

IF NOT RECORDED, RETURN TO:  
Arizona Title Insurance and Trust Co.  
111 West Monroe, Phoenix  
ATTENTION: Trust Department (Trust 6205)

STATE OF ARIZONA }  
County of Maricopa }

I hereby certify that the within  
is insurance and that all re-  
quired of record: as  
shown hereinafter & there

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR SPANISH GARDENS I

Book 10422  
Page 267-268  
Witness my hand and official  
seal the day and year aforesaid.  
Paul H. Munton  
County Recorder  
By *[Signature]*  
Deputy Recorder

THIS DECLARATION is made as of the date hereinafter  
set forth by ARIZONA TITLE INSURANCE AND TRUST COMPANY, an  
Arizona corporation, as Trustee, hereinafter termed "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the sole owner of the following  
described real property situated in the City of Phoenix, County  
of Maricopa, State of Arizona:

That portion of the Northeast quarter of  
the Southeast quarter of the Southeast  
quarter of Section 26, Township 2 North,  
Range 3 East, Gila and Salt River Base and  
Meridian, Maricopa County, Arizona, more  
particularly described as follows:

Commencing at the Southeast corner of said  
Northeast quarter of the Southeast quarter  
of the Southeast quarter, thence, North 89°  
46'51" West along the South line of said  
Northeast quarter of the Southeast quarter of  
the Southeast quarter, 40.00 feet to the true  
point of beginning;

Thence, North 89°46'51" West along said South  
line, 608.48 feet;

Thence, North 00°55'30" East along a line  
parallel to and 10 feet East of the West line  
of said Northeast quarter of the Southeast quarter  
of the Southeast quarter, 318.20 feet;

Thence, South 89°55'00" East, 4.81 feet to a  
point on a circular curve to the Southeast having  
a radius of 45.00 feet, a central angle of 132°  
50'35", an arc length of 104.33 feet and whose  
radius point bears South 89°55'00" East;

Thence, along the South line of an alley easement  
and easement for ingress and egress, as recorded  
in Docket 5292 on Page 268, Maricopa County  
Records, as follows:

Southeasterly along said curve 104.33  
feet to a point of reverse curvature to  
the Northeast having a radius of 30.00  
feet, a central angle of 42°50'35", an

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arc length of 22.43 feet and whose radius point bears South 42°45'35" East;

Thence, Northeasterly along said curve 22.43 feet to a point of tangency;

Thence, South 89°55'00" East, 507.27 feet;

Thence, departing from said easement, South 00° 54'50" West along a line 40 feet West of and parallel to the East line of said Northeast quarter of the Southeast quarter of the Southeast quarter, 294.64 feet to the true point of beginning.

hereinafter sometimes called the "Parcel", and

WHEREAS, the Parcel has heretofore been developed, used and occupied as a rental apartment complex; and

WHEREAS, Declarant desires hereby to convert, submit and subject the Parcel, together with the remainder of the "Property", as hereinafter Unofficial Document 1, to a horizontal property regime pursuant to Sections 33-551 through 33-561, Arizona Revised Statutes; and

WHEREAS, Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, certain easements and rights in, over and upon said premises and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant desires and intends that the unit owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative use, conduct and maintenance of such Property and are established for the

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purpose of enhancing and perfecting the value, desirability and attractiveness thereof;

NOW, THEREFORE, Declarant, as the sole owner of the property hereinbefore described and for the purposes above set forth, declares as follows:

1. Definitions. As used herein, unless the context otherwise requires:

1.1 "Act" means Section 33-551 through Section 33-561, Arizona Revised Statutes.

1.2 "Association" means SPANISH GARDENS I ASSOCIATION, an Arizona nonprofit corporation.

1.3 "Building" means each of eighteen (18) buildings as shown on the Plat which are located on the Parcel, which contain Units and which constitute a <sup>Unofficial Document</sup> part of the Property.

1.4 "Common Elements" means the "general common elements", as that term is defined in Section 33-551(6), Arizona Revised Statutes, including without limitation the Parcel, together with the outside walks and driveways, landscaping, and all other portions of the Property, except the Units.

1.5 "Declarant" means ARIZONA TITLE INSURANCE AND TRUST COMPANY, an Arizona corporation, as Trustee, and BAKER-CROW COMPANY, a Texas corporation, as Beneficiary, together with each of their successors or assigns in the ownership of the Property for purpose of its original development and sale.

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

1.7 "Majority" or "Majority of Owners" means the owners of more than fifty percent (50%) of the undivided ownership of the Common Elements, irrespective of the total number

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of Owners. Likewise, any specified percentage of the Owners means that percentage of undivided ownership of the Common Elements.

1.8 "Mortgage" shall mean any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, including without limitation deeds of trust. "Mortgagee" shall mean a party secured by such an instrument; and "Mortgagor" shall mean the party executing such instrument as security. "First Mortgage" shall mean a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.9 "Occupant" means a person or persons, other than an Owner, in rightful possession of a Unit.

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1.10 "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of Units the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor.

1.11 "Parcel" means the parcel or tract of real estate described above in this Declaration, hereby submitted to a horizontal property regime, together with any and all such additional parcels or tracts of real estate as may be added or annexed hereto pursuant to any provision hereof.

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

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1.13 "Plat" means the plat of survey of the Property and of all Units submitted to a horizontal property regime, said Plat being the Map of SPANISH GARDENS I appearing of record in Book 168 of Maps at page 23.

1.14 "Project" shall mean all Property and all Units comprising the Horizontal Property Regime hereby created.

1.15 "Property" shall mean the Parcel, together with all buildings, improvements and other permanent fixtures of whatsoever kind thereon, all rights and privileges belonging or in any wise pertaining thereto and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit and enjoyment of the Owners; and it shall in general have the same meaning as set forth in Section 33-551, Arizona Revised Statutes, as related to the Project.

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1.16 "Record" or "Recording" refers to record or recording in the office of the County Recorder of Maricopa County, Arizona.

1.17 "Restricted Common Elements" shall have the meaning set forth in subparagraph 5.2.

1.18 "Unit" means each of seventy-six (76) parts of the Property, including without limitation one or more rooms situated in the Buildings designed or intended for independent use as a dwelling unit. A Unit is an "apartment" within the meaning of Section 33-551(1), Arizona Revised Statutes.

2. Submission of Property. Declarant hereby submits and subjects the Property to a horizontal property regime pursuant to Sections 33-551 through 33-561, Arizona Revised Statutes, to be hereafter known as SPANISH GARDENS I, and does hereby declare that all of the Units shall be owned, leased, sold, conveyed and encumbered subject to the terms, conditions

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and other provisions of this Declaration.

3. Description of the Building, the Units and the Common Elements. The entire horizontal property regime shall be constituted of the Common Elements and the Units.

3.1 Buildings. There are eighteen (18) Buildings. Reference is hereby made to the Plat for a description of the cubic content space of each of the Buildings with reference to its location on the Parcel.

3.2 Units. There are seventy-six (76) Units. Reference is hereby made to the Plat for a description of the cubic content space of each Unit. Each Unit shall include the space enclosed and bounded by the interior finished surfaces of the ceiling, floor and perimeter walls thereof, together with a roof-mounted Unofficial Document air-conditioning unit, a patio area and a storage area; provided, however, that no portion of the roof, bearing walls or other structural components of the Building in which each Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility, water or sewer lines situated within such Unit and forming part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of a Unit. Each Unit shall include as an appurtenance thereto the exclusive right to use and occupy the parking area bearing the same number as the Unit, as shown on the Plat.

3.3 Common Elements. A description of the Common Elements included in and comprising parts of each Building is the description referred to in subparagraph 3.1 less the descriptions referred to in subparagraph 3.2. A description of the other Common Elements is as set forth in subparagraph 1.4 of this Declaration.

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3.4 Fractional Interest. The fractional interest which each Unit bears to the entire horizontal property regime, which fractional interest shall constitute the fractional interest in the Common Elements which is appurtenant to each such Unit, shall be one-seventy-sixth (1/76).

4. Association. The Association has been, or will be, formed to constitute the "council of co-owners", as that term is defined in Section 33-551, Arizona Revised Statutes, and to serve as the 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 the Act, in This <sup>Unofficial Document</sup> Declaration, in the Articles of Incorporation (hereinafter termed the "Articles") and in the Bylaws of the Association (hereinafter called the "Bylaws"). 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 this Declaration, the Articles and the Bylaws. Each 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 automatically succeed to such membership in the Association. 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

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persons shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. The Class B member 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 January 1, 1976.

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4.1 Association Board of Directors. For the period ending at the last to occur of either the conveyance by Declarant to Owners of more than three-fourths (3/4) of the total number of Units or January 1, 1976, all members of the Board of Directors of the Association (herein sometimes referred to as the "Board") may be designated by Declarant. Except for members designated by Declarant, each director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, 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.

4.2 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



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the provisions of the Declaration, Articles or Bylaws, the determination thereof by the Board shall be final and binding on each and all of such Owners.

4.3 Action by Owners. To the extent required by the Act, all actions 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, such action to include, but without limitation, adoption or ratification of the Bylaws and rules and regulations for the horizontal property regime which is the subject matter of this Declaration.

5. Use of Common Elements.

5.1 Unrestricted Common Elements. Each Owner shall have the non-exclusive right to use the Common Elements, except the Restricted 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 Unit owned by such Owner. Such right to use the Common Elements shall extend to each owner and the agents, servants, tenants, family members and invitees of each Owner. Such rights to use and possess the Common Elements shall be subject to and governed by the provisions of this Declaration, the Articles and the Bylaws. The Board shall have the authority to lease, to convey easements or to grant concessions with respect to parts of the Common Elements, subject to the provisions of the Declaration, Articles and Bylaws. Any income derived by the Association from leases, concessions or other sources, shall be held and used for the benefit of the members of the Association pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

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5.2 Restricted Common Elements. Certain of the parking spaces, as shown on the Plat, are set aside, respectively, for the exclusive use and occupancy of the Owner of the Unit which bears the same numerical designation as said parking space (e.g. Parking Space 4 is set aside for the exclusive use and occupancy of the Owner of Unit 4).

6. Parking. Subject to each Owner's exclusive right to use and occupy the parking space designated for his Unit herein, the Board shall have full authority to operate, manage and use for and on behalf of all Owners any parking areas situated on the Parcel; and the use thereof shall be subject to such rules and regulations as may be imposed by the Board.

7. Common Expenses. Each Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with the Declaration, the Articles and the Bylaws (which expenses are herein sometimes referred to as "common expenses"), including specifically, but not by way of limitation, the maintenance and repair thereof and any and all replacements and additions thereto. Each Owner's proportionate share of such common expenses shall be determined as follows: (a) The number of Units which are completed and ready for occupancy, and which have been sold by Declarant or occupied by any person, shall be totaled; and (b) the fraction comprised of the number of such Units owned by an Owner, as numerator, and the total number of such Units, as denominator, shall constitute such Owner's proportionate share of the common expenses. Payment of common expenses, including any prepayment thereof required by contract for sale of a Unit, shall be in such amounts, at such times and in such manner as is provided in the Articles

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and Bylaws. Such payment, together with interest, costs, and reasonable attorneys fees, shall constitute the personal obligation of the person who was the Owner of such Unit at the time such payment fell due. The personal obligation for delinquent payments shall not pass to an Owner's successors in title unless expressly assumed by them. If any Owner shall fail or refuse to make any such payment of common expenses when due, the amount thereof, together with interest, costs and reasonable attorneys fees, shall constitute a lien on such Owner's Unit, provided, however, that such lien shall be subordinate to the lien of a prior recorded First Mortgage on, or the right, title and interest of the trustee and beneficiary under a first deed of trust in and to, the applicable Unit, <sup>Unofficial Document</sup> acquired in good faith and for value, except for the amount of the proportionate share of common expenses which become due and payable from and after the date on which the Owner or holder of the mortgage, or the trustee or beneficiary under the trust deed, either takes possession of the applicable Unit, or accepts a conveyance of any interest therein (other than as security), or files suit to foreclose its lien, or records a notice of trustee's sale, or causes a receiver to be appointed for the Unit. The lien provided for in this paragraph may be foreclosed by the Association in the same manner as provided for the foreclosure of realty mortgages in the State of Arizona.

8. Mortgages. Each Owner shall have the right, subject to the provisions hereof, to make separate mortgages and to enter into trust deeds for his respective Unit. No Owner shall have the right or authority to make or create or cause to be made or created any mortgage, or other lien or security interest, on or affecting the Property or any part

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thereof, except only to the extent of his Unit and its appurtenant interest in the Common Elements.

9. Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Arizona with a rating in Best's Insurance Guide (or any comparable publication) of at least A-AAAA (or any comparable rating). All such insurance, to the extent possible, shall name the Association as the insured, in its individual capacity and also either as attorney-in-fact or trustee for all Owners.

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To the extent possible, such casualty insurance shall:

- (1) Provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents and against each Owner and each Owner's employees, agents and invitees;
- (2) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees and agents or of any Owner or such Owner's employees, agents or invitees;
- (3) provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or Mortgagee;

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(4) contain a standard mortgage clause endorsement in favor of the Mortgagee of any Unit or part of the Property except a Mortgagee of a Unit or part of the Property who is covered by other and separate insurance;

(5) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least 10 days' prior written notice to the Association and to each Owner and to each Mortgagee covered by any standard mortgage clause endorsement; and

(6) provide that the insurer shall not have the option to restore the premises if condominium ownership of the Units and Property is to be terminated or the Units and Property are to be sold as an entirety in accordance with the destruction, condemnation and obsolescence provisions of this Declaration.

To the extent possible, such public liability and property damage insurance shall provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice.

Certificates of insurance coverage or copies of insurance policies shall be issued to each Owner and each Mortgagee who makes written request to the Association for any such certificate or copy.

The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or

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improvements made to a Unit or Restricted Common Elements by an Owner or other insurance obtained at the request of and specifically benefiting any particular Owner, shall be a general common expense to be covered by assessments as elsewhere provided in this Declaration.

9.1 Casualty Insurance. The Association shall obtain and maintain casualty insurance covering the Property and each Unit covering loss or damage by fire and such other hazards as are covered under standard extended coverage policies, including vandalism and malicious mischief and, if available and if deemed appropriate by the Association, war risk, for the full insurable replacement cost of the Property, including each Unit. At the option of the Association such insurance may also cover additions, alterations or improvements to a Unit made by an Owner if the Owner reimburses the Association for any additional premiums attributable to such coverage. The Association shall not be obligated to apply any insurance proceeds to restore a Unit to a condition better than the conditions existing prior to the making of additions, alterations or improvements as aforesaid.

9.2 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering bodily injury liability, property damage liability and automobile bodily injury and property damage liability, as required of the Association. Each Owner shall be insured with respect to such Owner's liability arising out of the ownership, maintenance, repair or operations incidental thereto of that portion of the premises which is not reserved for his exclusive use or occupancy. Limits of liability for such coverage shall be not less than \$1,000,000 for each occurrence with respect to bodily

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injury liability and \$100,000 for each occurrence with respect to property damage liability.

9.3 Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

9.4 Insurance by Owners. Except to the extent coverage therefor may be obtained by the Association and be satisfactory to an Owner, each Owner shall be responsible for obtaining insurance he deems desirable, including insurance covering his furnishings and personal property and covering personal liability of him and his employees, agent and invitees. Any insurance policy of <sup>Unofficial Document</sup> by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and shall, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and their employees, agents and invitees.

9.5 Receipt and Application of Insurance Proceeds. Except as some particular person shall have a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Association. All insurance proceeds or recoveries received by the Association shall be applied by the Association as follows: first as expressly provided elsewhere in this Declaration; second to the Owners or persons who the Association may determine are legally or equitably entitled thereto; and third, the balance, if any, to Owners in proportion to their respective interests in Common Elements.

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9.6 Other Insurance by the Association. The Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, including casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

10. Destruction, Condemnation, Obsolescence, and Restoration or Sale of Project.

10.1 Definitions. The following terms shall have the following definitions:

10.1.1 "Substantial Destruction" shall exist whenever the Board of Directors of the Association determines that, as a result of any casualty, <sup>Unofficial Document</sup> damage or destruction to the Project, or any part thereof, the excess of estimated costs of Restoration (as herein defined) over Available Funds (as herein defined) is fifty percent (50%) or more of the estimated Restored Value of the Project (as herein defined). "Partial Destruction" shall mean any other casualty, damage or destruction of the Project, or any part thereof.

10.1.2 "Substantial Condemnation" shall exist whenever the Board of Directors of the Association determines that a complete taking of the Project as occurred or that a taking of part of the Project under eminent domain or by grant or conveyance in lieu of condemnation has occurred, and that the excess of the estimated costs of Restoration over Available Funds if fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Condemnation" shall mean any other such taking by eminent domain or by grant or conveyance in lieu of eminent domain.



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10.1.3 "Substantial Obsolescence" shall exist whenever the Owners of seventy-five percent (75%) in interest of the Project determine by vote that the Project or any part thereof has reached an undesirable state of obsolescence or disrepair, or whenever the Board of Directors determines that the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of estimated costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

10.1.4 "Restoration", in the case of any casualty, damage or destruction, shall mean restoration of the Project to a condition the same or Unofficial Document substantially the same as the condition in which it existed prior to the casualty, damage or destruction; in the case of condemnation, shall mean restoration of the remaining portion of the Project to an attractive, sound and desirable condition; and, in the case of obsolescence, shall mean restoration of the Project to an attractive, sound and desirable condition.

10.1.5 "Restored Value of the Project" shall mean the value of the Project after restoration.

10.1.6 "Available Funds" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation and any uncommitted income or funds of the Association other than the income or funds derived through assessments or special assessments. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable

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to the Owner of a Unit containing an individual air space unit for the condemnation or taking of that Owner's individual air space unit.

10.2 Restoration of the Project. Restoration of the Project shall be undertaken by the Association without a vote of the Owners in the event of Partial Destruction, Partial Condemnation or Partial Obsolescence but shall be undertaken in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence only with the consent of the Owners of seventy-five percent (75%) in interest of the Common Elements and the unanimous consent of all first Mortgagees in good faith and for value.

10.3 Sale of the Project. The Project shall be sold in the event of Substantial <sup>Unofficial Document</sup> Destruction, Substantial Condemnation or Substantial Obsolescence unless consent to Restoration has been obtained from the Owners of seventy-five percent (75%) in interest of the Common Elements and the unanimous consent to Restoration of all first Mortgagees thereof in good faith and for value has been obtained. In the event of such sale, condominium ownership under this Declaration shall terminate and the proceeds of sale and any insurance proceeds, condemnation awards or payments in lieu of condemnation shall be distributed by the Association to each Owner in accordance with his fractional interest in the Common Elements. Payments to be made to Owners hereunder shall be made jointly to Mortgagees as to Units which are mortgaged of record at the time of such payment.

10.4 Authority of Association to Restore or Sell. The Association, as attorney-in-fact for each Owner, shall have full power and authority to restore or to sell the Project and each Unit in the Project whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority

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shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or Sale, as the case may be.

10.5 Special Assessments for Restoration. Whenever restoration is to be undertaken, the Association may levy and collect assessments from each Owner of a Unit in proportion to each Owner's undivided interest in the Common Elements, payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by available funds. Such special assessments shall be secured by a lien on the Unit of each such Owner as in the case of regular assessments. Notwithstanding any other provisions in this Declaration, in the case of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence, any such special assessment shall not be a personal obligation of any such Owner who did not consent to restoration but, if not paid, may be recovered only by foreclosure of the lien against the Unit of such Owner.

10.6 Receipt and Application of Condemnation Funds. All compensation, damages or other proceeds constituting awards in condemnation or eminent domain or payments in lieu of condemnation or eminent domain shall be payable to the Association. The amount thereof allocable to compensation for the taking of or injury to the individual air space unit of a particular Unit or to improvements of an Owner therein shall be apportioned to the Owner of that Unit. The balance of the award shall be applied to costs and expenses of restoration, if undertaken, and, to the extent not so applied, shall be allocated as follows: first, any portion of the award allocable to the taking of or injury to Common Elements shall be apportioned among all Owners

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of such Common Elements in proportion to their respective undivided interests in the Common Elements; second, the amounts allocable to severance damages shall be apportioned to Owners of Units with individual air space units which were not taken or condemned in proportion to their respective undivided interests in the Common Elements; and third, the amounts allocated to consequential damages or for other purposes shall be apportioned as the Association determines to be equitable under the circumstances.

10.7 Reorganization in the Event of Condemnation. In the event all of the individual air space unit of a Unit is taken in condemnation, the Unit containing that individual air space unit shall cease to be part of the Property, the Owner thereof shall cease to be a member of the Association, and the undivided interest in Common Elements appurtenant to that Unit shall automatically become vested in the Owners of the remaining Units in proportion to their respective undivided interests in the Common Elements.

11. Maintenance, Repairs and Replacements. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit. Maintenance, repairs and replacements of the Common Elements shall be furnished by the Association as part of the common expenses, subject to the Bylaws and rules and regulations of the Association. If, due to the willfull or negligent act of an Owner or a member of his family or household pet or guest or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Elements or to a Unit or Units 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

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and replacements as may be determined by the Board, to the extent not covered by the Association's insurance. An authorized representative of the Board, or of the manager or managing agent of the Building, and all contractors and repairmen employed or engaged by the Board or such manager or managing agent, shall be entitled to reasonable access at reasonable times to each of the 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 serving other Units and the Common Elements.

12. Alterations, Additions or Improvements. No alterations of any Common Elements or any additions or improvements thereto shall be made by any Owner without the prior written approval of the Board. Unofficial Document Any Owner may make non-structural alterations, additions or improvements within his Unit, without the prior written approval of the Board, but such Owner shall be responsible for any damage to other Units, the Common Elements, or the Property, as the result of such alteration, addition or improvement. In addition to the required approval of the Board, there shall be no structural alterations or additions to the Building without the prior approval of a majority of the Owners given at a regular or special meeting of the members of the Association, and the prior approval of the holders of all First Mortgages and the beneficiaries under all first trust deeds acquired in good faith and for value then encumbering one or more of the Units. Unless otherwise determined at any such meeting, the cost of such alterations or additions shall be paid by means of a special assessment against the Owners in the proportion of their respective undivided fractional interests in the Common Elements. Such special assessments shall be

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secured by the lien provided for in paragraph 7 of this Declaration.

13. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all of the decorating within his own Unit from time to time including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating. Each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings and the surfaces within his 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 Elements (other than interior surfaces within the Unit as above provided), and any redecorating of Units to the extent made necessary by any damage to existing decorating of such Units 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 expenses. The 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 Owner.

14. Encroachments. If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any Unit or Entranceway providing ingress and egress thereto shall actually encroach upon another Unit, as the Common Elements and the Units are shown by the survey

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comprising the Plat, whether such encroachment results from the initial or existing construction or from subsequent repair, reconstruction, settlement or shifting, there shall be deemed to be mutual easements in favor of the Owners of the Common Elements and the respective Owners involved to the extent of such encroachment so long as the same shall exist, provided, however, that no such easement shall result from the willful misconduct of the Owner claiming entitlement thereto.

15. Sale or Lease of Unit - First Option to Association.

If any Owner, other than Declarant, shall desire at any time to sell or lease his Unit, he shall first give the Association at least thirty (30) days prior written notice of the proposed sale or lease, which notice shall state the name and address and financial and character Unofficial Document of the proposed purchaser or lessee and shall contain a copy of the proposed lease or contract for sale. During the period of thirty (30) days following the receipt by the Association of such written notice, the Association shall have the first right as its option to purchase or lease such Unit upon the same terms as the proposed sale or lease described in such notice.

If the Association shall give written notice to such Owner within said thirty (30) day period that it has elected not to exercise such option, or if the Association shall fail to give written notice to such Owner within said thirty (30) day period that it does or does not elect to purchase or lease such Unit upon the same terms as herein provided, then such Owner may proceed to close said proposed sale or lease transaction at any time within the next ninety (90) days thereafter; and if he fails to close said proposed sale or lease transaction within said ninety (90) days, his Unit shall again become subject to

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the Association's first option as herein provided.

If the Association shall give written notice to such Owner within said thirty (30) day period of its election to purchase or lease such Unit upon the same terms as the proposed sale or lease described in said written notice to the Association, then such purchase or lease by the Association shall be closed upon the same terms as such proposed sale or lease.

The Board shall have the authority on behalf of and in the name of the Association to elect to exercise or to elect not to exercise such option and to give written notice of such election.

A certificate executed by the president or secretary of the Association certifying that the Association, by the Board, has elected not to exercise such option to purchase or lease such Unit upon the terms of such proposed sale or lease shall be conclusive evidence of such election by the Association and of the compliance with the provisions hereof by the Owner proposing to make such proposed sale or lease. Such certificate shall be furnished to such Owner upon his compliance with the provisions hereof.

If the Board shall adopt a resolution recommending that the Association exercise its option to purchase or lease such Unit upon the terms of such proposed sale or lease, the Board shall promptly call a special meeting of all of the Owners for the purpose of voting upon such option, which meeting shall be held within said thirty (30) day period and shall be and constitute a special meeting of the members of the Association. If a majority of Owners present and voting at such meeting by affirmative vote elect to exercise such option to make such purchase or lease, then the Board shall promptly give written



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notice of such election as herein provided. In such event, such purchase or lease by the Association shall be closed and consummated and for such purpose the Board shall have the authority to make such mortgage or other financing arrangements and to make such assessments proportionally among the respective Owners and to make such other arrangements as the Board may deem desirable in order to close and consummate such purchase or lease of such Unit by the Association.

If the Association shall make any such purchase or lease of a Unit as herein provided, the Board shall have the authority at any time thereafter to sell, lease or sublease such Unit on behalf of the Association upon such terms as the Board shall deem desirable without complying with the foregoing provisions relating to the Association's right of first option and all of the net proceeds or deficit therefrom shall be applied among all of the Owners in such manner as the Board shall determine.

Unofficial Document

If a proposed lease of any Unit is made by any Owner after compliance with the foregoing provisions, a copy of the lease as and when executed shall be furnished by such Owner to the Board and the lessee thereunder shall be bound by and be subject to all of the obligations of such Owner with respect to such Unit as provided in this Declaration and the Bylaws and the lease shall expressly so provide. The Owner making any such lease shall not be relieved thereby from any of his obligations. Upon the expiration or termination of such lease or in the event of any attempted subleasing thereunder, the provisions hereof with respect to the Association's right of first option shall again apply to such Apartment.

The provisions hereof with respect to the Association's right of first option shall not apply to sales or leases made

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by Declarant.

If any sale or lease of a Unit is made or attempted by any Owner without complying with the foregoing provisions, such sale or lease shall be subject to each and all of the rights and options of the Association hereunder and each and all of the remedies and actions available to the Association hereunder.

The foregoing provisions with respect to the Association's right of first option as to any proposed sale or lease shall be and remain in full force and effect until the Property as a whole shall be sold or removed from the provisions of the Act, unless sooner rescinded or amended by the Owners in the manner herein provided for amendments of this Declaration. The Board may adopt rules and regulations from time to time not inconsistent with the foregoing provisions for the purpose of implementing and effectuating the foregoing provisions.

Unofficial Document

The Board shall have the power and authority to bid for and purchase any Unit at a sale pursuant to a mortgage foreclosure, trustee's or beneficiary's sale under a trust deed, or a foreclosure of any lien for assessments provided for in this Declaration, or at a sale pursuant to an order or direction of a court, or other involuntary sale, upon the consent or approval of a majority of Owners present and voting at a special meeting of the members of the Association or in such other manner as may be deemed by the Board to be necessary or expedient. The Board shall have power and authority to finance such purchase of a Unit by mortgage, common assessment or any other financing arrangement that shall be deemed expedient by the Board.

Anything to the contrary herein notwithstanding, the provisions of this paragraph 15 shall not apply or be enforced by any person with respect to:

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(a) A sale, transfer, assignment or conveyance of any Unit and its appurtenant undivided interest in the Common Elements to any person pursuant to a judgment of foreclosure of a mortgage of record, or enforcement of a deed of trust, by Declarant or an institutional lender upon such Unit and appurtenant interest, or by means of a deed in lieu of the foreclosure of such mortgage or deed of trust; or

(b) A sale, assignment or lease of any Unit and its appurtenant undivided interest in the Common Elements to any person by Declarant or an institutional lender which has acquired title through or by virtue of foreclosure <sup>Unofficial Document</sup> by it of a mortgage of record or deed of trust upon such Unit and appurtenant interest, or which has acquired title by acceptance of a deed in lieu of the foreclosure of such mortgage or deed of trust.

An institutional lender as used herein shall mean a bank, life insurance company, savings and loan association, savings bank, private mortgage company, or other corporation or business trust regularly engaged in making mortgage loans or in purchasing mortgages and/or deeds of trust.

16. Use and Occupancy Restrictions. No part of the Property shall be used for other than housing and the related common purposes for which the Property was designed, except that Declarant reserves the right to maintain sales offices, model units, and signs, on the Property, together with rights of ingress and egress therefrom, until all Units shall have been sold and conveyed by Declarant. Each Unit or any two or more adjoining Units used together shall be used as a residence

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or such other use as permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more adjoining Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining Units provided all expense of making such alterations is paid in full by the Owner. The foregoing restrictions as to residence shall not however be construed in such manner as to prohibit an Owner from (a) maintaining his personal professional library therein, (b) keeping his personal business or professional records or accounts therein, or (c) handling his personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of this Declaration.

The Common Elements shall be used only for access, ingress and egress to and from the respective Units by the Owners residing therein and their guests, household help and other authorized visitors and for such other purpose as are incidental to the residential use of the Units; provided, however, that any Restricted Common Elements shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements will not be obstructed, damaged or unreasonably interfered with by any Owner.

17. Remedies. In the event of any default by any Owner under the provisions of the Act, this Declaration, the Articles, the Bylaws, or the rules and regulations of the Association, the Association, or its successors or assigns, or the Board, or its agents, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the Articles, the Bylaws or said rules and regulations, or which

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may be available by law, and may prosecute any action or other proceedings against such defaulting Owner and others for enforcement or foreclosure of its lien and the appointment of a receiver for the Unit without notice, without regard to the value of such Unit or the solvency of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to rent the Unit and apply the rents received to payment of unpaid assessments and interest accrued thereon, and to sell the same as hereinafter in this paragraph provided, or for any combination of remedies or for any other relief. The proceeds of any such judicial sale shall first be paid to discharge court costs, other litigation costs including but without limitation reasonable <sup>Unofficial Document</sup> attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration. All expenses of the Association in connection with any such action or proceeding, including court costs and reasonable attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of eight percent (8%) per annum until paid, shall be charged to and assessed against

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such defaulting Owner and shall be added to and deemed part of his respective share of the common expenses and the Association shall have a lien for all of the same, as well as for nonpayment of his respective share of the common expenses, upon the Unit of such defaulting Owner and upon all of his additions and improvement thereto. In the event of any such default by any Owner, the Association and the Board and the manager or managing agent, if so authorized by the Board, shall have the authority to correct such 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 <sup>Unofficial Document</sup> and from time to time, cumulatively or otherwise, by the Association or the Board. The liens provided for in this paragraph 18 shall be junior to prior first mortgages and first trust deeds, and shall be foreclosed, in the same manner as the lien provided for in paragraph 7 of this Declaration.

If any Owner (either by his conduct or by the conduct of any other occupant of his Unit) shall violate any of the provisions of this Declaration, the Articles or the Bylaws or the rules and regulations, as then in effect; and such violation shall continue for ten (10) days after notice in writing from the Board or shall occur repeatedly during any ten (10) day period after written notice or request to cure such violation from the Board, then the Board shall have the power to file an action against the defaulting Owner for a judgment or injunction against the Owner or occupant requiring the defaulting Owner to comply with the provisions of this Declaration, the Articles or the Bylaws or the rules and regulations, and granting other appropriate relief

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including money damages. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any mortgage or deed of trust made in good faith and for value upon any Unit and its appurtenant undivided percentage interest in the Common Elements, 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.

18. Amendment. Unofficial Document Provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed by Owners owning not less than seventy-five percent (75%) of the total ownership of the Common Elements and acknowledged; provided, however, that the holders of all First Mortgages, and the beneficiaries under all first trust deeds, of record against one or more of the Units acquired in good faith and for value shall have consented in writing to each such change, modification or rescission, provided, further, that such consent shall not be withheld unreasonably or in bad faith.

Notwithstanding the provisions of the foregoing paragraph, if the Act, this Declaration, the Articles or the Bylaws require the consent or agreement of all or a specified percentage of Owners and/or lienholders and/or trustees and/or beneficiaries under trust deeds, for any action specified in the Act or this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action

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shall be signed by all of the Owners and/or all lienholders and trustees and/or beneficiaries under trust deeds, or both, as required by the Act or this Declaration.

Anything to the contrary herein notwithstanding, until such time as deeds to all of the Units shall have been delivered by Declarant to purchasers thereof, Declarant reserves the right to amend this Declaration, provided that no such amendment shall have the effect of changing the cubic content space of any Apartment not owned by Declarant (except as minor changes may be necessary in order more accurately to describe the boundaries of the Unit), or in the fractional interest which each Unit bears in the Common Elements, and provided further that any such amendment shall be consented to in writing by the holders of all first mortgages, and <sup>Unofficial Document</sup> the trustees and beneficiaries under all first trust deeds, acquired in good faith and for value then of record with respect to one or more of the Units, provided, further, that such consent shall not be withheld unreasonably or in bad faith.

The change, modification or rescission whether accomplished under any of the provisions of this paragraph 19 shall be effective upon recording such instrument, provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

19. Notices. Notices provided for in this Declaration or the Bylaws shall be in writing and shall be addressed to the Association or the Board or any Owner, as the case may be, at 1528 East Missouri, Suite C-102, Phoenix, Arizona, or at such other address as hereinafter provided. The Association or the Board may designate a different address or addresses for



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notices to them respectively by giving written notice of such change of address to all Owners at such time. Any Owner may also designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

Upon written request to the Board, the holder of any recorded mortgage or the trustee or beneficiary under any recorded trust deed, encumbering any Unit, shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner (Unofficial Document) of the Unit subject to such mortgage or trust deed.

20. Severability. If any provision of this Declaration, the Articles or the Bylaws or the rules and regulations, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles and Bylaws, or the rules and regulations, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby and the remainder of this Declaration, the Articles or Bylaws, or the rules and regulations, shall be construed as if such invalid part were never included therein.

21. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the

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survivor of the now living descendants of the President of the United States, Richard M. Nixon and the Governor of Arizona, Jack Williams.

22. Rights and Obligations. Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken Unofficial Document covenants running with the land and equitable servitudes, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such grantee, purchaser or person in like manner as through the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument of transfer.

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

24. Utility Easements. Notwithstanding any other provisions hereof, there is hereby created a blanket easement

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upon, across, over and under the Common Elements for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including without limitation water, sewer, gas, telephone, electricity, television cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of the buildings. Notwithstanding anything to the contrary contained in this paragraph, no such utility and service line or system may be installed or relocated on said property except as initially programmed and approved by Declarant, or as thereafter approved by Declarant or by the Board of Directors of the Association. This easement shall in no way affect any other recorded easements on the property.

25. First Mortgagee Protections. Unless all holders of First Mortgage liens on individual Units have given their prior written approval, the Association shall not be entitled to:

a. Change the pro rata interest or obligations of any Unit for purposes of levying assessments and charges and determining shares of the Common Elements and proceeds of the Project.

b. Partition or subdivide any Unit or the Common Elements of the Project.

c. By act or omission seek to abandon the condominium status of the Project except as provided by law in case of substantial loss to the Units and Common Elements of the Project.

Any institutional lender who is the holder of a First

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Mortgage who comes into possession of a Unit pursuant to the remedies provided in the Mortgage, foreclosure of the Mortgage or deed (or assignment) in lieu of foreclosure, shall, as provided in Paragraph 15 of this Declaration, be exempt from any "right of first refusal."

The holder of a First Mortgage is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under the Project documents which is not cured within thirty (30) days.

IN WITNESS WHEREOF, ARIZONA TITLE INSURANCE AND TRUST COMPANY, an Arizona corporation, as Trustee, has caused its corporate name and seal to be hereunto affixed by its officers hereunto duly authorized this 3rd day of December, 1973.

ARIZONA TITLE INSURANCE AND TRUST COMPANY, an Arizona corporation, as Trustee

By Barbara Clayton  
Its Assistant Trust Officer

STATE OF ARIZONA        )  
                                  )    ss:  
County of Maricopa     )

The foregoing instrument was acknowledged before me this 3rd day of December, 1973, by Barbara Clayton, the Ass't Trust Officer of ARIZONA TITLE INSURANCE AND TRUST COMPANY, an Arizona corporation, on behalf of the corporation in its capacity as Trustee.

Patricia A. Gaudin  
Notary Public

My Commission Expires:

10/31/77