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**DECLARATION OF COVENANTS, CONDITION  
FOR SAHUARO TOWNHOUSES, A PLANNED**

This Declaration made on the date hereinafter set forth by SAHUARO DEL SOL, an Arizona corporation, (hereinafter referred to as "Declarant"),

**W I T N E S S E T H:**

WHEREAS, Declarant is the owner of certain property in the City of Phoenix, County of Maricopa, State of Arizona, which is more particularly described as follows:

lots 1 through 12 and Tracts "A" through "G" of SAHUARO TOWNHOUSES, a planned area development of a portion of the N.W. 1/4 of Section 26, T.2N., R.3E., G. & S.R.B. & M., as recorded in Book 201, page 46, Maricopa County Recorder's Office and according to the Affidavit of Correction recorded in Docket 13138, page 1383, Maricopa County Recorder's Office.

NOW, THEREFORE, Declarant does hereby declare that all of the properties above described shall be held, sold and conveyed subject to the following covenants, assessments, liens, conditions, easements, reservations and restrictions 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 property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**Definitions**

**Section 1:** "Association" shall mean and refer to Sahuaro Townhouses, Inc., an Arizona nonprofit corporation, its successors and assigns.

**Section 2:** "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

**Section 3:** "Building" shall mean and refer to the principal structures shown on the plat and constructed on the land described on page 1 hereof.

**Section 4:** "Common Areas" or "Common Elements" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Areas to be owned by the Association are described as follows:

Tract "A" through Tract "G" of SAHUARO TOWNHOUSES, a planned area development of a portion of the N.W. 1/4 of Section 26, T.2N., R.3E., G. & S.R.B. & M., as recorded in Book 201, page 46, Maricopa County Recorder's Office and according to the Affidavit of Correction recorded in Docket 13138, page 1383, Maricopa County Recorder's Office.

**Section 5:** "Declarant" or "Developer" shall mean and refer to SAHUARO DEL SOL, an Arizona corporation, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped lot from the Declarant for the purpose of development.

Section 6: "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of the properties with the exception of the Common Areas and more particularly shall mean the separately designated Lots numbered 1 through 12, inclusive (subject to the provisions of Article VIII, Section 13 hereof) shown on the recorded subdivision plat of the properties, together with any improvements thereon.

Section 7: "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8: "Owner" shall mean and refer to the record owner whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) in any Lot which is part of the properties. An owner does not include a person or entity who holds an interest in a Lot merely as security for the performance of an obligation.

Section 9: "Plat" shall mean that certain plat recorded by Declarant in Book 201 of Maps at Page 46 of the official records of the County Recorder of Maricopa County, Arizona.

Section 10: "Properties" or "Premises" or "Property" or "Development" shall mean that certain real property as shown on the Plat.

Section 11: "Unit", "Townhouse" or "Townhouse Unit" shall mean and refer to a separately designated Lot at such time as a residential living Unit has been constructed thereon, without limiting or restricting the definition of Lot referred to in Section 6 above which also may include any improvements erected on a Lot.

## ARTICLE II

### Property Rights

Section 1: <sup>Unofficial Document</sup> Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

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

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

C. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said Common Areas and facilities, and the rights of such mortgagee in said Common Areas and facilities shall be subordinate to the rights of the homeowners hereunder and such borrowing shall be permissible only with the prior written consent of the First Mortgagees holding first mortgages on seventy-five percent (75%) of the Townhouse Units;

D. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations;

E. The right of the Association to adopt reasonable rules and regulations pertaining to the use of the Common Areas.

F. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority,

DM 13145 279

or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance and unless any First Mortgagees affected by such dedication or transfer have also given their written consent.

Section 2: Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3: Title to the Common Areas. The Declarant hereby covenants, for itself, its successors and assigns, that it will convey fee simple title to the Common Areas known as Tracts "A" through "G", inclusive, Sahuaro Townhouses, Planned Area Development, recorded in Book 201 of Maps, Page 46, official records of Maricopa County, Arizona, to the Association, free and clear of all encumbrances and liens. The following Tracts as designated on the Plat shall be used primarily for the following purposes: Tract "A", private drives; Tract "B", recreation area together with pool and ramada; Tract "C", planting and landscaped area; Tracts "D" through "G", inclusive, planting and landscape areas. The Association from time to time shall have the right to prescribe reasonable rules and regulations with respect to the use of the Common Areas.

### ARTICLE III

#### Membership and Voting Rights

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Section 1: Definition, Powers, Membership. The Association shall serve as a governing body for all of the Owners 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 this Declaration and in the Articles of Incorporation, and By-Laws. Further, the Association and its Board of Directors shall have all powers, rights, duties and obligations as set forth in the Declaration, the Articles of Incorporation and the By-Laws. 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 for the Owners in accordance with the provisions of the Declaration, the Articles of Incorporation, and the By-Laws. Each Townhouse Unit Owner shall be a member of the Association so long as he shall be an Owner and such membership shall automatically terminate when he ceases to be an Owner and upon the transfer of his ownership interest the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. The aggregate number of votes for all members of the Association shall be twelve, and the members of the Association shall be entitled to cast one vote for each Unit owned (except that in the election of directors, cumulative voting shall apply in accordance with Section 10 of Article XIV of the Arizona Constitution). If a Unit is owned by more than one Owner, the voting Owner shall be established as set forth in the By-Laws of the Association.

Section 2: Board of Directors of Association. The affairs of the Association shall be conducted by a Board of Directors, who shall be selected in the manner herein stated and as stated in the Articles of Incorporation and By-Laws. Up to July 31, 1981, or on the date that all twelve (12) of the Units have been conveyed by Declarant to ultimate purchasers thereof as evidenced by recorded deeds (or recorded Agreement of Sale), whichever date is first in time, all members of the Board may be designated by Developer unless Developer

relinquishes said right prior to such date. Nevertheless, the first meeting of the Members of the Association shall be held not later than August 31, 1981 or sixty (60) days after all twelve (12) of the Units have been conveyed by Declarant to ultimate purchasers thereof as evidenced by recorded deeds (or recorded Agreements of Sale), whichever date is first to occur. Until the first meeting of the Members of the Association, Developer shall have all rights, remedies and privileges accorded hereunder to the Association and its Board as set forth in Article XI, Section 2 below. Notwithstanding the foregoing, Developer may, prior to the time set forth above, elect to relinquish and/or delegate all or part of such rights and authority to the Association, which Developer shall have the right to do by written notice delivered to the Board at any time. Except for members designated by Developer, each director shall be an Owner or the spouse of an Owner or a 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 term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant.

Section 3: Indemnifications. Every director and every officer of the Association 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, in accordance with the provisions of the Articles of Incorporation and By-Laws. No director or officer 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 willful, wanton and intentional acts of such director or officer.

Section 4: Limitation upon Liability of Association. Notwithstanding any duty of the Association to <sup>Unofficial Document</sup> maintain and repair parts of the Common Area, 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 in any manner from the breach of such duties (except as may be covered by insurance).

Section 5: Property in Trust. All funds and the titles of all properties acquired by the Association and the proceeds thereof shall be held in trust for the members of the Association in accordance with the provisions hereof, the Articles of Incorporation, and the By-Laws.

Section 6: Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any question of interpretation or application of the provisions of this Declaration or the Articles of Incorporation or the By-Laws, the determination thereof by the Board shall be final and binding on each and all of such Owners. If a decision cannot be reached by the Board in connection with any matter submitted to or considered by the Board, said matter shall be determined by the members of the Association or by arbitration as more fully set forth in Section 7 below.

Section 7: Action by Owners. To the extent required by this Declaration, all action required to be taken by the Owners, acting as a council of 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 be final and binding upon all of the Owners and the council of co-owners.

#### ARTICLE IV

##### Covenant for Assessments

Section 1: Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Areas, and of the Townhouse Units situated upon the Properties.

Section 3: Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment shall be an amount based upon a monthly assessment of Thirty Dollars (<sup>Unofficial Document</sup> \$30.00) per Lot.

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment may be increased each year not more than five percent (5%) above the Maximum Annual Assessment for the previous year without a vote of the membership.

B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

C. The Board may fix the annual assessment at an amount not in excess of the maximum, and for the purposes of this Article the term "Maximum Annual Assessment" shall mean the maximum allowable assessment notwithstanding that the actual assessment was fixed in an amount less than such Maximum Annual Assessment.

Section 4: Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5: Notice and Quorum for Any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to

CAT 13145PG 282

all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6: Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7: Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Areas. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8: Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No <sup>Unofficial Document</sup>ly waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 9: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien; provided, however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; nor shall it relieve any Owner from the personal obligation for any assessment (together with interest, costs and attorneys' fees) becoming due during the period of his ownership.

#### ARTICLE V

##### Party Walls

Section 1: The rights and duties of the Owners of Townhouse Units within this Development with respect to party walls shall be governed by the following:

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

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

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

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

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

F. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one chosen by each of the Owners and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then by <sup>Unofficial Document</sup> a judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

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

#### ARTICLE VI

##### Architectural Control

Section 1: No building, fence, wall or other structure whatsoever shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color, design and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The restrictions and conditions set forth in this Article shall not be applicable to the Declarant or any original construction or landscaping undertaken by the Declarant within the Properties.

ARTICLE VIIMaintenance and AlterationsSection 1: In Connection with Townhouse Units.

A. By the Association: The Association shall maintain, repair and replace, at the Association's expense:

(1) All items within a Townhouse Unit (except interior surfaces) which contribute to the support of the Building, which shall include but shall not be limited to the outside walls of the Townhouse Unit, floor and ceiling slabs, load bearing columns, load bearing walls, and all fixtures (except air conditioning and heating equipment) on the exterior boundary walls of Townhouse Units serving the Common Element or other Townhouse Units.

(2) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions of a Townhouse Unit maintained by the Association, and all facilities contained within a Townhouse Unit which service part or parts of the Property other than the Townhouse Unit within which such facilities are contained.

(3) Notwithstanding the foregoing, the Association shall have authority to require Townhouse Unit Owners:

(a) to maintain, repair and replace all damages to windows and sliding glass doors except in the case of damage for which insurance proceeds are paid under policies purchased by the Association; and

(b) to undertake any other maintenance, repair and replacement work covered by rules and regulations which may be promulgated pursuant to Article II, Section E above.

B. By the Townhouse Unit Owner: The responsibility of the Townhouse Unit Owner shall be as follows:

(1) To maintain, repair and replace at his expense all portions of his Townhouse Unit except the portions to be maintained, repaired and replaced by the Association. Such work shall be done without disturbing the rights of other Townhouse Unit Owners.

(2) The portions of a Townhouse Unit to be maintained, repaired and replaced by the Townhouse Unit Owner at his expense shall include but not be limited to the following items: air conditioning and heating equipment; service equipment such as dishwasher, laundry, refrigerator, oven, stove, water heater, whether or not such items are built-in fixtures; interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor slab; all interior surfaces including but not limited to inside paint and other inside wall finishes. Except for the original installation of Declarant, the type and method of installation of air conditioning and heating units must first be approved by the Board.

Section 2: In Connection with the Common Elements. Maintenance, repairs and replacement of the Common Elements shall be furnished by the Association as part of the Common Expenses, subject to the provisions of this Declaration, the Articles of Incorporation, the By-Laws and the rules and regulations of the Association. Responsibility for portions of the Common Elements servicing or uniquely



001314500 285

related to one Townhouse Unit may be delegated to (or required of) that Townhouse Unit Owner in the reasonable discretion of the Board.

Section 3: Additional Provisions.

A. If, due to the act or neglect of an Owner or a member of his family or household pet or guest or other authorized occupant, or visitor or invitee of such Owner, damage shall be caused to the Common Areas or to a Townhouse Unit owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Owner shall pay for such damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance.

B. No Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of his Townhouse Unit without the prior written approval of the Board.

C. 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.

D. 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 of the Townhouse Units as may be required in connection with maintenance, repairs or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or servicing other Townhouse Units and the Common Elements.

Section 4: Alterations, Additions and Improvements. Except for original construction work undertaken by Declarant with respect to any Townhouse 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 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 of their respective interests in and to the Common Elements. Any Owner may make nonstructural additions, alterations, and improvements within his Townhouse Unit without the prior written approval of the Board, but such Owner shall be responsible for any damage to other Townhouse Units or the Common Elements which results from any such alterations, additions or improvements. Owners are hereby prohibited from making any structural additions, alterations or improvements within a Townhouse Unit, unless an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity of the Townhouse Unit within which such addition, alteration or improvement is to be made, and further, such addition, alteration or improvement must also be approved by the Board. The Owner shall be responsible for any damage to other Townhouse Units, or Common Elements, which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a Townhouse Unit, whether structural or not, shall be made without the prior written approval of the Board, if said addition, alteration or improvement is visible from other portions of the Common Area 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.

Section 5: Decorating. Each Owner, at his own expense, shall furnish and be responsible for all of the decorating within his own

Townhouse Unit 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 other surfaces which can be seen from the outside of the Townhouse Unit, without the approval of the Board. 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 Townhouse Unit, and such Owner shall maintain such surfaces in good condition at his sole expense as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Association and each such Owner shall have the right to decorate such surfaces from time to time as he may see fit and at his sole expense. Decorating of the Common Areas (other than interior surfaces within the Townhouse Unit as above provided), and any redecorating of Townhouse Units to the extent made necessary by any damage to existing decorating of such Townhouse Units caused by maintenance, repair or replacement work on the Common Areas by the Association, shall be furnished by the Association as part of the Common Expenses. The interior and exterior surfaces of all windows and glass doors (if any) forming part of a perimeter wall of a Townhouse Unit shall be cleaned or washed at the expense of each Townhouse Unit Owner unless the Board determines otherwise.

Section 6: First Mortgagees. The provisions of Article VII shall only apply to First Mortgagees, or other persons who acquire title to a Townhouse Unit after foreclosure or similar proceedings, only after such First Mortgagee or other person acquires title (including the expiration of any period of redemption).

#### ARTICLE VIII

##### Use Unofficial Document Restrictions

Section 1: Single Family Residential Use. All of the Townhouses in the Properties shall be known and described as, and limited in use to, single family Townhouse Units.

Section 2: Construction. All Units and structures on said Lots shall be of new construction and no buildings or structures shall be moved from any other location onto any of said Lots. No Unit shall be erected, permitted or maintained on any Lot having a ground floor area of less than 1,000 square feet, exclusive of open roofed areas, pergolas or attached garage or carport.

Section 3: Temporary Structures. No structures of a temporary character (except a temporary construction shed, sanitation facilities and/or sales office to be used by the Declarant or its agents with respect to the original construction and sale of dwelling Units on the Lots) shall be permitted on the Premises, and no trailers (except those used by the Declarant for the foregoing purposes and those permitted to be parked pursuant to Section 8 of this Article), tents, shacks or barns shall be permitted on the Premises, either temporarily or permanently.

Section 4: Business or Offensive Activities. No noxious or offensive activity may be carried on or permitted on any part of the Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood; nor shall any part of the Premises be used for business, professional, commercial, rest home (including but not limited to care or treatment of the physically or mentally disabled), religious or institutional purposes. This Section does not apply to the business activities or the construction of the dwellings by the Declarant or the activities of the Association in furtherance of its powers and purposes as set forth in the Declaration.

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Section 5: Signs. No sign (other than a name and address sign) of any nature whatsoever shall be displayed or placed upon any Unit except "For Rent" or "For Sale" signs, referring only to the Unit on which displayed, and said sign shall not exceed five (5) square feet in size and each Lot shall be limited to one sign. No signs shall be permitted on any of the Common Areas without the prior written consent of the Board. This restriction shall not be applicable to Declarant during any period of construction.

Section 6: Outside Lighting. Except as may be used by the Declarant during the sales period, no spotlights, floodlights or similar type lighting shall be placed or utilized upon any Unit which in any way will allow light to be reflected on any other Lot, or improvements thereon, or upon the Common Areas or any part thereof.

Section 7: Animals, Pets. Only commonly accepted household pets (not exceeding 2 in number) may be kept in a Unit, provided that such commonly accepted household pets are not kept, bred or maintained for any commercial purposes. No horses or other animals or birds of any kind shall be raised, bred or kept on the Premises or any part thereof without the written consent of the Board first obtained.

Section 8: Trucks; Boats; Cycles; Campers. Except for trucks or vans belonging to persons doing work on the Premises during daylight hours (or at other time during emergencies), no trucks, buses, vans, trailers, boats, antique cars, campers and similar type vehicles or equipment shall be parked in the streets or front yards, but shall be kept or parked only in carports, unless written approval is obtained from the Board with respect to some other place and/or manner of keeping or parking such vehicles or equipment. Except for antique cars, this Section does not apply to passenger automobiles and/or station wagons.

Section 9: Screening Areas; Fences. All screening areas and fences, hedges or walls shall be maintained <sup>Unofficial Document</sup> upon the Premises in accordance with their original construction or installation, except as otherwise approved by the Board.

Section 10: Trash; Unsightly Items. All clotheslines, garbage cans, equipment, service areas, woodpiles, storage piles and storage areas shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring property and streets. All rubbish, trash or garbage shall be removed from the Premises and shall not be burned on or allowed to accumulate on the Premises. No incinerators, except those approved in writing by the Board, shall be permitted on the Premises.

Section 11: Antennas. All radio, television and other antennas of every kind or nature shall be placed and maintained upon the Premises (or the improvements located thereon) only as approved by the Board.

Section 12: Renting. No portion of the Premises but for an entire Unit, together with the improvements thereon, may be rented, and then only to a single family.

Section 13: Subdividing.

A. None of the Units shall be resubdivided into smaller Units or conveyed or encumbered in less than the full original dimensions as shown on the Plat of this Development. However, this restriction (subject to the approval of the Declarant or the Association) shall not prevent conveyances which combine in common ownership Units or parts of Units in such a manner that the parcel of land thereby resulting has a street frontage and area the same as or greater than the street frontage and area of the Lots shown on said Plat. Such

00131455 288

parcel thereafter shall be considered as one Unit, except and provided, however, subject to the provisions of these Restrictions, an Owner of two (2) or more full Units as shown on the Plat shall be entitled to one (1) vote and shall be subject to one (1) assessment for each full Unit owned as shown on the original Plat.

B. Nothing contained in this Section 13 shall prevent the dedication or conveyance of, or granting or use of easements over, across and under portions of Lots for public or quasi-public uses or purposes which benefit the Unit Owners in general. Except as originally constructed by the Declarant or as permitted by the Board, no building or other structures shall be placed on any easements nor interference made with the free use thereof for the purposes intended.

Section 14: Walls. The walls of any buildings or improvements and fences constructed on any Lot shall not exceed the height of the original construction unless approved in writing by the Board. Set-back lines shall be maintained in accordance with the original construction on each Lot unless otherwise permitted by written approval of the Board.

#### ARTICLE IX

##### Insurance

Section 1: Reconstruction, Repairs. Insurance which shall be carried by the Association on the Common Property and on any portion of the property owned by Unit Owners shall be governed by the following provisions:

A. Authority to Purchase. The Board shall be authorized to purchase certain insurance upon Common Property, which 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, and provisions shall be made for the issuance of certificates of endorsement to the First Mortgagee of any First Mortgage or endorsements for the benefit of the First Mortgagee under any First Mortgage on any Unit; provided, however, that no such First Mortgagee, shall have any right to determine or participate in the determination as to whether any damaged Common Area Property shall be reconstructed or repaired, and shall not have any right to apply or have applied to the reduction of a First Mortgage debt any insurance proceeds, except distributions thereof made to a Unit Owner and First Mortgagee, pursuant to the provisions of this Declaration. Such policies and endorsements thereon shall be deposited 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 as he sees fit owner's liability insurance, theft or other insurance covering personal property damage and loss, and also insurance for each Owner's personal liability. Further, it shall be the responsibility of each Owner to provide and obtain:

(1) Casualty insurance on the portion of his Townhouse Unit which is not considered part of the Common Areas (including but not limited to carpeting, drapes, wall covering, fixtures, furniture, furnishings and other personal property), and on portions of the Common Areas for which the Townhouse Unit Owner is responsible.

(2) Insurance which is not carried by the Association and which the Townhouse Unit Owner desires.

B. Coverage.

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(1) **Casualty.** Those Buildings and improvements upon the land and the personal property and equipment constituting and included in the Common Areas shall be insured by the Association in an amount equal to the maximum insurable replacement value as determined from time to time by the Board. Such coverage shall afford protection against:

(a) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

(b) Such other risks as from time to time shall be customarily covered with respect to Buildings on the land, including but not limited to vandalism and malicious mischief.

(2) **Public Liability.** Insurance in the minimum amount of \$300,000.00 for each person injured and \$500,000.00 minimum coverage for each occurrence, and a minimum of \$50,000.00 insurance coverage for property damage arising out of or in connection with any such occurrence.

(3) **Workmen's Compensation** policy, if necessary to meet the requirements of law.

(4) Such other insurance as the Board shall determine from time to time to be desirable.

(5) The insurance policy or policies purchased by the Association shall, to the extent possible, as determined by the Board in its sole Unofficial Document discretion, contain the following provisions:

(a) That the coverage afforded by said policy or policies shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their First Mortgagees under a First Mortgage.

(b) That the conduct of any one or more Owners shall not constitute grounds for avoiding liability on said policy.

(c) That any "no other insurance" clause shall exclude insurance purchased by Unit Owners or their First Mortgagees, under First Mortgages.

(d) That there shall be no subrogation with respect to the Association, its employees, Townhouse Unit Owners and their families, and employees, or it should name said persons as additional insureds.

(6) 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 Townhouse Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the said Townhouse Unit Owner may desire.

C. 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 a Townhouse Unit or its appurtenances, or of the Common Areas by an Owner, shall be assessed against that particular Owner.

D. Insurance Claims. The Association, acting by and through its Board, is hereby irrevocably appointed agent for each Owner and for each holder of First Mortgage or other lien upon a Unit, and for each Owner of any other interest in the 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.

E. Insurance Trustee; Proceeds.

(1) All insurance policies purchased by the Association shall be for the benefit of the Association, the Townhouse Unit Owners and First Mortgagees as their interests may appear, and shall provide that proceeds covering property losses shall be paid to 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.

(2) The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold them in trust for the benefit of the Unit Owners and their First Mortgagees as follows: An <sup>Unofficial Document</sup> undivided share of such proceeds on account of damage to Common Areas shall be allocated to the Townhouse Unit Owners according to their shares of the Common Areas set forth above. Proceeds, if any, on account of Townhouse Units shall be held for the Owners of damaged Townhouse Units in proportion to the cost of repairing the damage suffered by each Townhouse Unit Owner, which cost shall be determined by the Association. In the event a First Mortgagee endorsement has been issued as to a Townhouse Unit, the share of the Townhouse Unit Owner shall be held in trust for the First Mortgagee and the Townhouse Unit Owner as their interests may appear.

(3) Proceeds of insurance policies received by the Insurance Trustee shall be distributed as follows:

(a) All expenses of the Insurance Trustee shall be first paid.

(b) If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds after payment of (3)(a) above shall be expended as provided in Article IX, Section 1, paragraph G.

(c) If it is determined as provided in Article IX, Section 1, paragraph F that the damage for which the proceeds remaining after a reconstruction and repair, the remaining proceeds shall be distributed to the beneficial owners, remittances to Townhouse Unit Owners and their First Mortgagees being payable jointly to them. This is a covenant for the benefit of any First Mortgagee of a Townhouse Unit and may be enforced by such First Mortgagee.

EW 13145 291

(4) In making distribution to Townhouse Unit Owners and their First Mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the names of the Townhouse Unit Owners and their respective shares of the distribution, and as to whether or not the Building or Buildings are to be reconstructed or repaired.

F. Damage and Repair. If any part of the Property or any property in which the Association owns an interest shall suffer loss or damage by casualty whether or not it shall be repaired or reconstructed, shall be determined in the following manner:

(1) If the damaged property is part of the Common Area or any property in which the Association owns an interest, it shall be repaired or reconstructed.

(2) If the damaged property is a Building or Buildings containing Townhouse Units, the damage shall be repaired and reconstructed if the Board finds that five or more of all of the Townhouse Units are tenantable.

(3) 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.

(4) If the loss or damage is only to those parts of a Townhouse Unit or Townhouse Units for which the responsibility of maintenance and repair is that of the Townhouse Unit Owner, then the Townhouse Unit Owner shall be responsible for repair and reconstruction; provided however, to the extent any insurance proceeds collected are attributable to the Townhouse Units (and not the Unofficial Document Common Areas) the share of the proceeds attributable to the Townhouse Units shall be used for repairs and reconstruction of the Townhouse Units.

(5) Immediately 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 cost of the repair or reconstruction.

(6) 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 Townhouse Unit Owners in the case of damage to Common Areas in sufficient amounts to provide funds to pay the estimated costs. Additional assessments may be made at any time during or following the completion of construction.

Such assessments against Townhouse Unit Owners for damage to Townhouse Units shall be in proportion to the cost of reconstruction and repair of their respective Townhouse Units. Such assessments on account of damage to Common Areas shall be in proportion to the Owner's share in the Common Areas.

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

(1) That portion of the insurance proceeds, if any, representing damage, the reconstruction and repair of which is the responsibility of the Townhouse Unit Owner, shall be paid by the Insurance Trustee to the Townhouse Unit Owner or, if there is a First Mortgagee endorsement,

CM 13145% 292

then to the Townhouse 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 a Townhouse Unit affects in any way the Common Areas or any other Owner's Unit, the proceeds must be used for reconstruction and repair of such damage.

(2) The portion of insurance proceeds representing 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.

(3) 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.

#### ARTICLE X

##### Easements

Section 1: Utility Easements. There is hereby created a blanket easement upon, across, over and under the Property for reasonable ingress, egress, installation, replacing, repairing and maintaining of all utilities, including but not limited to water, sewers, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain electrical, gas and/or telephone lines, wires, conduits and circuits on, above, across and under the Common Areas, including the Buildings. Notwithstanding anything to the contrary contained in this paragraph, no sewers, <sup>Unofficial Document</sup> electrical lines, gas lines, water lines, or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Declarant or thereafter approved by the Declarant or the Board. This easement shall in no way affect any other recorded easement on the Property.

Section 2: Easements Resulting from Encroachment. Each Townhouse Unit and the Common Areas 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 designed or constructed by the Developer. If any portion of the Common Areas shall actually encroach upon any Townhouse Unit, or if any Townhouse Unit shall actually encroach upon any portion of the Common Areas, or if any Townhouse Unit shall actually encroach upon another Townhouse Unit, as the Common Areas and Townhouse Units are shown by the Plat, a valid easement for any of said encroachments and for the maintenance thereof, so long as they stand, shall and does exist. In the event that any Townhouse Unit or structure is repaired, altered or reconstructed, the Owners of the Townhouse Units agree that similar encroachments shall be permitted and that a valid easement for said 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 from any seller or by acquiring any interest whatsoever in the Property.

#### ARTICLE XI

##### Rights of First Mortgagees

Section 1: Definitions re First Mortgagees.

A. First Mortgagee. "First Mortgagee" shall mean and refer to the owner and holder as mortgagee or beneficiary or vendor of any



0013145% 293

mortgage, deed of trust or agreement for sale which constitutes a first lien against the Properties or Premises or against any Unit or Townhouse.

B. First Mortgage. "First Mortgage" shall mean any mortgage, deed of trust or agreement for sale made in good faith, for value and duly executed and recorded so as to create a lien that is prior to the lien of any other mortgage, deed of trust or agreement for sale. The term "mortgage" whenever used shall be deemed to include realty mortgages, deeds of trust and agreements for sale.

C. Foreclosure. "Foreclosure" shall mean and refer to any procedure or process whereby a mortgage or deed of trust or agreement for sale be foreclosed and enforced against its subject property, including judicial foreclosure, non-judicial trustee's sale, forfeiture by notice proceedings, forfeiture by judicial proceedings, or the acceptance of a warranty deed or quitclaim deed in lieu of foreclosure.

Section 2: Right to Encumber.

A. Any Owner may encumber his Townhouse Unit with or by a First Mortgage (and other liens and mortgages although the provisions hereof with respect to a First Mortgage shall not apply to such other liens and mortgages). It shall be the duty of each Owner whose Townhouse Unit is encumbered by a First Mortgage promptly to notify the Association through its secretary of the name and address of each First Mortgagee thereunder, and the Association shall maintain a record of such First Mortgages. Each such Owner shall likewise promptly notify the Association as to the release or discharge of any such First Mortgage.

Section 3: Priority of First Mortgages and Assessment Liens.

A. First Mortgages and ri<sup>Unofficial Document</sup> First Mortgagees shall be governed by Section 9 of Article IV. Subject to the provisions of this Article XI, all of the provisions of this Declaration shall be binding upon and shall be effective against any Owner whose title is vested and which is derived through any foreclosure or deed in lieu of foreclosure or similar proceedings. Each and every lien created by or pursuant to this Declaration is and shall be subordinate, inferior and subject to the lien and charge of any First Mortgage.

Section 4: Limitations on Actions re First Mortgagees. During any period(s) of time that any Townhouse Unit shall be subject to any First Mortgage, the following shall be applicable:

A. Each First Mortgagee shall be given written notice by the Association at least thirty (30) days prior to the effective date of:

(1) any change in this Declaration or in the Articles of Incorporation or the By-Laws of the Association; and

(2) any change of a manager or a management company which has been employed by the Association to manage the Property.

A change in the officers, agents or employees of a corporation or other entity employed as the management company of the Property shall not be a change for which notice must be given.

B. The First Mortgagee holding a First Mortgage shall be notified in writing by the Association of any default by the Owner of the applicable Townhouse Unit in the performance of his obligations under this Declaration when such default has been in existence for thirty (30) days and has not been cured.

W13145 294

C. Each First Mortgagee shall be exempt from any right of first refusal or any similar restriction in the sale or rental of a Townhouse Unit encumbered by a First Mortgage in the event such right or restriction(s) is hereafter added to this Declaration.

D. The First Mortgagee, or other person who shall acquire title through foreclosure or similar proceedings, shall not be liable for any claim(s) for unpaid assessments or charges levied against the Townhouse Unit encumbered by such First Mortgage, which unpaid assessments or charges accrued prior to the date such First Mortgagee or other person acquires title (including the expiration of any period of redemption) through foreclosure or similar proceeding against the Townhouse Unit, except for claims for a share of such assessments or charges resulting from a reallocation of such unpaid assessments or charges to all Townhouse Units.

E. Prior to the time a First Mortgagee or other person acquires title to a Townhouse Unit (including the expiration of any period of redemption) through foreclosure or similar proceedings, a First Mortgagee shall not in any case or manner be liable for the payment of any assessment or charge, nor for the observance or performance of any provision hereof, except for those matters which are enforceable by injunctive or other equitable action, not requiring the payment of money.

F. Without the prior written approval of all First Mortgagees, the Association shall not:

(1) change the prorata interest or obligation of any Townhouse Unit for assessment purposes;

(2) partition, subdivide, alienate, release, transfer, hypothecate or otherwise encumber any Common Areas of the Property, except as to the Association's right to grant easements Unofficial Document and similar or related purposes; nor

(3) by act or omission seek to abandon or terminate the Planned Area status of the Project except as set forth in Article IX dealing with insurance and destruction.

G. Each First Mortgagee shall have the right, after prior notice to the Association, to inspect the books and records of the Association at reasonable times during normal business hours, but not more often than once a month. In addition, upon written request, each such First Mortgagee shall have the right:

(1) to receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association;

(2) to receive written notice of all regular or special meetings of the Owners and to designate a representative to attend all such meetings;

(3) to receive timely written notice of substantial damage or destruction to any Townhouse Unit or any part of the Common Areas in which any First Mortgagee has an interest; and

(4) to receive timely written notice if any Townhouse Unit or portion thereof or the Common Areas or any portion thereof in which such First Mortgagee has an interest is made the subject matter of any condemnation or eminent domain proceeding or proposed acquisition in lieu thereof.

0013145% 295

H. In the event of a default by any Owner in the payments due upon a promissory note secured by a First Mortgage, the First Mortgagee shall have the right, upon giving written notice to the defaulting Owner, and placing on record a notice of default, to exercise the vote of such Owner at any regular or special meeting of the Owners held during such time as the default may continue. When the First Mortgagee shall have complied with such conditions, upon a certain request, the Association shall notify it of all such meetings of Owners or of the Association, so long as such default remains uncured. Upon the curing of any such default, the First Mortgagee shall promptly give notice to the Association, and voting rights shall revert to the Owner.

I. Any amendment under Section 11, Article XII, shall also have the respective consent of not less than ninety percent of the First Mortgagees during the first twenty-year period, and thereafter by not less than seventy-five percent of the First Mortgagees.

Section 5: No change in any of the provisions set forth in this Article XI shall be effective without the written consent of all First Mortgagees.

## ARTICLE XII

### General Provisions

Section 1: Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Unofficial Document

Section 2: Formation of Association and Additional Rights of Declarant and Developer. The Developer shall cause the Association to be formed no later than the date which is thirty (30) days prior to the date upon which the first meeting of the Members of the Association is to be held (see Article III, Section 2, above). Regardless of whether or not the Association has been formed, and notwithstanding any other provision hereof, until the first meeting of the Members of the Association, described in Article III, Section 2, above:

(1) In addition to, and not in derogation of, all other rights and remedies of Declarant and Developer, Developer shall have and may exercise all of the rights and remedies of the Association and the Board;

(2) Declarant and Developer shall not be obligated or required to pay assessments or charges on account of ownership of Townhouse Units and Townhouse Units owned by Declarant and Developer shall not be subject to any lien or assessment provided for herein; and

(3) Developer may impose and collect the assessments and charges provided for herein upon a uniform basis for Townhouse Units now owned by Declarant and Developer, and all such amounts collected by Developer may be commingled with Developer's general funds and no accounting, budget, application of funds, or justification of any sort shall be required by Developer.

Section 3: 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 mail, postage prepaid, or in the case of telegraphic notice, when delivered to the telegraph company addressed:

DM 13145PG 236

(1) to Sahuaro Townhouses, Inc., c/o its designated statutory agent; and

(2) to the Owners at their respective Townhouse Units as designated by Number, Sahuaro Townhouses, at the respective address in Phoenix, Arizona.

No other method of giving notice is hereby precluded.

**Section 4: No Waiver; Remedies Cumulative.** No failure or delay on the part of any person in exercising any right, power or privilege hereunder and no course of dealing between or among the persons subject hereto, shall operate as a waiver of any provision hereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof nor the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which any person subject hereto would otherwise have. No notice to or demand on any person in any case shall entitle such person to any other or further notice or demand in similar or other circumstances or constitute a waiver of rights to any other or further action in any circumstances.

**Section 5: 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 Areas, or with respect to any matter affecting the Owners with regard to the Common Areas, and further in connection with enforcing this Declaration, the Articles, the By-Laws and any rules and regulations Unofficial Document 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 is necessary for the best interests of the Association as a whole, the Association, acting by and through its Board, shall be deemed the Real Party in interest and is hereby authorized to commence and prosecute any such proceedings or to defend any such action. Nothing contained in this paragraph shall be deemed or construed to impose upon the Association, its members or its Board, any liabilities or obligations nor grant to any third party or parties any rights that any of said above-named parties would not otherwise have if this paragraph were not contained herein.

**Section 6: 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 provisions hereof.

**Section 7: 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.

**Section 8: Mortgage/Deed of Trust.** Wherever the words "mortgage" or "mortgagee" are used or referred to in this Declaration, the words will also be deemed to include a "deed of trust" or "trustee" or "beneficiary" under a deed of trust, which terms may be used interchangeably.

**Section 9: 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 their respective successors,

13145 297

assigns, purchasers, mortgagees, trustees and beneficiaries of deeds of trust, encumbrancers, grantees, donees and lienors.

Section 10: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 11: Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the 11th day of SEPTEMBER, 1978.

SAHUARO DEL SOL,  
an Arizona corporation

By George A. Collamer  
President

STATE OF ARIZONA )  
                                  ) SS.  
County of Maricopa )

On this the 11th day of SEPTEMBER, 1978, before me the undersigned Notary Public, personally appeared George A. Collamer, who acknowledged himself to be the President of SAHUARO DEL SOL, an Arizona corporation, and that he as such officer, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing the name of the said corporation by himself as such officer.

WITNESS my hand and seal.

Don E. Sarrett  
Notary Public

My Commission Expires:

SEP 11 1978  
1-6-79

Mail to

DENNIS LUEBKIN

HAYER, NUNN AND COLLAMER  
ARCHITECTURE - ENGINEERING - PLANNING  
1733 E. MISSOURI AVE. - PHOENIX, ARIZONA 85014 - 243-8200

STATE OF ARIZONA }  
County of Maricopa } SS

I hereby certify that the within instrument was filed and recorded at request of

Donald Surface

SEP 11 1978 -11 45

in Book: 13145  
on page 277-297

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

Bill Henry

By John D. ...  
County Recorder  
Deputy Recorder

WHEN RECORDED MAIL TO:

Phillip E. Allen  
3615 North 27th Way  
Phx., Az. 85016

MOD ESTW

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS FOR SAHUARO TOWNHOUSES, INC

THE FOLLOWING AMENDMENTS to the Declaration of Covenants, Conditions and Restrictions for SAHUARO TOWNHOUSES, INC., were duly passed and enacted by a vote of not less than Ninety percent (90%) of the Sahuaro Townhouses lot owners:

1. Delete the words "and ceiling" from Article VII, Section 1: A (1) line 4.
2. Insert the words "the roof and roofing" in Article VII, Section 1: B (2) line 4.
3. Delete the following sentence of Article IV, Section 8: "Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum."
4. Insert the following sentence at the beginning of Article IV, Section 8: "Any assessment not paid on or before the tenth (10th) day of each month shall be liable for a ten dollar (\$10) late fee."

The undersigned President and Secretary of SAHUARO TOWNHOUSES, INC., hereby certify that the above amendments to the Declaration of Covenants, Conditions and Restrictions recorded on the 11th day of September, 19 78, in Docket 13145, pages 277 through 297, records of Maricopa County, Arizona, were duly voted upon and approved pursuant to the procedures and requirements contained in said Covenants, Conditions and Restrictions at meetings called for such purpose in February, 1982 and August, 1983.

DATED this 7<sup>th</sup> day of Nov., 1983.

*J. A. Barton*  
\_\_\_\_\_  
President

attest:

(seal)

*Phillip E. Allen*  
\_\_\_\_\_  
Secretary

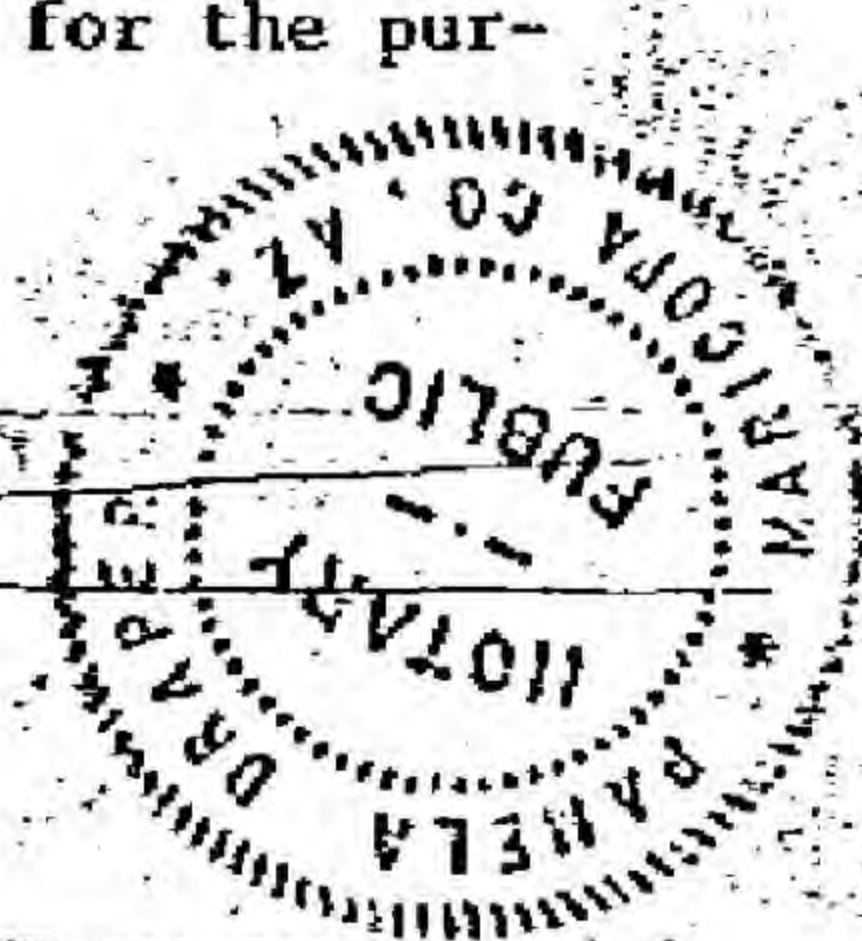
STATE OF ARIZONA )  
                              ) SS  
COUNTY OF MARICOPA )

ON THIS THE 7th day of November, 1983 before me, the undersigned Notary Public, personally appeared Tim S. Barton and Phillip E. Allen, known to me to be the President and Secretary, respectively, of Sahuaro Townhouses, Inc., and they acknowledged that they executed the foregoing Amendment to Declaration of Covenants, Conditions and Restrictions in their official capacities and for the purposes therein contained.

WITNESS my hand and official seal.

*[Signature]*  
\_\_\_\_\_  
Notary Public

My Commission Expires: 4-16-85



RECORDED IN OFFICIAL RECORDS  
OF MARICOPA COUNTY, ARIZONA  
NOV 8 - '83 - 800  
BILL HENRY, COUNTY RECORDER  
FEE 500 PGS /

# Unofficial Document

WHEN RECORDED, RETURN TO:

Philip Brown  
The Olcott Law Firm, PLLC  
180 W. Magee, No. 164  
Oro Valley, AZ 85704

MA  
HELEN PURCELL  
2006-0135731 01/31/06 11:28  
1 OF 1

MARTINEZB

## AMENDMENT TO DECLARATION RENTALS FOR SAHUARO TOWNHOUSES INC.

This Certificate of Amendment to Declaration, Rentals for Sahuaro Townhouses Inc. ("Rentals Amendment") is made and executed as of this 28<sup>th</sup> day of JANUARY 2006 by The Sahuaro Townhouses, Inc.

### BACKGROUND

A. The Declaration of Covenants, Conditions, and Restrictions for The Sahuaro Townhouses Homeowners Association Inc. was recorded on September 11, 1978 in **Instrument Number 1978-013145**, Official Records of Maricopa County, Arizona ("Declaration"). The Declaration subjects certain real property located in Maricopa County, Arizona consisting of various houses and related common areas depicted on the Plat to the covenants, conditions, restrictions, liens, and easements as more fully set forth in the Declaration and the other Project Documents. **This Amendment applies to Sahuaro Townhouses, Lots 1 thru 12 & All Common Areas, a subdivision of Maricopa County, Arizona, recorded in Book 201 of Maps at Page 46, in the office of the County Recorder of Maricopa County, Arizona: and**

B. Pursuant to Article XII, Section 11 of the Declaration, the Declaration may be amended recordation of a certificate, signed and acknowledged by the President or Secretary of the Association, setting forth the amendment and certifying that such amendment has signed by not less than seventy-five percent (75%) of Lot Owners of the Association. Any amendment must be properly recorded.

C. Capitalized terms used but not defined in this Rentals Amendment will be ascribed the meanings specified in the Declaration, or Arizona law.

## RENTALS AMENDMENT

Pursuant to the Declaration, the Members amend the Declaration as follows:

Article VIII, Section 12 is deleted in its entirety and a new Article VIII, Section 12 is added as follows:

### Section 12 Renting and Rental Limitations

- A. *General Limitations.* No portion of the Premises but for an entire Unit, together with the improvements thereon, may be rented, and then only to a single family. **A maximum of two (2) Units (of the 12 Units in the Association) may be rented at any one time.** Owners shall not lease or rent their Lots unless the Owner obtains prior approval of the Board in writing. The Board and/or <sup>Unofficial Document</sup> any court construing this provision are encouraged to consider that the general intention of this Section is to limit occupancy to a maximum of two rentals. The Board and any court construing this Section shall disregard the form of any transaction that might evade the intention of this Section, and analyze the substance of the transaction.

### CERTIFICATION

Pursuant to ARS §10-3708 Action by Written Ballot, the undersigned President and Secretary of hereby certify that the amendment has been approved by an instrument signed by not less than seventy five percent (75%) of the Lot Owners and which written instruments are in the permanent files of the Association.



By: *Yvonne A. Holappa*  
President

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January 2006, by the President of The Sahuaro Townhouses Inc., who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

*Sheena Lee Cox*  
Notary Public

My Commission Expires:

January 19, 2009



Unofficial Document

By: *Steve H. Sperry*  
Secretary - TREASURER

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January 2006, by the Secretary of The Sahuaro Townhouses Inc., who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

*Sheena Lee Cox*  
Notary Public

My Commission Expires:

January 19, 2009

