

DECLARATION OF HORIZONTAL PROPERTY REGIME
AND DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR HORIZON HEIGHTS CONDOMINIUMS

THIS DECLARATION, made as of the date hereinafter set forth by ENVIRONMENTAL
CONSTRUCTION COMPANY, an Arizona corporation (hereinafter called the "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the sole owner of the following described real property situated
in the Town of Oro Valley, Pima County, Arizona and described in Exhibit A attached hereto
and incorporated herein by this reference (hereinafter sometimes referred to as the "Parcel");
and

WHEREAS, Declarant desires hereby to submit and subject the Parcel to a horizontal
property regime pursuant to Sections 32-551 through 33-561 of the Arizona Revised Statutes;
and

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

WHEREAS, Declarant desires and intends that the Unit Owners, Mortgagees,
beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring
any interest in the Property (as hereinafter defined) shall at all times enjoy the benefits of, and
shall hold their interests subject to, the rights, easements, privileges and restrictions hereinafter

including the trustee and beneficiary under any deed of trust and also including a seller under a contract for sale, other than a seller who is an owner; and "Mortgagor" means the party executing a Mortgage. "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property.

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

1.11 "Owner" means the record owner, whether one or more persons or entities, of a fee simple title, whether or not subject to any Mortgage, to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of Units the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor.

1.12 "Parcel" means the parcel or tract of real estate described on Exhibit A attached hereto and incorporated fully herein by this reference, plus any additional parcels or tracts of real estate which may hereafter at any time have been added by the Declarant to the horizontal property regime in the manner hereinafter provided.

1.13 "Parking Space" means each of the separate parking spaces as shown on the Plats.

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

1.15 "Plats" means the various plats of survey of the Property, as hereinbefore and hereinafter more fully described and identified, and additional real property adjacent thereto owned by the Declarant, all of which are attached hereto as Exhibit B and are incorporated fully

herein by this reference, said Plats having been recorded at Book 38 of Maps, page 79 et seq. in the Records of Pima County, Arizona.

1.16 "Property" means the Parcel, the Buildings and the Units comprising the horizontal property regime hereby created, together with all buildings, improvements, and other permanent fixtures of whatsoever kind thereon, all rights and privileges belonging or in any way pertaining thereto and all furniture, furnishings, fixtures, machinery, equipment, appliances and personal property located thereon, intended for the mutual use, benefit and enjoyment of the Owners (but not including the personal property of any owner or occupant); and such term shall in general have the same meaning as set forth in Section 33-551, Arizona Revised Statutes, as related to the horizontal property regime hereby created.

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

1.18 "Apartment Unit" or "Unit" means each of the twenty-six (26) portions of the Property contained or planned to be contained in the Buildings which consist or are planned to consist of one or more rooms and any patio and are intended for independent use as a dwelling unit, as shown on the Plats. A Unit is an "Apartment" within the meaning of Section 33-551(1), Arizona Revised Statutes, and includes an undivided interest in the Common Elements as set forth in Paragraph 3.4 hereof.

2. Submission of Property. Declarant hereby submits and subjects the Property to a horizontal property regime pursuant to Sections 33-551 through 33-561, Arizona Revised Statutes, to be known as HORIZON HEIGHTS CONDOMINIUMS, and does hereby declare that

all of the Units shall be owned, leased, sold, conveyed and encumbered or otherwise held or disposed of subject to the terms, conditions and other provisions of this Declaration.

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

3.1 Buildings. Reference is hereby made to the Plats for a description of the cubic content space of or planned for each of the separate residential Buildings in the horizontal property regime and its location or planned location on the Parcel.

3.2 Units. There are or are planned to be a total of twenty-six (26) Units in the Buildings. Reference is hereby made to the Plats for a description of the cubic content space of each Unit and its location or planned location within the Buildings. Each Unit shall include the space enclosed and bounded by the interior unfinished surfaces of the ceiling or any extension of the elevation thereof, floor and any extension of the elevation thereof, perimeter walls and windows thereof (or, if there is no perimeter wall, then the interior boundary thereof), including the ceilings, floors, perimeter walls and windows of garages, and the patio fences or any extension of the vertical interior surface thereof, together with any portion of the central air conditioning/heating system which exclusively serves such Unit; provided, however, that no portion of the roof, bearing walls or other structural components of the Building in which each Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility, water or sewer lines situated within such Unit and forming part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of a Unit.

3.3 Common Elements. A description of the Common Elements included in and comprising parts of each Building is the description referred to in subparagraph 3.1 less the

descriptions of the Units referred to in subparagraph 3.2. A description of the other Elements is as set forth in subparagraph 1.4.

3.4 Interest in the Common Elements. The percentage interest which each Unit bears to the entire horizontal property regime, which interest shall constitute an undivided interest in the Common Elements which is appurtenant to each such Unit, shall be the percentage calculated by a fraction in which the numerator is one (1) and the denominator is the total number of Units. For example, if there are twenty-six (26) Units, then the interest which each Unit bears to the entire horizontal property regime would be 1/26 or 3.845 percent.

4. Association. The Association, an Arizona nonprofit corporation, has been, or will be, formed to constitute the "Council of Co-Owners", as that term is defined in Section 33-551, Arizona Revised Statutes, and to serve as the governing body for all of the Owners for the protection, improvement, alteration, expansion, augmentation, disposal, divestment, redescription, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds, and other matters as provided in the Act, in this Declaration, in the Articles of Incorporation of the Association (hereinafter referred to as the "Articles") and in the Bylaws of the Association (hereinafter referred to as 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 provision of this Declaration, the Articles and the Bylaws. Each Owner shall be a member of the Association as soon and so long as he shall be an Owner. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner, and the new Owner shall likewise automatically succeed to such membership in the

Association. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it appertains (and then only to such purchaser) or by intestate succession, testamentary disposition, foreclosure of a mortgage of record or other legal process transferring fee simple title to such Unit (and then only to the Person to whom such fee simple title is transferred). Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged or alienated the voting right of his Unit regarding special matters to a Mortgagee as additional security, only the vote of such Mortgagee will be recognized in regard to such special matters, if a copy of such proxy or other instrument pledging or alienating such vote has been filed with the Board of Directors. In the event that more than one such instrument has been filed, the Board of Directors shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves. Any attempt to make a prohibited transfer of a membership is void and will not be recognized by or reflected upon the books and records of the Association. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of such Unit, the Association shall have the right to record a transfer upon the books of the Association and issue a new membership to the purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

4.1 Classes of Membership: Voting Rights of Classes. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Unit owned. When more than one

person holds an interest in any unit, all such persons shall be members. The voting for such Unit shall be exercised as they as such Persons among themselves determine, but in no event shall more than one vote be cast with respect to any Class A Unit.

Class B. Class B member shall be the Declarant who shall hold one Class B membership for each Unit owned and shall be entitled to three (3) votes for each Unit owned. Each such vote may be cast in such proportions on any matter as Declarant may determine. Class B memberships shall cease and be converted to Class A memberships, without further act or deed, upon the happening and during the continuance of any of the following events:

(a) Upon the sale or other disposition of any Unit by Declarant, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including a pledge or assignment by Declarant to any lender as security), with respect to the Unit or Units so sold or otherwise disposed of; or

(b) With respect to all remaining Class B memberships, upon the first to occur of the following:

(i) Within one hundred twenty (120) days following the first date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or

(ii) On January 1, 1992,

If any lender to whom Declarant has assigned or hereafter assigns, as security, all or substantially all of its rights under this Declaration succeeds to the interests of Declarant by

virtue of said assignment, the Class B memberships shall not be terminated thereby. Lender shall hold the Class B memberships on the same terms as they were held by pursuant hereto.

4.2 Election and Qualifications of Directors. The manner of election, length of term, and duties and powers of the Directors (other than those set forth herein) shall be set forth in the Articles of Incorporation or the Bylaws of the Association. In the event of any conflict between the Articles or Bylaws and this Declaration, this Declaration shall govern and shall be binding. Each director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of such Owner). If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director, and his place on the Board shall be deemed vacant. The requirements of this subparagraph shall not apply to directors elected by the Class B member.

4.3 Board's Determination Binding. In the event of any dispute or disagreement between the Owners relating to the Property, or any question of interpretation or application of the provisions of this Declaration, the Articles or the Bylaws, the determination thereof by the Board shall be final and binding on each and all of such Owners; except that if any such dispute, disagreement or question shall involve the Declarant, the determination thereof by Declarant shall be final and binding.

4.4 Action by Owners. To the extent permitted by the Act, all actions required to be taken by the Owners, acting as a Council of Co-Owners for the Property, shall be taken by the Association, by and through its directors and officers, such actions to include, without limitation,

adoption or ratification of the Bylaws and rules and regulations for the horizontal property regime created hereby.

4.5 Additional Provisions in Articles of Incorporation and Bylaws of the Association.

The Articles of Incorporation and Bylaws of the Association may contain any provision not inconsistent with law or with this Declaration relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members.

5. Use of Common Elements. Each Owner shall have the nonexclusive right to use the Common Elements in common with all other Owners as may be required for the purposes of access, ingress and egress to and from and the use, occupancy and enjoyment of the respective Unit owned by such Owner and of the Common Elements for their intended purposes, as herein provided. Each Owner of any Unit hereafter existing on the real property described in Exhibits C, D, E and F attached hereto and incorporated herein by this reference, as shown in the Plats, shall have the nonexclusive right to use any portion of the Common Elements set aside for common recreational purposes on a nondiscriminatory basis with the Owners of all Units in the horizontal property regime created in this Declaration. Such rights shall extend to each occupant and the agents, servants, tenants, family members and invitees of each Owner. Such rights shall be subject to such reasonable limitations and restrictions as may from time to time be promulgated by the Board, and shall be subject to and governed by the Provisions of this Declaration, the Articles and the Bylaws.

6. Parking Spaces. There shall be one type of Parking Spaces, called "Guest Parking Spaces." Guest Parking Spaces shall be part of the general Common Elements and held available for additional parking by Owners and their guests and invitees in accordance with rules

determined by the Board of Directors from time to time. The Board shall have full authority to establish, operate, manage and adopt rules and regulations for any Guest Parking Spaces.

7. Common Expenses. Commencing on the conveyance of the first Unit, each Owner, including Declarant, shall pay his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in accordance with this Declaration, the Articles and the Bylaws (which expenses are herein sometimes referred to as "Common Expenses"), including specifically, but not by way of limitation, insurance, all utilities for the Common Elements, the maintenance and repair of the Common Elements and any and all replacements and additions thereto, and reasonable reserves for contingencies, replacements or other proper purposes, including an adequate reserve fund for replacement of those Common Elements which must be replaced on a periodic basis. The Association shall also maintain a working capital fund equal to at least two (2) months estimated Common Expenses of the Association, or such greater amount and for such longer period as the Board of Directors may determine from time to time. Each Owner's proportionate share of such Common Expenses shall be the same as the fractional undivided interest in the Common Elements appurtenant to his Unit as provided in paragraph 3.4.

3 mos
\$15,000

The assessments of Common Expenses shall be fixed by the Board from time to time, subject to the conditions hereinafter set forth. Except as adjusted as a result of the annexation of additional Units into the horizontal property regime hereby created (pursuant to paragraph 35 hereof), and until January 1, 1986, the maximum annual assessment for any Unit shall be Twenty-Three Thousand Five Hundred and 00/100 Dollars (\$23,500.00), times the percentage interest in the Common Elements appurtenant to such Unit. For example, the maximum annual

assessment for a Unit to which a 3.846 percent interest in the Common Elements is appurtenant shall be \$903.81. Thereafter, the maximum annual assessment may be increased each year by the Board of Directors by up to the same percentage amount as the percentage increase during the calendar year then ended in U.S. Department of Labor Consumer Price Index for all Urban Consumers (or if such index has been discontinued, in a similar index selected by such Board). Such maximum annual assessment may be increased by a greater amount only upon the 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.

In addition to the annual assessments authorized above, the Association may levy special assessments 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 Elements and only upon the 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.

Payment of Common Expenses shall be due at such times as may be determined by the Board of Directors of the Association. Such payment, together with interest at the rate of twelve percent (12%) per annum, costs, and reasonable attorneys fees, shall constitute the personal obligation of the person who was the Owner of such Unit at the time such payment fell due. The personal obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by him. If any Owner shall fail or refuse to make any such payment of Common Expenses when due, the amount thereof, together with interest, costs and reasonable attorney's fees, shall constitute a lien on such Owner's Unit and on any rents or proceeds therefrom; provided, however, that such lien shall be subordinate to the lien of a prior recorded

First Mortgage on the applicable Unit, acquired in good faith and for value, except for the amount of the unpaid Common Expenses which accrues from and after the date on which such First Mortgagee acquires title to the applicable Unit, and if any lien for unpaid assessments prior to such date has not been extinguished by the process by which such First Mortgagee acquired such title, such First Mortgagee shall not be liable for such unpaid assessments, and upon written request to the Board of Directors by such First Mortgagee, such lien shall be released in writing by the Association. Any person acquiring an interest in any Unit shall be entitled to a statement from the Association setting forth the amount of unpaid assessments, if any, and such person shall not be liable for, nor shall any lien attach to such Unit in excess of, the amount set forth in such statement, except for assessments which occur or become due after the date thereof. The lien provided for in this paragraph may be foreclosed by the Association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona.

8. Mortgages. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages of his Unit. No owner shall have the right or authority to make or create or cause to be made or created any mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Unit and its appurtenant interest in the Common Elements.

9. Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Arizona with a rating in

Best's Insurance Guide (or any comparable publication) of at least Class VI or better (or any comparable rating). All such insurance, to the extent possible, shall name the Association or its authorized representative, including without limitation any trustee under any insurance trust agreement, as the insured, in its individual capacity and also either as attorney-in-fact or trustee for all Owners. Each initial or any subsequent Owner of any Unit shall, by virtue of becoming such Owner and without further act or deed, appoint the Association or its authorized representative attorney-in-fact for the purposes herein contained, including, but not limited to, purchasing and maintaining the insurance referred to herein, collecting and disposing of the proceeds thereof, negotiating losses and executing releases of liability, and executing all documents and performing all other acts necessary to accomplish such purposes. Such powers of attorney are coupled with an interest and shall be irrevocable and shall survive the incapacity or death of any Owner and any transfer or other disposition of any Unit by operation of law or otherwise. Each initial and any subsequent Owner shall be deemed to and does hereby agree and covenant to execute any consent, power of attorney, amendment, or other instrument necessary to accomplish any of the foregoing. The Board of Directors shall review all such insurance at least annually and shall be responsible to increase the amounts thereof as it deems necessary or appropriate. To the extent possible, such insurance shall:

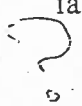
- (1) Provide for a waiver of subrogation by the Insurer as to claims against the Association, its directors, officers, employees and agents and against each Owner and each Owner's employees, agents and invitees, and against each Mortgagee of all and any part of the Property or of any Unit, and any other person for whom the Association, any Owner or Mortgagee may be responsible;

(2) Provide that the insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees and agents or of any Owner or such Owner's employees, agents or invitees or of any Mortgagee of all or any part of the Property or of any Unit or any other person for whom the Association, any Owner or Mortgagee may be responsible;

(3) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee of all or any part of the property or any Unit and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or Mortgagee of all or any part of the Property or any Unit;

(4) Provide that, under such insurance policy, no contributions or assessments shall be required from or made against the Association or any Owner or Mortgagee of all or any part of the Property or any Unit on account of any payment of the proceeds under the policy;

(5) Contain a standard without contribution mortgage clause endorsement in favor of the Mortgagee of any Unit or all or any part of the Property;

 (6) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least 30 days' prior written notice to the Association and to each Owner and to each Mortgagee covered by any standard mortgage clause endorsement; and

(7) Provide that the insurer shall not have the option to restore the premises if condominium ownership of the Units and Property is to be terminated or the Units and

Property are to be sold as an entirety in accordance with the destruction, condemnation and obsolescence provisions of this Declaration.

To the extent possible, such public liability and property damage insurance shall provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation.

The Association shall maintain in its file a copy of its current policy of insurance for the Property and certificates of insurance for each Unit. Certificates of insurance coverage or copies of insurance policies shall be issued to and at the expense of each Owner and each Mortgagee who makes or on whose behalf written request is made to the Association for any such certificate or copy.

The cost and expense of all insurance obtained by the Association shall be a general Common Expense.

9.1 Casualty Insurance. The Association shall obtain and maintain casualty insurance covering the Property and each Unit covering loss or damage by fire and such other hazards as are covered under standard extended coverage policies, including without limitation, vandalism and malicious mischief, such other hazards as institutional lenders customarily require insurance against in the Tucson, Arizona area and, if available and if deemed appropriate by the Association, war risk, and a National Flood Insurance Association Standard Flood Insurance Policy, unless such insurance is not available or the Association shall determine that the Property does not fall within a flood hazard area. Such insurance shall be obtained in an amount which provides coverage for one hundred percent (100%) of the current replacement cost of the Property, exclusive of land, foundation, excavation and other items normally excluded from

coverage, including each Unit. At the option of the Association, such insurance may also cover additions, alterations or improvements to a Unit made by an Owner if the Owner reimburses the Association for any additional premiums attributable to such coverage. The Association shall not be obligated to apply any insurance proceeds to restore a Unit to a condition better than the conditions existing prior to the making of additions, alterations or improvements as aforesaid.

9.2 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering bodily injury liability, property damage liability and automobile bodily injury and property damage liability. Such insurance shall contain a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of an Owner because of negligent acts of the Association or any other Owner. Each Owner shall be insured with respect to such Owner's liability arising out of the ownership, maintenance, repair, condition or operation of the Common Elements, including restricted Common Elements, and all other coverage in kinds and amounts commonly required for similar projects by institutional lenders in the Tucson, Arizona area. Limits of such coverage shall not be less than \$1,000,000 per injury and occurrence with respect to bodily injury liability and with respect to property damage liability.

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

9.4 Fidelity Bonding. The Association shall obtain and maintain bonds under which the Association is the named insured for all officers, directors, trustees and employees of the Association and all other persons or entities which handle or are responsible for funds of the

Association, including without limitation officers, employees and agents of any professional manager of the Association, in amounts not less than one hundred fifty percent (150%) of the estimated annual budget of the Association from time to time. To the extent possible, said bonds shall:

- A. Name the Association as an obligee.
- B. Contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.
- C. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a Common Expense.
- D. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Association.

9.3 Insurance by Owners. Except to the extent coverage therefor may be obtained by the Association and be satisfactory to an Owner, each Owner shall be free to obtain and be responsible for obtaining such additional or other insurance as he deems desirable, including insurance covering his furnishings and personal property and covering personal liability of him and his employees, agents and invitees and any other person for whom such Owner may be responsible. Any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and must, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any

claim against the Association, its officers, directors, agents and employees and against other Owners and their employees, agents and invitees and against any Mortgagee of all or any part of the Property or any Unit or other person for whom the Association or any such Owner or Mortgagee may be responsible.

9.6 Receipt and Application of Insurance Proceeds. Except as some particular person shall have a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries under policies maintained by the Association shall be paid to and received by the Association or its authorized representative, including without limitation any trustee under any insurance trust agreement. The Association or such representative shall have the right, acting alone, to collect and dispose of all insurance proceeds and to adjust or settle any claim under any insurance maintained by it and to perform all other acts necessary to accomplish such purposes. Each initial or any subsequent Owner of any Unit shall, by virtue of becoming such Owner and without further act or deed, appoint the Association or its authorized representative attorney-in-fact for the purposes herein contained, including, but not limited to, purchasing and maintaining the insurance referred to herein, collecting and disposing of the proceeds thereof, negotiating losses and executing releases of liability, and executing all documents and performing all other acts necessary to accomplish such purposes. Such powers of attorney are coupled with an interest and shall be irrevocable and shall survive the incapacity or death of any Owner and any transfer or other disposition of any Unit by operation of law or otherwise. Each initial and any subsequent Owner shall be deemed to and does hereby agree and covenant to execute any consent, power of attorney, amendment or other instrument necessary to accomplish any of the foregoing. All insurance proceeds received by the Association or such representative shall be

applied in accordance with the following priorities: first, as expressly provided elsewhere in this Declaration; second, to the Owners and Mortgagees or other persons whom the Association may determine are legally or equitably entitled thereto; and third, the balance, if any, to Owners and Mortgagees in proportion to their respective interests in the Common Elements. The lien priority of any First Mortgagee shall not be disturbed by any loss, damage or destruction and shall continue in any insurance proceeds payable with respect to the Mortgaged Unit in accordance with the provisions of this paragraph.

9.7 Other Insurance by the Association. The Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, including but not limited to casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

9.8 FNMA and FHLMC Requirements. Notwithstanding any provision of this Paragraph 9, if at any time any of the Units are covered by Mortgages which are required in writing by the holder thereof to qualify for further sale to the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") (or any successor to such corporations which performs their present functions), the Association shall at all times carry all insurance in such amounts and containing all provisions as are required from time to time by either FNMA or FHLMC to be maintained by the homeowners associations of horizontal property regimes, unless such coverage is unavailable or waived in writing. The Association shall furnish to FNMA or FHLMC or any First Mortgagee requesting the same in writing any

claim or notification of damage or other loss covered by any of the types of insurance provided for in this Section.

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

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

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

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

10.1.3 "Substantial Obsolescence" shall exist whenever the Owners of Units holding seventy-five percent (75%) of the undivided ownership of the Common Elements determine by vote that the Property or any part thereof has reached an undesirable state of obsolescence or disrepair, or whenever the Board of Directors determines that the Property or any part thereof has reached such a state of obsolescence or disrepair that the excess of estimated costs of

Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Property. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

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

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

10.1.6 "Available Funds" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation and any uncommitted income or funds of the Association other than the income or funds derived through assessments or special assessments. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee of all or any part of the Property or of any Unit, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner of a Unit for the condemnation or taking of that Owner's individual air space unit.

10.2 Restoration of the Property. Restoration of the Common Elements shall be undertaken by the Association without a vote of the Owners in the event of Partial Destruction, Partial Condemnation or Partial Obsolescence. In the event of Substantial Obsolescence, such

restoration shall be undertaken unless, under the provisions of applicable Arizona law, the prior written consent of a sufficient number of Owners and First Mortgages to such non-restoration, and to the use of proceeds or awards for a purpose other than restoration, is obtained. To the extent permitted by Arizona law at the time non-restoration is contemplated, the written consent to such non-restoration and to the use of proceeds or awards for a purpose other than restoration required under this paragraph shall be obtained as follows:

A. If Declarant then owns any Units, such consent shall be obtained from the Declarant and not less than two-thirds of the Owners of all Units not owned by Declarant; and

B. If Declarant then owns no Units, such consent shall be obtained from not less than two-thirds of the Owners of all Units.

For purposes of both of subparagraphs A and B, before the written consent of the Owner of any Unit which is subject to a Mortgage shall be effective, any First Mortgagee of such Unit shall have consented in writing to such nonrestoration and to the use of any of such proceeds or awards for a purpose other than the restoration of such Common Elements.

10.3 Sale of the Property. In the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence, if the requisite number of First Mortgagees and Owners consent to such nonrestoration, as provided in the preceding paragraph, the Common Elements shall be sold, except for those portion of the Common Elements which remain desirable and which are independent of the destroyed, condemned or obsolete portion. In the event of such sale, the proceeds of sale and any insurance proceeds, condemnation awards or payments in lieu of condemnation shall be distributed by the Association to the Owners of Units

with each Unit receiving an equal portion. Such payments shall be made to Owners or, as to Units which are mortgaged of record at the time of such payment, jointly to such Owner and the Mortgagee.

10.4 Authority of Association to Restore or Sell. The Association, as attorney-in-fact for each Owner, shall have full power and authority to restore or to sell the Property and each Unit whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

10.5 Special Assessments for Restoration. Whenever Restoration is to be undertaken, the Association may levy and collect assessments from each Owner in equal proportion, payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by Available Funds. Such special assessments shall be secured by a lien on the Unit of each such Owner as in the case of regular assessments. Notwithstanding any other provisions in this Declaration to the contrary, in the case of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence, any such special assessment shall not be personal obligation of any such Owner who voted against Restoration or who filed with the Association a written consent to nonrestoration prior to commencement thereof. Whether or not such special assessment is a personal obligation of the Owner, if it is not paid when due, such special assessment may be recovered by foreclosure of the lien against the Unit of such Owner as hereinabove provided.

10.6 Receipt and Application of Condemnation Funds. Except as herein expressly provided, all compensation, damages or other proceeds constituting awards in condemnation or

eminent domain or payments in lieu of condemnation or eminent domain shall be payable to the Association. The Association shall have the right, acting alone, to adjust or settle any award payable to it. With respect to any such award or payment payable to the Association by reason of any condemnation or eminent domain proceedings, each initial and any subsequent Owner of any Unit shall, by virtue of becoming such Owner and without further act or deed, appoint the Association said Owner's attorney-in-fact for negotiation and settlement of any such award or payment. Such powers of attorney are coupled with an interest and shall be irrevocable and shall survive the incapacity or death of any Owner and any transfer or other disposition of any Unit by operation of law or otherwise. Each initial and any subsequent Owner shall be deemed to and does hereby agree and covenant to execute any consent, power of attorney, amendment or other instrument necessary to accomplish any of the foregoing. The amount of any such award equitably allocable as compensation for the taking of or injury to the individual air space unit of a particular Unit or to improvement of an Owner therein shall be apportioned and paid to the Owner of that Unit or to any Mortgagee of such Unit as their interests may appear. The balance of the award shall be applied to costs and expenses of Restoration, if undertaken, and, to the extent not so applied, shall be allocated as follows. First, any portion of the award allocable to the taking of or injury to Common Elements shall be apportioned among all Owners or Mortgagees, as their interests may appear, in proportion to their respective undivided interests in the Common Elements. Secondly, the amounts allocable to severance damages shall be apportioned to Owners and Mortgagees of Units with individual air space units which were not taken or condemned in proportion to their respective undivided interests in the Common Elements. Thirdly, the amounts allocated to consequential damages or for other purposes shall

be apportioned as the Association determines to be equitable under the circumstances. The lien priority of any Mortgagee shall not be disturbed by any condemnation proceeding and shall continue in the proceeds of any condemnation award attributable to the Mortgaged Unit in accordance with the provisions of this paragraph.

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

11. Rights of Owners in any Distributions. In the event that any Owner or Mortgagee is entitled to receive any distribution of money, property or other things from the Association for any reason, including without limitation the sale or other disposition of all or any part of the Common Elements or the cessation or termination for any reason of the horizontal property regime herein declared, such distribution shall be in proportion to the interest in the Common Elements appurtenant to the Unit or Units owned or held by such Owner or Mortgagee, except as provided in paragraphs 9 or 10 hereof or as otherwise determined by the Association to be required by equity.

12. Maintenance, Repairs and Replacements: Right of Access. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit and of any portion of the air conditioning heating system or

other utilities which exclusively service his Unit; and each Owner shall keep his patio areas, if any, in a neat, clean and attractive condition. The Association shall be fully responsible for the maintenance, safety, liability and control of all Common Elements and private sewers and shall make all necessary repairs and replacements, and, except as provided below, the cost thereof shall be a Common Expense. Without limiting the generality of the foregoing sentence, the Association shall (i) periodically examine all water retention basins, and (ii) maintain such water retention basins in accordance with the requirements of any Town of Oro Valley Hillside Ordinance, whether now in force or hereafter adopted, which regulates the maintenance of such water retention basins. The Association shall be responsible for the maintenance, safety, control and liability of the private streets and easements. In the event that the Association or its assigns shall fail to maintain said easements and streets, then the Town of Oro Valley shall have the right but not the obligation to enter upon said easements and streets for the purpose of repairing, paving and otherwise maintaining said easements and streets to the standards promulgated in the Oro Valley Zoning Code Revised, as amended. In the event that the Town of Oro Valley shall exercise such right, the individual Owners and Members of the Association are subject to assessment and collection of charges by the Town of Oro Valley for such maintenance and resurfacing of the streets. If, due to the willful or negligent act of an Owner or a member of his family or guest or other authorized occupant or visitor of such Owner, or other person for whom such Owner may be responsible, or household pet, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner shall, to the extent required by law and not covered by the Association's insurance, pay for such damage and for

such maintenance, repairs and replacements as may be determined by the Board. Such obligation of payment and performance shall be payable together with interest at the rate of twelve percent (12%) per annum, costs and attorneys' fees, and secured by a lien, as provided in paragraph 7 with respect to Common Expenses. An authorized representative of the Board, or of the manager or managing agent of the Association, and all contractors and repairmen employed or engaged by the Board or such manager or managing agent, shall be entitled to reasonable access at reasonable times to each of the Units as may be required in connection with maintenance, repairs or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units and the Common Elements.

13. Alterations, Additions or Improvements. No alterations of any Common Elements or any additions or improvements thereto or any alterations, additions or improvements to the patios associated with any Unit shall be made by any Owner without the prior written approval of the Board. Any Owner may make nonstructural alterations, additions or improvements within the interior of his Unit (but excluding for purposes of the authority herein granted any patio) without the prior written approval of the Board, but such Owner shall be responsible for any damage to other Units, the Common Elements, or the Property which may result from such alteration, addition or improvement. In addition to the required approval of the Board, there shall be no structural alterations or additions to any Building without the prior approval of a majority of the Owners given at a regular or special meeting of the members of the Association. Unless otherwise determined at any such meeting, the cost of such alterations or additions shall be paid by means of a special assessment against the Owners in proportion to their respective undivided interests in the Common Elements. Such special assessments shall be

payable together with interest at the rate of twelve percent (12%) per annum, costs and attorneys' fees and secured by a lien upon the Units of such Owners in accordance with the provisions of paragraph 7.

14. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all of the decorating within his own Unit (but any furnishing or decorating of any patio shall be subject to the provisions of paragraph 18 of this Declaration) from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating. Notwithstanding any other provision hereto to the contrary, all draperies, window shades, curtains and other decorating of any Unit which can be seen from outside the Unit shall be subject to regulation as to color or design by the Board of Directors. Each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings and the surfaces within his Unit, and each Owner shall have the right to decorate such surfaces from time to time as he may see fit at his sole expense. However, each Owner shall maintain such surfaces in good condition, and all such use, maintenance and decoration shall be subject to regulation by the Board of Directors. Decorating and maintenance of the Common Elements (other than interior surfaces within the Unit as above provided), and any redecorating of Units to the extent made necessary by any damage caused by defect in or by maintenance and repair work by the Association on the Common Elements shall be furnished by the Association and paid for as part of the Common Expenses.

15. Encroachments. If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any Unit or entryway providing ingress and egress thereto or therefrom shall

actually encroach upon another Unit or entryway, as the Common Elements and the Units are shown on the appropriate Plat, whether such encroachment results from the initial construction or from subsequent repair, reconstruction, settlement or shifting, there shall be deemed to be mutual easements in favor of the Owners of the Common Elements and the respective Owners involved to the extent of such encroachment so long as the same shall exist; provided, however, that no such easement shall arise if the encroachment results from the misconduct of the Owner claiming entitlement thereto. The Association shall at all times have the right to maintain any Common Element now existing or hereafter constructed, regardless of any encroachment now or hereafter existing of any such Common Element on any Unit.

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

17. Use and Occupancy Restrictions. No part of the Property shall be used other than as a dwelling and the related common purposes for which the Property was designed, except that Declarant shall have the right to maintain sales and any other offices, model units, and signs on the Property, together with rights of ingress and egress therefrom, and to do such other acts and

maintain such other facilities as are incidental to the development and sale of the Units now or hereafter existing in the horizontal property regime hereby created or the development, construction, lease or sale of any portion of the real property described on Exhibits C, D, E and F attached hereto and shown in the Plats. Without limiting the foregoing, no Owner shall permit his Unit to be used for transient or hotel purposes or shall lease less than the entire Unit. Any lease agreement shall be in writing, for a duration of no less than 30 days, and shall expressly provide that its terms are subject in all respects to the provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association and that a violation of any such provisions shall be a default under such lease, and a copy of any such lease shall be delivered to the Association. The Owner shall enforce such provisions against any lessee or other occupant, and the Association shall also have the right to enforce any remedies provided herein or in any lease in the event of a default resulting from the breach of this Declaration, the Articles or the Bylaws of the Association. Each Unit or any two or more adjoining Units used together shall be used as a single family residence or for such other purposes as are permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more adjoining Units under Common ownership and used together for a proper purpose as aforesaid may be altered to afford ingress and egress to and from such adjoining Units at the sole expense of the Owner thereof if and only if specific plans are submitted to and prior approval is obtained from the Board of Directors.

The Common Elements shall be used only for their intended recreational purposes and for access, ingress and egress to and from the respective Units by the Owners or occupants residing therein, members of their household and their guests, household help and other

authorized visitors and for such other purposes as are incidental to the residential use of the Units. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Owner.

No Owner shall keep or maintain any thing or shall suffer any condition to exist on his Unit or cause any other condition on the Property which materially impairs any easement or right of any other Owner or otherwise materially impairs or interferes with the use and enjoyment by the Owners of their Units and the Common Elements. Subject to the foregoing, commonly accepted household pets may be kept in a Unit, but no such pets shall be bred or allowed loose or unsupervised on any part of the Property. Walking of pets shall be prohibited except at such times and on such portions of the Property as the Board may permit by its rules and regulations, and all pets shall be leashed.

If the Board determines that any motor vehicle is creating loud or annoying noises by virtue of its operation within the Property, or that the parking or storage of any vehicle or trailer on the Property is unsightly or detracts from the overall character of the Property, such determination shall be conclusive and final that the operation or storage of such vehicle is a nuisance, and said operation, upon notice by the Board to the owner or operator thereof, shall be prohibited within the Property.

No structure of a temporary character shall be permitted on the Property, and no tent, shack, barn, or trailer shall be permitted on the Property either temporarily or permanently, unless it is located thereon by or with the consent of Declarant.

No sign of any nature whatsoever, other than a dignified name and/or address sign, shall be displayed or placed on any Unit, in any window or on any part of the Property. No "For Sale"

or "For Rent" signs of any nature whatsoever shall be permitted on any part of the property, and no other signs or graphics shall be permitted on any patio or on any of the Common Elements without the prior written consent of the Board or as directed by the Board. A master "For Sale" sign may be placed on the property by the Board of Directors with a telephone number to call for information. These provisions shall not apply to the Declarant until the last Unit owned by Declarant has been sold.

Except as installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any building, structure or patio which in any manner will allow light to be directed or reflected on the Property or the Common Elements, or any part thereof or any other Unit.

No windbells, windchimes, or similar devices shall be permitted on the Property.

No window air conditioners or portable Units of any kind shall be installed in any Building.

No reflective materials, including but not limited to aluminum foil, reflective screens or glass, mirrors or similar type items, shall be permitted to be installed or placed on the outside or inside of any windows. Enclosures, shades, screens or other items affecting the exterior appearance of any patio shall not be permitted without the express written consent of the Board of Directors and shall be subject at all times to the rules and regulations of such Board and to the provisions of paragraph 16 of this Declaration.

No radio, television or other antennae of any kind or nature shall be placed or maintained upon any Unit or Building, except that Declarant shall have the right to install a master antenna or antennae and to provide each Unit access to such antenna.

Without limiting the foregoing, each Owner shall maintain and keep his Unit at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Units or of the Common Elements.

No Owner shall keep or store garbage, rubbish or junk or cause or permit any other unsightly or unsanitary substances or conditions to exist.

Pursuant to the right of entry hereinbelow set forth in Paragraph 21, the Board of Directors or its authorized agents may enter any Unit in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Unit. Such expenses shall be payable together with interest at the rate of twelve percent (12%) per annum, costs and attorneys' fees and secured by a lien upon such Unit in accordance with the provision of paragraph 7.

The Association may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Units by reasonable rules and regulations of general application adopted by the Board of Directors from time to time.

18. Architectural Control. No building, fence, wall, antenna, tower, awning, sign or other structure of any kind of character shall be commenced, erected or maintained upon the Property, nor shall any exterior addition, change or alteration be made thereto or therein, including without limitation changes to any exterior wall, screen or window whether or not part of any Unit, which is visible from the exterior of the Building; and no additions to, changes in or alterations of landscaping, grade or drainage shall be made, until 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 as to harmony of exterior design and location in relation to surrounding structures and topography by the Board of Directors. All construction shall be in accordance with applicable building and zoning codes of the Town of Oro Valley.

19. Party Walls. The rights and duties of the Owners of Units with respect to party walls shall be as follows:

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

(b) In the event any party wall is damaged or destroyed through the act of the Owner of one adjoining Unit, or any of his guests, tenants, licensees, agents or members of his family or other person for whom such Owner is responsible so as to deprive the other adjoining Unit of the full use and enjoyment of such party wall, then the Owner responsible for such damage shall, to the extent required by law and not otherwise covered by the Association's insurance, forthwith at his sole expense proceed to rebuild or repair the same in as good condition as formerly.

(c) Any Owner who by his negligent or wilful act or by the negligent or wilful act of any guest, tenant, licensee, agent or member of his family or other persons for whom

such Owner is responsible, causes any party wall to be exposed to the elements shall at his sole expense furnish the necessary protection against such elements.

(d) In addition to satisfying the other requirements of this Declaration, any owner proposing to modify, make additions to or rebuild his Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner and shall complete such alterations in accordance with the provisions of any building code or similar regulations or ordinances.

(e) In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be decided by the Board of Directors of the Association, whose determination shall be final and binding on such Owners.

(f) These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission of a previous Owner except as herein expressly provided.

20. Exemption of Declarant from Restrictions. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any reasonable acts of Declarant, its employees, agents, and subcontractors, or parties designated by it in connection with the construction, completion, sale or leasing of the Units.

21. Entry by Board or its Agent. The Board of Directors of the Association or its authorized agents may enter any Unit at any reasonable time, upon reasonable notice, when two-

thirds (2/3) of the members of the Board of Directors deem it necessary or advisable for the enforcement of any restriction hereinabove set forth, to effect emergency or other necessary repairs or otherwise for the protection and preservation of that Unit or other Units. In addition, the Board of Directors or its authorized agents may enter any Unit at any time when any director or agent believes in his discretion that an emergency exists and that such entry is necessary in order to protect any person or property in such Unit or adjoining Units or for other good cause. If it becomes necessary to break into a Unit, the Association, its directors, officers and agents shall not be liable for any damage done to the Unit as a result of the exercise of this right of entry. The party exercising this right of entry shall see that adequate measures are taken to secure the Unit until either the Owner or resident shall be notified that the Unit has been entered.

22. Roof Leaks or Repairs. The Association shall maintain properly and repair promptly all leaks or other damage to the roofs of any of the Buildings. The Association shall not be responsible for damages to any Unit or the paint, wallpaper, carpeting or other furnishings thereof or other personal property therein, except for damage to paint or wallpaper caused by the failure of the Association to use reasonable efforts to repair any roof leak after receiving written notice thereof from the Owner of the affected Unit.

23. Copy of Declaration to New Members. A copy of this Declaration, the Articles of Incorporation and Bylaws of the Association and the books, records and financial statements of the Association will be available for inspection, at such reasonably convenient location as the Board of Directors may determine, upon request during normal business hours, to all Owners and First Mortgagees and to any holders, insurers and guarantors of any First Mortgages. The former Owner, at its own expense, or upon written request, the Board of Directors at the expense

of the person making such request, shall give each new Owner of a Unit a copy of this Declaration and any and all amendments hereto. However, the failure of the Board to provide such copy shall not relieve the new Owner from complying with this Declaration nor waive any of the rights, conditions or restrictions stated herein or create any liability on the part of the Association, the Board of Directors or their agents. The Association shall also make available for inspection by prospective purchasers of Units copies of this Declaration, the Bylaws, any rules governing the Property, and if such financial statements have been prepared, the most recent audited annual financial statements of the Association.

24. Remedies. In the event that any Owner shall fail to comply with the provisions of the Act, this Declaration, the Articles, the Bylaws, or the rules and regulations of the Association, the Association shall have each and all of the rights and remedies provided for in the Act, this Declaration, the Articles, the Bylaws or said rules and regulations, or which may be available at law or in equity, and may prohibit such Owner from the use of the recreational facilities of the horizontal property regime for as long as such Owner is in default in the payment of any Common Expenses, or for a period of up to sixty (60) days for each violation, whichever is longer, and may prosecute any action or other proceedings against such Owner for enforcement of such provisions or foreclosure of its lien and the appointment of a receiver for the Unit, or damages, or injunctive relief, or specific performance, or judgment for payment of money and collection thereof, or to sell the Unit as hereinafter in this paragraph provided, or any combination of such remedies or any other and further relief which may be available at law or in equity, all without notice and without regard to the value of such Unit or the solvency of such Owner. The proceeds of any sale shall first be applied to discharge court costs, other litigation

costs, including without limitation reasonable attorneys' fees, and all other expenses of the proceeding and sale. The remainder of such proceeds shall be applied first to the payment of any unpaid assessments or other charges and the satisfaction of any other damages, and any balance shall then be paid to the Owner and or any Mortgagee as their rights may appear. Upon the confirmation of the sale, the purchasers thereat shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of restitution for the purpose of acquiring such possession. The purchasers at any such sale shall take the Unit sold subject to this Declaration. All expenses of the Association in connection with any action or proceeding, including court costs and reasonable attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of twelve percent (12%) per annum until paid, shall be charged to and assessed against such defaulting Owner and shall be added to and deemed part of his Common Expenses, and the Association shall have a lien upon the Unit of such defaulting Owner and upon all of his additions and improvements thereto for all of the same, as well as for nonpayment of his respective share of the Common Expenses. In the event of any such breach by any Owner, the Association shall also have the authority, with or without legal proceedings and with or without notice to such Owner, to correct such default and to do whatever may be necessary for such purpose; and all expenses in connection therewith shall be charged to and assessed against such Owner, and such assessment shall constitute a lien against such Owner's Unit. Any and all rights and remedies of the Association may be exercised at any time and from time to time, cumulatively or otherwise. The lien provided for in this paragraph shall be of the same priority, subject to the same terms and

conditions and may be foreclosed in the same manner as the lien provided for in paragraph 7 of this Declaration.

Notwithstanding any provision of this Declaration to the contrary, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage made in good faith and for value upon any Unit and its appurtenant undivided interest in the Common Elements, but, except as herein expressly provided, each and all of such covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any Lessee or Owner of any Unit whose title thereto is acquired by foreclosure, Trustee's sale, sale, deed in lieu of foreclosure or otherwise.

25. Amendment. The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed by Owners of not less than seventy-five percent (75%) of the Units and acknowledged; provided, however, that before the signature of any Owner whose Unit is subject to a Mortgage shall be effective, the First Mortgagee of such Unit which has requested in writing to be notified of any amendment and has informed the Association of its address shall also have consented to each such material change, modification or rescission, which consent shall not be unreasonably withheld; and further provided that so long as there is a Class B member, any such amendment shall also have been approved by the United States Veterans Administration; and further provided that no such amendment shall be effective to revoke, limit or restrict any right, power, exemption, privilege or easement provided to the Declarant herein or to increase any obligation or liability of the Declarant unless such amendment is also signed by the Declarant.

Notwithstanding the provisions of the foregoing paragraph, if the Act, this Declaration, the Articles or the Bylaws require the consent or agreement of all or any greater percentage of the Owners than is specified above for any such amendment or for any action specified in the Act or this Declaration, then any instrument so changing, modifying or rescinding this Declaration or any provision hereof with respect to such action shall be signed by the Owners of not less than such specified percentage, as well as the Declarant and any First Mortgagees, the United States Veterans Administration or other persons required by the foregoing paragraph.

26. Notices. Notices provided for in the Act, this Declaration, or the Bylaws shall be in writing and shall be mailed postage prepaid if to the Association or the Board, addressed to the address to which payments of assessments are then sent, and if to the Owner, addressed to his Unit. The Association or the Board may designate a different address or addresses for notices to them respectively from time to time by giving written notice of such change of address to all Owners. Any Owner may also designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above provided shall be deemed delivered when deposited properly addressed in the United States mail, postage prepaid.

Upon written request to the Board, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners of such Unit. Such notices shall be deemed given when mailed postage prepaid to the address specified in the request therefor.

27. Severability. If any provision of this Declaration, the Articles or the Bylaws, or the rules and regulations, or any section, clause, sentence, phrase or word, or the application

thereof in any circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of this Declaration, the Articles and Bylaws, or the rules and regulations, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby; and the remainder of this Declaration, the Articles or Bylaws, or the rules and regulations, shall remain in full force and effect as if such invalid part were never included therein, and such invalid part shall be promptly amended as herein provided or reformed by such court so as to implement the intent thereof to the maximum extent permitted by law.

28. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants, interests or rights created by this Declaration would otherwise be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States, Ronald Reagan, or the Governor of Arizona, Bruce Babbitt.

29. Rights and Obligations. Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and equitable servitudes and shall be binding upon and shall inure to the benefit of any Owner, grantee, purchaser or any person having at any time any interest or estate in any Unit in like manner as though the provisions of

this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument of transfer; and each such person shall be entitled to bring, and shall be subject to, an action for the recovery of damages, or for injunctive relief, or both, resulting from any breach of any such provisions.

30. Performance or Relief. After the date hereof, any person who owns or acquires any interest or estate in all or any part of the Property, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including a pledge or assignment by Declarant to any lender as security), agrees and shall agree by virtue of and upon the acquisition of such interest or estate that said acquiring person shall look only to the Association or other property Owners or other persons hereafter acquiring an interest or estate in said Property for any performance or enforcement of or relief from any violation of any of the covenants, conditions and restrictions contained herein, including the Declarant if the Declarant is violating any of the covenants, conditions and restrictions contained herein which are applicable to the Declarant.

31. Utility Easements. Notwithstanding any other provision hereof, there is hereby created a blanket easement upon, across, over and under the Parcel and Common Elements for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including without limitation water, sewer, gas, telephone, electricity, television cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of the Buildings; provided that no such utility and service line

or system may be installed or relocated on said Property except as initially planned and approved by Declarant or as thereafter approved by Declarant or by the Board of Directors of the Association. This easement shall in no way affect any other recorded easements on the Property.

32. First Mortgagee Protections. Unless fifty-one percent (51%) of all First Mortgagee have given their prior written approval, the Association shall not be entitled to:

A. By act or omission, seek to abandon or terminate the declaration of horizontal property regime contained herein, in the case of Substantial Destruction of the Units and Common Elements or of a Substantial Condemnation;

B. Change the pro-rata interest or obligations of any Unit for the purpose of:

(1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(2) determining the pro-rata interest in the Common Elements appurtenant to each Unit;

C. Partition or subdivide any Unit;

D. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements not being a transfer within the meaning of this clause);

E. Use hazard insurance proceeds for losses to any Property (whether Units or Common Elements) for other than the repair, replacement or reconstruction of such Property; or

F. Terminate professional management and assume self-management of the Association.

Notwithstanding any provision of this paragraph 32 to the contrary, unless sixty-seven percent (67%) of all First Mortgagees have given their prior written approval, the Association may not seek to rescind, abandon or terminate, by act or omission, the declaration of horizontal property regime contained herein, other than as a result of Substantial Destruction of the Units and Common Elements or of Substantial Condemnation. Any First Mortgagee which has requested in writing to be notified and has provided the Association with its address shall be entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of any of such Mortgagor's obligations under this Declaration which is not cured within thirty (30) days and of the commencement of any condemnation proceedings against all or any part of the Property or of substantial damage to or destruction of any part of the Property. Upon written request, all First Mortgagees shall have the right (i) to examine all books and records of the Association during normal business hours; (ii) to receive annual reports of the Association as soon as available and in any event within ninety (90) days following the end of any fiscal year of the Association; and (iii) to receive written notice of all meetings of the Unit Owners and to designate a representative to attend all such meetings. Any other provision hereof to the contrary notwithstanding, no provision of this Declaration shall give the Owner of a Unit, or any other party, priority over any rights of the First Mortgagee of such Unit in the case of any distribution to such Unit Owner of insurance proceeds or condemnation awards for Destruction to or Condemnation of any Unit or Common Element.

33. Professional Management Agreement. Any agreement for professional management of the horizontal property regime or any contract providing for services to be performed by the Declarant for the Association shall provide for termination by either party with or without cause and without payment of a termination fee on thirty (30) days' written notice, and no such contract or agreement shall be of a duration in excess of one (1) year, renewable by agreement of the parties for successive one (1) year periods.

34. Plan of Development. The horizontal property regime hereby declared and created is the first phase of the horizontal property regime created or planned to be created on the real property described in the Plats. Such horizontal property regime contains or is planned to contain in total approximately seventy-two (72) apartment units. However, neither Declarant nor any other person has any obligation to submit any of the remainder of such real property to any horizontal property regime or to develop such property in accordance with such plan or otherwise.

35. Expansion of Horizontal Property Regime.

35.1 Additional Property. Subject to compliance with the conditions hereinafter provided, Declarant shall be entitled and hereby reserves the right, without a vote of the Owners, and at any time or from time to time on or prior to January 1, 1992, by written instrument executed by Declarant and recorded, to add to this Declaration and the horizontal property regime created hereby in one or more phases some or all of the real property described in Exhibits C, D, E and F attached hereto and incorporated fully herein by this reference; provided, however, that the maximum number of Units which Declarant may add is forty-six (46), making a total maximum of seventy-two (72) Units; and further provided that each such phase added

shall be contiguous with land already within or simultaneously added to the horizontal property regime established hereby and shall include all open space, landscaped areas, parking spaces, private sewers, water retention basins and other areas proximately and reasonably connected with such added land. Any such property shall, upon its addition hereto, be included for all purposes as part of the "Parcel" and the "Property", and the terms "Buildings", "Common Elements", "Parking Space", "Unit", "Owner" and other defined terms herein shall mean and include such added property for all purposes as if it had been subject to this Declaration ab initio, and the Owners of such added Units shall be "Members" of the Association. Such added property, and any Person at any time acquiring any interest therein, shall be entitled and subject to all the rights, benefits, memberships, easements, covenants, conditions, restrictions, liens and obligations provided for herein, including without limitation the use of the Common Elements and Recreational Areas and the payment of Common Expenses and liens therefor, and the percentage interest in the Common Elements appurtenant to each Unit shall be adjusted in the manner hereinafter provided. In the event that prior to January 1, 1986, the horizontal property regime created hereby is expanded as provided herein, the maximum aggregate sum to be assessed annually as Common Expenses, as provided in paragraph 7 hereof, may be increased. The amount of the increase shall not be greater than the amount necessary to insure that the maximum monthly assessment per Unit after such expansion is approximately \$75.00. Notwithstanding any provision in this paragraph to the contrary, the limitation on maximum assessments of Common Expenses shall expire on January 1, 1986, in accordance with paragraph 7 hereof.

35.2 No Obligation to Expand. Notwithstanding any other provision of this Declaration to the contrary, Declarant shall have no obligation to add any additional property to this Declaration or commence or complete construction of any subsequent phase of development.

35.3 Requirements for Expansion. In the event that Declarant does add property to this Declaration as hereinabove provided, any development upon such property shall be reasonably compatible with prior phases with respect to architectural design, location, number of Units, quality and type of construction and anticipated maintenance expense. All additional phases must be built in accordance with plats and plans approved by the United States Veterans Administration, and the horizontal property regime hereby established may not be merged with a successor regime without prior approval of such Administration. Additional phases shall not be subject to any lien arising in connection with the Declarant's ownership of or construction of improvements upon the property to be added which would adversely affect the rights of existing Unit Owners or the priority of any First Mortgage on any existing Unit, and all taxes, assessments, mechanic's liens or other charges affecting such property must be paid or otherwise satisfactorily provided for by the Declarant. As a condition of adding any further property, the Declarant shall purchase or cause to be purchased a liability insurance policy in form, substance and amount approved by said Administration insuring the Owners of existing Units as their interests might appear to cover any liability to which such Owners might be exposed as a result of such expansion.

35.4 Adjustment of Percentage Interests. Upon the inclusion of additional property under this Declaration, the undivided percentage interest which is appurtenant to each of the

then existing Units shall be adjusted, and each of the new Units so added shall receive and have appurtenant thereto, an undivided percentage interest in the Common Elements calculated in the manner set forth in paragraph 3.4 hereof. At the time of the annexation of additional Units in accordance with the provisions of this paragraph, the Declarant shall record a notice of such adjustment, setting forth a new percentage interest in the Common Elements appurtenant to each existing and each new Unit, whereupon such adjustment shall be effective, and no amendment to this Declaration or further instrument or act of any kind shall be necessary in order to effectuate such adjustment. Declarant shall also deliver a copy of such notice to the Association, but the failure of Declarant to do so shall not affect the validity or effectiveness of such adjustment. Notwithstanding the foregoing, each initial and any subsequent Owner by acquiring title to any Unit and any Mortgagee whose consent might be required to any such adjustment by any provision of this Declaration shall be deemed to and does hereby agree and covenant to execute any consent, power of attorney, amendment or other instrument which may be necessary or appropriate to accomplish any of the foregoing. Any deed for any Unit may, but need not, be delivered subject to the express condition that the undivided interest in the Common Elements appurtenant to such Unit may be adjusted upon the addition of any such property to this Declaration in accordance with the formula hereinabove set forth. Upon the annexation of all Units and property which Declarant is entitled to add in accordance with the plan of development heretofore approved by the United States Veterans Administration, the percentage interests in the Common Elements appurtenant to each Unit would be 1.389 percent.

35.5 Easements for Development. Declarant hereby reserves a blanket easement upon, across, over and under the Common Elements for the purpose of ingress to and egress from the

real property described in Exhibits C, D, E and F attached hereto for the purposes of development and construction of improvements on such real property and for the purpose of providing to and extending to or within such remaining real property all utilities and for the purpose of developing, advertising and selling such real property. Declarant shall use any other reasonable means of access in preference to the easement herein granted, and if Declarant uses such easement herein granted it shall do so in such a manner as to minimize damage to other Units or property and shall replace, repair or restore at its sole cost and expense any damage to any Unit or Property caused by the manner of such exercise, including without limitation, damage to streets and sidewalks caused thereby.

36. Waiver. Any right or remedy provided for in this Declaration shall not be deemed to have been waived by any act or omission, including without limitation any acceptance of payment or partial performance or any forbearance, except by an instrument in writing specifying such right or remedy and executed by the person against whom enforcement of such waiver is sought.

37. Counterparts and Execution. This Declaration may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one instrument. For purposes of recording, each Owner may execute a separate signature and acknowledgment page which may be attached to counterparts, detached from counterparts, and/or reattached to a single copy of this Declaration so as to permit the recordation thereof.

IN WITNESS WHEREOF, ENVIRONMENTAL CONSTRUCTION COMPANY, an Arizona corporation, has executed this instrument as of this 22nd day of May, 1985.

ENVIRONMENTAL CONSTRUCTION COMPANY,
an Arizona corporation

By: O.S Dale D. Ulrich
Its VP

STATE OF ARIZONA)
) ss:
County of Maricopa)

On this 22nd day of May, 1985, before me, the undersigned Notary Public, personally appeared Dale D. Ulrich, who acknowledged himself to be the Vice President of ENVIRONMENTAL CONSTRUCTION COMPANY, an Arizona corporation, and being authorized so to do executed the foregoing document for the purposes therein contained.

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

O/S Jane Hayes, a.k.a. Jane Burke

My Commission Expires:
6-21-86