

CC&Rs-Condo Declaration
East Clarendon Homeowner's Association

C C & R'S

When recorded mail to:
East Clarendon Homeowners Association
c/o New Horizon Management Co.
8650 North 35th Ave., Suite 100
Phoenix, AZ 85021

RECEIVED APR 25 1983

AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
EAST CLARENDON HOMEOWNERS ASSOCIATION

We, the undersigned officers, certify that this amendment was approved at a meeting of the Board of Directors on February 15, 1983 at which meeting there was present in person or by proxy, a sufficient number of Homeowners to constitute a quorum necessary to amend the Declaration of Covenants, Conditions and Restrictions of East Clarendon Homeowners Association.

Now therefore, the Covenants, Conditions and Restrictions of East Clarendon Homeowners Associations are amended as follows:

ARTICLE 7
USE RESTRICTIONS

7.5 ANIMALS

Paragraph 7.5 is hereby deleted in its entirety and shall be replaced with the following language:

No animals or birds of any kind shall be raised, bred, or kept in any unit, or on any portion of the property subsequent to February 15, 1983; except that usual and ordinary small household pets such as dogs, cats or birds that have been in residence prior to February 15, 1983, may continue to reside in their respective units providing the owners of the pets abide by applicable leash laws and the rules and regulations of East Clarendon Homeowners Association concerning pets. However, upon demise or removal of said pets, no new pets shall replace those that are grandfathered in by this amendment.

Eleanor MacPhillips
Eleanor MacPhillips, President

On this 15th day of April, 1983, before me the undersigned Notary Public, personally appeared Eleanor MacPhillips, the President of East Clarendon Homeowners Association, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledges that she signed the same for the purposes therein contained.

Therese A. [Signature]
Notary Public
My Commission Expires March 9, 1986

Susan Fifer
Susan Fifer, Secretary

On this 15th day of April, 1983, before me the undersigned Notary Public, personally appeared Susan Fifer, the Secretary of East Clarendon Homeowners Association, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledges that she signed the same for the purposes therein contained.

Therese A. [Signature]
Notary Public
My Commission Expires March 9, 1986

TURNER BACK UP SLIP
NAME PAVILACK
Staple in upper left

84 459099

WHEN RECORDING MAIL TO:

James R. Muth, Esq.
PAVILACK, SPACK & MULCHAY, P.C.
6900 E. Camelback Rd., #800
Scottsdale, Arizona 85251

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA	
OCT 22 1984 4 15	
BILL HENRY, COUNTY RECORDER	
FEE 5.00	PGS 3

AMENDMENT TO DECLARATION SUBMITTING PROPERTY TO
HORIZONTAL PROPERTY REGIME AND DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR

CASA ESPANA
MARICOPA COUNTY, ARIZONA

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

A portion of the east 320 feet of lot 21 of the
Goebel Tract, as recorded in Book 11 of Maps,
page 5, in the Office of the Maricopa County
Recorder, Maricopa County, Arizona. Those
portions of the east 320 feet of lot 21 not
included are located within dedicated streets
bounding the property on the east and south.

The lands are platted as a Horizontal Property
Regime according to the Plat recorded within the
Office of the Maricopa County Recorder, Maricopa
County, Arizona, in Book 205 of Maps at page 39.

WHEREAS, a certain Declaration submitting property to
Horizontal Property Regime and Declaration of Covenants, Conditions
and Restrictions for Casa Espana, 3030 E. Clarendon Avenue, Phoenix,
Maricopa County, Arizona, has been placed on said property and has
been recorded on January 26, 1979, Docket 13404, pages 915-956, with
the Maricopa County Recorder's Office;

WHEREAS, as part of said Declaration, the right to amend
is granted to the owner-members representing not less than seventy-
five percent (75%) of the total voting power of the East Clarendon
Homeowners Association;

Leave in file

*name change to
East Clarendon
Place*

205-39

BRS

*Ar. u
comp.*

32121

DXI 13404PC S15

WHEN RECORDED MAIL TO:

CARSON MESSINGER ELLIOTT LAUGHLIN & RAGAN
1400 United Bank Building
3550 North Central Avenue
Phoenix, Arizona 85012

PROP RSTR (PR)

Attention: G. Wayne McKellips, Jr.

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DECLARATION SUBMITTING
PROPERTY TO HORIZONTAL PROPERTY REGIME
AND
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CASA ESPANA
MARICOPA COUNTY, ARIZONA

STATE OF ARIZONA }
County of Maricopa } ss

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

Carson Messinger
JAN 26 1979 -4 15

in Docket 13404
on page 915-956

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

Dill Henry

County Recorder

By *John D. ...*
Deputy Recorder

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DECLARATION SUBMITTING
PROPERTY TO HORIZONTAL PROPERTY REGIME
AND
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CASA ESPANA
3030 EAST CLARENDON AVENUE
PHOENIX, MARICOPA COUNTY, ARIZONA

THIS DECLARATION, is made this 4th day of November, 1978, by CASA ESPANA ASSOCIATES, an Arizona limited partnership, as Declarant, holder of legal title to the property hereinafter described, for itself, its successors, grantees and assigns.

A. The purpose of this declaration is to submit the lands herein described and the improvements constructed thereon to a Horizontal Property Regime in the manner provided by Title 33, Chapter 4.1, Article 1, Arizona Revised Statutes, herein called the "Condominium Act".

B. The name by which this condominium is to be identified is CASA ESPANA and its address is 3030 East Clarendon, Phoenix, Arizona.

C. The lands which are hereby submitted to the condominium form of ownership are:

A portion of the East 320 feet of Lot 21 of the GOEBEL TRACT as recorded in Book 11 of Maps, Page 5, in the office of the Maricopa County Recorder, Maricopa County, Arizona. Those portions of the East 320 feet of Lot 21 not included are located within dedicated streets bounding the property on the East and South.

D. The lands are platted as a Horizontal Property Regime according to the plat recorded within the office of the Maricopa County Recorder, Maricopa County, Arizona, in Book 205 of Maps at page 39.

E. All of such property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are declared to be in furtherance of a plan for the improvement, development and sale of said property and are established for the purpose of enhancing and perfecting the value and desirability of said property and every part thereof. All of such covenants, restrictions and conditions shall

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th said property and shall be binding upon all parties having or acquiring any right, title or interest in said property or part thereof and shall be for the benefit of each Owner of any portion of said property and for the benefit of any person having any interest whatsoever in said property or the improvements thereon, or any interest therein, and shall inure to the benefit of and be binding upon each of said party's successors in interest, without requirement of further specific reference to this declaration in any deeds, contracts, mortgages or other security instruments and regardless of any subsequent forfeiture, foreclosure, or sale of Units therein.

ARTICLE I

DEFINITIONS

THE TERMS used herein shall have the meanings stated in the "Condominium Act" and as follows:

1.1 "Articles" as used herein shall mean and refer to the Articles of Incorporation of CASA ESPANA CONDOMINIUM ASSOCIATION, INC., as originally existing and as amended from time to time.

1.2 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Property which is to be paid by each Unit Owner as determined by the Association.

1.3 "Association" shall mean and refer to CASA ESPANA CONDOMINIUM ASSOCIATION, INC., an Arizona nonprofit corporation, the members of which shall be all the Owners of Units in the Project, and shall constitute the "Council of Co-Owners" as defined in Section 33-551, Arizona Revised Statutes.

1.4 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association to be appointed by the Owners in accordance with the Articles and Bylaws.

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.6 "Common Area" shall mean and refer to all those portions of the Property which are not included within the individual Units. The Common Area includes, without limitation: land; parking and driveway areas; sidewalks and walkways; stairs; bearing and other walls not included within the interior of a unit, columns, girders, subfloors, unfinished floors, roofs, ceilings and foundations; central heating, central air-conditioning equipment, reservoirs, tanks, pumps, motors, ducts, flues and chutes; conduits, pipes, plumbing, wires and other utilities required to provide power, light, telephone, gas, water, sewerage, drainage, heat, air-conditioning and elevator service; sprinklers, sprinkler pipes, and sprinkler heads which protrude into the airspace of the condominium Unit; and the central television antenna, if any.

1.7 "Common Expenses" means and includes the actual and estimated expenses of operating, maintaining, repairing and replacing the Property and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the Project Documents.

1.8 "Common Interest" means the proportionate undivided interest in the Common Area which is appurtenant to each Unit as

with in the Condominium Plan. As to each Unit the percentage set forth on the Condominium Plan constitutes the percentage interest which that Unit bears to the entire horizontal property regime and is equal to and determines that Unit owner's undivided interest in the common area, and any surplus of the Association and the percentage of the common expenses attributable to that Unit and payable by its Owner.

1.9 "Condominium" shall mean an estate in real property, consisting of title to a Unit within the horizontal property regime hereby established and an undivided interest in the Common Area. The ownership of each condominium shall include (1) the ownership of a Unit; (2) an undivided interest in the Common Area; (3) membership in the Association; and (4) a non-exclusive easement for ingress and egress over the common area. Each Unit shall be a separate freehold estate consisting of the space described and defined in Article 2 hereof.

1.10 "Condominium Building" and "Building" shall mean a residential structure containing condominium Units.

1.11 "Condominium Plan" shall mean and refer to the recorded diagrammatic plat of the horizontal property regime referred to on page one hereof which sets forth the floor plan or plans of the Units as built on the Property and which identifies each Unit and shows its dimensions. A copy of said plat is attached hereto as Exhibit "A", and is incorporated herein by reference as part of this Declaration as to all its content and effect.

1.12 "Declarant" shall mean and refer to CASA ESPANA ASSOCIATES and its successors and assigns, but shall not include members of the public purchasing completed condominium Units.

1.13 "Declaration" shall mean and refer to this enabling Declaration.

1.14 "Institutional Lender" and "First Mortgagee" are synonymous herein and shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded first lien Mortgage on any Unit, and a beneficiary or trustee under a first lien deed of trust, encumbering any unit, and its successors and assigns.

1.15 "Map" shall mean and refer to that subdivision map (also referred to as the "Condominium Plan"), recorded November 6, 1978, in Book 205, page 39 of Official Records of Maricopa County, Arizona, and any subsequently recorded subdivision map and all amendments thereto, which cover the Property or a portion thereof.

1.16 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.17 "Mortgage" shall include a deed of trust as well as mortgage, and "foreclosure" thereof as used herein shall mean include judicial foreclosure of a mortgage or deed of trust, judicial trustee's sale, or acceptance of a deed in lieu of foreclosure.

1.18 "Mortgagee" shall include the beneficiary, or trustee under, or the holder of a deed of trust as well as a mortgagee.

1.19 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.20 "Owner" or "Owners" shall mean and refer to the record holder or holders of title to a Unit in the Project. This shall include any person having a fee simple title to any Unit, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a Unit is sold under a recorded contract of sale to a purchaser who resides in the Unit, the resident purchaser, rather than the fee owner, shall be considered the "Owner" as long as he resides in the Unit as a contract purchaser.

1.21 "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.22 "Project" is synonymous with "Property", hereinafter described.

1.23 "Project Documents" means all of the condominium constituent documents and includes this Declaration as it may be amended from time to time, the exhibits attached hereto, the Condominium Plan (Map), the Articles and Bylaws of the Association, and the rules and regulations for the Members as established from time to time.

1.24 "Property" or "properties" means and includes the real property above described, and all structures and improvements erected or to be erected thereon and all property, real, personal or mixed, intended for or used in connection with the Project.

1.25 "Unit" shall mean and refer to the elements of an individual condominium, as defined in Article 2, which are not owned in common with the Owners of other condominiums in the Project Unit and is also synonymous with "Apartment" as used in the "Condominium Act."

1.26 "Unit Designation" means the number, letter, or combination thereof or other official designation shown on the Condominium Plan.

ARTICLE 2

DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND
CREATION OF PROPERTY RIGHTS

2.1 Description of Project

The Project consists of the underlying Property with the residential Units and all other improvements located or to be located thereon. The cubic content space of the buildings within the Project with reference to their location on the land, and the cubic content space of each Unit within the buildings is described on Exhibit "A" attached hereto (the "Condominium Plan").

2.2 Division of Property

The Property is hereby divided into the following separate freehold estates:

2.2.1 Dwelling Units

Each of the Units as separately shown, numbered and designated on the Condominium Plan is bounded by and contained within the interior unfinished surface of the perimeter walls, floors and ceilings of each Unit, and also includes all windows, doors, and electrical outlets located in the perimeter walls thereof. Each Unit includes both the portions of the building so described or contained within such boundaries, and the air-space so encompassed. Each Unit also includes as an appurtenance thereto: (1) the adjacent area encompassing a patio or balcony, as the case may be, the lower boundary of which shall be the unfinished floor surface thereof the elevation of which is equal to the lower elevation of the Unit to which it is appurtenant, the upper elevation of which shall be a horizontal plane parallel to the floor surface at an elevation equal to the upper elevation of the Unit to which it is appurtenant, and the side boundaries of which shall be vertical planes extending upward from the outside edges of the floor surface, but not including any exterior wall bounding such patio or balcony area (but including the interior finished surface of any such walls); and, (2) an exclusive (except as against the Association) easement to use for vehicle parking purposes, the parking space specifically designated in the Condominium Plan as being appurtenant to and included with that Unit. The square footage and cubic content of each Unit, excluding that contained in the appurtenant patio or balcony, is set forth on page one of the Condominium Plan. The square footage and cubic content space of the appurtenant patio or balcony can be independently determined from the Condominium Plan. The parking area and garage or carport structures are to be maintained by

Association and are Common Areas and the Association shall have access thereto at all times for the maintenance, replacement or repair thereof. The Unit does not include those areas and things which are defined as "Common Area" below. Each Unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed substantially in accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the building.

2.2.2 Common Area

The remaining portion of the Property, referred to herein as "Common Area" or Common Areas", shall consist of and shall include, without limitation, all of the elements set forth in Article 1.6. Each Unit Owner shall have, as appurtenant to his Unit, the respective undivided percentage interest in the Common Area which is set forth on the Condominium Plan as being attributable to his Unit. The common interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Unit owners affected, and the First Mortgagees of such Unit owners, as expressed in an amended declaration. Such common interest cannot be subdivided or separated from the Unit to which it is appurtenant. Each Unit owner may use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the rights of any other Unit owners. The Declarant shall reserve and hereby reserves for itself and the Association and their successors and assigns a non-exclusive easement over and onto the Common Area for common driveway purposes, for drainage and encroachment purposes and for ingress to and egress from the Common Area for the purpose of completing improvements thereon or for the performance of necessary repair work. The unassigned parking spaces set forth on Exhibit A attached shall constitute part of the Common Area. Declarant may grant easements for the use of all or a portion of such spaces to individual Units, in which case any such easement shall become appurtenant to the Unit to which it is assigned. No more than one unassigned space shall be assigned to any one Unit. Any unassigned parking spaces not assigned by the Declarant by the time all Units are originally sold, shall be under the jurisdiction and control of, and subject to assignment by the Association.

2.3 No Separate Conveyance of Undivided Interests

The foregoing interests and exclusive easements are hereby established and are to be conveyed only with the respective Units, and cannot be changed, except as herein set

Declarant, its successors, assigns and grantees covenant and agree that the undivided interests in the Common Areas, and fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

2.4 Partition Prohibited

The Common Area shall remain undivided as set forth above. No Owner shall bring any action to partition, or subdivide any Common Area or appurtenances unless there is total or substantially total destruction of a Building without a decision to repair or rebuild as provided in Covenant 9.8.7 herein, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of the ownership interests in a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby (but partition of title to or the estate in a single Unit is prohibited). No partition shall be effected or attempted without the prior written consent of the Institutional Lender, if any, with an interest in the Unit.

ARTICLE 3

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND
VOTING RIGHTS

3.1 Association to Manage Common Area

The management of the Common Area shall be vested in the Association in accordance with the Bylaws. The Owners of all the Units covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association, subject to the standards set forth in this Declaration and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project.

3.2 Membership

The Owner of a Unit shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

3.3 Transferred Membership

Membership in the Association shall not be transferred, pledged, separately encumbered, or alienated in any way, except upon the transfer (or encumbrance) of the Unit to which it is appurtenant, and then only to the new Owner (or Mortgagee). Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.4 Classes of Membership.

The Association shall have two (2) classes of voting membership established according to the following provisions:

3.4.1 Class A Membership

Class A Membership shall be that held by each Owner of a Unit other than Declarant and each Class A Member shall be entitled to one (1) vote for each Unit owned. If a Unit is owned by more than one person, each such person shall be a Member of the Association, but there shall be no more than one vote for

it, and the Owners thereof shall designate in writing to the Association the name of the Owner who may vote. During the pendency of any proceedings to foreclose a First Mortgage including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default of a Unit including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner.

3.4.2 Class B Membership

Class B Membership shall be that held by Declarant (or its successor) who shall be entitled to three (3) votes for each Unit owned by Declarant provided that Class B Membership shall be converted to Class A Membership and shall forever cease to exist on the occurrence of the close of escrow of the sale of the last Unit held by Declarant (or its successor) or, if earlier, on May 4, 1980.

3.5 Voting Requirements

While there are two (2) outstanding classes of membership, any action by the Association which must have the approval of the Association membership before being undertaken shall require the vote or written assent of the prescribed percentage of each class of members, as, set forth in the Articles and Bylaws.

3.6 Membership Meetings

Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place, and in accordance with the provisions of the Articles and Bylaws of the Association.

3.7 Board of Directors

The affairs of the Association shall be managed by a Board of Directors, which shall be established, and which shall conduct regular and special meeting according to the provisions of the Articles and Bylaws of the Association.

ARTICLE 4

MAINTENANCE AND ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation For Assessments

The Declarant, for each Unit owned within the Project, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) regular annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided herein and in the Bylaws of the Association. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Unit against which each assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. No Owner of a 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 Area or by the abandonment of his Unit.

4.2 Purpose of Assessments

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire project for the improvement and maintenance of the Common Area for the common good of the Project. Annual assessments shall include an adequate reserve fund for maintenance and repairs of the Common Area elements and replacement of those which will be required to be replaced on a periodic basis.

4.3 Annual Assessments

Until January 1 of the year immediately following the close of escrow of the sale of the first Unit in the Project, the maximum regular annual assessment per Unit shall be \$1,440.00 for Units 1 through 8, inclusive, and 21 through 28, inclusive, and \$960.00 for Units 9 through 16, inclusive, and 29 through 36, inclusive, which amount shall be prorated based on the number of months remaining before January 1 of such year. Thereafter, the Board shall determine and fix the amount of the maximum annual assessment against each Unit at least thirty (30) days in advance of each annual assessment; provided, however, that the maximum annual assessment may be neither increased by more than ten percent (10%) above nor decreased by more than ten percent (10%) below the maximum annual assessment for the previous year, without the vote or written assent of fifty-one percent (51%) of the voting power of the Association.

//

4.4 Special Assessments

In addition to the regular annual assessments authorized by the Board, the Board may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures or personal property related thereto, or to defray any unanticipated or underestimated expense normally covered by a regular assessment (and, where necessary, for taxes assessed against the Common Area); provided, however, that the aggregate special assessments for any fiscal year shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that assessment year, without the vote or written assent of a majority of the voting power of the Association. Special assessments may also be levied against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Unit into compliance with the provisions of this Declaration and the Articles and Bylaws and rules and regulations of the Association.

4.5 Allocation of Assessments

The Owner(s) of each Unit, including Declarant if any Unit is owned by Declarant, shall be assessed a percentage share of each regular and special assessment equal to the percentage interest in the common area which is appurtenant to that Owner's Unit (except for special assessments imposed for compliance or disciplinary reasons).

4.6 Date of Commencement of Annual Assessment; Due Dates

The regular annual assessments provided for herein shall be payable in equal monthly installments and shall commence as to all Units in the Project on the first day of the month following the close of escrow of the sale of the first Unit in the Project. In addition to the regular assessment, each Unit Owner purchasing from the Declarant shall be required to make a non-refundable additional payment to the Association upon the closing of the sale of his Unit, equal to two month's assessments as a contribution to the initial working capital fund of the Association, if the same be necessary in the opinion of the Declarant to adequately fund the operation of the Association. Due dates of assessments shall be established by the Board and notice shall be given to each Unit Owner at least thirty (30) days prior to any due date.

4.7 Transfer of Unit by Sale or Foreclosure

Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to Mortgage Foreclosure shall extinguish the lien of such assessments (both annual and special) as to payments which became

for to such sale or transfer (except for assessment liens recorded prior to the Mortgage). No sale or transfer shall release such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Where the Mortgagee of a first Mortgage of record or other purchaser of a Unit obtains title to the same as a result of Foreclosure of any such first Mortgage, such acquirer of title, his successor and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible prorata from all of the Units including such acquirer, his successors and assigns. In a voluntary conveyance (other than by Foreclosure) of a Unit the grantee of the same shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association, upon ten (10) days written notice to the Association, setting forth the amount of the unpaid assessments due the Association and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor, in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such assessment becoming due after the date of any such statement.

4.8 Enforcement of Assessment Obligation Priorities; Discipline

Any part of any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Unit prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust) made in good faith and for value. Such lien, when delinquent, may be foreclosed and enforced by sale by the Association, its attorney or other person authorized by this Declaration or by law to make the sale, after failure of the Owner to pay such assessment, in accordance with the provisions of Sections 33-721 et. seq. of the Arizona Revised Statutes, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in the manner provided by the Statutes of the State of Arizona for foreclosure of mechanics and materialmen's liens or in any other manner permitted by law. Foreclosure of an assessment lien shall not affect or impair the

lien of any first mortgage or deed of trust on the Unit which is the subject thereof. The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties and may temporarily suspend the Association membership privileges of a Unit Owner who is in default in payment of any assessment, after notice and hearing according to the Bylaws.

4.9 Unallocated Taxes

In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, said taxes shall be included in the assessments made under the provisions of this Article, and, if necessary, a special assessment may be levied against the Units in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

4.10 Tax Assessments

As provided in Section 33-558 of the Condominium Act, no taxes, assessments or charges which may become liens on any Unit prior to any first Mortgage under Arizona law, shall affect the Common Area as a whole, such taxes, assessments or charges shall only be levied separately on each Unit and its respective appurtenant percentage share of the Common Area.

ARTICLE 5

DUTIES AND POWERS OF THE ASSOCIATION

5.1 Duties and Powers

In addition to the duties and powers enumerated in the Articles, Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

5.1.1 Maintain, repair, replace, restore, operate and manage all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon, (and not included within any individual Unit) and all property that may be acquired by the Association. This obligation shall not extend to the maintenance of any portion or facility of the Common Area required to be maintained by an individual Owner under this Declaration, the Articles or the Bylaws.

5.1.2 Enforce the provisions of this Declaration by appropriate means, including without limitation, the expenditure of funds of the Association, the employment of legal counsel and the commencement of actions.

5.1.3 Maintain such policy or policies of insurance as are required by this Declaration or which the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.

5.1.4 Grant and reserve easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Units.

5.1.5 Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to this Declaration and the Articles, Bylaws of the Association and any restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project. Any management agreement for the Property shall provide for termination by either party for cause upon thirty (30) day's written notice thereof to the other, and without cause (and without payment of a termination fee) upon ninety (90) days' written notice, and the term of any such agreement may not exceed one year, but may be renewable for successive one-year periods by agreement of the parties. If any Institutional Lender shall be the holder of Mortgages on 50% or more of the individual Units, and shall make written request to the Association therefor, the Association shall employ experienced professional management to perform the Associations duties.

5.1.6 Adopt reasonable rules not inconsistent with this Declaration, the Articles or the Bylaws relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Property and other Owners.

5.2 Maintenance of Project by Association

The Association shall provide regular and periodic maintenance replacement and repair of the Project as provided in the Articles and Bylaws. The Association shall maintain, repair and replace all portions of any Unit owned by the Association, and all portions of the Project not included within the boundaries of the individual Units not owned by the Association, which portions shall include but not be limited to: The foundations; floor slabs; roofs; exterior walls, finishes and fixtures; all conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services; all central heating and cooling devices not located within or servicing an individual Unit; all Common Areas; and, all facilities contained within a Unit which service part or parts of other Units in addition to the Unit within which contained. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner, any member of his family and his guests, tenants, invitees, employees and agents. The repair or replacement of a Unit exterior resulting from such excluded items shall be the responsibility of each Owner; provided, however, any insurance proceeds payable to the Association as a result of such act or neglect will be made available to such owner to accomplish any such repair, replacement or maintenance; and provided, further, that if an Owner shall fail to make the repairs or replacements which are the responsibility of such Owner, the Association, acting through the Board, shall have the right (but not the obligation) to enter the Unit and made such repairs or replacements, and the cost thereof shall be added to the assessments chargeable to such Unit and shall be payable to the Association by the Owner of such Unit.

5.3 Access at Reasonable Hours

For the purpose of performing the maintenance authorized by this Article or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents and employees shall have the right, after reasonable notice to the Owner, and at reasonable hours, to enter any Unit or upon any portion of the Common Area.

5.4. Custodian Unit

The Association shall have the power and authority, with the vote or written consent of a majority of each class of Members, to purchase a Unit (the "Custodian Unit") to be occupied

by the custodian (manager) of the Project. In such case, during the period the Custodian Unit is owned by the Association:

5.4.1 No right to vote shall be exercised on behalf of the Custodian Unit;

5.4.2 No assessment shall be assessed or levied on the Custodian Unit; and

5.4.3 Each other Unit Owner shall be charged, in addition to his usual assessment, his share of the assessment that would have been charged to the Custodian Unit, but for the provisions of this Subarticle.

ARTICLE 6

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UTILITIES

6.1 Owners' Rights and Duties

The rights and duties of the Owners of Units within the Project with respect to utilities shall be as follows:

6.1.1 Whenever sanitary sewer, water, electric, gas, television receiving, telephone lines or connections, heating or airconditioning conduits, ducts, or flues are located or installed within the Project, which connections, or any portion thereof lie in or upon Units owned by other than the Owner of a Unit served by said connections, the Owners of any Unit served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter (upon reasonable notice to the Owner, thereof) upon the Units or to have the utility companies enter upon the Units in or upon which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when necessary.

6.1.2 Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air-conditioning conduits, ducts, or flues are located or installed within the Project which connections serve more than one Unit, the Owner of each Unit served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his Unit.

6.1.3 In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board, which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

6.2 Easements for Utilities and Maintenance

Easements over, under and through the Property for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, and telephone lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as now established, and as may be hereafter required or needed to service the Property, are hereby reserved by Declarant and its successors and assigns, including the Association, together with the right to grant and transfer the same.

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6.3 Association's Duties

The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units, which shall be paid by the respective Owners of those Units.

ARTICLE 7
USE RESTRICTIONS

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In addition to all of the covenants contained herein, the use of the Property and each Unit therein is subject to the following:

7.1 Use of Individual Units

No Unit shall be occupied and used except for single family residential purposes by the Owners, their tenants, and social guests, and no trade, business or "home occupation" (as that term is used in the City of Phoenix Zoning Ordinance) shall be conducted therein, except that Declarant, its successors or assigns, may use any Unit or Units in the Project owned by Declarant for a model home site or sites and display and sales office until the last Unit in the entire project is sold.

7.2 Nuisances

No noxious, illegal, or offensive activities shall be carried on in any Unit, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any Building.

7.3 Vehicle Restrictions

No trailer, camper, mobile home, commercial vehicle, truck (other than standard size pickup truck), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Property, other than temporarily, unless placed or maintained within an enclosed garage or carport, or in an area specifically designated for such purpose by the Board. Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Property. No off-road unlicensed motor vehicles shall be maintained or operated upon the Property, except as reasonably necessary to the execution of the rights or duties of the Association under this Declaration.

7.4 Signs

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No signs shall be displayed to the public view on any Units or on any portion of the Property except such signs as are approved by the Board or committee appointed by the Board. The Board shall designate a location or locations within the Common Area in which "For Sale" or "For Rent" signs approved by the Board as to size and content may be displayed.

7.5 Animals

No animals or birds of any kind shall be raised, bred or kept in any Unit, or on any portion of the Property, except that usual and ordinary small household pets such as dogs, cats or birds may, upon approval of the Association, be kept, provided that they are kept under reasonable control at all times. The Board may enact reasonable rules respecting the keeping of animals within the Project and may designate certain areas in which animals may be taken. The Association reserves the right to have such pets removed if the pet's behavior becomes objectionable to the members of the Association. Approval for such pets will not be unreasonably withheld, nor will the removal of such pets be unreasonably applied.

7.6 Garbage and Refuse Disposal

All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, woodpiles, or storage piles shall be kept screened and concealed from view of other Units, streets and the Common Area.

7.7 Radio and Television Antennas

No alteration to or modification of a central radio or television antenna system or cable television system, if available, shall be permitted, and no Owner may be permitted to construct, use, or operate his own external radio or television antenna without the consent of the Board.

7.8 Right to Lease

The respective Units shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than ten (10) days, or (b) any rental if the occupants of the Unit are provided customary hotel service such as room service for food and beverages, maid service, furnishing laundry and linen and bellboy service. Subject to the foregoing restrictions, the Owners of the respective Units shall have the absolute right to lease the Units provided that the lease is made subject to the covenants, conditions and restrictions, limitations and uses contained in this Declaration

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and the Bylaws, and any reasonable rules and regulations established by the Association. No lease shall be for less than an entire Unit. All leases shall be in writing and shall provide that a failure of the Lessee to comply with the Project Documents shall be a default under the lease.

7.9. Residents

Each of the Units shall be occupied only by a single family as a residence and for no other purpose. However, additional guests may be allowed for reasonably short periods of time.

7.10 Clothes Lines

No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes.

7.11 Power Equipment and Car Maintenance

No power equipment, work shops, or car maintenance (other than emergency work or minor repairs requiring less than one (1) days work shall be permitted on the Property except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

7.12 Liability of Owners for Damage to Common Area

The Owner of each Unit shall be liable to the Association for the expense of any maintenance, repair, or replacement of the Common Area or improvements rendered necessary by his act, neglect, carelessness or by that of any member of his family or his or their guests, invitees, employees, agents and tenants, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

7.13 Adult Residential Project

The Project is intended to be an adult residential development, and as such, no person under the age of eighteen (18) years of age shall occupy any Unit as a permanent resident, whether as an Owner, tenant or otherwise and the Board may adopt further rules governing such occupancy.

7.14 No Warranty of Enforceability

While Declarant has no reason to believe that any of the restrictive covenants or other provisions contained in this Article VII or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent.

Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Unit in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

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ARTICLE 8

ARCHITECTURAL CONTROL

8.1 Prohibition of Alteration and Improvement

No building, fence, exterior wall, obstruction, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement, or exterior structure of any kind shall be removed or commenced, erected, painted or maintained upon the Property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by an Architectural Control Committee (the Committee) appointed by Declarant or elected by the Owners as provided in this Article. No balcony or patio of a Unit shall be used for storage purposes. It is further provided, that no clothing, laundry, or other personal items are to be hung out on the balconies or patios of the Units.

8.2 Plans and Approval

Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such improvements or alteration, shall be submitted to the Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to rebuild in accordance with Declarant's original plans and specifications, or to rebuild in accordance with the plans and specifications previously approved by the Committee. No landscaping of patios or yard visible from the street or from the Common Area shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Committee.

8.3 Architectural Control Committee

The number, election, and term of members of the Committee shall be as provided in the Bylaws, subject to the following limitations:

8.3.1 There shall not be less than three (3) nor more than five (5) members of the Committee.

8.3.2 Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the Arizona Public Report for the Project. Thereafter, Declarant reserves to itself the power to appoint a majority of the members of the Committee, until ninety

percent (90%) of all Units in the project have been sold. Committee members appointed by the Declarant need not be members of the Association.

8.3.3 After one (1) year from the date of issuance of a public report for the Project, the Board shall have the power to appoint one (1) member of the Committee until ninety percent (90%) of all of the Units in the Project have been sold. Thereafter, the Board shall have the power to appoint all of the members of the Committee. Committee members appointed by the Board shall be from the membership of the Association.

ARTICLE 9
GENERAL PROVISIONS

9.1 Enforcement

The Association, any Owner, any Institutional Lender, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court; provided, however, that an individual Owner shall have no right to enforce the collection of any assessment levied against any other Owner under Article 4 above, such right being reserved to the Association. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

9.2 Invalidity of Any Provision

Should any provision of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, then the same shall be considered severable herefrom and the validity of all other provisions shall remain unaffected and in full force and effect.

9.3 Amendments

Subject to the standards set forth in any applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project, and the rights of the Owners and Institutional Lenders provided herein, this Declaration may be amended as provided in the Bylaws of the Association. Until the first Unit is sold (or a contract for sale entered into), the Declarant shall have the unlimited right to amend this Declaration. Any amendment must be recorded and shall become effective upon being recorded in the Recorder's Office of the County of Maricopa. No amendment shall discriminate against any individual Unit Owner or change any Unit nor the share of the Common Area appurtenant to it, nor increase an individual Owner's proportionate share of the Common Expenses, without the written consent of the Owner so affected and all record holders of liens adversely affected thereby. No substantial changes shall be made in this Declaration or the Articles or Bylaws of the Association, without notice to, and approval of, each purchaser who has entered into an agreement for the purchase of a Unit, but whose sale has not closed.

9.4 Encroachment Easements

Each Unit within the Property is hereby declared to have an easement over all adjoining Units and the Common Area and the Common Area is declared to have an easement over all Units for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settlement or shifting, or movement of any portion of the Project. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

9.5 Mortgage Protection Cause

9.5.1 Rights of First Mortgagees

No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other mortgage) on any Unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise.

9.5.2 Notice to Lenders

All Institutional Lenders, and all persons servicing Mortgages for such Lenders, that have filed with the Association an appropriate written request, shall be entitled to receive the following notices from the Association pertaining to any Unit in which they have an interest:

A. Notice of any proposed change in the Project Documents, which notice shall be given thirty (30) days prior to the effective date of such change;

B. Notice of default by the Owner-Mortgagor or Owner-Trustor of a Unit in the performance of such mortgagor's or trustor's obligations under the Project Documents, which default is not cured within thirty (30) days;

C. Notice of any damage or destruction to any individual Unit subject to a mortgage or deed of trust, which damage or destruction is substantial or may be restored only at a cost exceeding One Thousand Dollars (\$1,000.00), which notice shall be given immediately upon the Board's obtaining knowledge of such damage or destruction.

D. Notice of any damage or destruction to any portion of the Common Area or facilities or improvements thereon, which damage or destruction is substantial or may be restored only at a cost exceeding Ten Thousand Dollars (\$10,000.00), which notice shall be given immediately upon the Board's obtaining knowledge of such damage or destruction.

E. Notice of any proceeding or other action taken or proposed for the acquisition of any Unit or portion thereof or the common elements or any portion thereof by any condemnation, eminent domain or similar proceeding, shall be given immediately upon the Board's obtaining knowledge of such proceeding.

F. Notice of all meetings of the Association, which notice shall be given thirty (30) days prior to the date of any such meeting, and each lender shall be permitted to designate a representative to attend all such meetings.

9.5.3 Changes Requiring Lender Approval

The prior written approval of the Institutional Lenders affected shall be required to make any material amendment to the Project Documents, including, but not limited to, any amendment which would:

A. Change the undivided pro rata share or ownership interest in the Common Area, or the share of assessments levied against or charged to any Unit; or

B. By act or omission, seek to terminate or abandon the status of the Project as a statutory Condominium; or

C. Allow partition or subdivision of any Unit, except as provided in Subarticle 2.4; or

D. Change the interest of any Unit in the allocation of distributions of hazard insurance proceeds or condemnation awards; or

E. Permit or allow the Owners by act or omission to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause); or

F. Permit the use of hazard insurance proceeds for losses or damages to any portion of the Property to be used for other than the repair, replacement or reconstruction thereof, except as specifically permitted with respect to substantial loss to the Units or the Common Area or otherwise under this Declaration; or

C. Change the provisions so as to give a Unit Owner, or any other party, priority over any rights of Institutional Lenders pursuant to their mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Units or Common Area.

9.5.4 Mortgage Priority

Notwithstanding any language contained in this Declaration to the contrary, no Unit Owner and no other party shall have priority over any rights of Institutional Lenders pursuant to their Mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Condominium Units and/or Common Areas.

9.5.5 Right to Inspect Records; Financial Reports

Institutional Lenders shall have the right to inspect the books and records of the Association during normal business hours and to receive the annual financial statement of the Association within ninety (90) days following the end of the fiscal year of the Association. Audited statements will be supplied if available.

9.5.6 Termination of Professional Management

The written approval of each Institutional Lender will be required prior to effectuation of any decision by the Association to terminate any professional management of the Association (if such has been established by the Declarant or the Association) and assume self-management of the Project.

9.5.7 Reserve Accounts

The Reserve Accounts for repair and replacement of Common Area shall be funded by the regular monthly assessment payments.

9.5.8 Abandonment or Termination of Project

The prior written approval of each and every Institutional Lender shall be required for the abandonment or termination of the Project and withdrawal of the Property from the Horizontal Property Regime, except for abandonment or termination in case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain, and provided, all Institutional Lenders are discharged or paid in full by insurance, condemnation award or other proceeds and have no further interest in the Project.

9.5.9 No Right of First Refusal

No covenant, condition or agreement contained in this Declaration shall be deemed to subject the right of a

Unit Owner to sell, transfer, or otherwise convey the Owner's Unit to any right of first refusal or similar restriction in favor of the Association. No right of first refusal may ever be adopted which shall impair the rights of any Institutional Lender to take title to a Unit through any Foreclosure or to subsequently sell or lease a Unit acquired thereby.

9.6 Owner's Right and Obligation to Maintain and Repair

Except for those portions of the Project which the Association is required to maintain and repair, each Unit Owner shall, at his sole cost and expense, maintain and repair his Unit and keep the same in good condition. The Owner's responsibility for repair, replacement and maintenance shall extend to, but not be limited to: Windows (which shall be repaired within seven (7) days of damage); interior walls; doors; all lighting fixtures; fans, dishwashers, stoves and other appliances; electrical outlets and plumbing fixtures in or appurtenant to the Unit or installed for the sole use thereof; and, any separate air conditioning, furnace and water heating unit which services his Unit. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his Unit. In the event an Owner fails to maintain his Unit as provided herein in a manner which the Board deems necessary to preserve the appearance, sanitary condition and value of the Property, the Board may notify the Owner of the work required and request it be done within thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance within said period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary lien his Unit for the amount thereof, in the same manner as annual and special assessments.

9.7 Entry for Repairs

The Board or its agents may enter any Unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible and to effect emergency repairs, or other necessary repairs which the Owner has failed or neglected to perform. Such entry shall be made upon reasonable notice (except in the event of emergency) and with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association.

9.8 Insurance; Damage or Destruction

9.8.1 Reconstruction by Unit Owners

In the event of damage to or destruction of any Unit, the Owner shall reconstruct the same as soon as reasonably practicable, and substantially in accordance with the original

plans and specifications therefor. Each Owner shall have an easement of reasonable access onto any adjacent Unit for purposes of repair or reconstruction of his Unit as provided in this Subarticle.

9.8.2 Association Liability Insurance

The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant and the agents and employees of each and the Owners and the respective family members, guests and invitees of the Owners against any liability incident to the ownership or use of the Common Area and facilities in the Common Area, and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured, and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners or the Association. Such insurance shall be in amounts deemed appropriate to the Board and to Institutional Lenders but in no event less than \$1,000,000 for each occurrence, for personal injury and/or property damage.

9.8.3 Master Hazard Insurance

Additionally, the Association shall obtain and continue in effect a master or blanket policy of multi-peril insurance on the Project, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts required by Institutional Lenders, coverage to be obtained on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of all improvements on the Project. Such policy shall contain extended coverage and replacement costs endorsements, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause and a determinable cash adjustment clause, or a similar clause to permit cash settlement covering full value of the improvements on the Project in the event of destruction and a decision not to rebuild pursuant to this Declaration. If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project shall be maintained in an amount equal to the aggregate outstanding principal balance of all Mortgage loans on the individual Units or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. Such policies shall comply with this Declaration and be in such form and amount as shall be determined by the Board; shall name as insured the Association, the Owners and Declarant (so long as Declarant is an Owner of any Units), and all Mortgagees as their respective interests may appear, through standard Mortgagees clauses or endorsement; and, shall provide that any proceeds be paid to the Association in trust for the use and benefit of the Owners and all Mortgagees as their interests may appear.

9.8.4 Additional Association Insurance

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The Association may purchase such other insurance as it may deem necessary, or as may be requested by any Institutional Lender, including without limitation plate-glass insurance, workmen's compensation, directors liability, and errors and omissions insurance, and shall purchase fidelity coverage against dishonest acts by any person or entity handling funds of the Association, including but not limited to, directors, officers, employees or agents of the Association (whether said individuals are paid or volunteers), and employees and agents of professional managers. The fidelity insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half (1-1/2) times the Association's estimated annual operating expenses and reserves. An appropriate endorsement shall be added to the policy to cover any persons who serve without compensation if the policy does not otherwise cover volunteers.

9.8.5 Choice of Carriers; Insurance Premiums

All insurance shall be obtained from an insurance carrier which has a financial rating of Class VI or better by Best's Insurance Reports or equivalent rating services, and is licensed to do business in the State of Arizona. Policies shall not be utilized where under the terms of the carrier's charter, by-laws, or policy: (a) contributions or assessments may be made against Unit Owners or their Mortgagees; or (b) less payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (c) any other limiting clause is included (other than insurance conditions) which could prevent Unit Owners or their Mortgagees from collecting insurance proceeds. The insurance premiums for the insurance policies required under this Article 9.8 shall be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right of any Unit Owner to obtain additional individual condominium insurance. Neither the Declarant, the Association, nor any officer or director thereof shall be liable to any Owner or other party if any risk or hazard is not covered by insurance or the amount is inadequate. Each Owner is responsible to ascertain the Association's coverage and to procure such additional coverage as such Owner deems necessary. Institutional Lenders may pay overdue premiums and may secure new insurance coverage upon the lapse of any policy, with respect to any insurance required to be maintained by the Association or by any Owner under this Declaration and any Institutional Lender making such expenditure, shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

9.8.6 Proceeds from Insurance

If any of the Project improvements are damaged by fire or other casualty, insurance proceeds payable to the Association shall be used to rebuild or repair such damage

substantially in accordance with the original plans and specifications therefor. Custom-built items added by Owners to their Units shall be rebuilt or replaced at the expense of Owners or their insurers. Any excess insurance proceeds shall be deposited to the general funds of the Association. In the event the proceeds of the Association's insurance policy are insufficient to rebuild or repair a Unit or Units, and the Owner or Owners of said Unit or Units do not have sufficient funds, whether insurance proceeds or personal funds, to rebuild and restore said Unit or Units, then the Association may use funds from its general account or if necessary from levying a special assessment on all Unit Owners (or on those responsible for the damage) to restore or rebuild said Unit or Units.

9.8.7 Total Destruction

In the event the Property or any Condominium Building within the Project subject to this Declaration is totally or substantially damaged or destroyed the Institutional Lenders shall receive timely notice thereof. Subject to the rights of all Mortgagees, the repair, reconstruction or disposition of the Property and insurance proceeds shall be as provided by an agreement approved by more than fifty-one percent (51%) of the votes of each class of membership, and not less than two-thirds of all First Mortgagees.

9.8.8 Personal Liability Insurance

In addition to the master policies which the Association shall carry, the Board shall have the power to require each Unit Owner, at his expense, to carry personal liability insurance covering damage to property or injury to the person of others within the Project resulting from negligence of the Owner or his agents, in an amount up to One Hundred Thousand Dollars (\$100,000.00) for each occurrence.

9.8.9 Waiver of Subrogation; Notice of Cancellation

All property and liability insurance carried by the Association or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, officers, and directors, and other Owners, their families, guests, invitees, agents and employees. All insurance carried by the Association shall contain a provision requiring the insurer to notify Institutional Lenders requesting such notice, at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

9.9 Condemnation

In the event of any taking of any Unit in the Project by eminent domain, the Owner of such Unit and his Mortgagee

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shall be entitled to receive the award for such taking and after acceptance thereof he and his mortgagee shall be divested of all interest in the Project. If such Owner shall vacate his Unit as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of more than one Unit at the same time, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Units are not valued separately by the condemning authority or by the court. The Association should give careful consideration to the allocation of percentage interests in the Common Area in determining how to divide lump sum proceeds of condemnation. In the event any Unit Owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under the rules of the American Arbitration Association.

9.10 Limitation of Restrictions on Declarant

It is understood that the completion of any repairs, restoration or improvements to the property by the Declarant and the sale, rental, and other disposal of said Units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood construed to:

9.10.1 Prevent Declarant, its contractors, or subcontractors from doing on the Property or any Unit, whatever is reasonably necessary or advisable in connection with the completion of the work; or

9.10.2 Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

9.10.3 Prevent Declarant from conducting on any part of the Property its business of completing the work and of establishing a plan of Unit ownership and of disposing of said Property in Units by sale, lease or otherwise; or

9.10.4 Prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale, lease or disposition thereof.

9.11 Termination of Any Responsibility of Declarant

So long as Declarant, its successors and assigns,

owns one or more of the Units established and described in this Declaration and except as otherwise specifically provided herein, Declarant or its successors and assigns, as the case may be, shall be subject to the provisions of this Declaration. In the event Declarant shall convey all of its right, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

9.12 Owners' Compliance

Each Owner, tenant or occupant of a Unit shall comply with the provisions of the Project Documents and all decisions and resolutions of the Association or its duly authorized representatives, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages (including costs and attorneys' fees), and/or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or Bylaws, shall be deemed to be binding on all Owners of Units, their successors and assigns.

9.13 Conflict of Project Documents

If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to the Articles, the Bylaws and then to the rules and regulations of the Association.

9.14 Construction of Project Documents

Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of the Project Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions of the Project Documents shall be final, conclusive and binding as to all persons and properties benefited or bound thereby; provided, however, the Project Documents are intended to comply with and shall be interpreted where possible in conformity with all the rules, regulations and requirements from time to time existing of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association applicable to conventional Mortgages on condominiums. In the event of conflict between the rules, regulations and requirements of the two institutions, those of the institution holding the greatest number of Mortgages on Units, in the Project shall govern.

9.15 Indemnification

Each member of the Board, each officer and each Association member shall be indemnified by the Owners out of the common expense fund against all expenses, damage, injury and liabilities including attorneys' fees, reasonably incurred by or

imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, or any settlement thereof, by reason of his being or having been a member of the Board, an officer of the Association, or a member of the Association, except in such cases wherein the member of the Board, the officer or member of the Association, is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, except in proceedings brought by the Association against a board member, officer or member and except where such expenses and liabilities, damage or injury is covered by some type of insurance. In the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

9.16 Declarants Exercise of Associations Powers

Until all of the Units are disposed of originally by Declarant, or until 18 months from the date hereof, whichever is first, the Declarant or persons designated by Declarant shall act as and for the members of the Association and shall exercise all of the rights, duties powers and functions of the Board of Directors. Thereafter, within twenty (20) days, Declarant shall hold a special meeting of the members of the Association at which meeting Declarant shall resign from the Board and the members, including Declarant if Declarant is a member, shall elect a new Board pursuant to the Bylaws. This provision may not be amended without the prior written consent of Declarant.

9.17 Captions

Captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text hereof.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 4th day of NOVEMBER, 1978.

CASA ESPANA ASSOCIATES, an
Arizona Limited Partnership

By Dana Holdings, Inc., a
general partner

By Henry B. Anderson
Its President

By Parkside Holdings, Inc.,
a general partner

By Pam E. [Signature]
Its President

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STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 4th day of NOVEMBER, 1978, by Gary G. Anderson and Paul E. Krug, the respective Presidents of, and on behalf of, Dana Holdings, Inc. and Parkside Holdings, Inc., Washington corporations, General Partners of Casa Hispana Associates, an Arizona Limited Partnership, the corporations acting on behalf of the partnership.

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


Notary Public

My commission expires:

SEPTEMBER 29, 1978

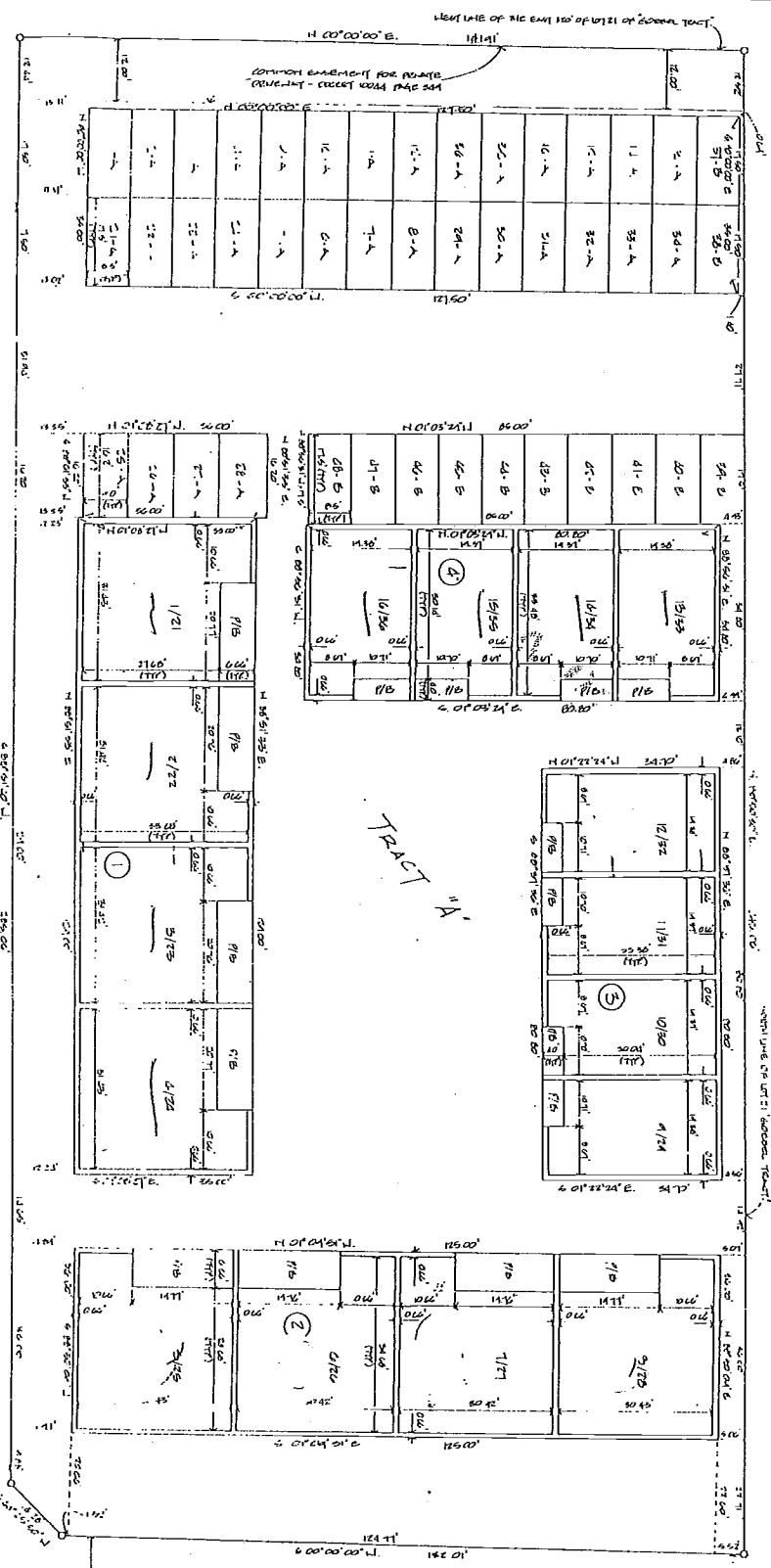
EAST CLARENDON PLACE

205
39



CLARENDON AVE.

51st STREET



COLEMAN
12-21-71