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DECLARATION OF HORIZONTAL PROPERTY REGIME
AND COVENANTS, CONDITIONS AND RESTRICTIONS

TRANSAMERICA TITLE

FOR

CASA REQUENA II

PROP RSTR (PR)

THIS DECLARATION is made as of the date hereinafter set forth by FARGO, LTD., an Arizona Corporation, hereinafter referred to as the "Declarant."

WITNESSETH:

WHEREAS, the undersigned is owner of certain real property situated in County of Maricopa, State of Arizona, to wit:

(SEE ATTACHED EXHIBIT "A")

hereinafter referred to as the "Parcel"; and

WHEREAS, the undersigned is desirous of imposing on said Parcel a Horizontal Property Regime and Covenants, Conditions and Restrictions to comply with FHA and VA requirements and regulations, all for the mutual benefit, enjoyment, and use of the Declarant and all future owners thereof.

NOW, THEREFORE, the undersigned, owner of that certain real property situated in the County of Maricopa, State of Arizona, to wit:

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA	
AUG 17 1983 - 10 00	
BILL HENRY, COUNTY RECORDER	
FEE	70.00 PGS 67

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hereby declares that all of the said Parcel shall be held, sold and conveyed subject to the following easements, restrictions, limitations, servitudes, covenants, charges, liens, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

SECTION 1.**NAME**

1.01. **Name.** The name of this horizontal property regime shall be "CASA REQUENA Unofficial Document

SECTION 2.**DEFINITIONS**

As used herein, unless the context otherwise requires:

2.01. "Act" means Arizona Revised Statutes, Sections 33-551 through 33-561, Arizona Revised Statutes, as the same may be amended.

2.02. "Apartment" means a part of the property consisting of one or more rooms (including a balcony or patio) designated by number on the Plat and more particularly described in Section 4.04 below. Apartments are designated by one of the following numbers: 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97,

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98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108. Each apartment is located in one of the buildings shown on the Plat and is composed of and includes the space enclosed and bounded by the interior finished surfaces of the floor, ceiling and perimeter walls thereof; provided, however, no structural parts of the building in which each apartment is located, and no pipes, wires, conduit, ducts, flues, shafts, or public utility, water or sewer lines up to the exterior wall of an apartment and forming part of any system serving one or more other apartments or serving the common areas shall be deemed to be part of an apartment.

2.03. "Articles of Incorporation" or "Articles" shall mean and refer to the Unofficial Document Articles of Incorporation of Casa Requena II Homeowners' Association, which will be a non-profit, corporation whose members will be comprised of the owners of all of the units.

2.04. "Association" means Casa Requena II Homeowners' Association, an Arizona non-profit corporation, the members of which shall be the owners of all the units.

2.05. "Board" or "Board of Directors" means the governing body of the Association as more specifically set forth in Section 12.02 below.

2.06. "Building" means any one (or more if the context requires) of the principal structures shown on the plat and erected upon the Parcel. The buildings designated on the Plat contain the following apartments:

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<u>Buildings</u>	<u>Apartments</u>
5	55-59, 73-77, 91-95
6	60-64, 78-82, 96-100
7	65-68, 83-86, 101-104
8	69-72, 87-90, 105-108

The buildings are more particularly described in Section 4.03 below.

2.07. "By-Laws" means the By-Laws of the Association, as amended from time to time.

2.08. "Common expenses" means the items more particularly described in Section 13.01 below.

2.09. "Common Elements" means the "general common elements" as that term is defined in Arizona Revised Statutes, Section 33-551, and includes the Parcel and other portions of the Property, except the apartments, the balconies and the patios. Common elements are more particularly described in Paragraph 4.05 below.

2.10. "Condominium Constituent Documents" means this Declaration and any amendments thereto, the Articles and By-Laws, any rules and regulations of the Association, and all such other documents which pertain to the Condominium Project.

2.11. "Condominium Project" or "Project" means the Property and each and every component thereof, including the apartment units and the Common Elements.

2.12. "Declarant" means FARGO, LTD., an Arizona Corporation, or its successors and assigns, if specifically so designated by Declarant.

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2.13. "First Mortgage" means a first lien deed of trust, as well as a first mortgage, on a unit. "First Mortgagee" means a holder of a first mortgage, as well as a beneficiary or trustee under a first deed of trust, their successors and assigns.

2.14. "Declaration" means this instrument as it may be amended from time to time, by which the Property is submitted to a horizontal property regime.

2.15. "Majority" or "majority of owners" means the owners of more than fifty percent (50%) of the undivided ownership of the Common Elements. Any specified percentage of the owners refers to that percentage of undivided ownership of the Common Elements.

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2.16. "Occupant" means a person or persons (and if the context so requires, also an owner or owners) in possession of a unit.

2.17. "Owner" or "co-owner" or "unit owner" means the person or persons whose estate(s) or interest(s) individually or collectively aggregate fee simple ownership of a unit and the person/persons who is/are purchaser/purchasers under a valid and outstanding recorded agreement of sale with respect to a unit, but shall not include a person or persons whose interest is limited to security for a loan unless the context otherwise requires.

2.18. "Parcel" means the parcel or tract of real estate described above in this Declaration, submitted to a horizontal property regime.

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2.19. "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

2.20. "Plat" means the plat of survey of the property and all of the units submitted to this horizontal property regime, which Plat is recorded in Book _____ of Maps, at Page _____, of the official records of the County Recorder of Maricopa County, Arizona.

2.21. "Property" or "Condominium Property" shall have the same meaning as set forth in Arizona Revised Statutes, Section 33-551, as related to the Project which is the subject of this Declaration, together with all fixtures and personal property intended for the mutual Unofficial Document benefit and enjoyment of the unit owners and as set forth herein.

2.22. "Record" or "recording" refers to the county records or recordings in the office of the County Recorder of Maricopa County, Arizona.

2.23. "Unit" means an apartment together with the undivided fractional interest in and to the general Common Elements as more particularly described in Section 4.05 below, and together with the exclusive right to use one parking space, as set forth in Section 4.05 below.

SECTION 3.

SUBMISSION OF PROPERTY

3.01. Declarant hereby submits and subjects the Property to a horizontal property regime pursuant to Arizona Revised Statutes, Sections 33-551 through 33-561, and does hereby

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declare that all of the Units shall be owned, leased, sold and conveyed subject to the terms, conditions and other provisions of this Declaration.

SECTION 4.

HORIZONTAL PROPERTY REGIME AND DESCRIPTIONS

4.01. Each Unit shall have an undivided fractional interest in the Common Elements, the numerator of which shall be 1 and the denominator of which shall be 54.

4.02. Description of the Cubic Content Space of the Buildings. A description of the cubic content space of the buildings with reference to their location on the Parcel is set forth on the plat. The vertical boundaries shall be the exterior of the outside walls, except that where there are balconies and patios extending beyond the exterior of the outside walls, the vertical boundaries shall be the plane of the outside edge of the balcony or balconies, or patio or patios, which extend outward farthest from the exterior wall of the building, all as shown on the plat.

4.03. Description of Cubic Content Space of Each Apartment. The cubic content space of each apartment, and the balcony, patio or storage area, if any, appurtenant thereto, shall consist of and be measured by the entire space between the horizontal and vertical boundaries thereof as shown on the Plat.

4.04. Description of Common Elements. The description of the Common Elements is the Property less the individual units described and shown on the Plat.

4.05. Exclusive Use of Parking Space. Each owner of a Unit shall have the exclusive use of one parking space for

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his unit, all of which shall be located upon the Property as depicted on the Plat. This right of exclusive use shall be, and is hereby declared to be, an appurtenance to the ownership of the Unit, and shall not be severed therefrom. The right to exclusive use shall be conveyed by deed from owner to owner by reference to the unit numbers shown on the copy of the Plat attached hereto and incorporated herein by this reference. Nevertheless, in the event a deed omits, through inadvertence or otherwise, the conveyance of the exclusive use herein established, the use shall be considered to have passed with the ownership of the Unit.

SECTION 5.

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CONSENT TO COVENANTS, CONDITIONS AND RESTRICTIONS

5.01. Each and every owner of a unit described herein, by the acceptance of a deed therefor, whether from the Declarant or from any subsequent owner of a unit, or by the signing of contracts or agreements to purchase the same, and all others who at any time shall obtain any interest in the Property or any part thereof, shall thereby consent, agree and affirm all of the covenants, conditions and restrictions hereof and shall thereby agree to be bound by, keep and perform the same in strict compliance with this Declaration and the Articles of Incorporation and By-Laws, and such rules and regulations as may be adopted by the Association or by the Board from time to time. Failure to comply with any of the same shall be grounds for an action to recover damages or for injunctive relief, and/or for the exercise of any other available remedies in accordance with law and as set forth herein. Each occupant shall be bound by the

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provisions of this Declaration, and the other Condominium Constituent Documents.

SECTION 6.

USE AND OCCUPANCY RESTRICTIONS

6.01. General Restrictions. The use and occupancy of the Property shall be in conformity with all deed restrictions and zoning and other ordinances, rules and regulations of all appropriate governmental agencies and, subject to the foregoing, shall be in accordance with the following provisions as long as the Condominium Project exists.

6.02. Occupancy. No part of the Property shall be used for any purpose other than residential housing and the related purposes for which the Property was designed. Each of the apartment units shall be used as a residence and for no other purpose, and shall be occupied only by a single family, its servants and guests. No apartment unit may be divided, subdivided or combined into a smaller or larger unit than is shown on the Plat without first amending this Declaration pursuant to the terms and conditions of Section 25.07, below.

6.03. Common Elements. Except for the rights of exclusive use set forth herein, each owner shall have the right to use the Common Elements in common with all other owners as more particularly set forth in Section 20, below, the use, maintenance and operation of the Common Elements will not be obstructed, damaged or unreasonably interfered with by any owner or occupant.

6.04. Nuisance. No nuisance shall be allowed upon the Property, nor any use or activity which is the source of

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annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents. All areas of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No owner of a unit shall permit or suffer anything to be done or kept upon his, her or their apartment unit or make any use of his, her or their apartment unit which would increase the rate of insurance upon the Property or any part thereof.

6.05. Lawful Use. No illegal or unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility for meeting the requirements of governmental bodies which require maintenance, modification or repair of the Property shall be the same (either the responsibility of the owner or of the Association) as the responsibility for the maintenance and repair of the particular part of the Property affected. Except for the rights specifically granted herein, the owners of units are hereby prohibited and restricted from occupying or using any portion of the Project outside of their respective units, except as may be allowed by this Declaration or by the Rules of the Association.

6.06. Leasing. Only entire condominium units may be rented. Any lease agreement between a condominium unit owner and a tenant shall provide that the terms of the lease shall be subject in all respects to this Declaration and that any failure

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by the tenant to comply with the terms of this Declaration shall be a default under the lease which may be enforced by the Association. All leases shall be in writing. For purposes of this Declaration, leasing means any agreements for the leasing or rental of a condominium unit.

No condominium unit owner shall be permitted to lease his unit for transient or hotel purposes.

Notwithstanding the above, a lender in possession of a condominium unit following a default in a first mortgage, a foreclosure proceeding on any deed or other arrangement in lieu of foreclosure, shall be permitted to lease its unit for such times and terms as such lender sees fit.

6.07. Pets. Unofficial Document Only household pets may be kept in the apartment units; provided, however, the Board in accordance with Section 6.13, below, may limit or restrict the number and kinds of pets which may be kept in a unit and otherwise regulate pets.

6.08. Signs. No advertising or other signs shall be erected, placed or permitted to remain on any apartment unit or upon the Property except as otherwise approved by the Board. The Board may designate a particular place on the Property where a "for rent" or "for sale" sign or signs may be placed. The size, type, style, and appearance of such signs shall be regulated by the Association.

6.09. Business Activities. No business activities shall be conducted on any portion of the Property; provided, however, the foregoing restrictions shall not be construed in such manner as to prohibit an owner from (a) maintaining his own

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personal professional library, (b) keeping his personal business or professional records or accounts, or (c) handling his personal business calls or correspondence.

6.10. Planting, Fences, Screens, etc. No shades, awnings, aluminum screens or any other type of shade screening which can be viewed or seen from the outside of the Property shall be placed on a window on or about any apartment unit unless approved by the Board. Further, no fences, hedges, walls or landscaping shall be placed upon or maintained upon the Property or outside an apartment except as initially installed by the Declarant or subsequently approved by the Board.

6.11. Exemption of Declarant. Until all units have been sold and conveyed by the Declarant, Declarant may make such use of the unsold apartment units, the Common Elements and any part of the Property as may facilitate the completion of any contemplated improvements in the sale of the units, including but not limited to maintenance of construction facilities and offices, sales offices model apartment units, placement of signs on the Property and rights of ingress and egress therefrom. Neither the owners nor the Association shall make use of the Property in such a manner as to interfere with any completion of improvements, remodeling, or sale of the units.

6.12. Party Walls. Any wall which separates one unit from another shall not be used by an owner of the unit for the purpose of attaching anything to said wall which produces or transmits noise or sound in any manner whatsoever, nor shall any

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owner be permitted to penetrate any said wall in excess of two inches (2") from the surface of said wall.

6.13. Rules and Regulations. Reasonable rules and regulations concerning the use of the Property and all portions thereof and imposing reasonable restrictions upon the owners and use of the apartment units may be made and amended from time to time by the Board; provided, however, that all such rules and regulations and amendments thereto shall be approved by not less than the majority of owners before such shall become effective. Notwithstanding the foregoing, until all of the units are sold by Declarant, as evidenced by deeds (or recorded agreements of sale) delivered to purchasers, the Board (without any additional approval of the members of the Association) shall be authorized to promulgate the rules and regulations referred to above. Copies of such regulations and amendments thereto shall be furnished by the Association to all unit owners and residents of the Property upon request.

SECTION 7.

EASEMENTS

The following easements are running with and affect the land of the Condominium Property.

7.01. Utility Easements. There is hereby declared and created a blanket easement upon, across, over and under the Property, for reasonable 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

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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 to affix and maintain wires, circuits, and conduits, on, in and under the condominium units, Common Elements and limited Common Elements. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said Property except as initially programmed and/or approved by the Declarant or thereafter approved by the Association. The easements shall in no way affect any other previously recorded easements on said Property.

7.02. Ingress and Egress.^{Unofficial Document} Easements for ingress and egress are hereby reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Elements, and for vehicular traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes.

7.03. Easements in Parking. Easements for parking as shown on the Plat are hereby reserved to the owners of units in the Condominium Project, as described in Section 4.05 above.

7.04. Encroachment. Each apartment unit and the Common Elements shall be subject to an easement for encroachments, including but not limited to, encroachments of walls, ceilings, ledges, floors and roofs created by construction, settling and overhangs as originally designed or constructed, or

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as created by discrepancies between the Plat and the actual construction. If any portion of the Common Elements shall actually encroach upon any unit, or if any unit shall actually encroach upon any portion of the Common Elements, or if any unit shall actually encroach upon another unit, as the Common Elements and the units are shown by the Plat, a valid easement for any of the above mentioned encroachments and for the maintenance thereof, so long as they stand, shall and does exist. In the event that any unit or structure is repaired, altered or reconstructed, the owners of the units agree that similar encroachments shall be permitted and that a valid easement for such encroachments and for the maintenance thereof shall exist. Owners and any other parties acquiring any interest in the Property shall acquiesce and agree to the existence of such easements by accepting a deed to any unit or by acquiring any interest whatsoever in the Property.

SECTION 8.

CONDEMNATION

8.01.01. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically be used for the purposes permitted by this Declaration, the award shall compensate the unit owner for his unit and its appurtenant Common Element interest, whether or not any Common Element interest is acquired by the condemning party. Upon acquisition of the unit or portion thereof, unless the condemnation decree provides otherwise, the affected unit's entire Common Element interest,

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votes and membership in the Association, and common expense liabilities are automatically reallocated to the remaining units in the Project in proportion to the respective interests, votes, and liabilities of those units prior to the taking, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting these reallocations. For purposes of this Section, by acceptance of a unit, or any interest therein, the owners shall be deemed to have appointed the Association as their attorney-in-fact for the purposes of amending, executing, and recording the Declaration as provided herein. Any remnant of a unit remaining after the taking under this Subsection shall be deemed thereafter a part of the Common Elements.

8.01.02. Except as provided in Subsection 8.01.01, if a part of a unit is acquired by eminent domain, the award shall compensate the unit owner for the reduction in value of the unit and its appurtenant Common Element interest. Upon such taking, (1) the unit's interest in the Common Elements, votes and membership in the Association, and common expense liabilities shall remain the same as that which existed before the taking, and (2) the condemning party shall have no interest in the Common Elements, votes or membership in the Association, or liability for the common expenses.

8.01.03. If a portion of the Common Elements is acquired by eminent domain, the award shall be paid to the Association. The Association shall cause the award to be utilized

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for the purpose of repairing and restoring the Property, including, if the Board deems it necessary or desirable, the replacement of any improvements. Any portion of the award not used for any restoration or repair of the Property shall be divided among the unit owners and first mortgagees in proportion to their respective Common Element interests prior to the taking, as their respective interests may appear.

SECTION 9.

MAINTENANCE, REPAIRS AND REPLACEMENTS

Responsibility for the maintenance, repairs and replacements of the Property shall be as follows:

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9.01. In connection with the Property, the Association shall maintain, repair and replace, at the Association's expense:

- (a) All areas of exclusive use appurtenant to the units, except interiors of storage areas.
- (b) All items within a unit, and any balcony or patio appurtenant thereto (except interior surfaces), which contribute to the support of the building, which shall include but not be limited to the outside walls of the unit, floor and ceiling slabs, load-bearing walls and all fixtures on the exterior boundary walls of a unit serving the Common Elements or other units.

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- (c) All conduit, ducts, plumbing, wiring and other facilities for the furnishing of utility services up to the exterior wall of a unit and forming part of any system serving one or more other units or other Common Elements.
- (d) All other portions of the Common Elements.

9.02. Notwithstanding anything to the contrary contained in Section 9.01, above, the Association shall have the authority to require unit owners to:

- (a) Maintain, repair and replace all damages to windows and ^{Unofficial Document} sliding glass doors, except for damage for which insurance proceeds are paid under policies purchased by the Association.
- (b) Undertake any other maintenance, repair and replacement work, which is specifically required by the uniform regulations promulgated pursuant to Section 6.13, above.

9.03. In connection with the units, the owner shall maintain, repair and replace, at the owner's expense:

- (a) All portions of his unit, except the portions to be maintained, repaired, and replaced by the Association. Such work shall be done without infringing upon the rights of other apartment units owners.
- (b) The fixtures within an apartment unit, including but not limited to the following items: Service equipment such as dishwasher,

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washer, dryer, refrigerator, oven, stove, and water heater, whether or not such items are built-in fixtures; floor coverings except the floor slab; and all interior surfaces including but not limited to inside paint and other inside wall finishes. (See Section 11, below, for additional provisions relating to decorating).

9.04. In connection with the foregoing, maintenance, repairs and replacements of the Common Elements shall be furnished by the Association as part of the common expense, subject to the provisions of this Declaration, the Articles of Incorporation, the By-Laws and the rules and regulations of the Association, except that responsibility for portions of the Common Elements which service or are uniquely related to one unit may be delegated to (or required of) that unit owner in the reasonable discretion of the Board.

9.05. If, through the act or neglect of an owner or other member of his, her or their family or household pet or guest or other authorized occupant, visitor or invitee of such owner, the Common Elements or a unit shall be damaged or destroyed, then such owner, if otherwise liable under applicable law, shall pay for such damage and for such maintenance, repairs and replacements as may be determined by the Board, but only to the extent not covered by the Association's insurance.

9.06. No owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of a

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building, balcony, patio, or other Common Elements without the prior written approval of the Board.

9.07. Each owner shall promptly report to the Association any defect or need for repairs, the responsibility for remedying of which is that of the Association.

9.08. An authorized representative of the Board, or of the manager or managing agent of the Property, and all contractors and repairmen employed or engaged by the Association or such manager or managing agent, shall be entitled to reasonable access to each unit as may be required in connection with maintenance, repairs or replacements of or to that unit, the Common Elements or any equipment, facilities or fixtures affecting or servicing other units and the Common Elements.

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SECTION 10.

ALTERATION, ADDITIONS AND IMPROVEMENTS

10.01. Except for original construction work undertaken by Declarant with respect to any unit or the Common Elements, there shall be no structural alterations, additions or improvements to the Common Elements without the prior approval of the majority of the owners given at a regular or special meeting of the members of the Association. Unless otherwise determined at any such meeting, the cost of such alterations, additions or improvements to the Common Elements shall be paid by means of a special assessment against the owners in the proportion to their respective undivided interests in and to the Common Elements.

10.02. Any owner may make non-structural additions, alterations and improvements within his unit without the

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prior written approval of the Board, but such owner shall be responsible for any damage to other units, the Common Elements, or the Property which results from any such alterations, additions or structural improvements.

10.03. Owners are hereby prohibited from making any structural additions, alterations or improvements within an unit, unless (1) an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity of the building within which such addition, alteration or improvement is to be made; and (2) such addition, alteration or improvement is also approved by the Board. The owner shall be responsible for any damage to other units, the Common Elements or the Property which results from any such structural addition, alteration or improvement.

10.04. Notwithstanding anything contained in Sections 10.02 and 10.03, above, no addition, alteration or improvement within a unit, whether structural or not, shall be made without the prior written approval of the Board, if said addition, alteration or improvement is reasonably visible from other portions of the Property or from the surrounding neighborhood, and prior to granting such approval, the Board must affirmatively find that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding improvements and the Property.

SECTION 11.

DECORATING

11.01. Each owner, at his, her or their own expense, shall furnish and be responsible for all of the decorating within

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his own unit and balcony or patio, if any, from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating; provided, however, no reflective materials shall be placed in the windows or upon other surfaces which can be seen from the outside of the buildings, without prior approval of the Board.

11.02. Subject to the provisions of this Declaration, each owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings within his unit, and such owner shall maintain such surfaces in good condition at his sole expense. Said maintenance may be subject to such rules and regulations of the Association as may be necessary for the common good, benefit and enjoyment of the Property.

11.03. Decorating of the Common Elements (other than interior surfaces within the units as above provided) and any redecorating of the units (to the extent made necessary by any damage to existing decorating of such apartments caused by maintenance, repair or replacement work on the Common Elements by the Association) shall be furnished by the Association as part of the common expense.

11.04. The interior and exterior surfaces of all windows and glass doors (if any) forming part of a perimeter wall of a unit shall be cleaned or washed at the expense of each unit owner unless the Board determines otherwise.

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11.05. Decorating of balconies and patios shall be the responsibility of each unit owner having the exclusive use thereof, but subject to the rules and regulations of the Board.

SECTION 12.

HOMEOWNERS' ASSOCIATION

12.01. The Association has been or will be formed and shall fulfill its functions pursuant to the provisions of the Condominium Constituent Documents.

12.02. Definition and Powers. The Association shall constitute the "council of co-owners" as that term is defined in the Act, and shall serve as the governing body for the Project, and without limiting its powers and function, the Association shall provide for the maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds, and other matters as provided in the Act and the Condominium Constituent Documents. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it in accordance with the provisions of the Condominium Constituent Documents.

12.03. Membership. Each unit owner shall be a member of the Association so long as he, she or they shall be an owner or owners and such membership shall automatically terminate when he, she or they cease(s) to be an owner and upon the transfer of his, her or their ownership interest, the new owner

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succeeding to such ownership interest shall likewise succeed to such membership in the Association.

12.04. Voting Classes. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members but for all voting purposes and quorum purposes they shall together be considered to be one Member. Unofficial Document The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot. Any attempt to cast multiple votes for a given lot shall result in the invalidity of all such votes.

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

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

(b) on December 31, 1989.

For the purposes of Subsection (a), the number of votes

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shall be based upon the units initially covered by this
Declaration.

12.05. Board of Directors of Association. The affairs of the Association shall be conducted by a Board of Directors, the members of which shall be selected in the manner provided herein and provided in the Articles of Incorporation and By-Laws. Except for members nominated by Declarant, each director shall be an owner or member of the immediate family of an owner (or if an owner is a corporation, partnership or trust, a director may be an officer, director, partner or beneficiary of such owner). If a director shall cease to meet such qualifications during his or her term, he or she will thereupon cease to be a director and his or her place on the Board shall be deemed vacant.

12.06. Indemnification. Every director and every officer of the Association and the Association's managing agent, if any, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a part, or in which he may become involved, by reason of his being or having been a director or officer of the Association, or managing agent of the Association in accordance with the provisions of the Articles of Incorporation and By-Laws. No director or officer of the Association or managing agent of the Association shall have any monetary liability for a failure of the Association or the Board to act in accordance with the terms of this Declaration unless such failure was due to the

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willful, wanton and intentional acts of such director or officer or managing agent of the Association.

12.07. Limitation Upon Liability of Association.

Notwithstanding any duty of the Association to maintain and repair parts of the Condominium Property, neither the Association, nor any member thereof, nor any member of the Board, nor any agent nor any officer of the Association shall be liable for injuries or damages to persons or property resulting from the breach of such duties (except as may be covered by insurance).

12.08. Board's Determination Binding. In the event of any dispute or disagreement between any owners relating to the Property, or any question Unofficial Document interpretation or application of the provisions of the Condominium Constituent Documents, the determination by the Board shall be final and binding on each and all of such owners. If a decision cannot be reached by the Board upon any matter submitted to or considered by the Board, it shall be determined by the members of the Association or by arbitration as more fully set forth in Section 12.09 below.

12.09. Action by Owners. To the extent required by the Act, or by this Declaration, all action required to be taken by the owners, acting as council for co-owners for the Property, shall be taken by the members of the Association acting as such council of co-owners. Any dispute as to any action or decision required to be taken or made by the owners which cannot be made or resolved by a vote of the owners shall be submitted and settled in accordance with the rules and regulations then obtaining of the American Arbitration Association in Maricopa County, Arizona, and any decision made or rendered thereby shall

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be final and binding upon all of the owners and the council of co-owners.

SECTION 13.

ASSESSMENTS

In accordance with and subject to the Condominium Constituent Documents, the Association shall levy, make and collect assessments against the unit owners so as to provide for the payment of the common expenses incurred to promote the health, safety, welfare and recreation of the owners.

13.01. Common Expenses. The total amount to be assessed shall be the total of the common expenses which shall include:

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- (a) All expenses of administration of the Condominium Project (including but not limited to legal, accounting and management fees); water and all other utility services (except telephone) for the Common Elements; insurance required hereunder pursuant to Section 18.02(e), (f) and (g), and otherwise as determined by the Board; costs of maintenance, operation, repair, replacement and betterment of the Common Elements (including but not limited to painting, landscaping, repairs, replacements, alterations, additions, reconstruction, services, supplies, labor materials, equipment and other related items); and any valid charge against the

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Condominium Project as a whole as determined by the Board of Directors (including but not limited to all costs of enforcing compliance with this Declaration, deficiencies due to non-payment by unit owners, and such costs as are deemed necessary to meet the purposes of the Association).

- (b) Such amounts as determined by the Board for the establishment and maintenance of a reserve fund, which reserve fund shall be adequate to meet the costs and expenses of maintenance Unofficial Document repairs and replacements of those Common Elements which must be maintained, repaired and replaced on a periodic basis. Such reserve fund shall be funded and derived from the regular assessments payable in regular installments and not by means of a special assessment or levy.

13.02. Amount of Assessment. Each unit and the owner thereof, subject to the terms hereof, shall be assessed an amount of the common expense equal to that unit's fractional ownership interest in the Common Elements, and in addition thereto, and by means of a special assessment:

- (a) If a unit owner fails to perform maintenance, repairs, and replacements which are his obligation, or permits a nuisance as defined in Section 6.03 above, then, after the Board

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gives such unit owner written notice to perform such maintenance, repairs or replacements or abate such nuisance, within a reasonable time limit as may be set by the Board; the Board may perform such needed maintenance, repairs and replacements, or abate such nuisance, and shall levy an assessment against such unit owner thereof equal to the amount so expended.

- (b) All costs incurred in the enforcement of the provisions of this Declaration against any unit owner, including but not limited to attorneys' fees and court costs shall be assessed to the unit and the owner against whom enforcement is sought.

13.03. Determination by Board. The total amount of the regular assessment and each unit owner's share thereof, as set forth herein, shall be determined and established by the Board at least yearly, and in accordance with the terms of the Articles and By-Laws. Initially, such assessments shall be at the rate of Seventy Dollars (\$70.00) per unit per month, for the year ending December 31, 1983 (the "base year"). From and after the base year, the monthly assessments shall be determined by the Board, provided that the assessments in any given subsequent year shall not be increased over the assessment in the base year by more than the increase in the Consumer Price Index in Maricopa County as determined by The Valley National Bank of Arizona, or

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its successor, for the October next preceding that given year over the Consumer Price Index for October of the base year, unless any additional increase is approved by a vote of two-thirds (2/3) of the votes cast at a meeting of the Association specially called for such purpose. If The Valley National Bank of Arizona, or its successor, fails to maintain and promulgate said Consumer Price Index, the Consumer Price Index published by the United States Department of Labor, or its equivalent, shall govern. Each unit owner's share of the total assessment shall be paid, as directed by the Board and as set forth in the By-Laws. In addition to the special assessments set forth in Subsections 13.02(a) and (b) above, special assessments are hereby authorized in the event of unanticipated costs or expenses and any such special assessments for unanticipated costs or expenses shall be charged to the units in the same proportion as regular assessments. Notwithstanding the foregoing, no First Mortgagee shall have any obligation to pay any assessments or installments that accrued prior to the time it became entitled to actual possession of or took title to the unit, whichever is first in time, by virtue of foreclosure or deed in lieu of foreclosure of such First Mortgagee's encumbrance.

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13.04. Accounting. The Board of Directors, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all voting owners and First Mortgagees, at reasonable times, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

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13.05. Payment of Assessments and Lien Rights.

- (a) The Board or its designated representative shall notify the owners of units of that unit's share of the total assessment and when such amounts are due and payable. Each unit owner, for himself, his heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period that he is an owner, he will remit these charges to the Association or the party or parties as directed by the Board.
- (b) Assessments attributable to units and/or installments thereof shall be paid on or before the dates established by the Board, and all sums not so paid may bear interest at Unofficial Document eighteen percent (18%) per annum or at the highest rate lawful for individuals to pay under the laws of Arizona, whichever is higher, from the due date until paid, at the election of the Board. In addition and to the maximum extent allowable under law, the Board, by appropriate regulation, may impose a charge for late payment. All payments on account shall be first applied to late charges, if any, interest, and then to the assessment payment first due.

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- (c) No owner may exempt himself from paying such assessments or charges by being a non-user of the general Common Elements or by abandoning the unit of which he is the record owner, or by otherwise attempting to avoid such obligation. Nor shall any unit owner be entitled to claim a set-off against the Association whatsoever. The assessment levied by the Association shall also be deemed a personal obligation of the owner of a unit at the time such assessment falls due.
- (d) Each assessment or any other charge made on a unit pursuant to the Condominium Constituent Documents shall constitute a lien on such unit to secure the payment of such amounts, which lien and the right to foreclose the same shall be in addition to and not in substitution of all rights and remedies which the Association and the Board may have in accordance with the provisions of this Declaration or otherwise.
- (e) Each owner by his acceptance of a deed to a unit hereby expressly vests in the Association or its agents the right and power to bring all actions against such owner personally for the collection of all such assessments or charges as a debt, and to enforce

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the lien securing same by all methods available under Arizona law for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the like manner as a mortgage of real property, and/or as a mechanic's lien, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The Association may make payments on any prior liens including any mortgage or taxes on the unit, and such payments shall Unofficial Document be applied to the lien in favor of the Association. The lien provided for in this Section 13.05 shall be in favor of the Association and shall be for the benefit of all other unit owners. The Association shall have the power to bid in any foreclosure sale pursuant to such foreclosure, and to acquire and hold, lease, mortgage and convey the unit so purchased. The Association may institute suit to recover a money judgment for unpaid obligations of the owner without being required to foreclose its lien on the unit involved and without waiving the lien which secures such obligations. In any such foreclosure proceeding, the owner shall be required to pay a reasonable rental for the unit, commencing as of the date foreclosure

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proceedings are filed, and in such proceedings the Association shall be entitled, subject only to the prior right of a First Mortgagee, to such rent, and to the appointment of a receiver to collect same.

- (f) Upon transfer of each unit to the initial purchaser an amount equal to two (2) months assessment shall be paid to the Homeowners' Association as and for working capital for the Homeowners' Association.
- (g) The provisions of this Section 13 are expressly declared to be subject to the provisions of Section 17, below.

SECTION 14.

INSURANCE

Insurance shall be obtained by the Association on the Condominium Property and shall be governed by the following provisions:

14.01. Authority to Purchase. The Board shall purchase and maintain certain insurance upon the Condominium Property, including but not limited to the insurance described in Section 14.02, below, which insurance is to be purchased by the Association for the benefit of the Association, the unit owners, and the First Mortgagees, as their interests may appear. Provisions shall be made for the issuance of certificates of endorsement to the First Mortgagee of any First Mortgage. Such policies and endorsements thereof, or copies thereof, shall be deposited

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with the Association. The Board shall deliver a copy of the policies, or by and through their agent advise the unit owners of the coverage of said policies to determine which particular items are included within the coverage so that the unit owners may insure themselves as they see fit if certain items are not insured by the Association. Without limiting the generality of the foregoing, it shall be each owner's responsibility to provide for himself owner's liability insurance, theft or other insurance covering personal property damage and loss, insurance for each owner's personal liability, and such other insurance which is not carried by the Association as the unit owner desires.

14.02. Coverage. The Association shall obtain and maintain the following policies of insurance in full force and effect:

- (a) A multi-peril type policy covering the entire Condominium Project providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including but not limited to vandalism and malicious mischief, in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement costs).
- (b) A comprehensive policy of public liability insurance covering all of the Common Elements and public ways in the Condominium Project in a minimum amount of at least One Million

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Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a unit owner because of the negligent acts of the Association and its agents or other unit owners. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use.

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- (c) If there is a steam boiler in operation in connection with the Condominium Project, there must be in force, boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing, as minimum coverage, Fifty Thousand Dollars (\$50,000.00) per accident per location.
- (d) If the Condominium 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 Condominium Project

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must be maintained in the amount of the outstanding principal balance of the first mortgage loans on the units comprising the Condominium Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

- (e) The Association shall obtain, if available, fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than one and one-half (1½) times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.
- (f) A workmen's compensation policy, if necessary to meet the requirements of Arizona law.
- (g) Such other insurance as the Board shall determine from time to time to be desirable.

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14.03. Provisions Required. The insurance policies purchased by the Association shall, to the extent possible, contain the following provisions:

- (a) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by unit owners of First Mortgagees.
- (b) The conduct of any one or more unit owners shall not constitute grounds for avoiding liability on any such policies.
- (c) There shall be no subrogation with respect to the Association, its employees, unit owners and members of their household and their families and employees, or the policy(ies) should name said persons as additional insured.
- (d) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.
- (e) A statement of the name of the insured shall be included in all policies and shall name the Association and all unit owners and First Mortgagees, as they may appear from time to time.
- (f) A standard mortgagee clause which must be endorsed to provide that any proceed shall be

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paid to the Casa Requena II Homeowners' Association, for the use and benefit of First Mortgagees as their interest may appear, or which must be otherwise endorsed to fully protect the interest of First Mortgagees, their successors and assigns.

- (g) For policies of hazard insurance, a standard mortgagee clause shall provide that the insurance carrier shall notify the First Mortgagee named at least ten (10) days in advance of the effective date of any reduction in or Unofficial Document cancellation of the policy.
- (h) Any "no other insurance" clause shall exclude insurance purchased by unit owners or First Mortgagees.

14.04. First Mortgagee Protection.

- (a) The Association shall provide each First Mortgagee with a letter wherein the Association agrees to give written notice to each First Mortgagee, or servicer of a mortgage, or any entity or person designated by such First Mortgagee or servicer, whenever:
- (1) Damage to a unit covered by a First Mortgage exceeds One Thousand Dollars (\$1,000.00); and/or

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- (2) Damage to the Common Elements and related facilities exceeds Ten Thousand Dollars (\$10,000.00).
- (b) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financing rating by Best's Insurance Reports of Class VI or better, or if such rating system be discontinued, by a successor thereto or a similar such rating service.
- (c) Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.
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- (d) Policies shall not be utilized where:
- (1) Under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the unit owner or First Mortgagee or any entity or person purchasing or guaranteeing any first mortgage; or
 - (2) By the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or
 - (3) The policy includes any limiting clauses (other than insurance condition) which prevent any unit owner or the First

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Mortgagee, its successors or assigns
from collecting insurance proceeds.

- (e) The mortgagee clause of each insurance policy shall be properly endorsed, and there must have been given necessary notice of transfer, and any other action required to be taken must be taken in order to fully protect, under the terms of the policies and applicable law, the interest of all First Mortgagees, their successors and assigns.
- (f) First Mortgagees may pay overdue premiums, or may secure new insurance coverage on the lapse of Unofficial Document policy, with respect to any insurance required to be maintained by the Association as provided in this part, and First Mortgagees making expenditures therefor shall be owed immediate reimbursement by the Association.

14.05. Non-Liability of Association/Board. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member shall be liable to any owner or any other party if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each unit owner to ascertain the coverage and protection afforded by the Association's insurance and to procure any payment for such additional insurance coverage and protection afforded by the Association's insurance and to procure any payment for such

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additional insurance coverage and protection the said unit owner may desire.

14.06. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of an apartment unit or its appurtenances, or of the Common Elements by an owner, shall be assessed against that particular owner.

14.07. Insurance Claims. The Association, acting by and through its Board, is hereby irrevocably appointed agent for each owner and for each Unofficial Document holder of a first mortgage or other lien upon a unit and for each owner of any other interest in the Condominium Property, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Association in this regard.

14.08. Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and First Mortgagees, as their interests may appear.

SECTION 15.

DAMAGE AND REPAIR

If all or any part of the Condominium Property or any property in which the Association owns an interest is damaged or destroyed by fire or other hazard, whether or not it shall be

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repaired or reconstructed, shall be determined in the following manner:

15.01. Common Elements. If the damaged property is part of the Common Elements or any property in which the Association owns an interest, it shall be repaired or reconstructed, unless it is determined in the manner hereinafter provided that the Condominium shall be terminated.

15.02. Units. If the damaged property is a building or buildings containing units, the damage shall be repaired and reconstructed if the Board finds that thirty-six (36) or more of all of the units are tenantable, unless within sixty (60) days after the loss or damage, the owners of all of the units and First Mortgagees decide to terminate the Condominium. If the damaged property is a building or buildings containing units, the damage shall not be repaired or reconstructed if the Board finds that only thirty-five (35) or less of all of the apartment units are tenantable, and in such case the Condominium will be terminated as provided, in Section 15.07 hereof, unless within sixty (60) days of the loss or damage the owners of thirty-seven (37) or more of the units, and two-thirds (2/3) of all of the First Mortgagees agree, in writing to such repair or reconstruction.

15.03. Construction.

- (a) Any repair or reconstruction must be substantially in accordance with the plans and specifications for the original improvements; or if not, then according to plans and specifications approved by the Board and a majority of the owners.

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- (b) If the loss or damage is only to those parts of a unit or units for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for repair and reconstruction; provided, however, to the extent any insurance proceeds collected are attributable to the units (and not the Common Elements) the share of the proceeds attributable to the units shall be used for repairs and reconstruction of the units.
- (c) Immediately ^{Unofficial Document} after a determination is made to repair or reconstruct damage to property for which the Association has the responsibility for repair and reconstruction, the Association shall obtain reliable and detailed estimates of the costs of the repair or reconstruction.
- (d) In the case of damage to Common Elements or to portions of the units for which the responsibility of repair and maintenance is that of the Association, if the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, assessments shall be made against the unit owners in sufficient amounts to provide funds to pay the estimated costs.

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Additional assessments may be made at any time prior to, during or following the completion of construction. Such assessments against unit owners for damage to units shall be in proportion to the cost of reconstruction and repair of their respective units. Such assessments on account of damage to Common Elements shall be in proportion to the owner's fractional ownership in the Common Elements.

15.04. Insurance Trustee: Proceeds.

- (a) Except for Unofficial Document damage which is less than one percent (1%) of the value of the Condominium Project, all insurance proceeds payable on account of damage or loss to the Condominium Project shall be deposited in an interest-bearing account at any bank in Arizona which is selected as a trustee by the Board, which bank is herein referred to as the "Insurance Trustee." The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of policies, or for the failure to collect any insurance proceeds. Insurance proceeds payable on account of loss or damage which equals less than one percent (1%) of the value of the Condominium Project shall be

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payable to and be used by the Association to repair such loss or damage.

- (b) The duty of the Insurance Trustee shall be to receive the insurance proceeds that are paid, and to hold them in trust for the benefit of the unit owners and the First Mortgagees as follows: An undivided share of such proceeds on account of damage to Common Elements shall be allocated to the unit owners according to their respective shares in the Common Elements as set forth in Section 4, above. Proceeds, if ^{Unofficial Document} any, on account of damage to apartment units shall be held for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Association. In the event a mortgagee endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the First Mortgagee and the unit owner as their interests may appear.

15.05. Manner of Disbursement. The proceeds from assessments and insurance received by the Insurance Trustee shall be disbursed in the following manner:

- (a) That portion of the insurance proceeds, if any, representing damage, the reconstruction and repair of which is the responsibility of

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the unit owner, shall be paid by the Insurance Trustee to the unit owner or, if there is a mortgagee endorsement, then to the unit owner and the First Mortgagee jointly, who may use such proceeds as they may determine; provided, however, to the extent that any damage to an unit affects in any way the Common Elements or any other owners' units, the proceeds must be used for reconstruction and repair of such damage.

- (b) The portion of insurance proceeds representing Unofficial Document damage, the reconstruction and repair of which is the responsibility of the Association, shall be disbursed in payment of the costs of such repair and reconstruction in the manner required by the Board and upon approval of an architect qualified to practice in Arizona and employed by the Association to supervise the work.
- (c) The Insurance Trustee shall not be required to determine whether a disbursement is to be made, the identity of the payee, or the amount to be paid, but may rely upon a certificate of the Board acting for and on behalf of the Association stating such information.

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15.06. Work. All repairs and construction work shall be done by licensed contractors, of good reputation. Payment bonds, performance bonds and statutory lien bonds may, but need not, be required in the discretion of the Board, but all work shall be done under written contracts.

15.07. Termination. If it is determined pursuant to Section 15.02 that the building or buildings containing Condominium units shall not be repaired or reconstructed because of damage or destruction, then and in such event, this Condominium shall be terminated and all of the owners and all of the mortgagees and lienholders of record of all of the units hereby designate and appoint the Board, and each of the members of the Board individually, as their attorneys-in-fact for the purpose of executing, acknowledging and recording a declaration withdrawing the property from this Horizontal Property Regime, which power is irrevocable and coupled with an interest.

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16. Management Agreements

16.01. Each unit owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association acting through the Board. A copy of all management agreements shall be available to each unit owner. Any agreement for professional management of the Condominium Project, or any other contract providing for services of the Declarant or any other party, shall not exceed a term of one (1) year, and any such agreement shall provide for termination by either party with or without cause, without payment of a termination fee, upon thirty (30) days written notice.

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16.02. Before terminating a professional management agreement and assuming self management, the Homeowners' Association must comply with the provisions of Section 17.18, below.

SECTION 17.

RIGHTS AND DUTIES OF FIRST MORTGAGEE

17.01. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles of Incorporation, By-Laws, or any rules, regulations or management agreements, the provisions set forth in Sections 17.02 through 17.18 shall apply to and benefit each holder of a first mortgage upon a unit.

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17.02. Any "right of first refusal" that may be contained in the Condominium Constituent Documents shall not impair or affect the rights of a First Mortgagee to foreclose or take title to a unit pursuant to the remedies provided in the first mortgage, to accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or interfere with a subsequent sale or lease of a unit so acquired by the First Mortgagee.

17.03. Any First Mortgagee or third party purchaser at a foreclosure sale or trustee's sale under a deed of trust who obtains title to a unit pursuant to the remedies provided in the first mortgage for foreclosure of the mortgage will not be liable for such unit's unpaid dues, charges or assessment which may accrue prior to the acquisition (including the expiration of any period of redemption) of title to such unit by the First Mortgagee.

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17.04. Unless seventy-five percent (75%) of the First Mortgagees (based upon one vote for each first mortgage owned), and owners of units having sixty-six percent (66%) of the ownership of the Common Elements, or such higher percentage as required in this Declaration, or by applicable law, have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate this Declaration or the Condominium Project hereby established (except as set forth in Unofficial Document Section 15 above).
- (b) Change the pro rata interest or obligation of any individual unit for the purpose of: (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each unit in the Common Elements.
- (c) Subject to the limitations of A.R.S. §33-560, partition or subdivide any apartment unit or units.
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easement for public utilities or for other public purposes consistent with the intended use of

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the Common Elements by the Condominium Project shall not be deemed a transfer within the meaning of this clause).

- (e) Use hazard insurance proceeds payable or paid due to losses to any Condominium Property or portion thereof (whether to apartment units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium Property, except as provided herein or by statute. First Mortgagees shall have the right to participate and give advice in the ^{Unofficial Document}adjustment and settlement of any claim under any insurance maintained by the Association.

17.05. All taxes, assessments and charges which may become liens prior to a first mortgage under local law shall relate only to the individual unit and not to the Condominium Project as a whole.

17.06. No provision of the Condominium Constituent Documents shall give a unit owner, or any other party, priority over any rights of the First Mortgagee of the units pursuant to its first mortgage in the case of a distribution to such unit owner of insurance proceeds or condemnation awards for losses to or taking of units and/or Common Elements.

17.07. All amenities pertaining to the Condominium Project and located on the Property (such as driveways, recreation and service areas) are a part of the Condominium

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Project and shall be covered by and subject to a mortgage on a unit to the same extent as are the Common Elements.

17.08. A First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by the unit mortgagor, on such First Mortgagee's mortgage, under the Condominium Constituent Documents which is not cured within thirty (30) days.

17.09. First Mortgagees shall have the right upon request to examine the books and records of the Association or the Condominium Project at reasonable times.

17.10. Except as provided in this Section 17, a First Mortgagee 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 or rules of the Association's Articles of Incorporation or By-Laws, or management agreement, except for those matters which are enforceable by the injunction or other equitable actions, not requiring the payment of money.

17.11. 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.

17.12. During the pendency of any proceeding to foreclose a first mortgage (including any period of redemption)

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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 First Mortgagee, or a receiver appointed in any such action, may, but need not, exercise any or all of the rights and privileges of the owner 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.

17.13. At such time as the First Mortgagee shall become record owner of a unit, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all assessments and charges accruing ^{Unofficial Document} thereon, in the same manner as any other unit owner.

17.14. The First Mortgagee, or any other party acquiring title to a mortgaged unit through foreclosure of the first mortgage or through any equivalent proceeding, such as, but not limited to, the taking of a deed in lieu of foreclosure or acquiring title at a Trustee's sale under a first deed of trust, shall acquire title 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 or equivalent proceedings, including the expiration day of any period of redemption. Any such unpaid assessment against the unit foreclosed shall be deemed to be a common expense charged proratably against all of the units. Nevertheless, in the event the unit

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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 the 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.

17.15. The li^{Unofficial Document}en^t the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon any unit; provided that such first mortgage is in favor of a bank, savings and loan association, insurance company, mortgage banker, other institutional lender, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association and Veteran Administration, their successors or assigns; and provided further that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure.

17.16. No breach or any violation of any provision of the Condominium Constituent Documents shall affect, impair, defeat or render invalid the interest or lien of any First Mortgagee.

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17.17. First Mortgagees shall have the right to enforce against unit owners, the Association and all others, any and all provisions of this Declaration including, without limitation, this Section 17. Enforcement by First Mortgagees may be by injunction, mandatory or prohibitory, or any other lawful procedure. This Declaration shall be interpreted in conformity with all rules, regulations and requirements of institutional mortgage holders, including expressly but not limited to the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association and Veterans Administration, applicable to conventional mortgages on condominiums, in effect as of this date or as hereafter amended, and any provision hereof which is inconsistent therewith shall be deemed modified to conform thereto. The Articles, By-Laws and all rules and regulations of the Association shall be governed by this Declaration and all provisions thereof which are inconsistent herewith shall be void.

17.18. Before terminating any professional management agreement entered into pursuant to Section 16 above, and assuming self management, the Association must obtain the prior written approval of at least seventy-five percent (75%) of all First Mortgagees.

SECTION 18.

COVENANTS RUNNING WITH THE LAND

18.01. It is intended and is hereby declared that the provisions of this Declaration shall be covenants running with the land, and such provisions, except as otherwise provided herein, shall apply to and be binding to the fullest extent

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permitted by law, on all successors in interest to Declarant and shall benefit and be enforceable by every person who now, or at any time hereafter, owns or holds an interest in said Property. Declarant shall be deemed a beneficiary of said provisions hereof and such provisions shall run in favor of Declarant so long as Declarant is or remains an owner of said Property or retains an interest therein. As such beneficiary, Declarant shall have the right, in the event of any breach of any said provisions hereto, to exercise all the rights and remedies and to maintain any action at law or suits in equity or other proper proceedings to enforce the curing of such breach of any said provisions to which beneficiaries of such agreement may be entitled.

SECTION 19.

INVALIDITY OF ANY PROVISIONS

19.01. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and, in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid, this Declaration 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. In the event that any provision or provisions of this instrument is adjudicated to be violative of the rule against perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last survivor of the following individuals: Ronald

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W. Reagan (President of the United States), and his children who shall be living at the time this instrument is recorded.

SECTION 20.

USE OF THE COMMON ELEMENTS

20.01. Each owner shall have the right to use the Common Elements in common with all other owners as may be required for the purposes of access and ingress and egress to, and use, occupancy and enjoyment of, the respective units owned by such owner, and for such other related purposes as from time to time may be permitted by the Board, except the designated exclusive use areas. Such right to use the Common Elements shall extend to each owner and the agents, servants, tenants, family members, guests and invitees of each owner. Unofficial Document Such rights to use and possess the Common Elements shall be subject to and governed by the provisions of this Declaration and all other Condominium Constituent Documents.

SECTION 21.

TERMINATION OF CONDOMINIUM/SHARES OF OWNERS
AFTER TERMINATION

21.01. This Horizontal Property Regime may be terminated by the agreement of all owners and holders of mortgages and encumbrances pursuant to the provisions of the Act, or as herein provided. After termination of the Horizontal Property Regime, the unit owners shall own the Property and all assets of the Association as tenants in common in undivided shares, and their respective First Mortgagees and lienors shall have first mortgages and liens upon the respective undivided shares of the unit owners. Such undivided shares of the owners shall be in the

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same proportion as the undivided shares in the Common Elements appurtenant to the owners' units prior to the termination (unless otherwise expressly set forth herein).

SECTION 22.

VIOLATION OF DECLARATION: REMEDIES

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

22.02. Violation of any of the restrictions or conditions or breach of any of the covenants or agreements contained herein or breach of any rules or regulations promulgated by the Board shall enable the Association, acting through the Board or an authorized agent, 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 or 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; provided, however, that the Association, acting through the Board or an authorized agent, shall not summarily enforce such restrictions, conditions, covenants, agreements, or rules and regulations or enter a unit as to which said violation or breach may exist without seeking and obtaining a court order from the appropriate court in the State of Arizona, unless the Association acting by and through the Board determines an emergency to exist which endangers the health, safety, morals and welfare of the unit owners.

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22.03. In the event of any default by an owner or occupant under the provisions of the Act, this Declaration, the Articles, the By-Laws, 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 the Act, this Declaration, the Articles, the By-Laws or said rules and regulations, or which may be available at law, and may after fifteen (15) days' notice and demand to cure such default(s), 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 Unofficial Document 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 the right to 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 and 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, a First Mortgagee 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

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expenses of the proceedings 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 purposes 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 ^{Unofficial Document} costs and reasonable attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at 18% per annum or the highest rate allowed by law, whichever is less, 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

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Section 22, shall be and are junior and subordinate to First Mortgagees, and shall be foreclosed in the same manner as a realty mortgage and/or a mechanic's lien in the State of Arizona.

22.04. If any owner (either by his conduct or by the conduct of any occupant of his units) shall violate any of the provisions of the other Condominium Constituent Documents, 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, the By-Laws, 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 first mortgage 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.

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SECTION 23.**MEMBERSHIP IN CASA REQUENA II HOMEOWNERS' ASSOCIATION, INC.**

23.01. Each owner agrees by the acceptance of his deed, to abide by the rules, regulations and assessments of CASA REQUENA II HOMEOWNERS' ASSOCIATION, INC., an Arizona corporation, and recognizes that non-payment of any dues or assessments levied by the Casa Requena II Homeowners' Association, Inc. is a lien against each residential condominium unit or apartment as provided in this Declaration.

SECTION 24.**MISCELLANEOUS**

24.01. Additional Rights of Declarant. Declarant shall not be obligated or required to pay assessments or charges on account of ownership of units by Declarant.

24.02. Notices. All notices, requests, demands or other communications to or upon the persons referred to herein shall be deemed to have been given or made when deposited in the mails, properly addressed, postage prepaid, or in the case of telegraphic notice, when delivered to the telegraph company. No other method of giving notice is hereby precluded. For purposes of receiving notice, each owner shall notify the Association in writing of the address where the owner will receive notices. Each owner will notify the Association immediately in writing upon any change of address. If any owner fails to file an address as required in this Section, the Association may give notice at any unit owned by the owner.

24.03. No Waiver; Remedies Cumulative. No failure or delay on the part of any person in exercising any

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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.

24.04. Judicial Proceedings. All owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court or courts of the State of Arizona or of the United States of America having jurisdiction in the State of Arizona, and such owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter; provided, however, as to those matters to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail. For the purposes of instituting or defending any action with respect to the Common Elements, or with respect to any matter affecting the owners with regard to the Common Elements, and further in connection with enforcing this Declaration, the Articles, the By-Laws or any rules and regulations

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adopted pursuant to this Declaration, the Articles or the By-Laws, or in any other instance where the Board of the members of the Association deem it necessary for the best interests of the Condominium 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 Section 24.04 shall be deemed or construed to impose upon the Association, its members or the Board, any rights that any of said above-named parties would not otherwise have if this paragraph were not contained herein.

Unofficial Document

24.05. Amendment. This Declaration may be amended as herein provided but no amendment may change the ratio of assessments without prior written approval of the then holders of all first mortgages on seventy-five percent (75%) of the lots encumbered by first mortgages. Amendments shall be made by an instrument signed by the Declarant and/or other Owners who own in the aggregate (Declarant and other Owners) not less than seventy-five percent (75%) of the lots. Any amendment must be recorded. Declarant may unilaterally amend this document prior to recordation of the first deed of any lot to an Owner and/or the recordation of a contract to sell a lot to an Owner other than Declarant.

24.06. Interpretation. This Declaration shall be interpreted in conformity with all rules, regulations and requirements of the Federal Home Loan Mortgage Corporation,

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Federal National Mortgage Association, Government National Mortgage Association and Veterans Administration, applicable to conventional mortgages, in effect as of the day of this Declaration or as hereafter amended, and any provision hereof which is inconsistent therewith shall be deemed modified to conform thereto. If there is any conflict among or between the Condominium Constituent Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to the Articles, then to the By-Laws and then to the rules and regulations of the Association.

24.07. Descriptive Headings. The descriptive headings of the several sections of this instrument are inserted for convenience only and shall not be deemed to affect the meaning of construction of any of the provisions hereof.

24.08. Governing Law. This instrument 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.

24.09. Binding Effect. Subject to the provisions contained herein, this instrument shall be binding upon and inure to the benefit of successors, assigns, purchasers, mortgagees, trustees and beneficiaries of deeds of trust, encumbrancers, grantees, donees and lienors of and from Declarant and upon and unto its respective successors, assigns, purchasers, mortgagees, trustees and beneficiaries of deeds of trust, encumbrancers, grantees, donees and lienors.

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 16 day of August, 1983.

DECLARANT:

FARGO, LTD.,
An Arizona Corporation

By Albert J. Shaheen, Jr.
Its: Vice President

STATE OF ARIZONA)
 : ss.
County of Maricopa)

On this 16 day of August, 1983, before me, the undersigned Notary Public, personally appeared Albert J. Shaheen, Jr., who acknowledged himself to be the Vice President of FARGO, LTD., an Arizona corporation and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation.

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

Albert M. Shaud
Notary Public

My Commission Expires:
6/20/84

DESCRIPTION

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EXHIBIT "A"

Apartments 55, 56, 57, 58, 59, 73, 74, 75, 76, 77
91, 92, 93, 94 and 95, in Building 5;

Apartments 60, 61, 62, 63, 64, 78, 79, 80, 81, 82, 96,
97, 98, 99 and 100, in Building 6;

Apartments 65, 66, 67, 68, 83, 84, 85, 86, 101, 102, 103
and 104, in Building 7; and

Apartments 69, 70, 71, 72, 87, 88, 89, 90, 105, 106, 107,
and 108, in Building 8;

CASA REQUENA II, a Condominium Project, according to Declaration of
Horizontal Property Regime recorded in Document No. 73-328807,
and in Book 255 of Maps, page 49, records of Maricopa
County, Arizona;

TOGETHER WITH the undivided interest in and to the common elements
as set forth in said Declarations and Plat.