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DECLARATION OF HORIZONTAL PROPERTY REGIME
AND
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
ESTABLISHING AND GOVERNING
EL MORADA DEL SOL CONDOMINIUMS

A PHASED RESIDENTIAL CONDOMINIUM PROJECT
PHOENIX, ARIZONA

INDEX
TO
DECLARATION OF HORIZONTAL PROPERTY REGIME
AND
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
EL MORADA DEL SOL CONDOMINIUMS

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EXHIBIT "B" - LEGAL DESCRIPTION OF PARCEL (PHASE I)
EXHIBIT "C" - LEGAL DESCRIPTION OF ADDITIONAL PARCEL

THIS DECLARATION is made as of the date hereinafter set forth by 38th Street Partnership, an Arizona general partnership, (hereinafter referred to as the "Declarant").

R E C I T A L S

(A) Declarant is the fee owner of that certain real property situated in the City of Phoenix, County of Maricopa, State of Arizona, described as Phase One on the Plat attached as EXHIBIT "A" hereto and hereby incorporated by reference (Phase One is hereinafter referred to as the "Parcel" and the metes and bounds description of which is set forth on Exhibit "B");

(B) Declarant desires to submit the Parcel, together with all buildings and improvements now or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (hereinafter referred to as the "Property"), to a Horizontal Property Regime originally consisting of fourteen (14) Condominium Units pursuant to Sections 33-551 through 33-561, Arizona Revised Statutes;

(C) Declarant desires to reserve the right to add all or part of the Additional Parcel (as hereafter defined) and thereby annex a maximum of 28 Condominium Units into the Horizontal Property Regime in accordance with a coordinated development plan;

(D) Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners or Occupants of the Property, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein (hereinafter collectively referred to as the "Restrictions") which shall run with and be a burden upon the Property;

(E) Declarant intends that the Owners, Occupants, Lenders, and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property; and for establishing rules for

the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and the quality of life therein;

NOW, THEREFORE, Declarant, as owner of the Property and for the purposes above set forth, declares as follows:

I

DEFINITIONS

As used herein, unless the context otherwise requires:

Section 1.01. "Act" shall mean Sections 33-551 through 33-561, Arizona Revised Statutes, pertaining to Horizontal Property Regimes in the State of Arizona.

Section 1.02. "Additional Parcel" shall refer to that real property situated in the City of Phoenix, County of Maricopa, State of Arizona, consisting of that portion of the Plat (as hereafter defined and attached as Exhibit "A") designated as Phase Two, all or part of which may be added to the Property in one or more additional phases by Supplemental Declaration pursuant to the option reserved by Declarant in accordance with ARTICLE XIV hereof. The metes and bounds description of the Additional Parcel is attached as Exhibit "C."

Section 1.03. "Association" shall refer to the EL MORADA DEL SOL HOMEOWNERS ASSOCIATION, INC., whose membership shall include each Owner of a Condominium Unit in the Property, and whose function shall be to serve as the Council of Co-Owners as defined in the Act. The Association will be incorporated under the name of EL MORADA DEL SOL HOMEOWNERS ASSOCIATION, INC., an Arizona non-profit corporation, prior to the conveyance of a Condominium Unit by Declarant.

Section 1.04. "Association Rules" shall mean and refer to the rules and regulations adopted by the Board pursuant to this Declaration and in furtherance of the Bylaws and in accordance with Section 33-561 of the Act.

Section 1.05. "Assessments" shall mean the charges against Owners to defray the Common Expenses as well as

miscellaneous special Assessments, special Assessments for capital improvements, and special Assessments for the purpose of restoring and reconstructing the Property in the event of casualty, all as provided in this Declaration.

Section 1.06. "Board" shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the governing body of the Association.

Section 1.07. "Building" shall mean and refer to each of the principal structures containing Condominium Units which are located or constructed on the Parcel (as well as the principal structures containing Condominium Units which are located or constructed on any part of the Additional Parcel) and which form part of the Property as shown on the Plat, whether or not such structures are composed of one or more floors or stories.

Section 1.08. "Bylaws" shall mean the Bylaws adopted by the Board pursuant to Section 33-561 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time.

Section 1.09. "Common Expenses" shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Elements which are maintained by the Association; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; (d) utilities (other than separately metered utilities for the Condominium Units), trash pickup and disposal, gardening, pool service, and other related services; (e) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Board in its discretion; (f) the establishment of reasonable reserves as the Board shall deem appropriate in its discretion; (g) other miscellaneous charges incurred by the Association or the Board pursuant to this Declaration, the Bylaws, or Association Rules in furtherance of the purposes of the Association or in discharge of the duties and powers of the

Association.

Section 1.10. "Common Elements" shall mean the entire Property, excluding the Condominium Units.

Section 1.11. "Condominium Unit" shall mean one or more rooms situated in a Building comprising part of the Property, designed or intended for independent use as a dwelling unit, together with the respective fractional interest in the Common Elements, and any exclusive and non-exclusive easements appurtenant thereto. Each Condominium Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat and as further described in Section 3.03 hereof; provided, however, that no structural components of the Building in which each Condominium Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility, water or sewer lines situated within such Condominium Unit and forming part of any system serving one or more other Condominium Units or the Common Elements shall be deemed part of a Condominium Unit. "Condominium Unit" shall be synonymous with "Apartment" as defined in Section 33-551 of the Act.

Section 1.12. "Declarant" shall mean 38th Street Partnership, an Arizona general partnership, its successors and assigns. Declarant is expressly intended to include any successor of the foregoing in the fee ownership of the Additional Parcel.

Section 1.13. "Declaration" shall mean this Declaration including all exhibits attached hereto, which are hereby incorporated by reference, and any and all amendments hereof and supplements hereto.

Section 1.14. "Lender" shall mean: (a) an institutional holder of a first mortgage or first deed of trust on a Condominium Unit which is a bank, savings and loan association, insurance company, established mortgage company, or other entity chartered under state or federal law; and (b) any Person who is a holder of a first mortgage or first deed of trust on a Condominium Unit.

Section 1.15. "Occupant" shall mean a Person or Persons, other than an Owner, in possession of a Condominium Unit.

Section 1.16. "Owner" shall mean the Person or Persons who are vested with record title of a Condominium Unit according to the records of the County Recorder of Maricopa County, Arizona; however, Owner shall not include a Person who holds an interest in a Condominium Unit merely as security for the performance of an obligation. Declarant shall be considered the record Owner of any Condominium Unit after the recordation of this Declaration or any Supplemental Declaration but prior to its initial conveyance by Declarant.

Section 1.17. "Parcel" shall refer to the single parcel of real property situated in the City of Phoenix, County of Maricopa, State of Arizona, designated as Phase One on the attached Exhibit "A" hereto and hereby incorporated by reference, and which constitutes the original real property committed to the Horizontal Property Regime under this Declaration. The metes and bounds description of the Parcel is attached as Exhibit "B."

Section 1.18. "Plat" means the plat of survey of the Property submitted to this Horizontal Property Regime and showing thereon fourteen (14) Condominium Units, each of which is identified by a number. A copy of the Plat is attached hereto as EXHIBIT "A." The original Plat is recorded in Book 271 of Maps, Page 41, in the records of the County Recorder of Maricopa County, Arizona. "Plat" shall also refer to any additional plat which may be recorded with any Supplemental Declaration.]

Section 1.19. "Person" shall mean a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 1.20. "Property" shall mean the Parcel, and any part of the Additional Parcel added pursuant to ARTICLE XIV hereof, together with all the Buildings, improvements and

permanent fixtures located thereon, and all easements and rights appurtenant thereto.

Section 1.21. "Restrictions" shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.

Section 1.22. "Supplemental Declaration" shall mean a written instrument recorded in the records of the County Recorder of Maricopa County, Arizona, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

II

CREATION OF THE HORIZONTAL PROPERTY REGIME

Section 2.01. Submission. Declarant hereby submits and subjects the Property to a Horizontal Property Regime pursuant to the Act, and in furtherance thereof, makes and declares the Restrictions contained in this Declaration, and Declarant hereby declares and agrees that the Property and all of the Condominium Units shall be held, conveyed, transferred, sold, leased, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of Declarant, the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns.

III

DESCRIPTION OF THE BUILDINGS, THE CONDOMINIUM

UNITS, AND THE COMMON ELEMENTS

Section 3.01. Name. The Property shall be known as "EL MORADA DEL SOL CONDOMINIUMS."

Section 3.02. Cubic Content Space of the Buildings. A description of the cubic content space of each Building containing Condominium Units with reference to its location on the

Parcel is set forth on the Plat. The horizontal boundaries shall be the planes of the top exterior surface elevations of the Buildings, as shown on the Plat, and the planes of the base elevations of the Buildings as shown on the Plat. The vertical boundaries shall be the exterior surface of the outside walls located on the perimeter lines of the respective Buildings as shown on the Plat.

Section 3.03. Cubic Content Space of Condominium Units. The cubic content space of each of the Condominium Units within the Buildings is set forth on the Plat. The horizontal boundaries of each Condominium Unit shall be the interior surface of the finished but undecorated ceiling and the interior surface of the finished but undecorated floor of the Condominium Unit as shown on the Plat. The vertical boundaries of each Condominium Unit shall be the interior surface of the finished but undecorated walls located on the perimeter lines of the respective Condominium Units as shown on the Plat.

Section 3.04. Description of Common Elements. The Common Elements shall consist of the entire Property, excluding the Condominium Units.

Section 3.05. Fractional Interest of each Condominium Unit in the Horizontal Property Regime. All Condominium Units are intended to be of the same size and the designation of the fractional interest which each Condominium Unit bears to the entire Horizontal Property Regime, which fractional interest shall constitute the fractional interest of each Owner in the Common Elements, shall be a fraction, the numerator of which will be one (1) and the denominator of which shall be the number of Condominium Units subject to this Declaration.

Section 3.06. Maintenance by Owners. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs, and replacements within his own Condominium Unit. Such obligation shall include, without limitation, the following: (a) the maintenance of all interior doors, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles,

wallpaper, paint, finished flooring, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls (all other components making up the construction of the walls, floors, or ceilings are part of the Common Elements); (b) repair and replacement of all window and door glass and related screens (including sliding glass doors for patios or balconies) and the interior and exterior cleaning of such window and door glass; (c) the maintenance of, in an open and unobstructed condition, all sewer and drainage pipes, water and other utility lines serving an Owner's respective Condominium Unit between the points at which the same enter the respective Condominium Unit and the points where the same join the utility lines serving other Condominium Units; and (d) maintenance, replacement, repair and restoration of all of the following which service an Owner's Condominium Unit exclusively: lighting fixtures, plumbing fixtures, stoves, refrigerators, hot water heaters, air conditioning and heating units wherever located (including compressors and condensers) and such other appliances, fixtures, and decorations as an Owner may install. An Owner shall also keep his carport, his patio or balcony area, and his storage space or spaces in a clean, sanitary, and attractive condition. An Owner may make non-structural alterations within his Condominium Unit with Association approval, which approval shall not be unreasonably withheld, but an Owner shall not make any structural or exterior alterations of the Common Elements.

Section 3.07. Maintenance by Association. The Association shall maintain and care for the Common Elements and the improvements thereon. Wherever such maintenance and care, other than ordinary wear and tear, is made necessary by the misuse of an Owner or such Owner's guests or invitees, the cost of such maintenance and repair shall be added to and become a part of the assessment to the Condominium Unit owned by such Owner and payable upon demand.

Section 3.08. Utilities. All utilities for individual Condominium Units, except water and sewer service charges (which

will be metered collectively and paid by the Association as a Common Expense item), will be metered separately to each Condominium Unit and such utility charges shall be the responsibility of the respective Owners.

IV

MANAGEMENT

Section 4.01. Association. The Association will be formed so as to constitute the "Council of Co-Owners" as that term is defined in the Act to serve as the governing body for all Owners and shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Elements, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, the Declaration, and 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 Declaration and the Bylaws.

Section 4.02. Membership. 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 such ownership interest, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association.

Section 4.03. Voting. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners other than Declarant. Class A Members shall be entitled to one (1) vote for each Condominium Unit owned. When more than one Person owns an interest in a Condominium Unit, each such Person shall be a member of the Association but the vote for such Condominium Unit shall be exercised as the co-Owners themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium Unit. The Association shall not be required to recognize the vote or written assent of any such co-Owner

except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

Class B. The Class B Member shall be Declarant. The Declarant shall be entitled to three (3) votes for each Condominium Unit which it owns; provided, however, the Class B Membership shall cease and be converted into Class A Membership not later than 120 days after the happening of whichever of the following is first in time:

(a) when the total votes outstanding in the Class A Membership equal or exceed the total votes outstanding in the Class B Membership; or

(b) on the third anniversary of the first conveyance of a Condominium Unit by Declarant to an Owner; provided, however, if the Property is expanded as provided in this Declaration, the third anniversary under this sub-paragraph (b) shall relate to the third anniversary of the first conveyance of a Condominium Unit in the then most recent phase of the Property; and further provided, however, the Class B Membership may be reinstated upon the expansion of the Property in the event the Class B Membership may have been previously converted to Class A Membership as provided in this Section 4.03.

Upon the termination of the voting rights of the Class B Member pursuant to either (a) or (b) above, the voting rights of the Class B Member shall automatically be converted to the voting rights of a Class A Member.

Notwithstanding anything herein to the contrary, the Class B Membership shall permanently cease and be converted to Class A Membership not later than a date five (5) years after the date of the conveyance by Declarant of the first Condominium Unit in the Property.

Section 4.04. Board of Directors. The governing body of the Association shall be the Board of Directors elected pursuant to the Bylaws. The Board shall consist of not less than three (3) members and not more than seven (7) members. The Board

may act to increase or decrease its membership within the aforesaid limits and to fill vacancies in its membership for the unexpired portion of any term. Except as otherwise provided in this Declaration, the Bylaws, or Association Rules, the Board may act in all instances on behalf of the Association. The Board shall adopt the Bylaws and Association Rules.

Section 4.05. Qualification of Directors. Except for Board 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, trustee or beneficiary of such Owner). If a Director shall cease to meet such qualifications during his term, he will thereupon cease to be a Director and his place on the Board shall be deemed vacant.

Section 4.06. Independent Manager. The Board may employ a responsible person or entity as manager to manage, operate and maintain the Common Elements, with all of the administrative functions and such other powers and duties as the Board may delegate from time to time and for such fees as the Board may establish consistent with other provisions of this Declaration. Any agreement for management of the Property shall be in writing and shall provide for termination by either the Association or the management agent for cause and termination without cause and without payment of a termination fee upon written notice of not less than thirty (30) nor more than ninety (90) days and the term of such agreement shall not exceed one (1) year, renewable by written agreement of the parties for successive periods of one (1) year.

Section 4.07. Action by Owners. The Board may not act on behalf of the Association to amend or terminate this Declaration. The Owners, acting by a majority of the voting power of the Association at a general or special meeting may, subject to the provisions of Section 5.13 hereinbelow, reject any act of the Board in fixing the annual budget, general Assessments, or special Assessments; provided such veto is exercised within

thirty (30) days after the Board action.

Section 4.08. Annual Meeting. The first meeting of the Association shall be held not later than one hundred twenty (120) days after the first conveyance of a Condominium Unit from Declarant to an Owner is recorded. Thereafter, the annual meeting shall be held as provided in the Bylaws.

Section 4.09. Right of Association to Enter Condominium Units. The Association, acting through the Board or its duly authorized agent, shall have the right at all times, upon reasonable notice (and at any time in case of an emergency), to enter upon or in any Condominium Unit to make repairs, or to abate any infractions or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by the lien provided in Section 5.01.

Section 4.10. Reserve Fund. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis, and such reserve shall be funded as part of monthly Assessments. Upon the Declarant first conveying a Condominium Unit to an Owner, the Association shall establish a working capital fund in an initial amount equal to two (2) months' Assessments for each and all of the Condominium Units then completely constructed. Notwithstanding anything herein to the contrary, and in addition to any impound of assessments required by an Owner's Lender, and not in lieu of an Owner's obligations to pay current monthly assessments, each Owner shall pay to the Association upon the close of the escrow pursuant to which the Owner's Condominium Unit is conveyed by Declarant to the Owner, a sum equal to the two (2) months' assessments as a contribution to the Association's working capital fund. Upon such payment by an Owner other than Declarant, the Association shall refund to Declarant a sum equal to the two (2) months'

Assessments Declarant had paid to the Association in respect to such conveyed Condominium Unit.

Section 4.11. Association Rules. The Board shall adopt Association Rules in furtherance of the Bylaws for the regulation and operation of the Property, including recreational facilities. The Board shall have the right to exclude from the use of the recreational facilities any Owner who is delinquent in the payment of any Assessment levied in accordance with ARTICLE V hereof.

Section 4.12. Architectural Control. No building, fence, wall, antenna, tower, awning, patio enclosure, or other structure of any kind or character shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition thereto, or change or alteration therein, be made until the plans and specifications showing the nature, kind, color, shape, height, materials, location and other material attributes of the same shall have been submitted to and approved in writing by the Board as to harmony of external design and location in relation to the Property as a whole and to surrounding structures and topography.

V

COVENANT FOR ASSESSMENTS

Section 5.01. Creation of Lien and Personal Obligation for Assessments. Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, of any Condominium Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree to pay to the Association, such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, court costs and other costs of collection as hereinafter provided, shall be a continuing lien upon the Condominium Unit against which each such

Assessment is made. Each such Assessment, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Condominium Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor.

Section 5.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance, care, preservation, and protection of the Property, enhancing the quality of life in the Property and the value of the Property including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, or in furtherance of any other duty or power of the Association.

Section 5.03. Regular Assessments.

(a) Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall distribute to each Owner a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board shall, at that time, subject to the provisions of Sections 5.03(b) hereinbelow, determine the amount of the regular Assessment to be paid by each Owner. Each Owner shall thereafter pay to the Association his regular Assessment in equal monthly installments on the first day of each month. In the event the Board shall, subject to the provisions of Sections 5.03(b) hereinbelow, determine that the estimate of the total charges for the current year is, or will become, inadequate to meet all the Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses, and determine the revised amount of the regular Assessment against each Owner, and the date or dates when due.

(b) Increases in the maximum annual regular Assessment shall be subject to the following provisions:

(i) Until the first day of the fiscal year of the Association immediately following the conveyance of the first Condominium Unit to an Owner, the maximum annual regular Assessment shall be Sixty and No/100 Dollars (\$60.00) per Condominium Unit.

(ii) From and after the first day of the fiscal year of the Association immediately following the conveyance of the first Condominium Unit to an Owner, the Board may increase the maximum annual regular Assessment each fiscal year above the maximum annual regular Assessment for the previous fiscal year, without a vote of the Owners, to the greater of:

(1) an amount five percent (5%) above the previous fiscal year's maximum annual regular Assessment, or

(2) an amount determined by multiplying the previous fiscal year's maximum annual regular Assessment by a fraction, the numerator of which is the Consumer Price Index, U.S. City Average, All Items, 1967 = 100, for Urban Wage Earners and Clerical Workers, published by the United States Department of Labor, Bureau of Labor and Statistics, or successor index published by the federal government or any agency thereof, and selected by the Board (the "Index") for the first month of the current fiscal year of the Association and the denominator of which is the Index for the first month of the previous fiscal year of the Association.

(iii) From and after the first day of the fiscal year of the Association immediately following the conveyance of the first Condominium Unit to an Owner, the maximum annual regular Assessment may be increased above the limits specified in Section 5.03(b) (ii) hereinabove by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

(iv) The Board may fix the maximum annual regular Assessment at an amount not in excess of the limits specified hereinabove.

Anything in this Section 5.03 to the contrary notwithstanding, the limitations of Section 5.03(b) shall not be applicable with regard to any increase in the maximum annual regular Assessment to the extent such increase is for the purpose of the Association collecting from the Owners either or both water utility service fees or sewer utility service fees.

Section 5.04. Capital Improvement Assessments. In addition to regular Assessments, the Board may, in any fiscal year, levy a capital improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Elements, including the necessary fixtures and personal property related thereto. The Board shall not impose a capital improvement Assessment without the approval of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. All amounts collected as capital improvements Assessments may only be used for capital improvements and shall be deposited by the Board in a separate account to be held in trust for such purposes and said funds shall not be commingled with any other funds of the Association.

Section 5.05. Uniform Rate of Assessment. All Assessments (other than special Assessments) shall be fixed at an equal amount for each Condominium Unit based upon a fraction where the numerator is one and the denominator is the number of Condominium Units in the Property.

Section 5.06. Certificate of Payment. The Association shall, after receipt of written demand, furnish to any Owner liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Condominium Unit

have been paid and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 5.07. Special Assessments. Special Assessments shall be levied by the Board against a Condominium Unit and its Owner to reimburse the Association for:

(a) costs incurred in bringing an Owner and his Condominium Unit into compliance with the provisions of this Declaration, the Bylaws, or Association Rules;

(b) any other charge designated as a special Assessment in this Declaration, Bylaws, or Association Rules; and

(c) attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

In the event the Association undertakes to provide materials or services which benefit individual Condominium Units and which can be accepted or rejected by individual Owners, an Owner, in accepting such materials or services, agrees that the costs thereof shall be a special Assessment.

Section 5.08. Date of Commencement of Assessments. Regular and other Assessments as to Condominium Units within the Property shall commence as to all such Condominium Units on the first day of the month following the conveyance of the first Condominium Unit by Declarant to an Owner. In the event additional Condominium Units are added by Supplemental Declaration, assessments shall not commence as to such additional Condominium Units until the first day of the month following the conveyance by Declarant of the first Condominium Unit in such phase. Until the Association makes an Assessment, the Declarant shall pay all Common Expenses of the Property.

Section 5.09. Staging of Assessments for Declarant. Notwithstanding anything herein to the contrary, Declarant shall not be liable for Assessments on uncompleted Condominium Units

until the conveyance of the first Condominium Unit in that respective phase.

Section 5.10. Reduction or Abatement of Regular Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the regular Assessments or may abate collection of regular Assessments as it deems appropriate.

Section 5.11. No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation: (i) a claim that the Association is not properly exercising its duties and powers as provided in this Declaration; or (ii) an Owner has made or elects to make no use of the recreational facilities.

Section 5.12. Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

Section 5.13. Notice and Quorum for any Action Authorized under Section 5.03(b)(iii) or Section 5.04. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.03(b)(iii) hereinabove or Section 5.04 hereinabove, shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting

shall be held more than sixty (60) days following the preceding meeting.

VI

EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES

Section 6.01. Delinquency. Any Assessment which is not paid when due is delinquent. Whenever an Assessment is delinquent the Board may, at its option, invoke any or all of the sanctions provided for herein.

Section 6.02. Late Charge. If any Assessment is not paid within ten (10) days after it becomes due and payable, the Owner shall be obligated to pay the late charge then provided for in the Bylaws. The amount of such late charge until paid shall constitute part of the Assessment lien as provided for in Section 5.01 of this Declaration.

Section 6.03. Interest. If any Assessment is not paid within thirty (30) days after it becomes due and payable, interest at the rate of twelve percent (12%) per annum may be assessed on the amount owing from the date due until such time as it is paid. The Board may, with the approval of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, impose a different rate of interest.

Section 6.04. Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay same or, upon compliance with the notice provisions herein, to foreclose the Assessment lien; provided, however, that the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise the other. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and his Condominium Unit and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and/or late charges, if appropriate) in the event that a judgment is obtained by the Association. Each Owner vests

in the Association or its assigns the right and power to bring actions at law and/or lien foreclosures against such Owner for the collection of delinquent Assessments.

Section 6.05. Notice of Lien. No action shall be brought to foreclose an Assessment lien at a time less than thirty (30) days after the date that a certified or registered notice of claim of lien is deposited in the United States Mail, postage prepaid, to the Owner of the applicable Condominium Unit and a copy thereof is recorded by the Association in the office of the County Recorder of Maricopa County, Arizona.

Section 6.06. Foreclosure Sale. Any foreclosure sale provided for in this Declaration is to be conducted in accordance with applicable provisions relating to the foreclosure of realty mortgages in the State of Arizona. The Association, upon approval by a majority vote of the Owners, may through its duly authorized agents have and exercise the power to bid on the Condominium Unit at the foreclosure sale and to acquire, hold, lease, mortgage and convey such Condominium Unit.

Section 6.07. Suspension of Votes. The Board shall suspend for the entire period during which an Assessment remains delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

Section 6.08. Suspension of Recreational Privileges. The Board is authorized to suspend for the entire period during which an Assessment remains delinquent the obligated Owner's right to the use of the recreational facilities of the Property.

VII

EASEMENTS

Section 7.01. General Easements to Common Elements. Subject to this Declaration and the Association Rules, non-exclusive reciprocal easements are hereby reserved and created for the purpose of support, ingress and egress, access, use and enjoyment in favor of each Owner, upon, across, over, under and through the Common Elements, including the use of all

pipes, wires, ducts, flues, cables, conduits, and public utility lines and recreational facilities, which easements shall be appurtenant to each Condominium Unit. The Association, acting through the Board or its authorized agent, and public utility companies providing service to the Property, shall have non-exclusive easements with the right of access to each Condominium Unit to make inspections, to remove violations, to maintain, repair, replace or effectuate the restoration of the Common Elements accessible in such Unit; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access.

Section 7.02. Utility Easements. There is hereby created a blanket easement upon, across, over and under the above described property for reasonable ingress, egress, 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 necessary electrical and/or telephone wires, conduits, and circuits on, above, across and under the Common Elements, including the unit buildings. 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 Developer of the condominium or thereafter approved by said Developer or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

Section 7.03. Easements for Encroachments. If any portion of the Common Elements now encroaches upon any Condominium Unit, or if any Condominium Unit now encroaches upon any other Condominium Unit or the Common Elements, or if any such encroachment shall occur hereafter as a result of the manner in which the

Buildings have been constructed or due to settling, shifting, alteration, replacement, repair, or restoration by Declarant or the Association, a valid easement for encroachment shall exist so long as the Buildings stand.

Section 7.04. Development Easements for Declarant.

Until seven (7) years after the conveyance of the first Condominium Unit to an Owner, there are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, easements and rights upon, across, over, under and through the Common Elements for construction, display (including the use of the Condominium Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the erection and sale or lease of Condominium Units within the Property; provided, however, that no such use by Declarant or its agents shall otherwise restrict Owners or Occupants in the reasonable use and enjoyment of their Condominium Units. The development easements reserved by Declarant pursuant to this Section 7.04 are intended to benefit any successor to Declarant, including without limitation, any Person who may succeed the Declarant in the ownership of all or any part of the Additional Parcel, and thereafter annex all or any part of the Additional Parcel to the Property in accordance with ARTICLE XIV hereof.

Section 7.05. Parking. Each Owner shall have an exclusive easement to use the carport space and parking space set forth on the Plat and designated for such Condominium Unit as indicated on the deed conveying the Condominium Unit to such Owner. Such exclusive parking easement shall be appurtenant to the respective Condominium Unit and may not be severed from the ownership of the Condominium Unit. All unassigned parking spaces shall be utilized for the benefit of the Association and the Board shall have the authority to manage the unassigned parking spaces in its sole discretion including, without limitation, the right to designate all or part of such unassigned parking spaces

as guest parking and/or to lease such unassigned parking spaces to Owners in accordance with the unassigned parking space rules adopted as part of the Association Rules.

Section 7.06. Patios, Balconies and Storage Spaces.

Each Owner shall have an exclusive easement upon, across, and over the patios or balconies and storage space or spaces designated on the Plat for each respective Condominium Unit by corresponding number. Such exclusive easements shall be appurtenant to the respective Condominium Unit and may not be severed from the ownership of the Condominium Unit.

VIII

USE RESTRICTIONS

Section 8.01. Residential Use. The Property shall be used exclusively for residential purposes and each Condominium Unit shall be improved, used and occupied as a separate dwelling unit. Unless specifically approved by the Board, no part of the Property may be used for any business, commercial, manufacturing, storing, vending, or any nonresidential purposes. However, nothing contained herein shall be construed to prevent Declarant and its agents from engaging in all forms of construction and sales activities within the Property including use of Condominium Units owned by Declarant as models until all Condominium Units have been sold by Declarant.

Section 8.02. Signs. No sign of any kind shall be displayed to public view from any portion of the Property without the written approval of the Board. Notwithstanding the foregoing, a single sign of reasonable dimension advertising a Condominium Unit for sale or rent may be placed by the Owner or his agent within the Condominium Unit or immediately adjacent thereto located on the Common Elements, subject to reasonable regulation by the Board. Nothing herein shall prevent Declarant and its agents and assigns from utilizing reasonable signs, flags, markers, and sales devices in furtherance of sales activities until all Condominium Units have been sold by Declarant.

Section 8.03. Nuisance. No noxious or offensive activity shall be carried on upon the Property, nor shall any activity which might be or become an annoyance or nuisance to Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance. No Owner or Occupant shall engage in activity within the Property in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. Nothing herein shall be construed to prevent Declarant and its agents from engaging in all forms of construction and sales activities until all Condominium Units have been sold by Declarant.

Section 8.04. Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Property or used therein unless the same and its proposed use are approved by the Board. Nothing herein shall be construed as preventing Declarant from using temporary structures or trailers for construction and/or sales purposes or engaging in all forms of construction and sales activities within the Property.

Section 8.05. Parking. Unless otherwise permitted by the Board, no motor vehicle (including a motorcycle), trailer, camper, boat, or similar item, and no bicycle, shall be permitted to remain upon the Property unless parked or placed within the Property in spaces designated for such use; provided, however, temporary parking of motor vehicles shall be permitted. For purposes hereof, "temporary parking" shall mean parking of vehicles belonging to invitees of Owners and Occupants, parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of goods and services to the Association or to the Owners and Occupants as well as parking of vehicles belonging to and being used by Owners, Occupants and invitees for loading and unloading purposes. Except for temporary parking, no buses, vans, trucks, or other vehicles having a carrying capacity in excess of 3/4 tons or designed for commercial purposes shall be maintained or parked upon the Property

except with the prior written approval of the Board. The Board may adopt Association Rules relating to the admission and temporary parking of vehicles within the Property, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments. Nothing herein shall be construed as preventing Declarant from using temporary structures or trailers for construction and/or sales purposes or engaging in all forms of construction and sales activities within the Property.

Section 8.06. External Fixtures. No external items such as, but not limited to, television and radio antennas, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, walls, landscaping and planting, other than those provided in connection with the original construction of the Property, and any replacements thereof, and other than those approved by the Board and any replacements thereof, shall be constructed, erected or maintained on the Property, including any Buildings thereof. Carports shall not be enclosed by the use of garage doors or otherwise. The foregoing notwithstanding, nothing herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Property. The Association may maintain in effect or cause to be maintained in effect a central antenna system or systems, which shall provide connections to each Condominium Unit via underground or internal wall wiring, or a combination thereof.

Section 8.07. Window Covers. Only curtains, drapes and shades may be installed as window covers. No window shall be covered by paint, foil, sheets or similar items. The Board may adopt Association Rules regulating the type, color and design of the external surface of window covers.

Section 8.08. External Laundering. Unless otherwise permitted by the Board, external laundering and drying of clothing and other items is prohibited.

Section 8.09. Outside Speakers and Amplifiers. No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of any Building without the prior written approval of the Board.

Section 8.10. Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Property. Notwithstanding the foregoing, minor tuneups for motor vehicles and the changing of motor oil and spark plugs in motor vehicles are permitted if such work is performed within the carport area.

Section 8.11. Unsightly Items. All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Condominium Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Condominium Units, shall be prohibited upon any Condominium Unit unless obscured from view of adjoining Condominium Units and Common Elements. Trash and garbage not disposed of by equipment contained within the Condominium Units shall be placed in containers by Owners and Occupants for removal from the Property in accordance with Association Rules applicable thereto adopted by the Board. The Board may adopt rules applicable to the provisions of this Section and their enforcement, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments. The foregoing notwithstanding, nothing herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Property.

Section 8.12. Oil and Mineral Activity. No oil drilling, oil development operations, oil refining, quarrying or