirs, executors, administrators, successors, grantees, and assigns. After the date on which this instrument has been recorded, these restrictions may be enforced by any one or more of the following: (A) the Association or its Board of Directors, which shall have the right and duty to enforce the same and expend Association money in pursuance thereof; (B) Declarant (as long as it has an interest in any part of the premises); (C) the owner of any unit. Any person who acquires title to a unit, except through delivery of a sheriff's deed as a result of a foreclosure, shall take title to such unit subject to any recorded

lien hereof for all charges pursuant to Articles VI and IX that have accrued prior to such acquisition of title, and subject to the lien hereof for all said charges that the breach of any of said restrictions may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such mortgage. The personal obligation to pay the annual and special assessments as provided in Article VI, of this instrument shall not pass to a successor in title or unless prior to such transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency. a lien for such assessments shall have been filed in writing with the County Recorder or other appropriate governmental agency. All instrument of conveyance of any interest of all or any part of said units may contain the restrictions herein by reference to this instrument. However, the terms and conditions of this instrument shall be binding upon all persons affected by its terms, regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages. Provided, however, that a violation of these restrictions or one or more of them, shall not affect the lien of any mortgage nor of record or which may hereafter be placed of record upon said unit, or any part thereof.

In the event the Declarant, or the Association, employs an attorney or attorneys to enforce said lien or the collection of any amounts due pursuant to this Declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the owner, owners, and parties against whom the action is brought shall pay all attorney's fees and costs thereby incurred by any such enforcing party prevailing any such action. Nothing herein shall be deemed to indicate that damages at law constitute an adequate remedy for violation of a restriction herein.

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After the date hereof, each party who acquires any interest in all or any part of the property described herein, further agrees that upon such acquisition of any interest in all or part of the real property, said acquiring party shall look only to the other existing and subsequent property owner or owners acquiring an interest in said property for any performance or relief deemed equitable or necessary for the enforcement of the covenants, conditions and restrictions contained herein.

2. Waiver or Abandonment. The waiver of, or failure to enforce, any breach or violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of such restrictions or a waiver of the right to enforce any subsequent breach or violation of such restrictions. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) has knowledge of the breach or violation. No restriction contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such restrictions pursuant to Article XIV, Section 8 herein.

3. Equal Treatment of Owners. These restrictions shall be applied to all owners without discrimination.

4. Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of the instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs, or sections contained herein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted.

5. Gender. The singular, wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

6. Topical Headings. The marginal or topical heading of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of this Declaration.

7. Management Company. The performance of the various duties and obligations of the Association may be performed in whole or partly by a management company selected by the Association in accordance with the By-Laws of the said Association. Any such management contract in effect on the date of the earlier of the two dates referred to in Article IV, Section 1, A and B of this Declaration shall remain in force for a minimum period of one (1) year thereafter, with the same said management continuing to perform such management functions for such one-year period.

8. Amendment. These restrictions shall remain in full force and effect for a period of 5 years from the date hereof. Thereafter they shall be deemed to have been renewed for successive terms of 1 year, unless revoked or amended by a written instrument, executed and acknowledged by the then owners of not less than 2/3 of the units in each building.

Said instruments shall be recorded in the Office of the Recorder for the County of Maricopa, State of Arizona within 60 days prior to the expiration of the initial 5-year effective period.

9. Indemnification of Directors and Officers. The Association shall indemnify and hold harmless <sup>Unofficial Document</sup> any and all persons who may serve at any time as directors or officers of the Association for any and all liability by reason of being or having been directors or officers of the Association. This indemnification shall not apply to willful misconduct in the performance of duty as a director or officer. This indemnification shall include all expenses incurred including attorney's fees and costs in litigation and all amounts paid in payment or settlement of bona fide claims against the Association. This indemnification shall be in addition to other rights to which said directors or officers may be entitled under Arizona law, pursuant to the By-Laws of the Association or by vote of the members.

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Dated on the day and year first above written.

DKT1374590269

DECLARANT:

PARK PALISADES HOMEOWNERS ASSOCIATION,  
INC.

BY:

*[Signature]*  
 ROLAND B. PTAK  
 Secretary/Treasurer

STATE OF ARIZONA    )  
                            )   ss.  
 County of Maricop    )

On this 15 day of June, 1979, before me the under-  
 signed, personally appeared Roland B. Ptak, who acknow-  
 ledged himself to be acting on behalf of the Declarant, and that  
 being authorized so to do, executed the foregoing instrument for  
 the purposes therein contained.

In witness whereof, I have set hereunto my hand and official  
 seal.

*[Signature]*  
 NOTARY PUBLIC

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My Commission Expires:

My Commission Expires July 20, 1982STATE OF ARIZONA }  
County of Maricopa } ss

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

*[Signature]*  
 James Olmstead + Lehman

JUL 5 - 1979 - 1000

in Docket 13745  
 on page 254 - 269

Witness my hand and official  
 seal the day and year aforesaid.

Dell Henry

County Recorder  
 By *[Signature]*  
 Deputy Recorder

8.50

4250 W. 19<sup>th</sup> Ave

Chasid By 85017