

C C & R'S

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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2002 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 05012

1 The undersigned, owner of that certain real property situated
2 in the State of Arizona, County of Maricopa, known as Scottsdale
3 Parkway Townhouse, more specifically described as follows:
4 Lots 9,10,11,12,13,14,15,30,31,32 and 33, SCOTTSDALE
5 PARKWAY, according to the plat of record in the office
6 of the Maricopa County Recorder in Book 76 of Maps,
7 page 21,
8 hereby covenants, agrees and declares that all of said property
9 and apartment units thereon are and will be held, sold and con-
10 veyed subject to the following covenants, conditions and restric-
11 tions, which are hereby declared to be for the benefit of all of
12 the property herein, and the owners thereof, their heirs, suc-
13 cessors, grantees and assigns. This Declaration, together with
14 the Plat heretofore recorded in Book 139 of Maps, page 11,
15 and the Declaration of Horizontal Regime, heretofore recorded in
16 Book 8779, page 139, establishes a plan for the individual
17 ownership of real property estates consisting of an area of cubic
18 space and the improvements contained therein, together with an
19 undivided 1/41st interest in the real property described above
20 and all of the remaining property which is hereinafter defined
21 and referred to as the "common elements." Said instruments estab-
22 lish and impose a plan of condominium ownership for the improve-
23 ment and development of said property described herein and the
24 adoption and establishment of covenants, conditions, and restric-
25 tions upon said land and upon any and all apartment units con-
26 structed thereon, and upon the use, occupancy and enjoyment thereof.
27 Every conveyance of any of said apartment units, or property or
28 portion thereof shall be and is subject to the said covenants,
29 conditions and restrictions, as follows:

1. Definitions:

(a) The terms "Apartment Unit," "Apartment," "Patio,"
"Laundry Room," "Parking Space" and "Common Elements"
shall have the definition which is given to them in the

Plat and Declaration of Horizontal Property Regime as
recorded in Book 139 of Maps, at page 11 thereof,
and Docket 8779 at page 139 respectively in the of-

fice of the County Recorder of Maricopa County, Arizona

(b) An "Owner" is any person or entity who owns an
Apartment Unit.

(c) "Association" means Scottsdale Parkway Townhouse
and its successors and is comprised of all the owners
of apartment units.

(d) The "Builder" shall refer to Blankenship Builders
Inc., and/or its assigns or successors in interest.

(e) The "Developer" shall refer to Blankenship
Builders, Inc., and/or its successors in interest or
assigns.

(f) "Majority of Owners" means the owners of more than
one-half ($\frac{1}{2}$) of the apartment units.

(g) "Common Expenses" shall include: (1) all expenses
of administration, of maintenance, operation, manage-
ment, repairs or replacement of the common elements and
of the portion of the apartment units required to be
maintained by the Association; (2) all expenses declared
to be common expenses by provisions of this Declaration
or By-Laws; (3) all taxes assessed against the common
elements; and (4) any valid charge against the Horizontal
Property Regime as a whole, which may include a pro-
portion of the water used by the individual apartment units
in the event common water meters are used.

2. Use Restrictions: The use of the property of the con-
dominium shall be in accordance with the following provisions
so long as the condominium exists.

2.1 Apartment Units. Each of the apartment units shall
be occupied only by a single family, its servants and guests, and

1 a residence and for no other purpose. Except as reserved to the
2 Developer, no apartment may be divided or subdivided into a single
3 unit, nor any portion thereof sold or otherwise transferred, with
4 first amending this Declaration to show the changes in the apart-
5 ments to be affected thereby.

6 2.2 Common Elements. The common elements shall be
7 used only for the purposes for which they are intended in the
8 furnishing of services and facilities for the enjoyment of the
9 apartments.

10 2.3 Nuisances. No nuisances shall be allowed upon
11 condominium property, nor any use or practice which is the source
12 of annoyance to residents or which interferes with the peaceful
13 possession and proper use of the property by its residents. All
14 parts of the property shall be kept in a clean and sanitary con-
15 dition, and no rubbish, refuse or garbage allowed to accumulate
16 nor any fire hazard allowed to exist. No apartment owner shall
17 permit any use of his apartment or make any use of the common el-
18 ements which will increase the rate of insurance upon the condom-
19 inum property.

20 2.4 Lawful Use. No immoral, improper, offensive or
21 unlawful use shall be made of the condominium property nor any
22 part thereof; and all valid laws, zoning ordinances and regula-
23 tions of all governmental bodies having jurisdiction thereof shall be
24 observed. The responsibility of meeting the requirements of go-
25 vernmental bodies which require maintenance, modification or rep-
26 air of the condominium property shall be the same as the responsibi-
27 lity for the maintenance and repair of the property concerned.

28 2.5 Leasing. Entire apartments may be rented provi-
29 the occupancy is only by the lessee and his family, its servants
30 and guests. No rooms may be rented, except as a part of an apart-
31 ment and no transient tenants may be accommodated.

32 2.6 Regulations. Reasonable regulations concerning

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1 the use of the condominium property may be made and amended from
2 time to time by the Board of Directors of the Association; pro-
3 vided, however, that all such regulations and amendments thereto
4 shall be approved by not less than 21 votes of the Association
5 before such shall become effective. Members not present at
6 meetings considering such regulations or amendments thereto may
7 express their approval in writing. Copies of such regulations and
8 amendments thereto shall be furnished by the Association to all
9 apartment owners and residents of the condominium upon request.

10 2.7 The following items shall not be permitted on the
11 property:

- 12 (a) Clotheslines
- 13 (b) No outside visible antennas of any type:
- 14 (c) No animals, livestock or poultry of any kind shall
- 15 be raised, bred or kept on any lot, except that dogs, cats
- 16 or other household pets may be kept provided that they are
- 17 not kept, bred or maintained for any commercial purposes.

18 2.8 No advertising signs (except one of not more than
19 five square feet "For Rent" or For Sale" sign per apartment) bill-
20 boards, unsightly objects, or nuisances shall be erected, placed
21 or permitted to remain on the premises, nor shall the premises be
22 used in any way or for any purpose which may endanger the health
23 or unreasonably disturb the owner of any apartment or any resident
24 thereof. Further, no business activities of any kind whatever
25 shall be conducted in any building or in any portion of the premises.
26 Provided, further, however, the foregoing covenants shall not ap-
27 ply to the business activities, signs and billboards, or the con-
28 struction and maintenance of buildings, if any, of the Builder,
29 the Developer or their agents and assigns during the construction
30 and sale period.
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1 2.9 Any and all boats and campers mounted on trucks
2 shall be kept covered and in the parking spaces and are specifi-
3 cally restricted from parking on the streets and common elements
4 Trailers and trucks in excess of 3/4 ton shall be completely
5 prohibited from parking, standing or being kept within the con-
6 fines of the Horizontal Property Regime, including the parking
7 spaces.
8

9 2.10 All equipment of any kind, woodpiles, storage
10 piles, trunks, boxes or any other items of a similar nature sha-
11 be kept in the laundry room or apartment and shall not be per-
12 mitted to remain on the patio or in the common elements. All
13 garbage and/or trash shall be kept in the receptacles provided
14 for it and all such receptacles shall be kept in the receptacle
15 area provided for them. No rubbish, trash or garbage shall be
16 permitted to be kept in the patio area or on the common elements
17 except in the area provided for the same by the Builder and/or
18 Developer.
19

20 2.11 No planting or gardening shall be done outside the area
21 of the patio and no fences, hedges or walls shall be erected or
22 maintained upon said premises, outside the area of the patios,
23 except such as are installed in accordance with the initial con-
24 struction of the buildings located thereon or as approved by the
25 Association's Board of Directors or its designated representative.
26 The individual apartment unit owner shall have the right to do
27 whatever gardening or planting he desires within his patio excep-
28 that no planting shall be done which would constitute a hedge
29 higher than the patio fences nor which will materially harm the
30 exterior design of the entire condominium project. Except for
31 the right of ingress and egress and except for the intended use
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PHOENIX, ARIZONA 85012

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of the common area facilities by the Apartment Unit owners, the owners of Apartment Units are hereby prohibited and restricted from using any land or airspace outside of their apartment units except as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners of Apartment Units of Scottsdale Parkway Townhouse and is necessary for the protection of said owners.

2.12 Any wall which separates one apartment from another shall not be used by an owner of the Apartment Unit for the purpose of attaching anything to said wall which is recreational or which produces noise or sound in any way whatsoever nor shall any owner be permitted to penetrate any said wall in excess of two (2) inches from the exterior of said wall.

2.13 Proviso. Provided, however, that until Developer has completed and sold all of the Apartment Units of the condominium, neither the Apartment Unit Owners nor the Association nor the use of the condominium property shall interfere with the completion of the contemplated improvements and the sale of the apartment units. Developer and Builder may make such use of the unsold units and common elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, the showing of property and the display of signs.

3. Maintenance, Management, Alteration and Improvement. Responsibility for the maintenance of the condominium property, and restrictions upon the alteration and improvement thereof, shall be as follows:

3.1 Apartment Units.

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

(1) All portions of the perimeter walls of an apartment, which walls shall include the outside walls of the apartment, the patio fences (except for the interior surfaces of the fences) and all fixtures (except the air conditioning and heating unit which is the apartment owner's responsibility) on the exterior thereof and the boundary walls of the apartments; all portions of the floors and ceilings including those which separate the lower floor from the second floor; all portions of the load bearing columns and load bearing walls, and the roof and beams thereof, except that it shall not include any interior surfaces of the said walls, floors, ceilings and/or load bearing columns of the apartment, which said interior surfaces shall be the responsibility of the apartment owner.

(2) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions of an apartment maintained by the Association; except that all said conduits, ducts, plumbing, wiring and other facilities which provide service solely to one apartment unit shall be the responsibility of the owner of said apartment unit at said owner's sole expense.

(3) All incidental damage caused to an apartment unit by such work shall be promptly repaired at the expense of the Association.

(b) By the apartment unit owner. The responsibility of the apartment unit owner shall be as follows:

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3803 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

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

(2) ~~Not to paint or otherwise decorate or change~~ the appearance of any portion of the exterior or the apartment unit building, including the exterior lights and the exterior of the patio fences.

(3) It shall be the responsibility of the Apartment Unit Owner to maintain the patio including all yard work and gardening required within the patio area.

(4) To promptly report to the Association any defect or need for repairs the responsibility for the remedying of which is that of the Association.

(c) Alteration and Improvement. Except as elsewhere reserved to Developer, neither an Apartment Unit Owner nor the Association shall make any alterations in the portions of an apartment unit or an apartment unit building which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do anything which would jeopardize the safety or soundness of the apartment unit building, or impair any easement, without first obtaining approval in writing of owners of all other apartment units and the approval of the Board of Directors of the Association. A copy of plans for all of such work prepared by an architect licensed to practice in this state shall be filed with the Association prior to the start of the work.

3.2 Common Elements.

(a) By the Association. The maintenance, management and operation of the common elements shall be the responsibility and the expense of the Association, except that that the maintenance yard work in the patios shall be the responsibility of the individual Apartment Unit Owners.

(b) Alteration and Improvement. After the completion of the improvements included in the common elements which are contemplated by this Declaration, there shall be no alteration nor further improvement of common elements without prior approval in writing by the record owners of all of the apartment units; provided, however, that any alteration or improvement of the common elements bearing the approval in writing of the record owners of not less than 21 apartment units and which does not interfere with the rights of any owners without their consent, may be done if the owners who do not approve are relieved from the cost thereof. The amount of any cost not so assessed shall be assessed to the approving apartment unit owners in equal amounts. All apartment unit owners shall own a full one-forty-first (1/41st) interest in the common elements which are altered or further improved, whether or not the apartment unit owner contributes to the cost thereof.

4. Assessments: The making and collection of assessments against apartment unit owners for common expenses shall be as follows, and each apartment unit owner, for himself, his heirs, successors and assigns, covenants that each apartment unit shall be subject to an assessment in the amount to be determined in the following manner:

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PHOENIX, ARIZONA 85012

4.1 Such apartment unit's prorata share of all common expenses.

4.2 Such apartment unit's prorata share of such sum as the Board of Directors of the Association shall determine to be fair and prudent for the ~~establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein, including fire, liability and other hazard insurance premiums.~~

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

4.4 Each apartment unit's prorata share shall be 1/41st of the total amount determined under sub-paragraphs 4.1, 4.2 and 4.3 above.

4.5 The amount to be prorated among the owners of the apartment units pursuant to paragraphs 4.1, 4.2, 4.3 and 4.4 above shall be established annually by the Board of Directors of the Association. Said amount shall be comprised of an estimate of the amount which will be required in the future year and also any amount or sums which were spent in the prior year which were not covered or paid for by the estimated amount for said prior year. (At any time during the year, if it appears that the amount so determined by the Board of Directors of the Association is too high or too low, the Board of Directors may increase or decrease the said annual assessment and also the amount prorated to each apartment unit and also the monthly amount to be paid by the Apartment Unit Owner.

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At the time of the first conveyance of each apartment unit, and from time to time thereafter, at least annually, the ~~Board of Directors~~, for its designated representative, shall notify the owners of the apartment units of the amount of the annual assessment, ~~the amount to be prorated~~ to each apartment unit, and the monthly amount which each apartment unit owner shall pay, which monthly amount shall be paid by the apartment unit owner, in advance, once a month, until there has been a change in the amount in the manner outlined above. The said monthly amount shall be paid to the Board of Directors or to any agent appointed by the Board of Directors to collect said payments, which agent may be the holder of the mortgage on the apartment unit.

Each apartment unit owner, for himself, his heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period that he is an owner, he will remit these charges directly to the party or parties as directed by the Association's Board of Directors.

Each apartment unit owner further agrees that these charges if not paid within twenty (20) days after the first day of each month shall become a lien upon said owner's apartment unit and shall continue to be such lien until fully paid. This lien shall be subordinate to the lien of any first mortgage.

Each apartment unit owner, by his acceptance of a deed to an apartment unit hereby expressly vests in the Association or its agents, the right and power to bring all action against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods

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3003 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage of real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. In addition, the Association may make payments on any prior lien, including any mortgage or taxes on the apartment unit, and such payments shall be added to the lien in favor of the Association. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other apartment unit owners. The Association, acting on behalf of the apartment unit owners, shall have the power to bid in such a foreclosure sale and to acquire and hold, lease, mortgage and convey the property so purchased.

No owner of an apartment unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of his apartment unit.

4.6 All sums due to the Association shall carry interest at the rate of 8% per annum from the due date until paid. All payments on account shall be first applied to interest and then to the assessment payment first due.

5. Association. The operation of the condominium shall be by an unincorporated association which shall be organized and shall fulfill its functions pursuant to the following provisions.

5.1 Name. The name of the Association shall be SCOTTSDALE PARKWAY TOWNHOUSE.

5.2 Powers. The Association shall have all of the powers and duties set forth in the Condominium Act, except

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SUITE 2512 FIRST FEDERAL SAVINGS BUILDING
3003 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

as limited by this Declaration and the By-Laws, and all of the powers and duties reasonably necessary to operate the condominium as set forth in this Declaration and the By-Laws and as they may be amended from time to time. Provided, however, that the power of the Association to purchase an Apartment Unit of the condominium shall be limited to purchase at sales in foreclosure of liens for assessments for common expenses, at which sales the Association shall bid no more than the amount secured by its lien. This provision shall not be changed without unanimous approval of the members and the joinder of all record owners of mortgages upon the condominium.

5.3 Members.

(a) Qualification. The members of the Association shall consist of all of the record owners of apartment units.

(b) Change of membership. Change of membership in the Association shall be established by recording in the records of Maricopa County Recorder's Office, a deed or other instrument establishing a record title to an apartment unit in the condominium and the delivery to the Association of a certified copy of such instrument, the owner designated by such instrument thereby becoming a member of the Association. The membership of the prior owner shall thereby be terminated.

(c) Until such time as the Developer sells 38 Apartment Units, or at such sooner time as the Developer in its sole discretion, may determine and decide to relinquish control of the Association to the other Apartment

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SUITE 2512 FIRST FEDERAL SAVINGS BUILDING
3003 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

ment Unit owners by giving said owners written notice of the Developer's relinquishment of control (which event shall be referred to as the "Transfer of Control Date") for the purpose of voting, there shall be two classes of membership as follows:

CLASS A Class "A" members shall be all owners of Apartment Units with the exception of the Developer.

A Class "A" member shall not have the right to vote until the "Transfer of Control Date." Thereafter, each Class "A" member shall be entitled to one vote for each Apartment Unit owned.

CLASS B Class "B" member shall be the Developer. The Class "B" member shall be entitled to one vote for each Apartment Unit owned by it. For this purpose, an Apartment Unit shall mean each Apartment Unit depicted on the Plat recorded in Book 139, page 11, records of Maricopa County Recorder's Office, even though no construction of the surrounding walls, roof or other structure has yet been commenced or completed.

(d) Designation of Voting Representative. If an apartment unit is owned by one person his right to vote shall be established by the record title to his apartment unit. If an apartment unit is owned by more than one person, or is under lease, the person entitled to cast the vote for the apartment unit shall be designated by a certificate signed by all of the record owners of the apartment unit and filed with the secretary of the Association. If an apartment unit is owned by a corporation, the person entitled to cast the vote for

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SUITE 2612 FIRST FEDERAL BANKING BUILDING
3003 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

the apartment unit shall be designated by a certificate of appointment signed by the president or vice-president and attested by the secretary or assistant secretary of the corporation and filed with the secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the apartment unit concerned. A certificate designating the person entitled to cast the vote of the apartment unit may be revoked by any owner thereof.

(e) Approval or disapproval of matters. Whenever the decision of an apartment unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

(f) Restraint upon assignment of shares in assets. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his apartment unit.

5.4 Board of Directors. The affairs of the Association shall be conducted by a Board of five Directors who shall be designated in the manner provided in the By-Laws, and who are not be members of the Association.

5.5 Indemnification. Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees,

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ATTORNEYS AT LAW
SUITE 2012 FIRST FEDERAL BANKING BUILDING
3003 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

1 reasonably incurred by or imposed upon him in connection with
2 any proceeding to which he may be a part, or in which he may
3 become involved, by reason of his being or having been a
4 director or officer of the Association, or any settlement
5 thereof, whether or not he is a director or officer at
6 the time such expenses are incurred, except in such cases
7 wherein the director or officer is adjudged guilty of
8 willful misfeasance or malfeasance in the performance
9 of his duties; provided that in the event of a settlement
10 the indemnification herein shall apply only when the
11 Board of Directors approves such settlement and re-
12 imbursement as being for the best interests of the
13 Association. The foregoing rights of indemnification
14 shall be in addition to and not exclusive of all other
15 rights to which such director or officer may be
16 entitled.
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19 5.6 Limitation upon Liability of Association.

20 Notwithstanding the duty of the Association to maintain
21 and repair parts of the condominium property, the
22 Association shall not be liable for injury or damage
23 other than the cost of maintenance and repair, caused
24 by any latent condition of the property to be maintained
25 and repaired by the Association, or by the elements
26 or other persons or owners.
27

28 5.7 Property in Trust. All funds and the titles

29 of all properties acquired by the Association and the
30 proceeds thereof shall be held in trust for the members
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32

1 of the Association in accordance with the provisions hereof
2 and the By-Laws.

3 5.8 In the event any lot owner shall be in arrears
4 in the payment of any amounts due under any of the pro-
5 visions of this Declaration for a period of fifteen (15)
6 days, or shall be in default in the performance of any
7 of the terms of this Declaration for a period of fifteen
8 (15) days, said lot owner's right to vote as a member of
9 the Association shall be suspended and shall remain sus-
10 pended until all payments are brought current and all
11 defaults remedied.
12

13 6. Insurance:

14 6.1 Authority to purchase. All insurance policies
15 upon the condominium property shall be purchased by the
16 Association for the benefit of the Association and the
17 apartment unit owners and their mortgagees as their interest
18 may appear, and provisions shall be made for the issuance
19 of certificates of mortgagee endorsement to the mortgagees
20 of apartment unit owners. Such policies and endorse-
21 ments thereon shall be deposited with the Association.
22 Apartment unit owners may obtain insurance coverage
23 at their own expense upon their own personal property
24 and for their personal liability and living expense,
25 and the Apartment Unit owner may also obtain casualty
26 insurance on the portion of the apartment building which
27 surrounds his cubic space apartment such as the walls,
28 roof, floor, ceilings, etc.
29

30 6.2 Coverage:

31 (a) Casualty. All buildings and improvements upon
32 the land (including such interior walls as were origin-
ally constructed) and all personal property included

ATTORNEYS AT LAW
SUITE 2512 FIRST FEDERAL SAVINGS BUILDING
3003 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

in the common elements shall be insured by the Association in an amount equal to the maximum insurable replacement value, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

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

(2) 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.

(b) Public liability in a minimum amount of \$500,000.00 and in such higher amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverages, and with cross liability endorsement to cover liabilities of the apartment unit owners as a group to an apartment unit owner.

(c) Workmen's compensation policy to meet the requirements of law.

(d) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

(e) The said insurance policy purchased by the Association shall, to the extent possible, contain the following provisions:

(1) That the coverage afforded by said policy shall not be brought into contribution or proration with any insurance which may be purchased by apartment unit owners or their

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3003 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012

mortgagees;

(2) That the conduct of any one or more apartment unit owner shall not constitute grounds for avoiding liability on said policy;

(3) That any "no other insurance" clause should exclude insurance purchased by apartment unit owners or their mortgagees;

(4) That there shall be no subrogation with respect to the Association, its employees, apartment unit owners and members of their household or it should name said persons as additional insureds.

6.3 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

6.4 Insurance trustee; shares of proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the apartment unit owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association. Notwithstanding anything herein to the contrary, including any provision for a mortgagee, the Association shall hold all insurance proceeds collected by it in trust for rebuilding the damaged common elements and apartment unit buildings. The Association or its agents shall have exclusive authority to negotiate with the insurance carrier and to adjust losses, make settlements and give releases to the insurance carrier and to collect monies from the insurance carrier.

6.5 It shall be the individual responsibility of each owner to provide, as he sees fit, homeowners

1 liability insurance, theft or other insurance covering per
2 sonal property damage and loss.

3 6.6 In the event of damage or destruction to the
4 property by fire or other casualty, the Board of Directors
5 shall, upon receipt of the insurance proceeds, contract to
6 rebuild or repair such damaged or destroyed portions of the
7 property to as good condition as formerly. All such insur-
8 ance proceeds shall be deposited in a bank or other finan-
9 cial institution, the accounts of which bank or other finan-
10 cial institution are insured by a Federal governmental
11 agency, with the proviso agreed to by said bank or institu-
12 tion that such funds may be withdrawn only by signature of
13 at least 1/3 of the members of the Board of Directors, or
14 an agent duly authorized by the Board of Directors. The
15 Board of Directors shall contract with any licensed contrac-
16 tor, who shall be required to provide a full performance and
17 payment bond for the repair, reconstruction or rebuilding
18 of such destroyed building or buildings. In the event
19 the insurance proceeds are insufficient to pay all the
20 costs of repairing and/or rebuilding to the same condition
21 as formerly, the Board of Directors shall levy a special
22 assessment against the apartment unit owners whose
23 apartment unit building was damaged to make up any such
24 deficiency. The proportion of said deficiency which
25 shall be assessed against each said damaged apartment unit
26 shall be in the same proportion that the cost of repair
27 of each said apartment unit bore to the total cost of
28 repairs required to be made to the apartment building
29 which was damaged. Provided, however, that the special
30 assessment shall be levied equally against all apartment
31 unit owners to make up any deficiency for repair or
32 rebuilding of the common elements not a physical part of

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an apartment unit. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and owners as their interest may then appear. Such payments shall be made to all such owners and their mortgagees in proportion to their undivided interests.

6.7 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the apartment owners pursuant to the provisions of paragraph 6.6

6.8 All said special assessments shall be paid within 60 days from the date of levy and may be enforced by foreclosure in the same manner as is specified in paragraph 4.5.

6.9 Plans and specifications. Any reconstruction or repair must be substantially in accordance with the plans or specifications for the original building, or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is an apartment building, by the owners of all damaged property therein, which approvals shall not be unreasonably withheld.

6.10 Responsibility. As to damage which is only to those parts of an apartment unit for which the responsibility of maintenance and repair is that of the apartment unit owner, then the apartment unit owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of

1 reconstruction and repair after casualty shall be that of
2 the Association; provided, however, that the interior walls
3 of the apartment unit which were originally built in said
4 apartment shall be restored by the Association, provided the
5 particular loss is covered by the insurance provided by the
6 Association.

7 7. Management Agreement. Each owner hereby agrees to be
8 bound by the terms and conditions of all management agreements
9 entered into by the Association. A copy of all management agree-
10 ments shall be available to each owner. Any and all management
11 agreements entered into by the Association shall provide that
12 said management agreement may be cancelled by an affirmative vote
13 of three-quarters (3/4) of the members of the Association.

14 8. The common elements shall remain undivided; and no owner
15 shall bring any action for partition, it being agreed that this
16 restriction is necessary in order to preserve the rights of the
17 owners with respect to the operation and management of the common
18 elements.

19 9. The responsibility and expense for maintenance of elect-
20 rical, plumbing and other utilities which provide service solely to an in-
21 dividual apartment unit shall remain with the owner of said apart-
22 ment unit as is set forth in paragraph 3.1(a)(2) hereof.

23 10. Each apartment unit shall be subject to an easement
24 for encroachments created by construction, settling and overhangs
25 as designed or constructed by the original builder. A valid
26 easement for said encroachments and for the maintenance of same,
27 so long as it stands, shall and does exist. In the event the
28 multi-family structure is partially or totally destroyed, and
29 then rebuilt, the owners of apartments agree that minor en-
30 croachments of parts of the adjacent apartment units or common
31 elements due to construction shall be permitted and that a valid
32 easement for said encroachment and the maintenance thereof shall

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exist.

11. There is hereby created a blanket easement upon, across and under the above described property for reasonable ingress, installation, replacing, repairing and maintaining 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 electrical and/or telephone company to erect and maintain the necessary equipment on said property and to affix and maintain the electrical and/or telephone wires, conduits and circuits on, above, across and under the common elements, including the apartment unit building. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially programmed and approved by the Builder of the condominium or thereafter approved by said Builder or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

12. (a) The covenants, restrictions, reservations and conditions and easements contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, sub-leasing or occupying any apartment unit, their heirs, successors, executors, administrators, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions may be enforced by the Association or its Board of Directors, which shall have the right and duty to enforce the same and expend Association moneys in pursuance thereof, and also may be enforced by the owner of any apartment unit or any one or more of said parties. An action to abate the

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breach of any of the said covenants, restrictions, reservations and conditions may be brought against any apartment unit owner even though said breach was in existence at the time the owner acquired an interest in or title to said apartment unit. All charges against an apartment unit made by the Association pursuant to any of the provisions hereof shall constitute a lien upon the said apartment unit and all purchasers shall take title to said apartment unit subject to any said liens which have accrued prior to the date of purchase, except as to purchasers who have acquired title through foreclosure of a first mortgage and the subsequent Sheriff's sale (or through any equivalent proceedings such as, but not limited to the taking of a deed in lieu of foreclosure), and except as to successors in interest to said purchasers, and as to those purchasers, and their successors in interest, they shall take title pursuant to the provisions of paragraphs 12(b)(1)(2) & (3).

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

(1) An action to abate the breach of any of the covenants, restrictions, reservations and conditions may be brought against the purchasers who have acquired title through foreclosure of a first mortgage and the subsequent Sheriff's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in the said lot.

1 (2) During the pendency of any proceedings to fore-
2 close the first mortgage, including any period of redemption
3 the first mortgagee (or any receiver appointed in such acti
4 may, but need not, exercise any or all of the rights and
5 privileges of the owner of the apartment unit, including bu
6 not limited to the right to vote as a member of the Associa
7 to the exclusion of the owner's exercise of such rights and
8 privileges.
9

10 (3) The first mortgagee, or any other party acquiring
11 title to a mortgaged apartment unit through foreclosure sui
12 of the first mortgage or through any equivalent proceedings
13 such as, but not limited to, the taking of a deed in lieu
14 of foreclosure, and the successors in interest to said pur-
15 chasers, shall acquire title to the mortgaged apartment uni
16 free and clear of any lien authorized by or arising out of
17 of the provisions of this Declaration which secures the pay
18 ment of any assessment for charges accrued prior to the fin
19 conclusion of any such foreclosure suit or equivalent
20 proceedings, including the expiration date of any
21 period of redemption, except as follows: Any such
22 unpaid assessment against the apartment unit foreclosed
23 which may be treated as an expense common to all of the
24 apartment units, which expense may be collected by a pro
25 rata assessment of 1/41st of the total amount against each
26 of the apartment units, including the apartment unit fore-
27 closed against, and which pro rata assessment may be en-
28 forced as a lien against each apartment unit in the manner
29 provided for other assessments authorized in this Declarati
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Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting owner of the respective apartment unit to the Association, and the Board of Directors may use reasonable efforts to collect the same from the owner even after he is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquires title to a mortgage unit by foreclosure suit of said first mortgage, or by equivalent procedures, for all assessments authorized by this Declaration which accrue and are assessed after the date the acquirer has acquired title to the apartment unit free and clear of any right of redemption.

13. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any owner or owners in favor of the other owners.

14. Compliance and Default. Each apartment unit owner shall be governed by and shall comply with the terms of the Declaration of Horizontal Regime, this Declaration of Restriction, the By-Laws and regulations adopted pursuant thereto, and said documents and regulations adopted pursuant thereto, and said documents and regulations as they may be amended from time to time. Failure of an apartment unit owner to comply therewith shall entitle the Association or other apartment unit owners to the following relief in addition to the remedies provided by the Horizontal Regime Act of the State of Arizona.

14.1 Negligence. An apartment unit owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness

1 or by that of any member of his family or his or their guest
2 employees, agents, or lessees, but only to the extent that
3 such expense is not met by the proceeds of insurance carried
4 by the Association. Such liability shall include any in-
5 crease in fire insurance rates occasioned by use, misuse,
6 occupancy or abandonment of an apartment unit or its ap-
7 purtenances or the common elements.
8

9 14.2 Costs and attorneys' fees. In any proceeding
10 arising because of an alleged failure of an apartment unit
11 owner to comply with the terms of the Declaration, By-Laws
12 and regulations adopted pursuant thereto, and said documents
13 and regulations as they may be amended from time to time, the
14 prevailing party shall be entitled to recover the costs of the
15 proceeding and such reasonable attorneys' fees as may be
16 awarded by the Court.
17

18 14.3 No waiver of Rights. The failure of the Association
19 or any apartment unit owner to enforce any covenant, res-
20 triction or other provision of the Horizontal Regime, this
21 Declaration, the By-Laws, or the regulations adopted pur-
22 suant thereto, shall not constitute a waiver of the right
23 to do so thereafter.

24 15. Termination.

25 15.1 Since there are no more than five apartment units
26 in an apartment building and there are eleven separate
27 buildings, any damage, either partial or total to an apart-
28 ment unit will materially affect the value of the undamaged
29 apartment buildings, even though they are completely free
30 of any physical damage and are completely habitable;
31 therefore it shall be mandatory that all damage done to
32 an apartment unit shall be repaired and/or the apartment
unit rebuilt and reconstructed pursuant to the provisions

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of paragraphs 6 through 6.10 hereof.

15.2 The Horizontal Property Régime may be terminated by agreement of all of the owners and holders of mortgages and encumbrances pursuant to the provisions of ARS 33-556.

15.3 Shares of owners after termination. After termination of the condominium, the apartment unit owners shall own the condominium property and all assets of the Association as tenants in common in undivided shares, and their respective mortgages and lienors shall have mortgages and liens upon the respective undivided shares of the apartment unit owners. Such undivided shares of the apartment unit owners shall be the same as the undivided shares in the common elements appurtenant to the owners' apartment units prior to the termination.

15.4 Amendment. This section concerning termination cannot be amended without consent of all apartment unit owners and of all owners of mortgages required to approve termination by agreement.

16. These Declarations of Covenants, Conditions and Restrictions, unless specifically prohibited elsewhere herein as to particular provisions, may be amended by a majority vote of the members of the Association then eligible to vote.

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

18. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the re-

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1 remaining portions of this instrument or any part thereof, all of
2 which are inserted conditionally on their being held valid in law
3 and in the event that one or more of the phrases, sentences,
4 clauses, paragraphs or sections contained therein should be in-
5 valid or should operate to render this agreement invalid, this
6 agreement shall be construed as if such invalid phrase or phrases,
7 sentences or sentence, clause or clauses, paragraph or paragraphs,
8 or section or sections had not been inserted. In the event that
9 any provision or provisions of this instrument appear to be
10 violative of the Rule against Perpetuities, such provisions or
11 provision shall be construed as being void and of no effect as
12 of twenty-one (21) years after the death of the last surviving
13 of Rudolph Mariscal, Phillip Weeks and their respective wives
14 and children who shall be living at the time this instrument is
15 executed, whichever is the later.

16 DATED, this 24th day of June, 1971.

17 STEWART TITLE & TRUST OF PHOENIX,
18 an Arizona corporation, as Trustee,

19 By [Signature]
20 Vice-President

21 By [Signature]
22 Trust Officer

23 STEWART TITLE & TRUST OF PHOENIX,
24 an Arizona corporation, as mortgagee,

25 By [Signature]
26 Vice-President

27 By [Signature]
28 Secretary-Treasurer