

When Recorded Return to:
Pioneer National Title
3033 N. Central
Phoenix, Arizona
Builder Services Dept.

DKT 147270382
317349

A-1080-002

DECLARATION OF HORIZONTAL
PROPERTY REGIME AND
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE GARDENS, A 43 UNIT CONDOMINIUM

EROP RSTR (P)

THIS DECLARATION is made as of the date hereinafter
set forth by PIONEER TRUST COMPANY OF ARIZONA, an Arizona
corporation, as Trustee under TRUST Number 20,426, hereinafter
termed "Declarant".

County of
PIONEER NATIONAL TITLE COMPANY
NOW INCORPORATED

W I T N E S S E T H :

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

That portion of the northeast quarter of Section
26, Township 2 North, Range 4 East of the Gila and
Salt River Base and Meridian, Maricopa County,
Arizona, more particularly described as follows:

Beginning at the northeast corner of said Section
26; thence N 89°38'24" W (assumed bearing) along the
north line of the NE quarter of said Section 26, for
a distance of 756.38 feet; thence S 00°21'36" W, a
distance of 65.00 feet to a point on the south right-
of-way line of Indian School Road, being the true point
of beginning; thence S 24°12'18" W, a distance of
769.69 feet; thence N 65°47'42" W, a distance of 229.69
feet to a point on a curve on the east line of 78th
Street; having a radius of 80.00 feet, the center of
which bears N 54°48'30" W; thence along said curve
northerly a distance of 99.03 feet, through a central
angle of 70°55'32" to a point of reverse curvature
having a radius of 25.00 feet, through a central angle
of 35°56'23", an arc distance of 15.68 feet; thence
N 00°12'21" E a distance of 473.58 feet; thence along
a curve to the right, having a radius of 30 feet,
through a central angle of 90°09'15", an arc distance
of 47.21 feet to a point on the south right-of-way
line of Indian School Road; thence S 89°38'24" E along
said south right-of-way line, a distance of 498.34 feet
to the true point of beginning.

More particularly described on the plat of THE GARDENS,
as recorded in Book 224 of Maps, Page 42, records
of the Maricopa County Recorder, a reduced copy of
which is attached hereto (and incorporated by reference)
as Exhibit "A".

hereinafter sometimes called the "Parcel", and

WHEREAS, prior to this declaration, the parcel has been made subject to that certain Declaration of Covenants, Conditions and Restrictions and any amendments thereto, recorded in Docket 12834, page 863, records of the Maricopa County Recorder, which Covenants, Conditions and Restrictions are incorporated herein; and

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

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

WHEREAS, Declarant desires and intends that the unit owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth all of which shall run with the land and be binding upon the said Property and all parties having or acquiring any right, title or interest, in or to said Property, or any part thereof, and shall inure to the benefit of each owner thereof, and all of which are declared to be in furtherance of a plan to promote and protect the cooperative use, conduct and maintenance of such Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness thereof;

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

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

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

1.2 "Association" means The Gardens Inc. Homeowners Association, an Arizona nonprofit corporation, its successors and assigns. "Board" or "Board of Directors" shall mean the Board of Directors of The Gardens Inc. Homeowners Association.

1.3 "Building" means each of nine (9) buildings as shown on the Plat as buildings A through H and J and K, which are located on the Parcel, which contain Units and which constitute a part of the Property.

1.4 "Common Elements" means the "general common elements", as that term is defined in Section 33-551 (6), Arizona Revised Statutes, including without limitation the Parcel, together with the pool, pool equipment, pool room, mechanical rooms, central air conditioning/heating system (excluding any portion of such system which exclusively serves each unit), pedestrian trails, guest parking spaces not assigned as part of a unit, carport canopies and driveways, landscaping, and all other portions of the Property and as denoted on the Plat as "Tract A", "Tract B" and "Tract C", except the Units and those items specified as restricted common elements in paragraph 5.2 herein.

1.5 "Declarant" means Pioneer Trust Company of Arizona, an Arizona corporation, as Trustee under Trust Number 20, 426, together with each of its successors and assigns in the ownership of the Property for purposes of its original development and sale.

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

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

1.8 "Mortgage" shall mean any recorded, filed or otherwise perfected instrument given in good faith and for valuable

consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, including without limitation deeds of trust and contracts for sale. "Mortgagee" shall mean a party secured by such an instrument including a 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" shall mean the party executing such instrument as security. "First Mortgage" shall mean a Mortgage which is the first and most senior of all Mortgages upon the same property. First Mortgage shall not include the interest of a seller under a contract for sale.

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

1.10 "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property. "Owner" includes buyers under a contract for sale wherein all conditions of purchase and sale have been satisfied except payment of the purchase price and delivery of the deed. "Owner" does not include contract sellers whose interests are held merely as security for the performance of an obligation. In the case of Units the fee simple title to which is vested or recorded in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor.

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

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

to real property.

1.13 "Plat" means the plat of survey of the Property and of all Units submitted to a horizontal property regime, said Plat being the Condominium Plan of THE GARDENS appearing of record in Book 224 of Maps at page 42, records of Maricopa County.

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

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

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

1.17 "Apartment Unit" (hereinafter sometimes called Unit) means each of forty-three (43) parts of the Property consisting of one or more rooms designed or intended for independent use as a dwelling unit, including the two patio areas as shown on the Plat, the storage area shown on the Plat and the two carport stalls which shall bear the same number as shown on the recorded plat hereof as the number on the unit purchased by the owner. By way of example, if an owner purchases Unit A1, said owner shall own and have the exclusive right to utilize

for parking purposes, parking spaces designed as A1 and A1 on the Plat hereon. The Apartment Unit shall include the exclusive right to use the "Restricted Common Elements" as defined in paragraph 5.2. A Unit is an "apartment" included 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 hereof.

2. Submission of Property. Declarant hereby submits and subjects the Property to a horizontal property regime pursuant to Section 33-551 through 33-561, Arizona Revised Statutes, to be hereafter known as THE GARDENS and does hereby declare that all of the Units shall be owned, leased, sold, conveyed and encumbered 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. There are nine (9) buildings. Reference is made to the Plat for a description of the cubic content space of each of the Buildings with reference to its location on the Parcel.

3.2 Units. There are forty-three (43) Units. Reference is hereby made to the plat for a description of the cubic content space of each Unit. Each Unit shall include the space enclosed and bounded by the interior finished surfaces of the ceiling, or any extension of the elevation thereof, floor, or any extension of the elevation thereof, perimeter walls thereof, or if there is no perimeter wall, then the interior boundary thereof, (Finished surface as referenced on the plat shall mean textured, unpainted walls and ceilings and finished concrete floors.) and the patios 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 Common Elements is as set forth in subparagraph 1.4 of this Declaration.

3.4 Interest in the Common Elements. The 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 that fraction in which the numerator is one (1) and the denominator is the total number of units, to wit forty-three (43).

4. Association. The Association has been, or will be, formed to constitute the "council of co-owners", as that term is defined in Section 33-551, Arizona Revised Statutes, and to serve as the governing body for all of the Owners for the 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 (hereinafter termed the "Articles") and the Bylaws of the Association (hereinafter called the "Bylaws"). The Association shall not be deemed to be conducting a business of any kind, and all funds received

by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws. Each Owner shall be a Member of the Association so long as he shall be an Owner and such membership shall automatically terminate when he ceases to be an Owner and upon the transfer of his ownership interest the new Owner succeeding to such ownership interest shall likewise automatically succeed to such membership in the Association. An Owner of a unit shall automatically, upon becoming the Owner thereof, be a member of the Association, and shall remain a member of the Association until such time as his ownership ceases for any reason. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the unit and then only to such purchaser or by intestate succession, testamentary disposition, foreclosure of a mortgage of record or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records 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. 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 vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. The Class B members shall be the Declarant and shall be entitled to forty-three (43) votes for each

Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on June 1, 1982.

4.1 Association Board of Directors. For the period ending at the first to occur of either the conveyance by Declarant to Owners of all of the total number of Units or June 1, 1982, all members of the Board of Directors of the Association (herein sometimes referred to as the "Board") may be designated by Declarant. Except for members designated by Declarant, each Director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of such Owner). If a Director shall cease to meet such qualifications during his term, he will thereupon cease to be a Director and his place on the Board shall be deemed vacant. 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 of Bylaws and this Declaration, this Declaration shall govern and shall be binding.

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

4.3 Action by Owners. To the extent 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 members of the Association acting as such council of co-owners, and by and through its directors and officers, such action to include, but without limitation, adoption or ratification of the Bylaws and rules and regulations for the horizontal property regime which is the subject matter of this Declaration.

5. Use of Common Elements.

5.1 Unrestricted Common Elements. Each Owner shall have the non-exclusive right to use the Common Elements, except the Restricted Common Elements, in common with all other Owners as may be required for the purposes of access and ingress and egress to, and use, occupancy and enjoyment of, the respective Unit owed by such Owner. Such right to use the Common Elements generally denoted on the Plat as "Tract A", "Tract B" and "Tract C" shall extend to each occupant and the agents, servants, tenants, family members and invitees of each Owner. Such rights to use and possess the Common Elements shall be subject to 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. The Board shall have the authority to lease, to convey easements or to grant concessions with respect to parts of the Common Elements or to change the character description and use thereof, subject to the provisions of the Declaration, Articles and Bylaws. Any income derived by the Association from leases, concessions or other sources,

shall be held and used for the benefit of the members of the Association pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

5.2. Restricted Common Elements. Each unit owner shall have the right to the exclusive use of the area behind the patio areas and adjacent to his unit. This area is defined as being that area which is shown on the plat as either enclosed or is marked and set off with a dashline.

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

7. Common Elements. Each Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements, Common Areas, and of any other expenses incurred in conformance with the Declaration, the Articles and the Bylaws (which expenses are herein sometimes referred to as "common expenses"), including specifically, but not by way of limitation, insurance, the maintenance and repair thereof and any and all replacements and additions thereto. The expenses of the administration and operation of the common elements shall also include any assessments of the unit owners for the common area as defined herein.

Payment of common expenses, including any prepayment thereof required by contract for sale of a Unit, shall be in such amounts, at such times and in such manner as may be pro-

vided in the Articles and Bylaws or by the Board of Directors of the Association. Such payment, together with interest at the rate of nine percent (9%) 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 fall due.

If any Owner shall fail or refuse to make any such payment of common expenses when due, the amount thereof, together with interest, costs and reasonable attorneys fees, shall constitute a lien on such Owner's Unit, provided, however, that such lien shall be subordinate to the lien of a prior recorded First Mortgage on, or the right, title and interest of the trustee and beneficiary under a first deed of trust in and to, the applicable Unit, acquired in good faith and for value, except for the amount of the proportionate share of common expenses which accrues from and after the date on which the owner or holder of the mortgage or the trustee or beneficiary under the trust deed acquires title to the applicable unit. The lien provided for in this paragraph may be foreclosed by the Association in the same manner as provided for the foreclosure of realty mortgages in the State of Arizona.

Notwithstanding any other provisions of this Declaration to the contrary, until such time as the Declarant shall have sold and conveyed record title to seventy-five percent (75%) of the Units, the Declarant and Affiliated American Corporation, a Washington corporation (such corporation, its successors and assigns being hereinafter called the "Developer"), shall be exempt from paying any charge or assessment of the Association for maintenance of the Common Elements or Common Areas or any other purpose, whether such charge or assessment is made under this paragraph or any other paragraph of this Declaration, and no lien shall attach pursuant to this paragraph or otherwise to any Unit owned by the Declarant or the Developer so long as the Declarant or the Developer shall remain exempt from the payment of charges and assessments as hereinabove provided; provided, however, that until such time as seventy-five percent (75%) of the Units shall have been sold and conveyed by the Declarant as hereinabove provided the Developer shall be responsible for the

proper operation and conduct of the business of the Association and the payment of all common expenses in excess of the amounts assessable against the other Owners pursuant to this paragraph; and provided further, that no other Owner shall be required to pay any assessments for common expenses under this paragraph 7 in excess of one forty-third (1/43) times the number of Units owned by him of all such common expenses which have been paid or are to be paid by the Association, the Developer or otherwise.

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

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

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;

(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;

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

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

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

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

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

visions as the Association deems consistent with good business practice.

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

The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or improvements made to a Unit or Restricted Common Elements by an Owner or other insurance obtained at the request of and specifically benefiting any particular Owner, shall be a general common expense for which each unit owner shall be specially assessed.

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

9.2 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering bodily injury liability, property damage liability and automobile bodily injury

and property damage liability, as required of the Association. Each Owner shall be insured with respect to such Owner's liability arising out of the ownership, maintenance, repair or operations incidental thereto to that portion of the premises which is not reserved for his exclusive use or occupancy. Limits of liability for such coverage shall not be less than \$1,000,000 for each occurrence with respect to bodily injury liability and \$100,000 for each occurrence with respect to property damage liability.

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

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

9.5 Receipt and Application of Insurance Proceeds. Except if some particular person shall have a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Association. All insurance proceeds or recoveries received by the Association shall be applied by the Association as follows: first as expressly pro-

vided elsewhere in this Declaration; second to the Owners or persons whom the Association may determine are legally or equitably entitled thereto; and third, the balance, if any, to Owners in proportion to their respective interests in Common Elements.

9.6 Other Insurance by the Association. The Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, including 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.

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

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

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

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

eminent domain.

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

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

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

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

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

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

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

deeds or other instruments which may be necessary or appropriate for Restoration or Sale, as the case may be.

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

10.6 Receipt and Application of Condemnation Funds. All compensation, damages or other proceeds constituting awards in condemnation or eminent domain or payments in lieu of condemnation or eminent domain shall be payable to the Association. The amount thereof allocable to compensation for the taking of or injury to the individual air space unit of a particular Unit or to improvements of an Owner therein shall be apportioned to the Owner of that Unit. Any payment made to an Owner whose Unit has been completely taken in condemnation shall also be deemed to be payment in full for any parking space appurtenant to that Unit, regardless of whether the parking space was taken in condemnation. 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 of such Common Elements in proportion to their respective undivided interests in the Common Elements; second, the amounts allocable to severance damages shall be apportioned to Owners of Units with individual air space units which were not taken or condemned in proportion to their respective undivided interests in the Common Elements; and third, the amounts allocated to consequential damages or for other purposes shall be apportioned as the Association determined to be equitable under the circumstances.

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

11. Maintenance, Repairs and Replacements. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit and of any portion of the air-conditioning/heating system which exclusively services his Unit; and each Owner shall keep his patio areas and his balcony, if any, in a neat, clean and attractive condition. If, due to the willful or negligent act of an Owner or a member of his family or household pet or guest or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such

Owner shall pay for such damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance. Such obligation of payment and performance shall be payable together with interest, 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 Building, and all contractors and repairmen employed or engaged by the Board or such manager or managing agent, shall be entitled to reasonable access at reasonable times to each of the Units as may be required in connection with maintenance, repairs and replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units and the Common Elements.

12. Alterations, Additions or Improvements. No alterations of any Common Elements or any additions or improvements thereto or any alterations, additions or improvements to the patios or balconies associated with each unit shall be made by any Owner without the prior written approval of the Board. Any Owner may make non-structural alterations, additions or improvements within the interior of his Unit, without the prior written approval of the Board, but such Owner shall be responsible for any damage to other Units, the Common Elements, or the property, as the result of such alteration, addition or improvement. In addition to the required approval of the Board, there shall be no structural alterations or additions to the Building without the prior approval of a majority of the Owners given at a regular or special meeting of the members of the Association, and the prior approval of the holders of all First Mortgages and the beneficiaries under all first trust deeds acquired in good faith and for value then encumbering one or more of the Units.

Unless otherwise determined at any such meeting, the cost of such alterations or additions shall be paid by means of a special assessment against the Owners in the proportion of their respective undivided fractional interests in the Common Elements. Such special assessments shall be secured by the lien provided for in Paragraph 7 of this Declaration.

13. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all of the decorating within his own Unit from time to time including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating. Each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings and the surfaces within his Unit, and such Owner shall maintain such surfaces in good condition at his sole expense as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Association and each such Owner shall have the right to decorate such surfaces from time to time as he may see fit and at his sole expense. Decorating of the Common Elements (other than interior surfaces within the Unit as above provided), and any re-decorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Association shall be furnished by the Association as part of the common expenses.

14. Encroachments. If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any unit or entranceway providing ingress and egress thereto shall actually encroach upon another Unit, as the Common Elements and the Units are shown by the survey comprising the Plat, whether such encroachment results from the initial or existing construc-

tion 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 willful misconduct of the Owner claiming entitlement thereto.

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

16. Use and Occupancy Restrictions. No part of the Property shall be used for other than housing and the related common purposes for which the Property was designed, except that Declarant reserves the right to maintain sales offices, model units, and signs on the Property, together with rights of ingress and egress therefrom and to do such other acts and maintain such other facilities as are incidental to the development and sale of the Units, until all Units shall have been sold and conveyed by Declarant. Each Unit or any two or more adjoining Units used together shall be used as a residence or such other use as permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more ad-

joining Units used together as aforesaid may be altered, if prior approval is obtained from the architectural control committee as required by paragraph 17 herein, to afford ingress and egress to and from such adjoining Units provided all expense of making such alterations is paid in full by the Owner and an easement is hereby granted for such purpose. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit an Owner from (a) maintaining his personal and/or professional library therein, (b) keeping his personal business or professional records or accounts therein, (c) holding his personal business or professional telephone calls or correspondence therefrom, or (d) from obtaining a valid Home Occupation as set forth in the City of Scottsdale Zoning Ordinance. Such uses are expressly declared customarily incident to the principal residential use and not in violation of this Declaration.

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

No poultry shall be kept in or upon the Property; all dogs shall be kept leashed when outside the Unit or its appurtenant patio; and no Owner shall keep or maintain any thing including but not limited to pets and other animals or cause or suffer any act or condition on the Property which materially impairs any easement or right of, or otherwise materially and adversely af-

facts or unreasonably interferes with the use and enjoyment of their Unit and the Common Elements by other Owners or Occupants. No motor vehicle including but not limited to motorcycles and bikes, shall operate or be operated upon or adjacent to the Property in an unreasonably loud or disturbing manner. No items shall be conspicuously stored on any patio. The Association may otherwise regulate the use and occupancy of the Property and the Units therein by reasonable Rules and Regulations of general application.

No structures of a temporary character shall be permitted on the property, no tents, shacks, or barns, and no trailers except as provided elsewhere, shall be permitted on the property either temporarily or permanently. All fences, walls or gates built by unit owners in addition to those originally built by the developer shall conform to and match the walls, fences and gates as originally placed on the property and shall be subject to approval of the City of Scottsdale and the architectural control committee.

No sign, other than a name and address sign, of any nature whatsoever 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 of the Common Elements without prior written consent of the Board or as directed by the Board. These provisions do not apply to the Declarant or nominee or assigns during the period prior to any sales program during a sales program until the last Unit is sold. A master for sale sign may be placed on the property with a telephone number to call for information.

Except as may be initially installed by Declarant, no spotlights, flood lights or similar type high intensity light-

ing shall be placed or utilized upon any building or structure or balcony or patio which in any way will allow light to be directed or reflected on any Unit of the Property or the Common Elements, or any part thereof, without the written authorization of the Board. Other types of low intensity lighting which do not disturb the Owners or other occupants of the Property shall be allowed.

Only commonly accepted household pets may be kept in a Unit, provided that such commonly accepted household pets are not kept, bred or maintained for any commercial purposes, and provided further, that the Board shall have the right to regulate the number and kind of pets kept in a Unit. Pets shall not be allowed loose or unsupervised on any part of the Property and walking of pets shall be allowed only on such portions of the Property as the Board may prescribe by its rules and regulations.

If the Board determines that any vehicle (including but not limited to a motorbike or motorcycle) is creating loud or annoying noises by virtue of its operation within the Property, such determination shall be conclusive and final that the operation, upon notice by the Board to the owner or operator thereof, shall be prohibited within the Property.

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

Except as may be installed by Declarant, no radio, television or other antennas of any kind or nature shall be placed or maintained upon any Unit or Building unless approved in writing by the Board.

Without limitation of any other provision of this Declaration, interior window dressings, whether curtains, shades, shutters or otherwise, shall be lined with white so as to create a uniform appearance from the exterior.

Without limitation of any other provision of this Declaration, all fencing, walls, gates or other similar structures hereafter erected by an owner or occupant to enclose his patio area shall be identical in appearance and quality to the existing fences enclosing and immediately adjacent to the patios, and shall be no taller than three (3) feet in height, except if some other design may be approved by the Board of Directors or the Architectural Committee pursuant to Section 17 of this Declaration.

Notwithstanding anything contained herein to the contrary or otherwise, none of the use restrictions contained herein, nor any other restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, the developer or any nominee of either of them, or their employees, agents and subcontractors, or parties designated by them in connection with the construction, completion, sale or leasing of the Units.

17. Architectural Control. No building, fence, wall, antenna, tower, awning, sign or other structure of any kind or character shall be commenced, erected or maintained upon the Property, nor shall any exterior addition, change or alteration be made thereto or therein, and no additions to, changes in, or alterations of landscaping, grade or drainage shall be made, until the plans and specifications showing the nature, kind, color, shape, height, materials, location or other material attributes of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association and the City of Scottsdale, and by an architectural committee composed of three (3) or more representatives appointed by the Board.

18. Party Walls. The rights and duties of the Owners of Units within this Development with respect to party walls shall be governed by the following:

(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 wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

(b) In the event any such party wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests, tenants, licensees, agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild or repair the same to as good condition as formerly without cost to the adjoining Owner.

(c) In the event any such party wall is damaged or destroyed due to ordinary wear-and-tear and deterioration from lapse of time, or by any cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family, then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

(d) Notwithstanding any other provision of this paragraph, an Owner who by his negligent or willful act

causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this paragraph shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) In addition to meeting the other requirements of this declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Unit in any manner which required the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

(g) 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 submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party,

then said other party shall have the right and power to choose both arbitrators.

(h) These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an owner.

19. Entry by Board or its Agent. The Board of Directors of the Association or its authorized agent may enter any Unit when any member of the Board of Directors or its authorized agent deems it necessary for the protection and preservation of that Unit or other Units in the development. If it becomes necessary to break into a Unit because no key or means of access was provided by the resident or Owner in the manner specified herein, 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. Each resident or Owner shall either (1) leave a key with the manager of the Association or (2) leave a key with another resident and inform the manager in writing of the name of the resident to whom a key has been given. In the event the resident to whom a key has been given is not available at the time it is necessary to exercise this right of entry, any member of the Board of Directors or its authorized agent may enter the Unit pursuant to the conditions stated above.

20. Roof Leaks or Repairs. The Association shall be responsible to properly maintain and promptly pay for repair of all leaks or other damage to the roofs of any of the units located on the parcel.

21. Copy of Declaration to New Members. The Board of Directors shall have the responsibility to give each new purchaser of a Unit herein a copy of this Declaration and any and all amendments thereto. However, the failure of the Board to provide such new purchaser with a copy of this Declaration shall not be construed as relieving the new Owner from complying with this Declaration nor a waiver of any of the rights, conditions or restrictions stated in this Declaration. Additionally, failure of the Board of Directors to provide the new Owner with a copy of this Declaration shall not create any liability on the part of the Association, the Board of Directors or their authorized agents.

22. Remedies. In the event of any default by any Owner under the provisions of the Act, this Declaration, the Articles, the Bylaws, or the rules and regulations of the Association, the Association, or its successors or assigns, or the Board, or its agents, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the Articles, the Bylaws or said rules and regulations, or which may be available by law, and may prosecute any action or other proceedings against such defaulting Owner and others for enforcement or foreclosure of its lien and the appointment of a receiver for the Unit without notice, without regard to the value of such Unit or the solvency of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to rent the Unit and apply the rents received to payment of unpaid assessments and interest accrued thereon, and to sell the same as hereinafter in this paragraph provided, or for any combination of remedies or for any other relief. The proceeds of any such judicial sale shall first be paid to discharge court costs, other litigation costs including but without limitation reasonable attorney's fees and all other expenses of the pro-

ceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration. All expenses of the Association in connection with any such action or proceeding, including court costs and reasonable attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of nine percent (9%) per annum until paid, shall be charged to and assessed against such defaulting Owner and shall be added to and deemed part of his respective share of the common expenses and the Association shall have a lien for all of the same, as well as for nonpayment of his respective share of the common expenses, upon the Unit of such defaulting Owner and upon all of his additions and improvements thereto. In the event of any such default by any Owner, the Association and the Board and the manager or managing agent, if so authorized by the Board, shall have the authority to correct such default and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to the assessed against such defaulting Owner and such defaulting Owner's Unit. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board. The liens provided for in this paragraph 25 shall be junior to prior first mortgages and first trust deeds, and shall be foreclosed, in

the same manner as the lien provided for in paragraph 7 of this Declaration.

If any Owner (either by his conduct or by the conduct of any other occupant of his Unit) shall violate any of the provisions of this Declaration, the Articles or the Bylaws or the rules and regulations, as then in effect, and such violation shall continue for ten (10) days after notice in writing from the Board or shall occur repeatedly during any ten (10) day period after written notice or request to cure such violation from the Board, then the Board shall have the power to file an action against the defaulting Owner for a judgment or injunction against the Owner or occupant requiring the defaulting Owner to comply with the provisions of this Declaration, the Articles or the Bylaws or the rules and regulations, and granting other appropriate relief including money damages. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defect or adversely affect the lien of any mortgage or deed of trust made in good faith and for value upon any Unit and its appurtenant undivided interest in the Common Elements, but except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Unit whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of fifteen (15) days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen (15)

days said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults cured.

23. Water Meters. Each building shall have one water meter. The Association shall pay for all water bills for the parcel. An amount for said water bills shall be included in the assessment.

24. 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 owning not less than two-thirds (2/3) of the total ownership of the Common Elements and acknowledged; provided, however, that the holders of all First Mortgages, and the beneficiaries under all first trust deeds, of record against one or more of the Units acquired in good faith and for value shall have consented in writing to each such change, modification or rescission, provided, further, that such consent shall not be withheld unreasonably or in bad faith.

Notwithstanding the provisions of the foregoing paragraph, if the Act, this Declaration, the Articles or the Bylaws require the consent or agreement of all or a specified percentage exceeding two-thirds (2/3) of Owners and/or lienholders and/or trustees and/or beneficiaries under trust deeds, for any action specified in the Act or this Declaration. When any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all or such specified percentage of the Owners and/or all lienholders and trustees and/or beneficiaries under trust deeds, or both, as required by the Act or this Declaration.

Anything to the contrary herein notwithstanding, until such time as deeds to all of the Units shall have been delivered

by Declarant to purchasers thereof, Declarant reserves the right to amend this Declaration, including the description of the Buildings, the Units and the Common Elements, provided the description of the Buildings, the Units and the Common Elements, provided that no such amendment shall have the effect of changing the cubic content space of any Apartment not owned by Declarant (except as minor changes may be necessary in order to more accurately describe the boundaries of the Unit), or of changing the interest which each Unit bears in the Common Elements, and provided further that any such amendment shall be consented to in writing by the holders of all first mortgages, and the trustees and beneficiaries under all first trust deeds, acquired in good faith and for value then on record with respect to one or more of the Units, provided, further, that such consent shall not be withheld unreasonably or in bad faith and except further such consent shall only be necessary from such first mortgage holder of Declarant.

The change, modification or rescission whether accomplished under any of the provisions of this paragraph 24 shall be effective upon recording such instrument, provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

25. Notices. Notices provided for in this Declaration or the Bylaws shall be in writing and shall be addressed to the Association or the Board or any Owner, as the case may be, _____, Scottsdale, Arizona, or at such other address as hereinafter provided. The Association or the Board may designate a different address or addresses for notices to them respectively by giving written notices of such change of address to all Owners at such time. Any Owner

may also designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgement of the receipt thereof.

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

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

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

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

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

30. Utility, Repair and Maintenance Easements. Notwithstanding any other provisions hereof, there is hereby created a blanket easement upon, across, over and under the parcel herein described and Common Elements for ingress, egress, installation, replacing, repairing and maintaining all common elements including without limitation water, sewer, gas, telephone, elect-

ricity, television cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of the buildings. Notwithstanding anything to the contrary contained in this paragraph, no such utility and service line or system may be installed or re-located on said property except as initially programmed and approved by Declarant, or as thereafter approved by Declarant or by the Board of Directors of the Association. This easement shall in no way affect any other recorded easements on the property.

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

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

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

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

Any institutional lender who is the holder of a First Mortgage who comes into possession of a Unit pursuant to the remedies provided in the Mortgage, foreclosure of the Mortgage or deed (or assignment) in lieu of foreclosure shall, as pro-

vided in Paragraph 15 of this Declaration, be exempt from any "right of first refusal".

The holder of a First Mortgage is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under the Project documents which is not cured within thirty (30) days. The first Mortgagee shall have the right to examine all books and records of the Association.

32. Professional Management Agreement. Any Agreement for professional management of the Horizontal Property Regime or any other contract providing for services to be performed by the developer, sponsor or builder to the Homeowners Association, shall provide for termination by either party without cause or without payment of a termination fee on thirty (30) days written notice. Furthermore, no contract or agreement with a professional management company to manage the association or any other agreement or contract providing for service by the developer, sponsor or builder to the Homeowners Association shall be of a duration in excess of three years.

33. Numbers on Plat - Street Addresses. The recorded plat attached hereto shows handwritten numbers on each unit beginning with numbers 101 through 143. Said handwritten numbers refer to the street address of each unit and are shown on the plat for address and convenience purposes only.

34. Water Delivery Assessment. The property which is the subject matter of these covenants, conditions and restrictions is part of a previous Declaration of Covenants, Conditions and Restrictions recorded April 12, 1978, in Docket 12834, Pages 863 through 867, records of Maricopa County, Arizona. This document deals with the terms and conditions at which water will be delivered to the project. The Board of Directors is given specific authority to include within its assessment powers any monies which

may be due and owing as a result of the covenants, conditions and restrictions referenced in this paragraph.

IN WITNESS WHEREOF, PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee, has caused its corporate name and seal to be hereunto affixed by its officers hereunto duly authorized this 30th day of September, 1980.

PIONEER TRUST COMPANY OF ARIZONA,
an Arizona corporation, as
Trustee

By Charles A. Johnson
Its Trust Officer

STATE OF ARIZONA)
) ss.
County of Maricopa)

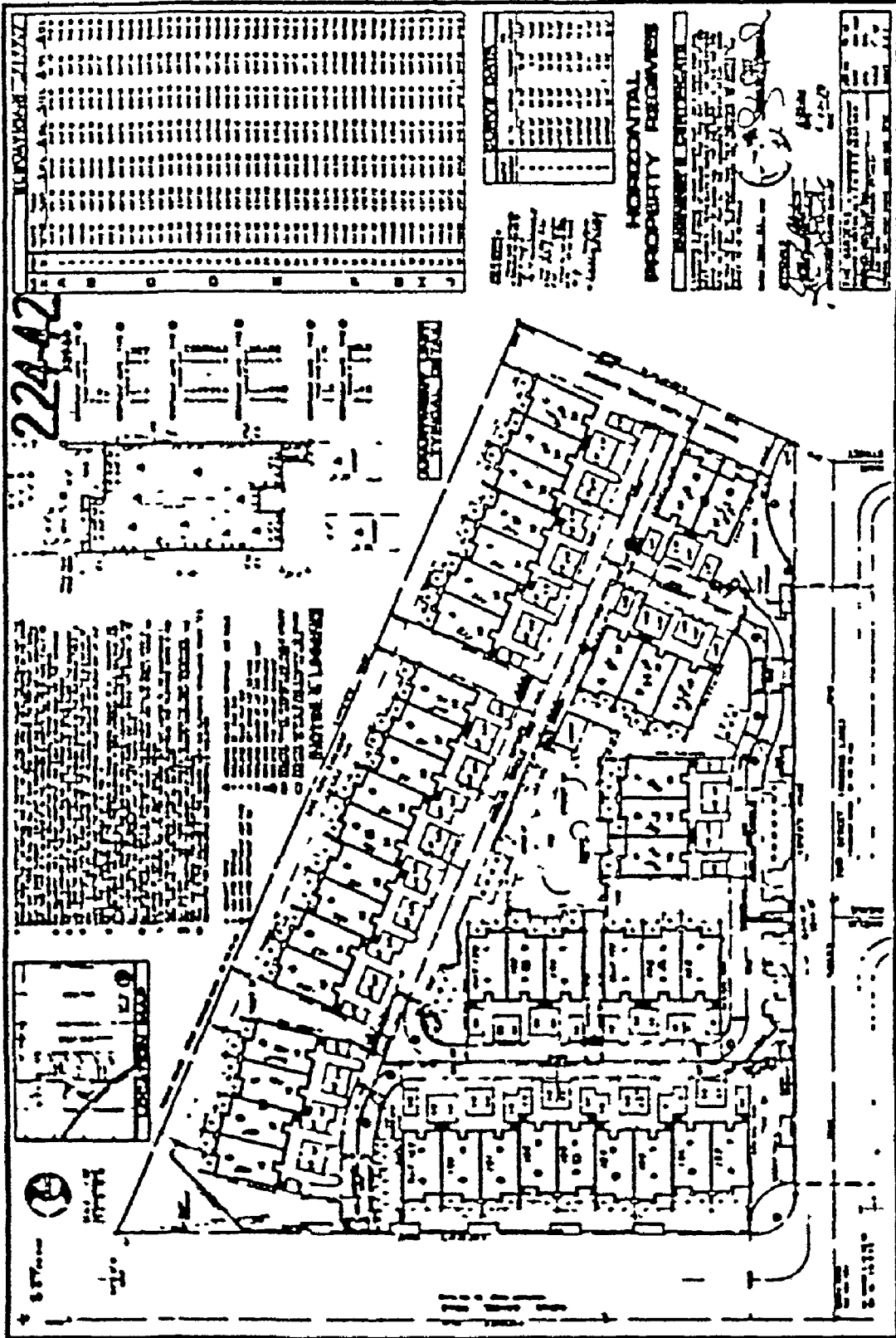
On this the 30th day of September, 1980, before me, the undersigned officer, personally appeared CHARLES A. JOHNSON, who acknowledged himself to be the Trust Officer of PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation, as Trustee, by himself as such officer.

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

David Lyke
Notary Public

My commission expires:

September 18, 1984



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STATE OF ARIZONA }
County of Maricopa } ES

I hereby certify that the within
in ins. 2. 6. 1. 3. 1. 2. 3. 2. 1. 0.
CERTIFICATE of Insurance of

PIONEER NATIONAL TITLE INS. CO.

OCT 1 - 1980 - 8 00

In D.C. # 14727

on 1st of 382-424

Witness my hand and seal of office at
Phoenix, Arizona this 1st day of October 1980

Bill Henry

County Recorder
By [Signature]
County Recorder

2/50

PIONEER TRUST COMPANY
3033 North Central Avenue, Suite 200
Phoenix, Arizona 85012
Trust No. 20,426

DK1150680 402

73191

MOD RSTR

A-381-11

FIRST AMENDMENT TO THE DECLARATION
OF HORIZONTAL PROPERTY REGIME AND DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE GARDENS

THIS INSTRUMENT, made as of this 5th day of March
1981,

WITNESSETH:

WHEREAS, reference is hereby made to that certain
Declaration of Horizontal Property Regime and Declaration of
Covenants, Conditions and Restrictions for The Gardens
recorded October 1, 1980, at Docket 14727,
page 382, et seq., records of Maricopa County, Arizona
(the "Declaration"); and

WHEREAS, the undersigned, PIONEER TRUST COMPANY OF
ARIZONA, as Trustee for Affiliated American Corporation under
Trust Number 20,426, is the Declarant under such Declaration;
and

WHEREAS, section 24 of such Declaration permits the
amendment of such Declaration in certain respects by the
Declarant under certain circumstances.

NOW, THEREFORE, said Declaration is hereby amended by
deleting therefrom that portion of the last paragraph of
section 7 beginning with the words "provided, however" and
continuing through the end of such paragraph and substituting
therefor the following:

"If and so long as the Declarant is exempt from paying
such charges or assessments, as above provided, no
owner other than the Declarant shall be required to pay
more than a maximum monthly assessment for common
expenses which shall be determined in the following
manner. Until December 31, 1981, the maximum monthly
assessment shall be \$ 145.00. Thereafter, such
maximum shall be adjusted every six months by the
percentage increase or decrease for such period in the

shall be exempt from paying assessments for common expenses, Declarant shall pay all common expenses in excess of the amounts which can be assessed against the Owners pursuant to this paragraph. Any provision of the foregoing to the contrary notwithstanding, the Declarant may elect at any time to commence paying regular monthly assessments, in which case the maximum assessment herein provided shall cease as to all Owners."

Except as above provided, the Declaration shall remain in full force and effect in accordance with its original terms. Any party may prepare a composite of the original Declaration as amended by this instrument and deliver and certify the same for all purposes as the complete Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions for The Gardens.

PIONEER TRUST COMPANY OF ARIZONA, as Trustee

By Charles A. Johnson
Its Trust Officer

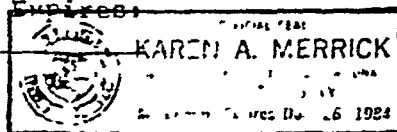
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the 5th day of March, 1981, before me, the undersigned Notary Public, personally appeared Charles A. Johnson, the Trust Officer of PIONEER TRUST COMPANY OF ARIZONA, as Trustee under Trust Number 20,426, a corporation, and acknowledged that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

Karen A. Merrick
Notary Public

My Commission Expires:
12-26-84



STATE OF ARIZONA
County of Maricopa
I hereby certify that the within and foregoing instrument is a true and correct copy of the original as recorded in my office.
PIONEER NATIONAL TITLE INS CO
MAR 6 - 1981 - 8 00
15068
482-483

By [Signature] Deputy Recorder
322

333 N. Central, Suite 200
Phoenix, AZ 85012
TIN: BUILDER SERVICES
D-98551-05

181

DKT 15404 PG 357

248677

REV Rstr

REVOCATION OF SECOND AMENDMENT TO
THE DECLARATION OF HORIZONTAL PROPERTY REGIME AND
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE GARDENS

KNOW ALL MEN BY THESE PRESENTS. That PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee, executed that certain Second Amendment to the Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions, and Restrictions, dated July 9, 1981 and recorded July 9, 1981, in Docket 15371, page 147, records of Maricopa County, Arizona, and

WHEREAS, said Second Amendment, amended that certain Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions, and Restrictions for THE GARDENS recorded October 1, 1980 in Docket 14727, page 382 and Amended March 5, 1981 in Docket 15068, page 482 (such Declaration as amended being hereafter referred to as "Declaration"); and

WHEREAS, the Declaration affects the real property described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Section 24 of said Declaration permits the Amendment of said Declaration under certain conditions; and

WHEREAS, the undersigned PIONEER TRUST COMPANY OF ARIZONA, an Arizona Corporation, as Trustee under Trust Number 20,426 desires to rescind and revoke the Second Amendment to Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions recorded July 9, 1981 in Docket 15371, page 147 in their entirety.

NOW, THEREFORE, the said Second Amendment to the Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions is hereby rescinded and revoked in its entirety and shall be of no further force or effect.

Except as herein specifically amended, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, PIONEER TRUST COMPANY OF ARIZONA, an Arizona Corporation, as Trustee, has caused its corporate name to be signed by the undersigned officer duly authorized this 24th day of July, 1981.

PIONEER TRUST COMPANY OF ARIZONA,
an Arizona corporation, as Trustee

BY: Charles A. Johnson
Trust Officer



STATE OF ARIZONA)
County of Maricopa)

On this, the 24 day of JULY, 1981, before me, the undersigned officer, personally appeared CHARLES A JOHNSON who acknowledged himself to be the Trust Officer of PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes herein contained by signing the name of the corporation, as Trustee by himself as such officer.

David J. [Signature]
Notary Public

My Commission expires:
Sept 18, 1981

UL 24 1981 -3 30
ATE OF ARIZONA } ss
ly G. [Signature] }
I here, certify t at the with
ins r en [Signature] and re-
ide. at [Signature] ul
PIONEER NATIONAL TITLE

Docket 15404
Page 357-358
W mess n [Signature] official
all eca [Signature] [Signature] [Signature]
3/11 [Signature]
C. H. [Signature] re-order
Deputy Recorder
3 40

Except as above provided, the Declaration as amended shall remain in full force and effect in accordance with its original terms. Any party may prepare a composite of the original Declaration as previously amended and as amended by this instrument and deliver and certify the same for all purposes as the complete Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions for The Gardens.

PIONEER TRUST COMPANY OF ARIZONA, as Trustee

By Charles A. Johnson
Its TRUST OFFICER

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the 9 day of July, 1981, before me, the undersigned Notary Public, personally appeared Charles A. Johnson, the TRUST OFFICER of PIONEER TRUST COMPANY OF ARIZONA, as Trustee under Trust Number 20,426, a corporation, and acknowledged that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

[Signature]
Notary Public

My Commission Expires
Sept 15, 1984

JUL 9 1981 -2 45

STATE OF ARIZONA }
County of Maricopa } ss

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

PIONEER NATIONAL TITLE

in Docket # 15371
on page 147-148

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

Will Henry
County Recorder
by [Signature]
Notary Recorder

300

which recorded. Turn to:
PIONEER NATIONAL TITLE INSURANCE COMPANY
3033 North Central Avenue, Suite 200
Phoenix, Arizona 85012

182

DKT 15371 PG

MOD REF

Attn: Builder Services Department

229685

D-89551-45 SECOND AMENDMENT TO THE DECLARATION

OF HORIZONTAL PROPERTY REGIME AND DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE GARDENS

THIS INSTRUMENT, made as of this 9th day of July,
1981,

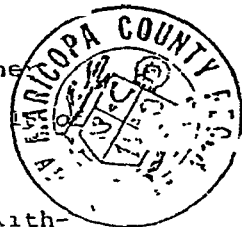
WITNESSETH.

WHEREAS, reference is hereby made to that certain
Declaration of Horizontal Property Regime and Declaration of
Covenants, Conditions and Restrictions for The Gardens
recorded October 1, 1980, at Docket 14727, page 382, et
seq., records of Maricopa County, Arizona, as amended by a
First Amendment dated March 5, 1981, and recorded at Docket
15068, page 482, et seq., of such records (such Declaration
as amended being hereinafter called the "Declaration"); and

WHEREAS, the undersigned, PIONEER TRUST COMPANY OF
ARIZONA, as Trustee for Affiliated American Corporation
under Trust Number 20,426, is the Declarant under such
Declaration; and

WHEREAS, section 24 of such Declaration permits the
amendment of such Declaration in certain respects by the
Declarant under certain circumstances.

NOW, THEREFORE, said Declaration is hereby further
amended by inserting therein at the end of paragraph
said Declaration the following:



"Any other provision hereof to the contrary notwithstanding, the Declarant may grant to any Owner of two or more Units an exemption from the restrictions herein contained to the extent and only to the extent necessary to own, operate, sell or lease Units or interests therein on a time-sharing basis, including maintaining a sales office on the premises, subject to such restrictions, if any, as the Declarant and such Owner may agree in order to assure that such Units are used and maintained in a manner consistent with the desirability and attractiveness of the Property and other Units."

"Attachment Lists" ... AC, D
 B4 B5 B6,
 C7 B, C9 C10 C11, C12 C13 C14 C15
 D4 D5 D6 D7
 E1 E2 E3 E4, E5 E6 E7 E8
 F14 F15 F16 F17 F18, F19 F20,
 G3 G4,
 H8, H9, H10,
 J11, J12, J13,
 and Tracts A, E and G,

THE CO-PIENS, according to Declaration of Homestead Partnership Regime
 recorded in Doc. et 14727, page 361, and amended in Doc. et 15066, page
 482, and Plat recorded in Book 224 of Maps, page 43. Records of
 Maricopa County, Arizona,

RECEIVED with the interest in and to the common areas, as set forth
 in said Declaration and on said Plat.

RECEIVED

AUG 11 1957

AFFILIATED AMERICAN CORP.