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DECLARATION OF CONDOMINIUM  
AND  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE TERRACES AT TIBURON CONDOMINIUM

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Unofficial Document

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**DECLARATION OF CONDOMINIUM  
AND  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE TERRACES AT TIBURON CONDOMINIUM**

THIS DECLARATION is made on the date hereinafter set forth by Coventry Homes, Inc., an Arizona corporation (hereinafter referred to as "DECLARANT").

WHEREAS, the DECLARANT, is the Owner of legal title of the real property situated in Maricopa County, Arizona, which is described on Exhibit A attached and incorporated herein, together with all building and improvements located thereon; and

WHEREAS, DECLARANT desires to submit the land described on Exhibit A attached hereto, together with all building, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or pertaining thereto (hereinafter called the "CONDOMINIUM") to a Condominium; and

WHEREAS, DECLARANT further desires to establish, for their own benefit, and for the mutual benefit of all future owners, lienholders, occupants, <sup>Unofficial Document</sup> or other holders of an interest in the CONDOMINIUM, or any part thereof, certain easements and rights, and certain mutually beneficial covenants, restrictions and obligations with respect to the proper use, conduct and maintenance of the CONDOMINIUM; and

WHEREAS, DECLARANT desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and other persons hereafter acquiring any interest in the CONDOMINIUM shall at all times enjoy the benefits of, and shall hold their interest subject to, the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspects of the CONDOMINIUM and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the CONDOMINIUM;

NOW, THEREFORE, DECLARANT hereby submits the CONDOMINIUM to be known as The Terraces at Tiburon Condominium and hereby declares that all the CONDOMINIUMS shall be subject to these covenants, conditions and restrictions and shall be held, conveyed, mortgaged, encumbered, leased, rented, occupied, improved and used subject to the following covenants, conditions, restrictions, easements and equitable servitudes. The restrictions set forth in this Declaration shall run with the CONDOMINIUM, shall be binding upon all persons having or acquiring any right, title or interest in the CONDOMINIUM, or any part thereof, shall inure to the benefit of every portion of the CONDOMINIUM, and any interest therein, shall inure to the benefit of and be binding upon any successor in interest of DECLARANT and of each OWNER and may be enforced by DECLARANT, by any OWNER or their successors in interest or by the ASSOCIATION.

**ARTICLE I**  
**DEFINITIONS**

Section 1.0 "ASSOCIATION" shall mean and refer to the The Terraces at Tiburon Condominium Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

Section 1.1 "ASSOCIATION RULES" shall mean the rules and regulations adopted by the ASSOCIATION, as the same may be amended from time to time.

Section 1.2 "ARTICLES" shall mean the Articles of Incorporation of the ASSOCIATION, as the same may be amended from time to time.

Section 1.3 "BYLAWS" shall mean the Bylaws of the ASSOCIATION, as the same may be amended from time to time.

Section 1.4 "BOARD" shall mean the Board of Directors of the ASSOCIATION.

Section 1.5 "ARCHITECTURAL COMMITTEE" shall mean the committee established pursuant to Section 6.3 of this DECLARATION.

Section 1.6 "ARCHITECTURAL COMMITTEE RULES" shall mean the rules adopted by the ARCHITECTURAL COMMITTEE, as the same may be amended from time to time.

Section 1.7 "MEMBER" shall mean any person, corporation, partnership, joint venture or other legal entity who is or becomes a member of the ASSOCIATION.

Section 1.8 "OWNER" shall mean the record owner, whether one or more persons <sup>Unofficial Document</sup> or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a UNIT. OWNER shall not include (i) the purchaser of a UNIT under an executory contract for the sale of real property, (ii) persons or entities having an interest in a UNIT merely as security for the performance of an obligation, or (iii) a lessee or tenant of a UNIT. In the case of UNITS the fee simple title to which is vested in a trustee, the Trustor shall be deemed to be the OWNER. In the case of UNITS the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement the beneficiary of any such trust shall be deemed to be the OWNER.

Section 1.9 "PURCHASER" means any person, other than the DECLARANT, who by means of a voluntary transfer acquires a legal or equitable interest in a UNIT, other than (i) a leasehold interest (including renewable options) of less than five years, or (ii) as security for an obligation.

Section 1.10 "DECLARANT" shall mean Coventry Homes, Inc., an Arizona corporation, its successors and any person or entity to whom it may expressly assign its rights under this DECLARATION.

Section 1.11 "DECLARATION" shall mean this entire document, as the same may be amended from time to time.

Section 1.12 "CONDOMINIUM" shall mean the real property located in Maricopa County, Arizona, which is described in Exhibit A attached to this DECLARATION and thereby incorporated herein, and any portion of the ANNEXABLE PROPERTY which is annexed by the DECLARANT pursuant to Article XII of this DECLARATION, together with all buildings and other IMPROVEMENTS located

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thereon and all easements, rights, and appurtenances belonging thereto.

Section 1.13 "CONDOMINIUM DOCUMENTS" shall mean this DECLARATION and the ARTICLES, BYLAWS, ASSOCIATION RULES and ARCHITECTURAL COMMITTEE RULES.

Section 1.14 "PLAT" shall mean (i) the Plat for The Terraces at Tiburon Condominium, which has been recorded with the County Recorder of Maricopa County, Arizona, in Book ~~302~~ of Maps, page ~~33~~, and any amendments thereto, insofar as said Plat covers the real property described on Exhibit A attached hereto and any portion of the ANNEXABLE PROPERTY which is annexed by the DECLARANT pursuant to Article XII of this DECLARATION, and (ii) any other plat, and any amendments thereto, recorded against all or any portion of the real property described on Exhibit A attached hereto and any portion of the ANNEXABLE PROPERTY which is annexed by the DECLARANT pursuant to Article XII of this DECLARATION.

Section 1.15. "ANNEXABLE PROPERTY" shall mean the real property located in Maricopa County, Arizona, which is described on Exhibits B-2 through B-10 attached to this DECLARATION and thereby incorporated herein, together with all buildings and other IMPROVEMENTS located thereon and all easements, rights and appurtenances belonging thereto.

Section 1.16 "IMPROVEMENTS" shall mean all physical structures, including, but not limited to, buildings, private drives, parking areas, fences, walls and landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

Section 1.17 "BUILDING" shall mean and refer to the structures designated as buildings on the PLAT.

Section 1.18 "UNIT" shall mean a portion of the CONDOMINIUM which is intended for separate fee ownership and is not intended to be owned in common with the other OWNERS of UNITS in the CONDOMINIUM. The number of each UNIT is shown on the PLAT. The boundaries of each UNIT are the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and each UNIT includes both the portions of the BUILDING and the airspace encompassed within the boundaries of the UNIT. The boundaries of each unit shall also include the fenced-in rear yard area. Each UNIT shall also include the range, dishwashers, garbage disposal located in the units and other built-in household appliances lying within said boundaries. The following shall not be considered part of a UNIT: bearing walls, columns, vertical supports, floors, roofs, foundations, patio walls and fences, except those fences separating each unit, pipes, ducts, flues, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the UNIT. No structural part of a BUILDING and no part of a UNIT forming a part of any systems serving one or more other UNITS or the GENERAL COMMON ELEMENTS shall be deemed or construed to be a part of a UNIT.

Section 1.19 "UNIT ESTATE" shall mean a UNIT together with an undivided interest in the GENERAL COMMON ELEMENTS as set forth in Section 2.3 of this DECLARATION and their right to the exclusive use of the LIMITED COMMON ELEMENTS reserved for the exclusive use of the UNIT under Section 2.5 of this DECLARATION.

Section 1.20 "GENERAL COMMON ELEMENTS" shall mean the entire CONDOMINIUM except for the UNITS.



Section 1.21 "LIMITED COMMON ELEMENTS" shall mean those portions of the GENERAL COMMON ELEMENTS that are reserved for the exclusive use of the OWNER of one UNIT in accordance with Section 2.5 of this DECLARATION.

Section 1.22 "COMMON EXPENSES" shall mean expenditures made or liabilities incurred by or on behalf of the ASSOCIATION, together with any allocations to reserve.

Section 1.23 "FIRST MORTGAGE" shall mean and refer to any mortgage or deed of trust with first priority over any other mortgage or deed of trust.

Section 1.24 "FIRST MORTGAGEE" shall mean and refer to the holder of any FIRST MORTGAGE.

Section 1.25 "ELIGIBLE MORTGAGE HOLDER" shall mean a FIRST MORTGAGEE who has requested notice of certain matters from the ASSOCIATION in accordance with Section 13.0 of this DECLARATION.

Section 1.26 "ELIGIBLE INSURER OR GUARANTOR" shall mean an insurer or governmental guarantor of a FIRST MORTGAGE who has requested notice of certain matters in accordance with Section 13.0 of this DECLARATION.

Section 1.27 "SINGLE FAMILY" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, together with their domestic servants, who maintain a common household in a UNIT.

Section 1.28 "SPECIAL DECLARANT RIGHT/DEVELOPMENT RIGHT" shall mean the rights created and reserved in Section 15.19 of this DECLARATION, or which may be otherwise provided for in the DECLARATION.

## ARTICLE II DESCRIPTION OF CONDOMINIUM

Section 2.0 Description of the Project. The CONDOMINIUM shall be comprised of a total of thirty-one (31) UNITS which are numbered on the PLAT as UNITS 67 through 71 inclusive, and 171 through 196 inclusive. The number of UNITS within the CONDOMINIUM may be increased by the annexation of all or any part of the ANNEXABLE PROPERTY Pursuant to Article XII of this DECLARATION. DECLARANT hereby reserves its DECLARANT RIGHT to construct all IMPROVEMENTS to the CONDOMINIUM as provided in this DECLARATION.

Section 2.1 Description of the Cubic Content Space of Each Building. The cubic content space of each BUILDING with reference to its location on the land is described on the PLAT. The boundaries of each BUILDING shall be exterior of the outside walls of said BUILDING, except that where there are patios extending beyond the exterior of the outside walls, the boundaries of each BUILDING shall be the plane of the outer edge of the exterior walls surrounding said patios or the plane of the boundary lines shown on the PLAT for said patios, which extend outward farthest from the exterior walls of said BUILDING. The upper and lower boundaries of the BUILDING shall be as shown on the PLAT.

Section 2.2 Description of the Cubic Content Space of Each Unit. The cubic content space of each UNIT and of each area of the CONDOMINIUM subject to individual ownership and exclusive control is set forth on the PLAT.

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Section 2.3 Description of General Common Elements. The GENERAL COMMON ELEMENTS shall include all of the CONDOMINIUM except for the UNITS. The GENERAL COMMON ELEMENTS shall include, but not be limited to, the land upon which the UNITS are located, the BUILDINGS, all exterior and bearing walls, columns, floors, ceilings and roofs, slabs, recreational facilities, pumps, landscaping, pavements, parking spaces, private drives, all waste, water pipes, ducts, conduits, wires, drainage lines, or other utilities, reservoirs, water tanks and pumps servicing more than one UNIT, the foundations of the UNITS, the foundations of the BUILDINGS, and all other devices and premises designated for common use or enjoyment by more than the OWNER of a single UNIT.

Section 2.4 Fractional Interest. Each Unit shall have a one thirty-second (1/32) undivided interest in the GENERAL COMMON ELEMENTS. The formula used to arrive at each UNIT's undivided interest in the GENERAL COMMON ELEMENTS shall be a fraction, the numerator of which shall be one (1), and the denominator of which shall be the total number of UNITS existing in the CONDOMINIUM. In the event the DECLARANT annexes all or any portion of the ANNEXABLE PROPERTY, the fractional interest of each UNIT in the GENERAL COMMON ELEMENTS shall be adjusted by the DECLARANT in accordance with the provisions of Section 12.0 of this DECLARATION.

Section 2.5 Limited Common Elements. Ownership of a UNIT shall entitle the OWNER thereof to the exclusive use of the following portions of the GENERAL COMMON ELEMENTS subject to such rules and regulations regarding the use and maintenance of such areas as may be adopted by the BOARD:

(a) The front Unofficial Document and/or stairway adjoining the UNIT and designed for the exclusive use of the OWNER or occupant of the UNIT and to which there is access from the UNIT.

(b) All shutters, awnings, window boxes, door-steps, stoops, porches, entry ways and all exterior doors and windows or other fixtures designed to serve a single UNIT but which are located outside the boundaries of the UNIT.

The right to exclusive use of the LIMITED COMMON ELEMENTS shall not be transferred, assigned or conveyed separate or apart from the UNIT. In the event a UNIT is conveyed, the right to the exclusive use of the LIMITED COMMON ELEMENTS shall automatically be transferred to the new OWNER. Any lien, including, but not limited to, the lien of a mortgage or deed of trust, arising against a UNIT, shall also be a lien against the OWNER'S right of exclusive use of the LIMITED COMMON ELEMENTS, and the foreclosure of a mortgage upon the UNIT, or the taking of a deed in lieu thereof, or a trustee's sale under a deed of trust or any other proceeding for foreclosing liens on a UNIT shall carry with it and transfer to the foreclosing party or the PURCHASER at any sheriff's sale or trustee's sale the exclusive use of the LIMITED COMMON ELEMENTS. Partial or full satisfaction or release of any such lien upon a UNIT shall similarly be a satisfaction and release of the lien against the right to the exclusive use of the LIMITED COMMON ELEMENTS. No LIMITED COMMON ELEMENT may be reallocated among UNIT OWNERS, nor may a GENERAL COMMON ELEMENT be reallocated into a LIMITED COMMON ELEMENT.

Section 2.6 Prohibition of Severance or Partition of a Unit Estate. No OWNER shall be entitled to sever his interest in his UNIT from his undivided interest in the GENERAL COMMON ELEMENTS, his right to the use of LIMITED

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COMMON ELEMENTS and his right and easement to the use and enjoyment of the GENERAL COMMON ELEMENTS. The undivided interest in the GENERAL COMMON ELEMENTS as established by this DECLARATION and the fee title to their respective UNITS shall not be separated, severed, partitioned or separately conveyed, encumbered or otherwise transferred, and each such undivided interest in the GENERAL COMMON ELEMENTS shall conclusively be deemed transferred or encumbered with the UNIT to which it is appurtenant even though the description in the instrument of conveyance or encumbrance may refer only to the UNIT. Nothing contained in this Section shall be construed to preclude an OWNER of a UNIT from creating a co-tenancy in the ownership of a UNIT with any other person or persons.

Section 2.7 Parking Spaces. UNIT OWNERS are to utilize their garages at all times for vehicles, therefore, all parking spaces shall be available for use by members of Owner's families, their guests and their tenants.

### ARTICLE III EASEMENTS

Section 3.0 Utility Easement. There is hereby created an easement upon, across, over and under the GENERAL COMMON ELEMENTS, for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, water, sewers, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the GENERAL COMMON ELEMENTS. Unofficial Document Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines may be installed or relocated on the GENERAL COMMON ELEMENTS except as initially designed, approved and constructed by the DECLARANT or as approved by the BOARD. This easement shall in no way affect any other recorded easements on the GENERAL COMMON ELEMENTS.

Section 3.1 Easements for Encroachments. Each UNIT and the GENERAL COMMON ELEMENTS shall be subject to an easement for encroachments, including but not limited to, encroachments of walls, ceilings, ledges, floors, and roofs created by construction, settling and overhangs as originally designed or constructed, or as created by discrepancies between the PLAT and the actual construction. If any portion of the GENERAL COMMON ELEMENTS shall actually encroach upon any UNIT, or if any UNIT shall actually encroach upon any portion of the GENERAL COMMON ELEMENTS, or if any UNIT shall actually encroach upon another UNIT, as the GENERAL COMMON ELEMENTS and the UNITS are shown on the PLAT, a valid easement for any of said encroachment and for the maintenance thereof, so long as they stand, shall and does exist. In the event any UNITS or structure is repaired, altered, or constructed, the OWNERS of the UNITS agree that similar encroachments shall be permitted and that a valid easement for said encroachment and for the maintenance thereof shall exist. The OWNER and any other parties acquiring any interest in the CONDOMINIUM shall acquiesce and agree to the existence of such easements by accepting a deed or otherwise becoming the OWNER of a UNIT.

Section 3.2 Easements for Ingress and Egress. There is hereby created easements for ingress and egress for

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pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the GENERAL COMMON ELEMENTS. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes; provided, however, that such easements shall not extend to any LIMITED COMMON ELEMENTS. Such easements shall run in favor of and be for the benefit of the OWNERS and occupants of the UNITS and their guests, families, tenants and invitees.

Section 3.3 Easements Through Common Elements. DECLARANT hereby creates and reserves an easement through the GENERAL COMMON ELEMENTS as may be reasonably necessary for the purposes of discharging the Declarant's obligations hereunder or when exercising SPECIAL DECLARANT RIGHTS or DEVELOPMENT RIGHTS or to make IMPROVEMENTS within the CONDOMINIUM or within real estate which may be added or annexed to the CONDOMINIUM.

Section 3.4 Owners' Easements of Enjoyment. Every OWNER shall have a right and easement of enjoyment in and to the GENERAL COMMON ELEMENTS, except for the LIMITED COMMON ELEMENTS, which right and easement shall be appurtenant to and shall pass with the title to every UNIT, subject to the following provisions:

(a) the right of the ASSOCIATION to adopt reasonable rules and regulations governing the use of the GENERAL COMMON ELEMENTS, except for the LIMITED COMMON ELEMENTS;

(b) the right of the ASSOCIATION to suspend the voting rights of an OWNER <sup>Unofficial Document</sup> after giving them notice and an opportunity to be heard for any period during which any assessment against his UNIT remains unpaid; and for a period not to exceed sixty (60) days for any other infraction or violation of the CONDOMINIUM DOCUMENTS;

(c) the right of the ASSOCIATION to dedicate or transfer all or any part of the GENERAL COMMON ELEMENTS to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the MEMBERS. No such dedication or transfer shall be effective unless an instrument signed by eighty percent (80%) of the MEMBERS agreeing to such dedication or transfer has been recorded. The requirements of this Section shall not apply in the case of the utility easements covered by Section 3.0 of this DECLARATION;

(d) the right of DECLARANT and its agents and representatives, in addition to the DECLARANT'S rights set forth elsewhere in this DECLARATION, to the nonexclusive use, without charge, of the GENERAL COMMON ELEMENTS for display and exhibit purposes and the maintenance of sales facilities;

Section 3.5 Delegation of Use. Any OWNER may delegate, in accordance with this DECLARATION, his right of enjoyment to the GENERAL COMMON ELEMENTS, except for the LIMITED COMMON ELEMENTS, to the members of his family, his tenants, his guests or invitees, provided such delegation is for a reasonable number of persons and at reasonable times.

Section 3.6 Limitation on Transfer. An OWNER'S right and easement of enjoyment in and to the GENERAL COMMON ELEMENTS, except for the LIMITED COMMON ELEMENTS, shall not be conveyed, transferred, alienated or encumbered separate and apart from an OWNER'S UNIT. Such right and easement of

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enjoyment in and to the GENERAL COMMON ELEMENTS, except for the LIMITED COMMON ELEMENTS, shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any OWNER'S UNIT, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement or to the GENERAL COMMON ELEMENTS, except for the LIMITED COMMON ELEMENTS.

ARTICLE IV  
USE AND OCCUPANCY RESTRICTIONS

Section 4.0 Single Family Residential Use. All UNITS and LIMITED COMMON ELEMENTS shall be used, improved and devoted exclusively to residential use by a SINGLE FAMILY. No gainful occupation, profession, trade or other non-residential use shall be conducted on or in any UNIT or LIMITED COMMON ELEMENT. Nothing herein shall be deemed to prevent the lease of a UNIT to a SINGLE FAMILY from time to time by the OWNER thereof, subject to all of the provisions of this DECLARATION, nor shall any provision hereof be deemed to prohibit an OWNER from (i) maintaining his own personal professional library in his UNIT, (ii) keeping his personal business or professional records or accounts therein, or (iii) handling his personal business calls or correspondence therefrom.

Section 4.1 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any portion of the CONDOMINIUM whether attached to a BUILDING or structure or otherwise, unless approved by the ARCHITECTURAL COMMITTEE.

Section 4.2 Utility Service. Except for lines, wires and devices existing on the CONDOMINIUM as of the date of this DECLARATION and maintenance and replacement of the same, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the CONDOMINIUM unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on BUILDINGS or other structures approved by the ARCHITECTURAL COMMITTEE. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of BUILDINGS or structures approved by the ARCHITECTURAL COMMITTEE.

Section 4.3 Improvements and Alterations. Except for original construction work undertaken by DECLARANT, with respect to any UNIT or the GENERAL COMMON ELEMENTS, there shall be no structural alterations, additions or improvements to any UNIT or the GENERAL COMMON ELEMENTS without the prior written approval of the MEMBERS entitled to cast at least eighty percent (80%) of the votes in the ASSOCIATION. Unless otherwise specified under this Section, the cost of such alterations, additions or improvements to the GENERAL COMMON ELEMENTS shall be paid by means of a special assessment against the OWNERS in the proportion of their respective undivided interests in and to the GENERAL COMMON ELEMENTS. Any OWNER may make nonstructural additions, alterations and improvements within his UNIT without the prior written approval of the ARCHITECTURAL COMMITTEE, but such OWNER shall, to the extent required by Arizona law, be responsible for any damage to other UNITS and to the GENERAL COMMON ELEMENTS which results from any such alter-

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stions, additions or improvements. OWNERS are hereby prohibited from making any structural additions, alterations or improvements within a UNIT, unless prior to the commencement of each addition, alteration or improvement, the OWNER receives the prior written approval of the ARCHITECTURAL COMMITTEE and an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity of the BUILDING within which such addition, alteration or improvement is to be made. The OWNER shall, to the extent required by Arizona law, be responsible for any damage to other UNITS and to the GENERAL COMMON ELEMENTS which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a UNIT, whether structural or not, which would be visible from the exterior of the BUILDING in which the UNIT is located, shall be made without the prior written approval of the ARCHITECTURAL COMMITTEE, which approval shall only be granted if the ARCHITECTURAL COMMITTEE affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding IMPROVEMENTS.

Section 4.4 Trash Containers and Collection. No garbage or trash shall be placed or kept on the CONDOMINIUM except in covered containers of a type, size and style which are approved by the ARCHITECTURAL COMMITTEE. The BOARD shall have the right to subscribe to a trash service for the use and benefit of the ASSOCIATION and all OWNERS, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The BOARD shall have the right to require all OWNERS to place trash and garbage in containers located in areas designated by the BOARD. No incinerators shall be kept or maintained on the UNIT.

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Section 4.5 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the CONDOMINIUM except such machinery or equipment as is usual and customary in connection with the use maintenance or construction of buildings, improvements or structures which are within the permitted uses of such property, and except that which DECLARANT or the ASSOCIATION may require for the operation and maintenance of the GENERAL COMMON ELEMENTS.

Section 4.6 Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of house pets, shall be maintained in or on the CONDOMINIUM and then only if they are kept, bred or raised solely as domestic pets and not for commercial purposes. No pet or any other animal shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. All dogs shall be kept on a leash not to exceed six (6) feet in length when outside a UNIT or any LIMITED COMMON ELEMENTS reserved to the use of such UNIT, and all dogs shall be directly under the OWNER'S control. No OWNER or any lessee or guest of an OWNER shall permit any dog being kept in the UNIT or LIMITED COMMON ELEMENTS reserved to the use of such UNIT to relieve itself on any portion of the GENERAL COMMON ELEMENTS. It shall be the responsibility of said OWNER, lessee or guest to remove immediately any droppings from pets. No structure for the care, housing, confinement, or training of any animal or pet shall be maintained so as to be visible from the exterior of the building in which the UNIT is located. Upon the written request of any OWNER, the BOARD shall determine whether, for the purposes of this Section, a particular animal or bird is a generally recognized house pet, a nuisance, or whether the number of pets

on any property is reasonable. Any decision rendered by the BOARD shall be enforceable as other restrictions contained herein.

**Section 4.7 Temporary Occupancy.** No trailer, basement of any incomplete IMPROVEMENT, building, tent, shack, garage or barn, and no temporary improvement of any kind shall be used at any time for a residence on any portion of the CONDOMINIUM either temporarily or permanently. Temporary building or structures used during the construction of buildings or structures approved by the ARCHITECTURAL COMMITTEE shall be permitted but must be removed promptly upon completion of the construction of the building or structure.

**Section 4.8 Restriction on Further Subdivision and Time Shares.** No UNIT shall be further subdivided or separated into smaller UNITS by any OWNER, and no portion less than all of any such UNIT shall be conveyed or transferred by any OWNER. This restriction shall not prevent the granting by an OWNER thereof of an easement over part or parts of a UNIT for use by another OWNER. Neither the ownership or occupancy of any UNIT shall be in time shares. No OWNER shall transfer, sell, assign or convey any time share in his UNIT and any such transaction shall be void. "Time share" as used in this Section shall mean a right to occupy a UNIT or any one of several UNITS during five (5) or more separated time periods over a period of at least five (5) years, including renewable options, whether or not coupled with an estate or interest in a UNIT or a specified portion of a UNIT.

**Section 4.9 Clothes Drying Facilities.** Outside clotheslines or other outside <sup>Unofficial Document</sup> facilities for drying or air clothes shall not be erected, placed or maintained on the CONDOMINIUM.

**Section 4.10 Mineral Exploration.** No portion of the CONDOMINIUM shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

**Section 4.11 Diseases and Insects.** No OWNER shall permit anything or condition to exist upon the CONDOMINIUM, which could induce, breed or harbor infectious plant diseases or noxious insects.

**Section 4.12 Vehicles.** All vehicles belonging to UNIT OWNERS are to be parked within the garages at all times. No mobile home, motor home, recreational vehicle, boat, trailer of any kind, truck, camper or tent, or similar vehicle or structure shall be kept, placed, maintained, constructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any portion of the CONDOMINIUM. No automobiles, trucks, motorcycles, motor bikes, scooters or other similar motor vehicle which are abandoned or inoperable shall be kept, placed or maintained on the CONDOMINIUM.

**Section 4.13 Signs.** No signs (including "For Sale" or "For Rent" signs) other than a name and address sign not exceeding 9 x 30 inches in size shall be permitted on the exterior of any UNIT or BUILDING or any other portion of the CONDOMINIUM without the written approval of the ARCHITECTURAL COMMITTEE.

**Section 4.14 Lawful Use.** No immoral, improper, offensive, or unlawful use shall be made on any part of the CONDOMINIUM. All valid laws, zoning ordinances, and regula-

tions of all governmental bodies having jurisdiction over the CONDOMINIUM shall be observed. Any violation of such laws, zoning ordinances or regulation shall be a violation of this DECLARATION.

Section 4.15 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the CONDOMINIUM and no activity shall be conducted upon the CONDOMINIUM which is offensive or detrimental to any portion of the CONDOMINIUM or any OWNER or occupants of the CONDOMINIUM. No exterior speakers, horns, whistles, bells or other sound devices except security or other emergency devices used exclusively for security or emergency purposes shall be located, used or placed on the CONDOMINIUM.

Section 4.16 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows of a UNIT without the prior written approval of the ARCHITECTURAL COMMITTEE. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a UNIT or any LIMITED COMMON ELEMENTS reserved for the use of such UNIT shall be constructed or installed in any UNIT or LIMITED COMMON ELEMENTS without the prior written consent of the ARCHITECTURAL COMMITTEE. Nothing contained in this Section shall be construed to prohibit the installation or use of a solar energy device as defined in Arizona Revised Statutes Section 43-1074.

#### ARTICLE V

#### MAINTENANCE AND REPAIR OF GENERAL COMMON ELEMENTS AND UNITS

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Section 5.0 Duties of the Association. The ASSOCIATION shall maintain, repair and make necessary improvements to all GENERAL COMMON ELEMENTS, except for those portions of the GENERAL COMMON ELEMENTS which the OWNERS of the UNITS are obligated to maintain pursuant to Section 5.1 of this DECLARATION. The portion of the GENERAL COMMON ELEMENTS that the ASSOCIATION shall maintain includes, but is not limited to, all common facilities and improvements, landscaping, drainage facilities, roadways, streets, parking areas and walks. The ASSOCIATION'S duties for maintenance and repair of the GENERAL COMMON ELEMENTS shall include the exterior portions of the UNITS and BUILDINGS, the land upon which the BUILDINGS are located, the space above the BUILDINGS, all bearing walls, columns, floors, roofs, slabs, foundations, storage building and lobbies, water and sewer pipes, ducts, shoots, conduits, wires and all other utility installations of the BUILDINGS, except the outlets thereof when located within UNITS and all structural parts of the GENERAL COMMON ELEMENTS. All such repairs and maintenance shall be COMMON EXPENSES and shall be paid for the ASSOCIATION.

Pursuant to A.R.S. §33-1255(F), DECLARANT is hereby entitled to a reduced common expense assessment. DECLARANT is, however, obligated to pay any operating deficiencies which includes allocations to reserves.

Section 5.1 Duties of Owners. Each OWNER of a UNIT shall maintain, repair, replace and restore, at his own expense, all portions of his UNIT, subject to the CONDOMINIUM DOCUMENTS. Each OWNER shall, at his own expense, maintain, repair, replace and restore, all doors, window glass, and any heating, cooling and air conditioning systems and equipment exclusively serving his UNIT, and all elec-



trical and plumbing fixtures and appliances exclusively serving his UNIT, including, but not limited to, dishwashers, laundry equipment, ranges, ovens, water heaters other built-in appliances. Each OWNER shall clean, maintain, repair, replace and restore all interior finishes coverings. No OWNER shall remove, alter, injure or interfere in any way with any shrubs, trees, grass or plantings placed upon the CONDOMINIUM by DECLARANT or the ASSOCIATION without first having obtained the written consent of the ARCHITECTURAL COMMITTEE. In addition, each OWNER shall be responsible for the maintenance and repair of the LIMITED COMMON ELEMENTS (except for the structural parts of the LIMITED COMMON ELEMENTS) to which he has the right of exclusive use pursuant to Section 2.5 of this DECLARATION. Each OWNER shall take all necessary action to keep the LIMITED COMMON ELEMENTS free and clear from unsightly accumulations of weeds, trash and litter. Each OWNER shall have an easement over, across and through such portions of the GENERAL COMMON ELEMENTS as are necessary in order for the OWNER to perform his obligations under this Section with respect to the maintenance, repair, replacement and restoration of those portions of the GENERAL COMMON ELEMENTS and LIMITED COMMON ELEMENTS which he is obligated to maintain.

The OWNERS of contiguous units who have a Party Fence shall both equally have the right to use such fence, provided that such use by one OWNER does not interfere with the use and enjoyment of same by the other OWNER. In the event that any Party Fence is damaged or destroyed through the act of an OWNER or any of his agents or guests or member of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such OWNER to rebuild and repair the Party Fence without cost to the other adjoining lot OWNER or OWNERS. In the event any such Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining OWNER, his agents, guests or family, it shall be the obligation of all OWNERS whose lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.

Section 5.2 Repair or Restoration Necessitated by Owner. Each OWNER shall be liable to the ASSOCIATION, to the extent provided for by the Arizona law, for any damage to the GENERAL COMMON ELEMENTS or the IMPROVEMENTS, landscaping or equipment thereon which results from the negligence or willful conduct of the OWNER. The cost to the ASSOCIATION of any such repair, maintenance or replacements required by such act of an OWNER shall be paid by said OWNER, upon demand, to the ASSOCIATION. The ASSOCIATION may enforce collection of any such amounts in the same manner and to the same extent as provided for in this DECLARATION for the collection of assessments.

Section 5.3 Association Right to Access. Each OWNER hereby grants to the ASSOCIATION a right of access to the GENERAL COMMON ELEMENTS for the purpose of enabling the ASSOCIATION, BOARD, ARCHITECTURAL COMMITTEE and any other committees established by the BOARD to exercise and discharge their respective powers, duties and responsibilities under the CONDOMINIUM DOCUMENTS. This right of access shall include, but not be limited to, the right to enter upon the GENERAL COMMON ELEMENTS for the purpose of determining whether the provisions of this DECLARATION are being complied with by the OWNERS, their guests, invitees, tenants and licensees. The ASSOCIATION shall have the right to enter a UNIT in case of emergency.

ARTICLE VI  
THE ASSOCIATION

Section 6.0 Rights, Powers and Duties of the Association. The ASSOCIATION shall be a non-profit Arizona corporation. The Unit Owner's Association shall constitute the ASSOCIATION, and shall have such rights, powers and duties as are prescribed by law and as are set forth in the CONDOMINIUM DOCUMENTS together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the ASSOCIATION as set forth in this DECLARATION.

Section 6.1 Directors and Officers. The affairs of the ASSOCIATION shall be conducted by the BOARD and such officers and committees as the BOARD may elect and appoint, in accordance with the ARTICLES and the BYLAWS. Pursuant to A.R.S. §33-1202(21) DECLARANT hereby reserves the SPECIAL DECLARANT RIGHT to appoint or remove any officer of the ASSOCIATION or any member of the BOARD during any period of DECLARANT CONTROL.

Section 6.2 Association Rules. By a majority vote of the BOARD, the ASSOCIATION may, from time to time and subject to the provisions of this DECLARATION, adopt, amend and repeal rules and regulations. The ASSOCIATION RULES may, among other things, restrict and govern the use of any area by any OWNER, by the family of such OWNER, or by any invitee, licensee or lessee of such OWNER; provided, however, that the ASSOCIATION RULES may not unreasonably discriminate among OWNERS and shall not be inconsistent with this DECLARATION, the ARTICLES or BYLAWS. A copy of the ASSOCIATION RULES as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each OWNER and may be recorded.

Section 6.3 Architectural Committee. The BOARD shall establish an ARCHITECTURAL COMMITTEE consisting of not less than three (3) members appointed by the BOARD to regulate the external design, appearance, use and maintenance of the CONDOMINIUM and to perform such other functions and duties as are imposed upon it by this DECLARATION, the BYLAWS or by the BOARD.

ARTICLE VII  
MEMBERSHIP AND VOTING RIGHTS

Section 7.0 Identity. Each OWNER of a UNIT shall be a MEMBER of the ASSOCIATION and shall be entitled to one vote per UNIT owned.

Section 7.1 Declarant Control. Established by this DECLARATION is a period of DECLARANT CONTROL of the ASSOCIATION. During the period of DECLARANT CONTROL, DECLARANT or person(s) designated by him may appoint and remove the officers and members of the BOARD. The DECLARANT may voluntarily surrender this right before termination of the period of DECLARANT CONTROL as stated below, but in that event, he may require, for the duration of the period of DECLARANT CONTROL, that specified actions of the ASSOCIATION or BOARD, as described in a recorded instrument executed by the DECLARANT, be approved by the DECLARANT before they become effective. The period of DECLARANT CONTROL shall terminate no later than the earlier of:

1) Ninety (90) days after conveyance of seventy-five percent (75%) of the UNITS which may be created to UNIT OWNERS other than the DECLARANT.

2) Four (4) years after DECLARANT has ceased to offer UNITS for sale in the ordinary course of business.

Section 7.2 Joint Ownership. When more than one person is the OWNER of a 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 ballot be cast with respect to any UNIT. The vote for each such UNIT must be cast as a unit, and fractional votes shall not be allowed. In the event that joint OWNERS are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If only one of the JOINT OWNERS of a UNIT is present at a meeting of the ASSOCIATION, he is

entitled to cast the vote allocated to that UNIT and it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other OWNERS of the same UNIT. In the event more than one ballot is cast for a particular UNIT, none of said votes shall be counted and said votes shall be deemed void.

Section 7.3 Corporate or Partnership Ownership. In the event a UNIT is owned by a corporation, partnership or association, the corporation, partnership or association shall be a MEMBER and shall designate in writing to the ASSOCIATION at the time of its acquisition of the UNIT, the name and title of the person who shall have the power to vote the membership of the corporation, partnership or association in the ASSOCIATION. The person so designated shall be the only person who shall be entitled to cast the vote for the UNITS owned by such corporation, partnership or association. If the corporation, partnership or association fails to designate the person who shall have the right to vote the membership of the corporation, partnership or association, then such corporation, partnership or association shall lose its right to vote and it shall not be considered as a MEMBER for the purpose of determining the requirement for a quorum or any other purpose requiring the approval of a person entitled to cast the vote for the UNIT owned by such corporation, partnership or association.

Section 7.4 Suspension of Voting Rights. In the event any OWNER of a UNIT is in arrears in the payment of any assessment or other amounts due under the terms of the CONDOMINIUM DOCUMENTS for a period of fifteen (15) days, the ASSOCIATION shall impose charges for late payment of assessments, and after notice and an opportunity to be heard, said OWNER'S right to vote as a MEMBER of the ASSOCIATION shall be suspended and shall remain suspended until all payments, including any late charges and applicable attorneys' fees, are brought current, and for a period not to exceed sixty (60) days for any infraction of the CONDOMINIUM DOCUMENTS.

Section 7.5 Transfer of Membership. The ASSOCIATION membership of each OWNER of a UNIT shall be appurtenant to such UNIT. The rights and obligations of an OWNER and membership in the ASSOCIATION shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of such UNIT, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under a Deed of Trust, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws

of the State of Arizona. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the ASSOCIATION. Any transfer of ownership to said UNIT shall operate to transfer said membership to the new OWNER thereof.

ARTICLE VIII  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.0 Creation of the Lien and Personal Obligation of Assessments. Each OWNER of a UNIT, by acceptance of a deed therefor or otherwise becoming the OWNER thereof, is deemed to covenant and agree to pay to the ASSOCIATION, (i) annual assessments, (ii) special assessments for capital improvements, and (iii) supplemental assessments. Such assessments shall be levied and collected as provided for in this DECLARATION. The annual, special and supplemental

assessments, together with interest, costs and reasonable attorney's fees, shall be a lien on the UNIT against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of each person who was the OWNER of such UNIT at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 8.1 Purpose of Assessments. The assessments levied by the ASSOCIATION shall be used exclusively to promote the recreation, health, safety, and welfare of the OWNERS, for the improvement and maintenance of the GENERAL COMMON ELEMENTS, and for <sup>Unofficial Document</sup> purposes set forth in the CONDOMINIUM DOCUMENTS, including but not limited to, insurance premiums, expenses for maintenance repairs and replacements of GENERAL COMMON ELEMENTS and reserves for depreciation and contingencies.

Section 8.2 Basis For Assessment. The assessments levied by the ASSOCIATION shall be based on an annual budget adopted by the BOARD. The BOARD shall have the right to adopt and amend the ASSOCIATION budget. Within thirty (30) days after adoption of any proposed budget, the BOARD shall provide a summary of the budget to all UNIT OWNERS. If the budget adopted or amended by the BOARD would result in an annual assessment for each UNIT in an amount greater than the maximum increase allowed pursuant to Section 8.3(a), such budget must be ratified by the OWNERS. If ratification is required, the BOARD shall set a date for a meeting of the UNIT OWNERS to consider ratification of the budget not fewer than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all the UNIT OWNERS rejects the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the UNIT OWNERS or adopted by the BOARD shall be continued until such time as the UNIT OWNERS ratify a subsequent budget proposed by the BOARD or adopt a budget not requiring ratification.

Section 8.3 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first UNIT to a PURCHASER, the annual assessment for each UNIT shall be Nine Hundred Dollars (\$ 900.00) for each UNIT.

(a) From and after January 1 of the year immedi-

ately following the conveyance of the first UNIT to a PURCHASER, the BOARD may, without a vote of the membership of the ASSOCIATION, increase the annual assessment during each fiscal year of the ASSOCIATION by the higher of an amount of five percent (5%) or by an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items) or the U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1967=100), or in the event said index ceases to be published, by any successor index recommended as a substitute therefor by the United States government.

(b) From and after January 1 of the year immediately following the conveyance of the first UNIT to a PURCHASER, the annual assessment may be increased by an amount greater than the maximum increase allowed pursuant to Section 8.3(a) above only if the budget upon which the annual assessment is based is ratified pursuant to Section 8.2 above.

(c) The BOARD shall fix the annual assessment for each UNIT in accordance with Section 8.7 of this DECLARATION but the annual assessment for a UNIT for any fiscal year of the ASSOCIATION may not exceed the maximum annual assessment established by the BOARD pursuant to this Section.

Section 8.4 Special Assessments. In addition to annual assessments, the ASSOCIATION may levy, in any fiscal year of the ASSOCIATION, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the GENERAL COMMON ELEMENTS, including fixtures and personal property related thereto, <sup>Unofficial Document</sup> or for any other lawful ASSOCIATION purpose, provided that any such assessment shall have first been ratified in the manner as set forth in Section 8.2 above for ratification of the annual budget.

Section 8.5 Supplemental Assessments. In the event the BOARD shall determine that its funds budgeted or available in any fiscal year are, or will, become inadequate to meet all expenses of the ASSOCIATION for any reason, including nonpayment of assessments, it shall immediately determine the approximate amount of such inadequacies for such fiscal year and issue a supplemental budget and levy a supplemental assessment against the OWNERS of each UNIT for the amount required to pay all such expenses; provided, however, that any such supplemental assessment must first be ratified in the manner as set forth in Section 8.2 above for ratification of the annual budget.

Section 8.6 Rate of Assessment. The annual assessment for each UNIT for each fiscal year of the ASSOCIATION shall be the sum equal to the total of (i) the estimated COMMON EXPENSES of the ASSOCIATION for the fiscal year, (ii) the amount determined by the BOARD to be required during the fiscal year for the establishment and maintenance of a reserve fund pursuant to Section 8.14 of this DECLARATION, and (iii) the amount determined by the BOARD to be necessary for the ASSOCIATION to perform all of its duties and obligations under the terms of the CONDOMINIUM DOCUMENTS for the fiscal year, multiplied by such UNIT'S undivided interest in the GENERAL COMMON ELEMENTS pursuant to Section 2.4 of this DECLARATION. Each UNIT shall be assessed its proportionate share of any supplemental or special assessments levied pursuant to Sections 8.4 or 8.5 of this DECLARATION. Each UNIT'S proportionate share of any such assessments shall be the amount obtained by multiplying the total amount of such

supplemental or special assessment by such UNIT'S undivided interest in the GENERAL COMMON ELEMENTS pursuant to Section 2.4 of this DECLARATION.

Section 8.7 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence at to all UNITS on the first day of the month following the conveyance of the first UNIT to a PURCHASER. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the ASSOCIATION. The BOARD shall fix the amount of the annual assessment against each UNIT in accordance with Section 8.2 above at least thirty (30) days in advance of each fiscal year. If the annual assessment is not fixed by the BOARD at least thirty (30) days in advance of the fiscal year, then the annual assessment for the prior fiscal year shall remain in effect until the thirtieth day after the BOARD fixes the annual assessment for the then current year. Written notice of the annual assessment shall be sent to every OWNER subject thereto prior to the commencement of the fiscal year; provided, however, that failure to give such notice shall not affect the validity or enforceability of the assessments as fixed by the BOARD. The BOARD may require that the annual, supplemental or special assessments be paid in installments. Unless otherwise specified by the BOARD special and supplemental assessments shall be due thirty (30) days after they are levied by the ASSOCIATION and ratified by the OWNERS and notice of the assessment is given to the OWNERS.

Section 8.8 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment, or any installment of an assessment, which is not paid within thirty (30) days after the assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of fifteen percent (15%) per annum.

Any assessment, or any installment of an assessment, which is delinquent shall become a continuing lien on the UNIT against which such assessment was made. The ASSOCIATION'S lien shall have priority over all liens and encumbrances on a UNIT except liens and encumbrances recorded before the recordation of the DECLARATION, a first mortgage or deed of trust on the UNIT recorded before the date on which the assessment sought to be enforced became delinquent, and liens from real estate taxes and other governmental assessments or charges against the UNIT.

The ASSOCIATION shall have the right, at its option, to enforce collection of any delinquent assessments in any manner allowed by law including, but not limited to, (i) bringing an action at law against the OWNER personally obligated to pay the delinquent assessments and such action may be brought without waiving any lien securing any such delinquent assessments, or (ii) bringing an action to foreclose its lien against the UNIT in the manner provided by law for the foreclosure of a realty mortgage. The ASSOCIATION shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all UNITS purchased at such sale.

Section 8.9 Subordination of Assessment Lien to Mortgages. The lien of the assessments provided in this DECLARATION shall be subordinate to liens and encumbrances on a UNIT except liens and encumbrances recorded before the recordation of the DECLARATION, a first mortgage or deed of trust on the UNIT recorded before the date on which the assessment sought to be enforced became delinquent, and

liens from real estate taxes and other governmental assessments or charges against the UNIT. Sale or transfer of any UNIT shall not affect the assessment lien. However, the sale or transfer of any UNIT pursuant to judicial or nonjudicial foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such UNIT from liability for any assessments thereafter becoming due or from the lien thereof.

Section 8.10 Exemption of Owner. No OWNER of a UNIT may exempt himself from liability for payment of assessments and other charges levied pursuant to the CONDOMINIUM DOCUMENTS by waiver and non-use of any of the GENERAL COMMON ELEMENTS and facilities or by the abandonment of his UNIT.

Section 8.11 Unallocated Tax Assessments. In the event that any taxes are assessed against the personal property of the ASSOCIATION, said taxes shall be included in the assessments made under the provisions of this Article, and, if necessary, a supplemental or special assessment may be levied against the UNITS in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

Section 8.12 Certificate of Unpaid Assessments. The ASSOCIATION upon written request shall furnish to a lienholder, UNIT OWNER or person designated by a UNIT OWNER a recordable statement setting forth the amount of unpaid assessments against his UNIT. The statement shall be furnished within 20 business days after receipt of the request and is binding upon the ASSOCIATION, the BOARD, and every UNIT OWNER.

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Section 8.13 Working Capital Fund. A working capital fund shall be established for the initial months of the project operations in an amount equal to at least two (2) monthly installments of the current annual assessment for each UNIT.

Section 8.14 Maintenance of Reserve Fund. Out of the annual assessments, the ASSOCIATION shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the GENERAL COMMON ELEMENTS with the ASSOCIATION is obligated to maintain.

#### ARTICLE IX CONDEMNATION

Section 9.0 Consequences of Condemnation; Notice. If at any time all or any part of the CONDOMINIUM shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Article shall apply. Upon any such act, each OWNER who has requested special notice, and each holder of a lien or encumbrance on the CONDOMINIUM or any part thereof shall be provided with timely written notice of any proceeding or proposed acquisition or sale. The ASSOCIATION shall represent the OWNERS in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for acquisition of the GENERAL COMMON ELEMENTS or any part thereof.

Section 9.1 Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter

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called the "CONDEMNATION AWARD," shall be payable to the BOARD in trust for the OWNERS and all holders of liens and encumbrances on the CONDOMINIUM or any part thereof, as their interests may appear.

Section 9.2 Complete Taking. In the event that the entire CONDOMINIUM is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the CONDOMINIUM created pursuant hereto shall terminate. The CONDEMNATION AWARD shall be apportioned among the OWNERS in accordance to their respective interests of the UNIT OWNERS which is the proportion to the fair market value of each OWNER'S UNIT as compared to the fair market value of all of the UNITS at the time of the condemnation. The fair market value of each UNIT at the time of the condemnation shall be determined by the judgement or order entered by the Court making the CONDEMNATION AWARD or, if there is no judgment or order or if the judgment or order fails to specify the fair market value of each of the UNITS, then the fair market value of each UNIT shall be determined by an appraiser employed by the BOARD. If the BOARD employs an appraiser for such purpose then the fee or compensation to be paid to the appraiser shall be paid by the BOARD out of the CONDEMNATION AWARD. On the basis of the foregoing principle, the BOARD shall as soon as practicable determine the share of the CONDEMNATION AWARD to which each OWNER is entitled. Out of the respective share of each OWNER, the BOARD shall pay, to the extent such funds are sufficient for such purpose, all encumbrances and liens on the interest of such OWNER in the order of their priority, and the balance, if any, of the OWNER'S share shall then be distributed to the OWNER.

Following termination of the condominium, the proceeds of any sale of real estate, <sup>Unofficial Document</sup> together with the assets of the ASSOCIATION, are held by the ASSOCIATION as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the ASSOCIATION holding liens on the units which were recorded before termination may enforce these liens in the same manner as any lienholder.

The respective interests of unit owners are as follows:

(a) Except as provided in (b) below, the respective interests of UNIT OWNERS are the fair market values of their UNITS, LIMITED COMMON ELEMENTS and GENERAL COMMON ELEMENT interests immediately before the termination, as determined by an independent appraiser selected by the ASSOCIATION. The determination of this independent appraiser shall be distributed to the UNIT OWNERS and becomes final unless disapproved within thirty days after distribution by UNIT OWNERS of UNITS to which fifty percent (50%) of the votes in the ASSOCIATION are allocated. The proportion of any UNIT OWNER'S interest to that of all UNIT OWNERS is determined by dividing the fair market value of that UNIT OWNER'S UNIT and GENERAL COMMON ELEMENTS interest by the total fair market values of all the UNITS and GENERAL COMMON ELEMENTS.

(b) If any UNIT or any LIMITED COMMON ELEMENT is destroyed to the extent that an appraisal of the fair market value of the UNIT or ELEMENT before destruction cannot be made, the interest of all UNIT OWNERS are their respective interest in the GENERAL COMMON ELEMENT'S immediately before the termination.

Section 9.3 Partial Taking. In the event that less than the entire CONDOMINIUM is taken, condemned, sold or



otherwise disposed of in lieu of or in avoidance thereof, the CONDOMINIUM created hereunder shall not terminate and the following provisions shall apply:

(a) If one or more of the UNITS is acquired by eminent domain, or if a part of the UNIT is acquired by eminent domain, leaving the UNIT OWNER with a remnant which may not practically or lawfully be used for any purpose permitted by the DECLARATION, the CONDEMNATION AWARD must compensate the UNIT OWNER for his UNIT and its interest in the GENERAL COMMON ELEMENTS, regardless of whether any GENERAL COMMON ELEMENTS are acquired. On acquisition, unless the decree otherwise provides, that UNIT's allocated interests are automatically reallocated to the remaining UNITS in proportion to the respective allocated interest of those UNITS before the taking so that the fractional interest of each remaining UNIT in the GENERAL COMMON ELEMENTS and share of any assessments shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of UNITS remaining in the CONDOMINIUM after the taking, and the ASSOCIATION shall promptly prepare, execute and record an amendment to the DECLARATION reflecting the reallocation. Each OWNER of a UNIT remaining after the taking shall be a MEMBER of the ASSOCIATION and shall be entitled to one (1) vote per UNIT owned. Any remnant of a UNIT remaining after part of a UNIT is taken under the subsection becomes a GENERAL COMMON ELEMENT.

(b) Except as provided in subsection (a) of this Section, if part of a UNIT is acquired by eminent domain the CONDEMNATION AWARD must compensate the UNIT OWNER for the reduction in value of the UNIT and its interest in the GENERAL COMMON ELEMENTS, regardless of whether any GENERAL COMMON ELEMENTS are acquired. On acquisition, unless the decree otherwise provides, <sup>Unofficial Document</sup> all the following apply:

(1) On acquisition, unless the decree otherwise provides, each UNIT's fractional interest in the GENERAL COMMON ELEMENTS, and share of any assessments made by the ASSOCIATION shall be allocated in the same manner and according to the same formulas as before the acquisition. Each OWNER of a UNIT remaining after the acquisition shall be a MEMBER of the ASSOCIATION and shall be entitled to one vote per UNIT owned.

(c) If part of the GENERAL COMMON ELEMENTS are acquired by eminent domain, the portion of the CONDEMNATION AWARD attributable to the GENERAL COMMON ELEMENTS taken shall be paid to the ASSOCIATION for the benefit of the UNIT OWNERS. Unless the DECLARATION provides otherwise, any portion of the award attributable to the acquisition of a LIMITED COMMON ELEMENT shall be equally divided among the OWNERS of the UNITS to which that LIMITED COMMON ELEMENT was allocated at the time of acquisition.

(d) The court decree shall be recorded in every county in which any portion of the CONDOMINIUM is located.

#### ARTICLE X INSURANCE

Section 10.0 Scope of Coverage. Commencing no later than the date of the first conveyance of a UNIT to a PURCHASER, the ASSOCIATION shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Property insurance on the GENERAL COMMON ELEMENTS and UNITS, exclusive of improvements and better-

ments installed in UNITS by OWNERS, insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the GENERAL COMMON ELEMENTS and UNITS, as determined by the BOARD; provided, however, that the total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the actual cash value of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the BOARD, but not less than \$1,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the GENERAL COMMON ELEMENTS and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the OWNERS as a group to an OWNER.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

(d) Such other insurance as the ASSOCIATION shall determine from time to time to be appropriate to protect the ASSOCIATION or the OWNERS.

(e) The insurance policies purchased by the ASSOCIATION shall, to the extent reasonably available, contain the following provisions:

(1) Each OWNER shall be an insured under the policy with respect to liability arising out of his ownership of an individuated interest in the GENERAL COMMON ELEMENTS or his membership in the ASSOCIATION.

(2) There shall be no subrogation with respect to the ASSOCIATION, its agents, servants, and employees, with respect to OWNERS and members of their household.

(3) No act or omission by any OWNER, unless acting within the scope of his authority on behalf of the ASSOCIATION, shall void the policy or be a condition to recovery on the policy.

(4) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by OWNERS or their mortgagees or beneficiaries under deeds of trust.

(5) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an OWNER because of the negligent acts of the ASSOCIATION or other OWNERS.

(6) Statement of the name of the insured as "The Terraces at Tiburon Condominium Association, Inc." for use and benefit of the individual OWNERS (designated by name if required by the insured).

(7) For policies of hazard insurance a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any reduction or cancellation of the policy.

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(f) "Agreed Amount" and "Inflation Guard" endorsements.

**Section 10.1 Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the ASSOCIATION and, upon request, to any OWNER, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled or not renewed until thirty (30) days after notice of the proposed cancellation or refusal to renew has been mailed to the ASSOCIATION, each OWNER and each FIRST MORTGAGEE, or to whom a certificate or memorandum of insurance has been issued at their respective last addresses.

**Section 10.2 Fidelity Bonds.** The ASSOCIATION shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the ASSOCIATION and all other persons handling or responsible for funds of or administered by the ASSOCIATION. Where the ASSOCIATION has delegated some or all of the responsibility for the handling of funds to a management agent, the ASSOCIATION shall require the management agent to provide fidelity bonds for its officers, employees and agents handling or responsible for funds of, or administered on behalf of the ASSOCIATION. The total amount of fidelity bond coverage shall be based upon the best business judgment of the BOARD, and shall not be less than the greater of (i) the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the CONDOMINIUM, (ii) the estimated maximum of funds, including reserve funds, in the custody of the ASSOCIATION or the management agent, as the case may be, at any given time during the term of each bond or (iii) the sum equal to three months <sup>Unofficial Document</sup> assessments on all UNITS plus reserve funds. Fidelity bonds obtained by the ASSOCIATION must also meet the following requirements:

(a) The fidelity bonds shall name the ASSOCIATION as an obligee;

(b) The bonds shall 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 bonds shall provide that they may not be cancelled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the ASSOCIATION and each FIRST MORTGAGEE.

**Section 10.3 Payment of Premiums.** Premiums for all insurance obtained by the ASSOCIATION pursuant to this Article shall be COMMON EXPENSES and shall be paid for by the ASSOCIATION.

**Section 10.4 Insurance Obtained by Owner.** The issuance of insurance policies to the ASSOCIATION pursuant to this Article shall not prevent an OWNER from obtaining insurance for his own benefit and at his own expense covering his UNIT, his personal property and providing personal liability coverage.

**Section 10.5 Payment of Insurance Proceeds.** Any loss covered by property insurance obtained by the ASSOCIATION in accordance with this Article shall be adjusted with the ASSOCIATION and the insurance proceeds shall be payable to the ASSOCIATION and not to any mortgagee or beneficiary under a deed of trust. The ASSOCIATION shall hold any

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insurance proceeds in trust for OWNERS and lien holders as their interests may appear. Subject to the provisions of Section 10.6 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to GENERAL COMMON ELEMENTS and UNITS, and OWNERS and lien holders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the GENERAL COMMON ELEMENTS and UNITS have been completely repaired or restored, or the CONDOMINIUM terminated.

Section 10.6 Repair and Replacement of Damaged or Destroyed Property. Any portion of the CONDOMINIUM damaged or destroyed shall be repaired or replaced promptly by the ASSOCIATION unless, (i) the CONDOMINIUM is terminated, (ii) repair or replacement would be illegal under state or local health or safety statute or ordinance, or (iii) eighty percent (80%) of the OWNERS, including every OWNER of a UNIT which will not be rebuilt, vote not to rebuild. The cost of repair or replacement which is in excess of insurance proceeds and reserves shall be a COMMON EXPENSE. If the entire CONDOMINIUM is not repaired or replaced, (i) insurance proceeds attributable to the damaged GENERAL COMMON ELEMENTS shall be used to restore the damaged area to a condition compatible with the remainder of the CONDOMINIUM, (ii) insurance proceeds attributable to UNITS and allocated LIMITED COMMON ELEMENTS which are not to be rebuilt shall be distributed to the OWNERS of those UNITS and the OWNERS to which those allocated LIMITED COMMON ELEMENTS were allocated, (iii) the remainder of the proceeds shall be distributed to all OWNERS or lienholders as their interests may appear in proportion to the GENERAL COMMON ELEMENT interest of all the UNITS. If the OWNERS vote not to rebuild a UNIT, that UNIT'S entire GENERAL COMMON ELEMENTS interest and proportionate share of assessments and votes in the ASSOCIATION shall be automatically allocated as if the UNIT had been condemned, and the ASSOCIATION shall promptly prepare, execute and record an amendment to the DECLARATION reflecting the allocations.

Section 10.7 Insurance Trustee. Notwithstanding any other provisions of this Article, there may be named as an insured on behalf of the ASSOCIATION, the ASSOCIATION'S authorized representative, including any trustee with whom such ASSOCIATION may enter into any Insurance Trust Agreement or any successor to such trustee ("Insurance Trustee"), who shall have the exclusive authority to negotiate losses under any policy providing such property or liability insurance to the ASSOCIATION. Each OWNER, by accepting a deed to, or otherwise becoming the OWNER of, a UNIT, appoints the ASSOCIATION or any Insurance Trustee or substitute Insurance Trustee designated by the ASSOCIATION, as attorney-in-fact for the purpose of purchasing such insurance, including, but without limitation: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases or liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The ASSOCIATION or any Insurance Trustee shall receive hold or otherwise properly dispose of any proceeds of insurance in trust for OWNERS and their FIRST MORTGAGEES, as their interests may appear.

ARTICLE XI  
NOTICE OF VIOLATION

Section 11.0 Recording of Notice. The ASSOCIATION

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shall have the right to record a written notice of a violation by any OWNER of any restriction or provision of the CONDOMINIUM DOCUMENTS. The notice shall be executed and acknowledged by an officer of the ASSOCIATION and shall contain substantially the following information:

- (a) The name of the OWNER;
- (b) The legal description or street address of the UNIT against which the notice is being recorded;
- (c) A brief description of the nature of the violation;
- (d) A statement that the notice is being recorded by the ASSOCIATION pursuant to this DECLARATION; and
- (e) A statement of the specific steps which must be taken by the OWNER to cure the violation.

Section 11.1 Effect of Recording. Recordation of a Notice of Violation shall serve as notice to the OWNER and to any subsequent purchaser of the UNIT that there is a violation of the provisions of the CONDOMINIUM DOCUMENTS. If, after the recordation of such notice, it is determined by the ASSOCIATION that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the ASSOCIATION shall record a notice of compliance which shall state the legal description or street address of the UNIT against which the notice of violation was recorded, the recording data identifying the docket and page <sup>Unofficial Document</sup> where the notice of violation was recorded, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

## ARTICLE XII ANNEXATION

Section 12.0 Right of Annexation. DECLARANT hereby expressly reserves the right until seven (7) years from the date of the recording of this DECLARATION to expand the CONDOMINIUM created by this DECLARATION, without the consent of any other OWNER, by annexing all or any portion of the ANNEXABLE PROPERTY, as described in Exhibits B-2 to B-10 hereto attached and thereby incorporated herein. In the event the DECLARANT annexes all or any part of the ANNEXABLE PROPERTY, each UNIT'S fractional interest in the GENERAL COMMON ELEMENTS after annexation shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of UNITS then in the CONDOMINIUM. Each UNIT'S liability for assessments made by the ASSOCIATION after annexation shall be allocated in the same manner and using the same formula as before annexation. Each OWNER of a UNIT after annexation shall be a MEMBER of the ASSOCIATION and shall be entitled to one vote per UNIT owned. The annexation of any or all of the ANNEXABLE PROPERTY, Exhibits B-2 to B-10 hereto attached, shall be accomplished by the DECLARANT recording with the County Recorder of Maricopa County, Arizona, an Amendment to the DECLARATION stating the following:

- (a) The legal description of the portion of the ANNEXABLE PROPERTY being annexed;

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(b) The number of UNITS and an identifying number of each UNIT being added by the annexation;

(c) The fractional interest of each UNIT in the GENERAL COMMON ELEMENTS as computed in accordance with the provisions of this Section;

(d) A description of any portion of the ANNEXABLE PROPERTY being added which will be GENERAL COMMON ELEMENTS or LIMITED COMMON ELEMENTS and the designation of the UNITS to which those LIMITED COMMON ELEMENTS will be reserved.

The annexation of the portion of the ANNEXABLE PROPERTY described in the Amendment to the DECLARATION shall become effective and the UNIT OWNER'S obligation to pay assessments and the voting rights of the UNIT OWNERS in the ASSOCIATION shall be effective as of the date the Amendment to the DECLARATION is recorded. The DECLARANT is hereby irrevocably appointed as agent and attorney-in-fact for the OWNERS and each of them to adjust each UNIT'S fractional interest in the GENERAL COMMON ELEMENTS and to do all other acts required by this Section in order to annex any or all of the ANNEXABLE PROPERTY.

Section 12.1 No Assurance. DECLARANT makes no assurances as to the exact location of buildings and other improvements to be constructed on the ANNEXABLE PROPERTY. DECLARANT makes no assurances as to the exact number of UNITS which shall be added to the CONDOMINIUM by annexation of all or any portion of the ANNEXABLE PROPERTY, but the number of UNITS added by any such annexation shall not exceed two hundred thirteen (213). DECLARANT makes no assurances as to what improvements may be constructed on the ANNEXABLE PROPERTY but such improvements shall be consistent in quality, material and style with the improvements constructed on the real property described in Exhibit A attached to this DECLARATION. All improvements to be constructed on any portion of the ANNEXABLE PROPERTY annexed into the CONDOMINIUM will be substantially completed prior to the annexation of such ANNEXABLE PROPERTY. All taxes and other assessments relating to all or any portion of the ANNEXABLE PROPERTY annexed into the CONDOMINIUM covering any period prior to the recording of the Amendment to the DECLARATION shall be the responsibility of and shall be paid for by the DECLARANT.

Section 12.2 Deannexation. Pursuant to A.R.S. §33-1202, DECLARANT hereby reserves its DEVELOPMENT RIGHT to withdraw or deannex the real estate described in Exhibit "A" attached hereto or any portion thereof from the CONDOMINIUM so long as it does not adversely affect any UNIT OWNER or their interests thereof.

Each UNIT'S fractional interest in the GENERAL COMMON ELEMENTS after withdrawal or deannexation shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of UNITS remaining in the CONDOMINIUM. Each UNIT'S liability for assessments made by the ASSOCIATION shall be allocated in the same manner and using the same formula as before the deannexation. Each OWNER of a UNIT remaining after deannexation shall be a MEMBER of the ASSOCIATION and shall be entitled to one (1) vote per UNIT owned.

#### ARTICLE XIII RIGHTS OF FIRST MORTGAGEES

Section 13.0 Notification to First Mortgagees. Upon

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receipt by the ASSOCIATION of a written request from a FIRST MORTGAGEE or insurer or governmental guarantor of a FIRST MORTGAGE informing the ASSOCIATION of its correct name and mailing address and number or address of the UNIT to which the request relates, the ASSOCIATION shall provide such ELIGIBLE MORTGAGE HOLDER or ELIGIBLE INSURER OR GUARANTOR with timely written notice of the following:

(a) Any condemnation loss or any casualty loss which affects a material portion of the CONDOMINIUM or any UNIT on which there is a FIRST MORTGAGE held, insured or guaranteed by such ELIGIBLE MORTGAGE HOLDER or ELIGIBLE INSURER OR GUARANTOR;

(b) Any delinquency in the payment of assessments or charges owed by an OWNER of a UNIT subject to a FIRST MORTGAGE held, insured or guaranteed by such ELIGIBLE MORTGAGE HOLDER or ELIGIBLE INSURER OR GUARANTOR or any other default in the performance by the OWNER of any obligation under the CONDOMINIUM DOCUMENTS, which delinquency or default remains uncured for the period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the ASSOCIATION;

(d) Any proposed action which requires the consent of a specified percentage of ELIGIBLE MORTGAGE HOLDERS as set forth in Sections 13.1 or 13.2 of this DECLARATION.

Section 13.1 Actions Requiring Approval of Eligible Mortgage Holders. To the extent permitted by applicable law, ELIGIBLE MORTGAGE Unofficial Document shall have the following rights:

(a) Any restoration or repair of the CONDOMINIUM, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the DECLARATION and the original plans and specifications, unless other action is approved by ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on UNITS the OWNERS of which have at least fifty-one percent (51%) of the votes in the ASSOCIATION allocated to OWNERS of all UNITS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS.

(b) Any election to terminate the legal status of the CONDOMINIUM after substantial destruction or a substantial taking in condemnation of the CONDOMINIUM shall not be effective unless approved by ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on UNITS the OWNERS of which have at least fifty-one percent (51%) of the votes in the ASSOCIATION allocated to OWNERS of all UNITS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS.

(c) Unless the formula for reallocation of interest in the GENERAL COMMON ELEMENTS after a partial condemnation or partial destruction of the CONDOMINIUM is fixed in advance by the DECLARATION or BYLAWS or by applicable law, no reallocation of interests in the GENERAL COMMON ELEMENTS resulting from a partial condemnation or partial destruction of the CONDOMINIUM may be effected without the prior approval of ELIGIBLE MORTGAGE HOLDERS without FIRST MORTGAGES on all remaining UNITS, whether existing in whole or in part, the OWNERS of which have at least fifty-one percent (51%) of the votes in the ASSOCIATION allocated to OWNERS of all UNITS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS.

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(d) When professional management of the ASSOCIATION has been previously required by any ELIGIBLE MORTGAGE HOLDER or ELIGIBLE INSURER OR GUARANTOR, whether such entity became an ELIGIBLE MORTGAGE HOLDER or ELIGIBLE INSURER OR GUARANTOR at that time or later, any decision to establish self management by the ASSOCIATION shall require the prior consent of OWNERS having at least sixty-seven percent (67%) of the votes in the ASSOCIATION and the approval of ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on UNITS the OWNERS of which have at least fifty-one percent (51%) of the votes in the ASSOCIATION allocated to OWNERS of all UNITS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS.

Section 13.2 Approval Required for Amendment to Declaration, Articles or Bylaws. The following provisions shall apply to all amendments to the DECLARATION, ARTICLES and BYLAWS, except for those amendments made as a result of destruction, damage or condemnation pursuant to Section 13.1 of this DECLARATION:

(a) The consent of OWNERS having at least eighty percent (80%) of the votes in the ASSOCIATION and the approval of ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on UNITS the OWNERS of which have at least eighty percent (80%) of the votes in the ASSOCIATION allocated to OWNERS of all UNITS subject to FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS, shall be required to terminate the legal status of the CONDOMINIUM as a CONDOMINIUM.

(b) The consent of OWNERS having at least eighty percent (80%) of the votes in the ASSOCIATION and the approval of ELIGIBLE MORTGAGE HOLDERS holding FIRST MORTGAGES on UNITS the OWNERS of which have at least fifty-one percent (51%) of the votes in the ASSOCIATION allocated to OWNERS of all UNITS <sup>su</sup><sub>Unofficial Document</sub> FIRST MORTGAGES held by ELIGIBLE MORTGAGE HOLDERS, shall be required to add or amend any material provisions of the DECLARATION, ARTICLES or BYLAWS which establish, provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of GENERAL COMMON ELEMENTS (or UNITS, if applicable);
- (4) Insurance or fidelity bonds;
- (5) Rights to the use of the GENERAL COMMON ELEMENTS;
- (6) Responsibility for maintenance and repair of the several portions of the CONDOMINIUM;
- (7) The interests in the GENERAL COMMON ELEMENTS or LIMITED COMMON ELEMENTS;
- (8) Leasing of UNITS;
- (9) Imposition of any right of first refusal or similar restriction on the right of any OWNER to sell, transfer or otherwise convey his UNIT;
- (10) Any provisions which are for the express benefit of FIRST MORTGAGEES, ELIGIBLE MORTGAGE HOLDERS or ELIGIBLE INSURERS OR GUARANTORS.



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(c) Any addition or amendment to the DECLARATION, ARTICLES or BYLAWS shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. Any FIRST MORTGAGEE who receives a written request to approve additions or amendments to the DECLARATION, ARTICLES or BYLAWS who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

(d) Notwithstanding anything contained in this Section to the contrary, this Section is not applicable to amendments to the DECLARATION that may be executed by the DECLARANT to exercise a DEVELOPMENT RIGHT or SPECIAL DECLARANT RIGHT, by the ASSOCIATION to reallocate allocated interests after the condemnation of a part of the CONDOMINIUM, or by certain UNIT OWNERS to terminate the CONDOMINIUM, or which may be executed under the provisions of the Act or DECLARATION without the consent or approval of OWNERS or ELIGIBLE MORTGAGE HOLDERS.

(e) During any period of DECLARANT CONTROL, the consent of DECLARANT is necessary to amend the DECLARATION.

Section 13.3 Prohibition Against Right of First Refusal. The right of an OWNER to sell, transfer or otherwise convey his UNIT shall not be subject to any right of first refusal or similar restriction.

Section 13.4 First Mortgagee Not Liable for Prior Assessments. Any FIRST MORTGAGEE or any other party acquiring title or coming into possession of a UNIT through foreclosure of the FIRST MORTGAGE, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited Unofficial Document taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the UNIT which became payable prior to such sale or transfer. Any such delinquent assessments which are extinguished pursuant to this Section may be reallocated and assessed to all UNITS as a COMMON EXPENSE. Any assessments and charges against the UNIT which accrue prior to such sale or transfer shall remain the obligation of the defaulting OWNER of the UNIT.

Section 13.5 Subordination of Certain Liens to First Mortgage. Any lien which the ASSOCIATION may have on a UNIT for the payment of assessments or other charges becoming payable on or after the date of the recording of the FIRST MORTGAGE on the UNIT shall be subordinate to the FIRST MORTGAGE.

Section 13.6 Right of Inspection of Records. Any OWNER, FIRST MORTGAGEE or ELIGIBLE INSURER or GUARANTOR will, upon written request, be entitled to (i) inspect the current copies of the CONDOMINIUM DOCUMENTS and the books, records and financial statements of the ASSOCIATION during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the ASSOCIATION, audited financial statement of the ASSOCIATION for the immediately preceding fiscal year of the ASSOCIATION, free of charge to the requesting party, and (iii) receive written notice of all meeting of the MEMBERS of the ASSOCIATION and be permitted to designate a representative to attend all such meetings.

Section 13.7 Limitation on Leasing of Units. No OWNER may lease less than his entire UNIT. No UNIT may be leased for a period of less than thirty (30) days. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of

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the CONDOMINIUM DOCUMENTS and any failure by any lessee to comply with the terms of such documents shall be a default under the lease.

Section 13.8 Prior Written Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the UNITS and/or the GENERAL COMMON ELEMENTS, unless at least two-thirds (2/3) of all FIRST MORTGAGEES (based upon one vote for each FIRST MORTGAGE owned) or OWNERS (other than the DECLARANT or other sponsor, developer or builder of the CONDOMINIUM) of the UNITS have given their prior written approval, the ASSOCIATION shall not be entitled to:

(a) By act or omission, seek to abandon or terminate this DECLARATION or the CONDOMINIUM;

(b) Change the pro rata interest or obligations of any individual UNIT for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each UNIT in the GENERAL COMMON ELEMENTS;

(c) Partition or subdivide any UNIT;

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the GENERAL COMMON ELEMENTS. The granting of easements for public utilities or for other public purposes consistent with the intended use of the GENERAL COMMON ELEMENTS shall not be deemed a transfer within the meaning of this paragraph;

(e) Use hazard <sup>insurance</sup> proceeds for losses to any UNITS or the GENERAL COMMON ELEMENTS for any purpose other than the repair, replacement or reconstruction of such UNITS or the GENERAL COMMON ELEMENTS.

Section 13.9 Liens Prior to First Mortgage. All taxes, assessments, and charges which may become liens prior to the FIRST MORTGAGE under local law shall relate only to the individual UNIT and not to the CONDOMINIUM as a whole.

Section 13.10 Condemnation or Insurance Proceeds. No OWNER of a UNIT, or any other party, shall have priority over any rights of any FIRST MORTGAGEE of the UNIT pursuant to its mortgage in the case of a distribution to such UNIT OWNER of insurance proceeds of condemnation awards for losses to or a taking of UNITS and/or GENERAL COMMON ELEMENTS.

Section 13.11 Limitation on Partition and Subdivision. No UNIT shall be partitioned or subdivided by DECLARANT without the prior written approval of the holder of any FIRST MORTGAGE on such UNIT.

Section 13.12 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this ARTICLE and any other provisions of the CONDOMINIUM DOCUMENTS, the provisions of this Article shall prevail; provided, however, that in the even of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the CONDOMINIUM DOCUMENTS with respect to the number or percentage of OWNERS, FIRST MORTGAGEES, ELIGIBLE MORTGAGE HOLDERS or ELIGIBLE INSURERS OR GUARANTORS that must consent to (i) an amendment of the DECLARATION, ARTICLES or BYLAWS, (ii) a termination of the CONDOMINIUM, or (iii) certain actions of the ASSOCIATION as specified in

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Sections 13.1, 13.2 and 13.8 of this DECLARATION, the provision requiring the consent of the greatest number or percentage of OWNERS, FIRST MORTGAGEES, ELIGIBLE MORTGAGE HOLDERS or ELIGIBLE INSURERS OR GUARANTORS shall prevail.

**ARTICLE XIV**  
**TERMINATION OF THE CONDOMINIUM**

**Section 14.0 Method of Termination.** Notwithstanding any contrary provision of the CONDOMINIUM DOCUMENTS, the CONDOMINIUM created by the recording of this DECLARATION may only be terminated with the approval of all of the OWNERS of the UNITS. Any such termination of the CONDOMINIUM shall be evidenced by a "Termination Agreement" which shall be executed and acknowledged by all of the OWNERS and recorded with the County Recorder of Maricopa County, Arizona. The "Termination Agreement" shall specify a date after which the Agreement will be void unless it is recorded before that date. If at the time of such termination there are any encumbrances or liens against any of the UNITS, the "Termination Agreement" will be effective only when the creditors holding such encumbrances or liens execute and acknowledge such "Termination Agreement" or their encumbrances or liens are satisfied other than by foreclosure against the UNITS or expire by operation of law. No termination of the CONDOMINIUM shall be a bar to any subsequent commitment of the CONDOMINIUM to a CONDOMINIUM. So long as there is DECLARANT CONTROL in the ASSOCIATION, any termination of the CONDOMINIUM must be approved by the Veterans Administration or the Federal Housing Administration. Any termination of the CONDOMINIUM must also comply with the Unofficial Document requirements of Article XIII of this DECLARATION.

**ARTICLE XV**  
**GENERAL PROVISIONS**

**Section 15.0 Enforcement.** The ASSOCIATION, or any OWNER, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, condition, covenants, reservations, liens and charges not or hereafter imposed by the provisions of the CONDOMINIUM DOCUMENTS. Failure by the ASSOCIATION or by any OWNER to enforce any covenant or restriction contained in the CONDOMINIUM DOCUMENTS shall in no event be deemed a waiver of the right to do so thereafter.

**Section 15.1 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 15.2 Duration.** The covenants and restrictions of this DECLARATION shall run with and bind the CONDOMINIUM, for a term of twenty (20) years from the date this DECLARATION is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

**Section 15.3 Amendment by Owners.** This DECLARATION may be amended during the first twenty (20) year period by an instrument signed by OWNERS representing not less than ninety percent (90%) of the UNITS, and after said twenty (20) year period by an instrument signed by OWNERS representing not less than seventy-five percent (75%) of the UNITS. Any amendment must be recorded. So long as there is DECLARANT CONTROL in the ASSOCIATION, any amendment must be approved by the DECLARANT and the Veterans Administration or

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the Federal Housing Administration. Any amendment must also comply with the requirements of Article XIII of this DECLARATION.

Section 15.4 Amendment by Declarant. Notwithstanding anything to the contrary in this DECLARATION, so long as there is DECLARANT CONTROL in the ASSOCIATION, the DECLARANT shall have the right to amend this DECLARATION without obtaining the approval or consent of any other OWNER or mortgagee in order to conform the DECLARATION to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other administrative body; provided, however, that any such amendment by the DECLARANT must be approved by the Veterans Administration, other administrative body or the Federal Housing Administration. DECLARANT may also amend the DECLARATION during any period of DECLARANT CONTROL to comply with applicable law or to correct any error or inconsistency in the DECLARATION, if the amendment does not adversely affect the rights of any UNIT OWNER.

Section 15.5 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

Section 15.6 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this DECLARATION may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: if to the ASSOCIATION, Lepin and Renehan Management, Inc., P.O. Box 50309, Phoenix, Arizona 85076-0309; if to the ARCHITECTURAL COMMITTEE, P.O. Box 50309, Phoenix, Arizona 85076-0309; if to an OWNER, to the address of his UNIT within the CONDOMINIUM owned, in whole or in part, by him or to any other address last furnished by an OWNER to the ASSOCIATION; and if to DECLARANT, Coventry Homes, Inc. 3875 North 44th Street, Suite 201, Phoenix, Arizona 85018; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the ASSOCIATION. Each OWNER of a UNIT shall file the correct mailing address of such OWNER with the ASSOCIATION, and shall promptly notify the ASSOCIATION in writing of any subsequent change of address.

Section 15.7 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the CONDOMINIUM, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations not or hereafter imposed by the CONDOMINIUM DOCUMENTS and any amendments thereof. In addition, each such person by so doing thereby acknowledges that the CONDOMINIUM DOCUMENTS set forth a general scheme for the improvements and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in the CONDOMINIUM DOCUMENTS shall run with the land and be binding on all subsequent and future OWNERS, grantees, purchasers, assigns and transferees thereof. Furthermore, each such person fully understands and acknowledges that the CONDOMINIUM DOCUMENTS shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future OWNERS. DECLARANT, its successors, assigns and grantees, covenants and agrees that the UNITS

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and the membership in the ASSOCIATION and the other rights created by the CONDOMINIUM DOCUMENTS shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective UNIT even though the description in the instrument of conveyance or encumbrance may refer only to the UNIT.

Section 15.8 Gender. The singular, wherever used in this DECLARATION, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this DECLARATION apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 15.9 Topic Headings. The marginal or topical headings of the Sections contained in this DECLARATION are for convenience only and do not define, limit or construe the contents of the Sections or of this DECLARATION.

Section 15.10 Survival of Liability. The termination of membership in the ASSOCIATION shall not relieve or release any such former OWNER or MEMBER from any liability or obligation incurred under, or in any way connected with, the ASSOCIATION during the period of such ownership or membership, or impair any rights or remedies which the ASSOCIATION may have against such former OWNER or MEMBER arising out of, or in any way connected with such ownership or membership and the covenants and obligations incident thereto.

Section 15.11 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this DECLARATION and the ARTICLES, BYLAWS, ASSOCIATION RULES or <sup>Unofficial Document</sup> \_URAL COMMITTEE RULES, the provisions of this DECLARATION shall prevail.

Section 15.12 Joint and Several Liability. In the case of joint ownership of a UNIT, the liabilities and obligations of each for the joint OWNERS set forth in, or imposed by the CONDOMINIUM DOCUMENTS, shall be joint and several.

Section 15.13 Declarant's Exemption. Nothing contained in this DECLARATION shall be construed to prevent the erection or maintenance by DECLARANT or its fully authorized agents, of improvements or signs necessary or convenient to the development or sale of the CONDOMINIUM or the UNITS. DECLARANT and its agents and assigns specifically reserve the right to use and enjoy the GENERAL COMMON ELEMENT and all other IMPROVEMENTS and BUILDINGS and grounds in connection with its advertising, promotion and sales efforts; provided, however, that such use of the GENERAL COMMON ELEMENTS by the DECLARANT must not interfere with any OWNER'S use and enjoyment of the GENERAL COMMON ELEMENTS. So long as the DECLARANT owns any UNIT, the CONDOMINIUM DOCUMENTS may not be amended in any way which would eliminate, modify or impair the rights of the DECLARANT as set forth in this SECTION.

Section 15.14 Guests and Tenants. Each OWNER shall, to the extent required by Arizona law, be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents and employees with the provisions of the CONDOMINIUM DOCUMENTS. An OWNERS' failure to insure compliance by such persons shall be grounds for the same action available to the ASSOCIATION or any other OWNER by reason of such OWNER'S own non-compliance.

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**Section 15.15 Attorneys' Fees.** In the event the DECLARANT, the ASSOCIATION or any OWNER employs an attorney or attorneys to enforce a lien or to collect any amounts due from an OWNER or to enforce compliance with or recover damages for any violation or non-compliance with the CONDOMINIUM DOCUMENTS, the prevailing party in any such action shall be entitled to recover from the other party their reasonable attorneys' fees incurred in the action.

**Section 15.16 Management Agreements.** Any agreement for professional management of the ASSOCIATION or the CONDOMINIUM or any other contract providing for services of the DECLARANT, or other developer, sponsor or builder of the CONDOMINIUM shall not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.

**Section 15.17 Number of Days.** In computing the number of days for purposes of any provision of the CONDOMINIUM DOCUMENTS all days shall be counted including SATURDAYS, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

**Section 15.18 Declarant's Right to Use Similar Name.** The ASSOCIATION hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by DECLARANT of a corporate name which is the same or deceptively similar to the name of the ASSOCIATION provided one or more words are added to the name of such other corporation to make the name of the ASSOCIATION distinguishable from the <sup>Unofficial Document</sup> of such other corporation. Within five (5) days after being requested to do so by the DECLARANT the ASSOCIATION shall sign such letters, documents or other writing as may be required by the Arizona Corporation formed or incorporated by the DECLARANT to use a corporate name which is the same or deceptively similar to the name of the ASSOCIATION.

**Section 15.19 General Provisions.** Pursuant to A.R.S. §33-1201, et seq, DECLARANT hereby reserves the following SPECIAL DECLARANT RIGHTS/DEVELOPMENT RIGHTS with respect to the real property located in Maricopa County, Arizona as described in Exhibit "A" attached hereto and any portion of the ANNEXABLE PROPERTY which is described in Exhibits "B-2" through "B-10" attached hereto which is annexed to the CONDOMINIUM.

(a) Construct improvements provided for in the DECLARATION.

(b) Exercise any DEVELOPMENT RIGHT.

(c) Maintain sales offices, management offices, signs advertising the CONDOMINIUM, and models.

(d) Use easements through the COMMON ELEMENTS for the purposing of making improvements within the CONDOMINIUM or within real estate which may be added to the CONDOMINIUM.

(e) Appoint or remove any officer of the ASSOCIATION or any BOARD MEMBER during any period of DECLARANT CONTROL.

(f) Add real estate to the CONDOMINIUM.

(g) Create easements, UNITS, GENERAL COMMON ELEMENTS or LIMITED COMMON ELEMENTS within a CONDOMINIUM.

(h) Subdivide UNITS, convert UNITS into GENERAL COMMON ELEMENTS or convert GENERAL COMMON ELEMENTS into UNITS.

(i) Withdraw or deannex real estate from the CONDOMINIUM.

(j) Make the CONDOMINIUM part of a larger CONDOMINIUM or planned community.

(k) Amend the DECLARATION during any period of DECLARANT CONTROL to comply with applicable law or correct any error or inconsistency in the DECLARATION, if the amendment does not adversely affect the rights of any UNIT OWNER.

(l) Amend the DECLARATION during any period of DECLARANT CONTROL to comply with the rules or guidelines, in effect from time to time of any governmental or quasi governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transaction involving mortgage instruments.

IN WITNESS WHEREOF, the undersigned, being the DECLARANT, have hereunto set his hand and seal this 9th day of September, 1986.

COVENTRY HOMES, INC., an Arizona corporation

Unofficial Document

By James V. BeeMiller  
Its President

STATE OF ARIZONA )  
                          ) ss.  
COUNTY OF MARICOPA )

Subscribed and sworn before me this 9th day of September, 1986, by James V. BeeMiller, who acknowledged himself to be the President of Coventry Homes, Inc., an Arizona corporation, and that he, as such officer being authorized to do so, executed the above instrument for and on behalf of the corporation for the purposes therein set forth.

Teresa A. Chandler Notary Public

My Commission Expires:  
October 27, 1987

