

Unofficial Document

recorded mail to:
 WEST AMERICAN TITLE INSURANCE
 111 W. Monroe
 Phoenix, AZ 85007
 ATTN: GAYLE CANNON

AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MOD RSTR

CASA REQUENA

THIS AMENDED AND RESTATED DECLARATION is made as of the date hereinafter set forth by CASA REQUENA, LTD., an Arizona Limited Partnership, as sole owner, hereinafter referred to as the "Declarant."

WITNESSETH:

WHEREAS, the undersigned are owners of lots to certain real property situated in County of Maricopa, State of Arizona, to wit:

CASA REQUENA, a condominium project, a subdivision of airspace, situated in part of Lot 5, Block 11, Security Acres Amended, as recorded in Book 8 of Maps, Page 59, records, of the County Recorder of Maricopa County, Arizona, as recorded in Book 226, Page 36 of Maps in the office of the County Recorder of Maricopa County.

hereinafter referred to as the "parcel"; and

WHEREAS, a certain Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions has been placed on said property and have been duly recorded on the 6th day of October, 1980 in Docket 14739 at page 593 with the Maricopa County Recorder's Office and re-recorded October 22, 1980 in Docket 14776 at Page 463.

WHEREAS, as part of said Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions the right to amend is granted to the owners of not less than fifty-one percent (51%) of the lots.

WHEREAS, the undersigned represents the owners of not less than fifty-one percent (51%) of the lots within said subdivision.

WHEREAS, the undersigned are desirous of amending said Horizontal Property Regime and Covenants, Conditions and Restrictions.

NOW, THEREFORE, the Horizontal Property Regime and Covenants, Conditions and Restrictions shall be amended as follows:

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

CASA REQUENA, a condominium project, a subdivision of airspace, situated in part of Lot 5, Block 11, Security Acres Amended, as recorded in Book 8 of Maps, Page 59, records, of the County Recorder of Maricopa County, Arizona, as recorded in Book 226, Page 36 of Maps in the office of the County Recorder of Maricopa County.

DKI 148820 184

hereby declares that all of the said property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

1. Name

1.01. The name of this horizontal property regime shall be CASA REQUENA.

2. Definitions.

As used herein, unless the context otherwise requires:

2.01 "Act" means Sections 33-551 through 33-561, Arizona Revised Statutes, as the same may be amended.

2.02 "Apartment" means a part of the property consisting of one or more rooms (including a balcony or patio) designated by number on the plat and more particularly described in Paragraph 4.04 below. Apartments are designated by one of the following numbers: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108. Each apartment is located in one of the buildings shown on the plat and is composed of and includes the space enclosed and bounded by the interior finished surfaces of the floor, ceiling and perimeter walls thereof; provided, however, no structural parts of the building in which each apartment is located, and no pipes, wires, conduit, ducts, flues, shafts, or public utility, water or sewer lines up to the exterior wall of an apartment and forming part of any system serving one or more other apartments or serving the common area shall be deemed to be part of an apartment.

2.03. "Apartment Unit" means an apartment as defined in Paragraph 2.02 above and described in Paragraph 4.04 below, together with any areas of exclusive use assigned to or associated with the apartments.

2.04. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Casa Requena Homeowners Association, which will be a non-profit, corporation whose members will be comprised of the owners of all of the units.

DKT 14882 185

2.05. "Association" means Casa Requena Homeowners Association, an Arizona non-profit corporation, the members of which shall be the owners of all the units.

2.06. "Board" or "Board of Directors" means the governing body of the Association as more specifically set forth in Paragraph 12.02 below.

2.07 "Building" means any one (or more if the context requires) of the principal structures shown on the plat and erected upon the Parcel, described on Page 1 of this declaration. The buildings designated on the plat contain the following apartments:

<u>Buildings</u>	<u>Apartments</u>
1	1, 2, 3, 4, 5; 19, 20, 21, 22, 23; 37, 38, 39, 40, 41
2	6, 7, 8, 9; 24, 25, 26, 27; 42, 43, 44, 45
3	10, 11, 12, 13, 14; 28, 29, 30, 31, 32; 46, 47, 48, 49, 50
4	15, 16, 17, 18; 33, 34, 35, 36; 51, 52, 53, 54
5	55, 56, 57, 58, 59; 73, 74, 75, 76, 77; 91, 92, 93, 94, 95 <small>Unofficial Document</small>
6	60, 61, 62, 63, 64; 78, 79, 80, 81, 82; 96, 97, 98, 99, 100
7	65, 66, 67, 68; 83, 84, 85, 86; 101, 102, 103, 104
8	69, 70, 71, 72; 87, 88, 89, 90; 105, 106, 107, 108

The buildings are more particularly described in Paragraph 4.03 below.

2.08 "By-Laws" means the By-Laws of the Association as the same may be amended from time to time.

2.09. "Common expenses" means the items more particularly described in Paragraph 13.01 below.

2.10 "Common elements" means the "general common elements" as that term is defined in Section 33-551, Arizona Revised Statutes, and includes the Parcel and other portions of the Property, except the apartments, the balconies and the patios. Common elements are more particularly described in Paragraph 4.05 below.

2.11. "Condominium Constituent Documents" means this declaration and any amendments thereto, the Articles and By-Laws, any rules and regulations of the Association, and all such other documents which pertain to the Condominium Project.

2.12. "Condominium Project" means the Property and each and every component thereof, including the apartment units and the common elements.

DKT 14882 186

2.13. "Declarant" means CASA REQUENA, LTD., an Arizona Limited Partnership, or its successors and assigns, if specifically so designated by Declarant.

2.14. "First mortgage" means a first lien deed of trust, as well as a first mortgage, on a unit. "First mortgagee" means a holder of a first mortgage, as well as a beneficiary or trustee under a first deed of trust, their successors and assigns.

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

2.16. "Majority" or "majority owners" means the owners of more than fifty percent (50%) of the undivided ownership of the common elements. Any specified percentage of the owners refers to that percentage of undivided ownership of the common elements.

2.17. "Occupant" means a person or persons (and if the context so requires, also an owner or owners) in possession of a unit.

2.18. "Owner" or "co-owner" (Unofficial Document) "owner" means the person or persons whose estate(s) or interest(s) individually or collectively aggregate fee simple ownership of a unit and the person/persons who is/are purchaser/purchasers under a valid and outstanding recorded agreement of sale with respect to a unit, but shall not include a person or persons whose interest is limited to security for a loan unless the context otherwise requires. In the case of units, fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes Section 33-801, et seq., legal title for the purpose of this definition shall be deemed to be in the trustor.

2.19. "Parcel" means the parcel or tract of real estate described above in this declaration, submitted to a horizontal property regime.

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

2.21. "Plat" means the plat of survey of the property and all of the units submitted to this horizontal property regime, which said plat is recorded in Book 226 of Maps, at Page 36, of the official records of the County Recorder of Maricopa County, Arizona.

2.22. "Property" or "Condominium Property" shall have the same meaning as set forth in Sections 33-551, Arizona Revised Statutes, as related to the development which is the subject of this declaration, together with all fixtures and equipment intended for the mutual use, benefit and enjoyment of the unit owners and as set forth on Page 2 above.

DN1488200 187

2.23. "Record" or "recording" refers to the county records or recordings in the office of the County Recorder of Maricopa County, Arizona.

2.24. "Servicer" means the person or entity servicing a first mortgage (including the first mortgagee, if applicable), its successors and assigns.

2.25. "Unit" means an apartment unit together with the undivided percentage interest in and to the general common elements is more particularly described in Paragraph 4, below.

3. Submission of Property.

3.01. Declarant hereby submits and subjects the Property to a horizontal property regime pursuant to Sections 33-551 through 33-561, Arizona Revised Statutes, and does hereby declare that all of the Units shall be owned, leased, sold and conveyed subject to the terms, conditions and other provisions of this declaration.

4. Horizontal Property Regime and Descriptions.

4.01. The entire horizontal property regime shall be composed of one hundred eight (108) units, numbered and lettered as shown on the plat and described herein. The units consist of an apartment unit together with the following undivided percentage interests in the common elements:

<u>Units</u>	<u>Percentage Interest</u>	<u>Units</u>	<u>Percentage Interest</u>
1	.00925925	55	.00925925
2	.00925925	56	.00925925
3	.00925925	57	.00925925
4	.00925925	58	.00925925
5	.00925925	59	.00925925
6	.00925925	60	.00925925
7	.00925925	61	.00925925
8	.00925925	62	.00925925
9	.00925925	63	.00925925
10	.00925925	64	.00925925
11	.00925925	65	.00925925
12	.00925925	66	.00925925
13	.00925925	67	.00925925
14	.00925925	68	.00925925
15	.00925925	69	.00925925
16	.00925925	70	.00925925
17	.00925925	71	.00925925
18	.00925925	72	.00925925
19	.00925925	73	.00925925
20	.00925925	74	.00925925
21	.00925925	75	.00925925
22	.00925925	76	.00925925
23	.00925925	77	.00925925
24	.00925925	78	.00925925
25	.00925925	79	.00925925
26	.00925925	80	.00925925
27	.00925925	81	.00925925
28	.00925925	82	.00925925
29	.00925925	83	.00925925

DKT 1488200 188

30	.00925925	84	.00925925
31	.00925925	85	.00925925
32	.00925925	86	.00925925
33	.00925925	87	.00925925
34	.00925925	88	.00925925
35	.00925925	89	.00925925
36	.00925925	90	.00925925
37	.00925925	91	.00925925
38	.00925925	92	.00925925
39	.00925925	93	.00925925
40	.00925925	94	.00925925
41	.00925925	95	.00925925
42	.00925925	96	.00925925
43	.00925925	97	.00925925
44	.00925925	98	.00925925
45	.00925925	99	.00925925
46	.00925925	100	.00925925
47	.00925925	101	.00925925
48	.00925925	102	.00925925
49	.00925925	103	.00925925
50	.00925925	104	.00925925
51	.00925925	105	.00925925
52	.00925925	106	.00925925
53	.00925925	107	.00925925
54	.00925925	108	.00925925

4.02. Description of Land. The land is described on Page 1 of this declaration.

4.03. Description of the Cubic Content Space of the Buildings. A description of the cubic content space of the buildings with reference to their location on the Parcel is set forth on the plat. The vertical boundaries shall be the exterior of the outside walls, except that where there are balconies and patios extending beyond the exterior of the outside walls, the vertical boundaries shall be the plane of the outside edge of the balcony or balconies, or patio or patios, which extend outward farthest from the exterior wall of the building, all as shown on the plat.

4.04. Description of Cubic Content Space of Each Apartment. The cubic content space of each apartment, and the balcony, patio or storage area, if any, appurtenant thereto, shall consist of and be measured by the entire space between the horizontal and vertical boundaries thereof as shown on the plat in the drawings entitled "Interior Perimeter Details - Two Bedroom - One Bedroom - Two Bedroom Reversed" and further measured by the lineal dimensions set forth in the dimension chart thereon.

4.05. Description of Common Elements. The description of the common elements is the description provided for in Paragraph 4.02, above, together with the description of the land provided for on Page 1 of this declaration, less the description provided for in Paragraph 4.04, above.

DKT148820 189

4.06. Exclusive Use. Each owner of a unit shall have the exclusive use of a parking space for his, her or its unit, all of which are located on the Condominium Property. This right of exclusive use shall be, and is hereby declared to be, an appurtenance to the ownership of the unit; provided, however, the actual space to be used shall be assigned by the Declarant (or subsequently by the Board) and that assignment shall be reflected on the records of the Association. The use of the parking areas shall be subject to the reasonable rules and regulation of the Board.

5. Consent to Covenants, Conditions and Restrictions.

5.01. Each and every owner of a unit described herein, by the acceptance of a deed therefor, whether from the Declarant or from any subsequent owner of a unit, or by the signing of contracts or agreements to purchase the same, and all others who at any time shall obtain any interest in the Property or any part thereof, shall thereby consent, agree and affirm all of the covenants, conditions and restrictions hereof and shall thereby agree to be bound by, keep and perform the same in strict compliance with this declaration and the Articles of Incorporation and By-Laws, and such rules and regulations as may be adopted by the Association or by the Board from time to time. Failure to comply with any of the same shall be grounds for an action to recover damages or for injunctive relief, or for the exercise of any other available remedies in accordance with law and as set forth herein. Each occupant shall be bound by the provisions of this declaration, and the condominium constituent documents.

Unofficial Document

6. Use and Occupancy Restrictions.

6.01. General Restrictions. The use and occupancy of the Property shall be in conformity with all deed restrictions and zoning and other ordinances, rules and regulations of all appropriate governmental agencies and, subject to the foregoing, shall be in accordance with the following provisions as long as the Condominium Project exists.

6.02. Occupancy. No part of the Property shall be used for any purpose other than residential housing and the related purposes for which the Property was designed. Each of the apartment units shall be used as a residence and for no other purpose, and shall be occupied only by a single family, its servants and guests. No apartment unit may be divided, subdivided or combined into a smaller or larger unit than is shown on the plat without first amending this declaration pursuant to the terms and conditions of Paragraph 25.09, below.

DKT 14882, 190

6.03. Common Elements. Except for the rights of exclusive use set forth herein, each owner shall have the right to use the common elements in common with all other owners as more particularly set forth in Paragraph 20, below. The use, maintenance and operation of the common elements will not be obstructed, damaged or unreasonably interfered with by any owner or occupant.

6.04. Nuisance. No nuisance shall be allowed upon the Property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property by its residents. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No owner of a unit shall permit or suffer anything to be done or kept upon his, her or their apartment unit or make any use of his, her or their apartment unit which would increase the rate of insurance upon the Property or any part thereof. No unit owner shall permit animal feces to be deposited upon or remain upon the Property or any part thereof.

6.05. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Property shall be the same (either the responsibility of the apartment unit owner or of the Association) as the responsibility for the maintenance and repair of the particular part of the Property affected. Except for the right of ingress and egress, the owners of units are hereby prohibited and restricted from using any land or air space outside of their apartment unit except as may be allowed by this declaration or by the Association.

6.06. Leasing. Only entire condominium units may be rented. Any lease agreement between a condominium unit owner and a tenant shall provide that the terms of the lease shall be subject in all respects to this Declaration and that any failure by the tenant to comply with the terms of this Declaration shall be a default under the lease. All leases shall be in writing. For purposes of this Declaration, leasing means any agreements for the leasing or rental of a condominium unit.

No condominium unit owner shall be permitted to lease his unit for transient or hotel purposes.

DKT 14882, 191

Notwithstanding the above a lender in possession of a condominium unit following a default in a first mortgage, a foreclosure proceeding on any deed or other arrangement in lieu of foreclosure, shall be permitted to lease his unit for transient or hotel purposes.

6.07. Pets. Only household pets may be kept in the apartment units; provided, however, the Board in accordance with Paragraph 6.13, below, may limit or restrict the number and kinds of pets which may be kept in an apartment unit and otherwise regulate pets.

6.08. Signs. No advertising or other signs shall be erected, placed or permitted to remain on any apartment unit or upon the Property except as otherwise approved by the Board. The Board may designate a particular place on the Property where a "for rent" or "for sale" sign or signs may be placed.

6.09. Business Activities. No business activities shall be conducted in any apartment unit or on any portion of the Property; provided, however, the foregoing restrictions shall not be construed in such manner as to prohibit an owner from (a) maintaining his own personal professional library therein, (b) keeping his personal business or professional records or accounts therein, and (c) handling his personal business calls or correspondence therefrom.

Unofficial Document

6.10. Planting, Fences, Screens, etc. No shades, awnings, aluminum screens or any other type of shade screening which can be viewed or seen from the outside of the Property shall be placed on a window on or about any apartment unit unless approved by the Board. Further, no fences, hedges, walls or landscaping shall be placed upon or maintained upon the Property or outside an apartment except as initially installed by the Declarant or the Developer or subsequently approved by the Board.

6.11. Exemption of Declarant. Until all units have been sold and conveyed by the Declarant, Declarant may make such use of the unsold apartment units, the common elements and any part of the Property as may facilitate the completion of any contemplated improvements in the sale of the units, including but not limited to maintenance of construction facilities and offices, sales offices model apartment units, placement of signs on the Property and rights of ingress and egress therefrom. Neither the owners nor the Association shall make use of the Property or interfere with any completion of improvements, remodeling or sale of the units.

6.12. Party Walls. Any wall which separates one apartment unit from another shall not be used by an owner of the apartment unit for the purpose of attaching anything

DKT 14882A 182

to said wall which is recreational or which produces noise or sound in any way whatsoever, nor shall any owner be permitted to penetrate any said wall in excess of two inches (2") from the surface of said wall.

6.13. Rules and Regulations. Reasonable rules and regulations concerning the use of the Property and all portions thereof and imposing reasonable restrictions upon the owners and use of the apartment units may be made and amended from time to time by the Board; provided, however, that all such rules and regulations and amendments thereto shall be approved by not less than the majority of owners before such shall become effective. Notwithstanding the foregoing, until all of the units are sold by Declarant, as evidenced by deeds (or recorded agreements of sale) delivered to purchasers, the Board (without any additional approval of the members of the Association) shall be authorized to promulgate the rules and regulations referred to above. Copies of such regulations and amendments thereto shall be furnished by the Association to all unit owners and residents of the Property upon request.

7. Easements.

Unofficial Document

The following easements are covenants running with the land of the Condominium Property.

7.01. Utility Easements. There is hereby declared and created a blanket easement upon, across, over and under the above described parcel, for reasonable ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including but not limited to, water, sewers, gas, telephone, electricity, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and to affix and maintain wires, circuits, and conduits, on in and under the condominium units, common elements and limited common elements. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said parcel except as initially programmed and approved by the Declarant or thereafter approved by the Declarant or the Association. The easement shall in no way affect any other previously recorded easement on said parcel.

7.02. Ingress and Egress. Easements for ingress and egress are hereby reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the common elements, and for vehicular traffic

DKT 14882 183

over, through and across such portions of the common elements as from time to time may be paved and intended for such purposes.

7.03. Easements in Parking Areas. Easements are hereby reserved to the owners of units in the Condominium Project.

7.04. Encroachment. Each apartment unit and the 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 common elements shall actually encroach upon any apartment unit, or if any apartment unit shall actually encroach upon any portion of the common elements, or if any apartment unit shall actually encroach upon another apartment unit, as the common elements and the apartment units are shown by the plat, a valid easement for any of the above mentioned encroachments and for the maintenance thereof, so long as they stand, shall and does exist. In the event that any apartment unit or structure is repaired, altered or reconstructed, the owners of the units agree that similar encroachments shall be permitted and that a valid easement for such encroachments and for the maintenance thereof shall exist. Owners and any other parties acquiring any interest in the Property shall acquiesce and agree to the existence of such easements by accepting a deed from any seller or by acquiring any interest whatsoever in the Property.

Unofficial Document

8. Condemnation.

8.01. If a portion of the common elements shall be taken by exercise of the power of eminent domain, or should be transferred and conveyed to a condemning authority in anticipation of such exercise, the entire award made as compensation for such taking, including but without limitation, any amount awarded as severance damages or the entire amount received and paid in anticipation of such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including but without limitation, attorneys' fees, appraiser fees and court costs (which net amount is hereinafter referred to in this paragraph as the "award") shall be paid to the Board, as trustee for all owners and first mortgagees. If the portion of the common elements taken or conveyed shall not be comprised of, or include, all or any part of a building, as soon as practicable, the Board shall cause the award to be utilized for the purpose of repairing and restoring the Property, including, if the Board deems it necessary or desirable, the replacement of any

DKT 14882 194

improvements so taken or conveyed; provided, however, all first mortgagees then of record with reference to units shall be notified in writing and if a majority initially objects to such repairing or restoring within ten (10) days after written notice, then the Board may act only with the approval of such a majority of all first mortgagees then of record with reference to the units. If the portion of the common elements taken or conveyed is comprised of, or includes all or any part of a building, the Board shall call a special meeting of the members of the Association with notice to all first mortgagees then of record with reference to units to convene within thirty (30) days after its receipt of the award to determine whether and, if so, in what manner, the applicable building shall be restored, reconstituted, or replaced. If two-thirds (2/3) of the owners and two-thirds (2/3) of the first mortgagees determine at such special meeting not to restore, reconstitute or replace the applicable building and related improvements, the Board shall utilize the award to effect such minimum repairs thereto as shall be necessary to comply with all applicable requirements of law and shall divide the remainder of the award in as many shares as there are units, such shares to be in the same proportion as the owners' respective undivided percentage interest in the common elements, and such shares shall be distributed to the owners and first mortgagees as their interests appear. If the award should exceed the cost of the repair and restoration, any excess shall be divided, as soon as practicable, following the completion thereof, into shares and distributed in the same manner as provided in the immediately preceding sentence. If the cost of repair and restoration shall exceed the amount of the award, a special assessment shall be levied against the owners to the extent necessary to make up such deficiency, such assessment to be levied against the owners in the same proportion as their percentage interests in the common elements. The special assessments provided for herein shall be secured by the lien provided for in Paragraph 13 of this declaration. Nothing herein contained shall be deemed to impair or affect the priority of any first mortgagee in or to any proceeds, as set forth in Paragraph 17, below.

9. Maintenance, Repairs and Replacements.

Responsibility for the maintenance, repairs and replacements of the Property shall be as follows:

9.01. In connection with the apartment units, the Association shall maintain, repair and replace, at the Association's expense:

DKT 14882 183

- (a) All areas of exclusive use appurtenant to the apartment, except interiors of storage areas.
- (b) All items within an apartment, and any balcony or patio appurtenant thereto (except interior surfaces), which contribute to the support of the building, which shall include but not be limited to the outside walls of the apartment, floor and ceiling slabs, load-bearing columns, load-bearing walls and all fixtures on the exterior boundary walls of an apartment serving the common elements or other apartment units.
- (c) All conduit, ducts, plumbing, wiring and other facilities for the furnishing of utility services up to the exterior wall of an apartment and forming part of any system serving one or more other apartments or other common areas.

9.02. Notwithstanding anything to the contrary contained in Paragraph 9.01, above, the Association shall have the authority to require unit owners to:

- (a) Maintain, repair and replace ^{Official Document} damages to windows and sliding glass doors except in the case of damage for which insurance proceeds are paid under policies purchased by the Association.
- (b) Undertake any other maintenance, repair and replacement work, which is specifically required by the uniform regulations promulgated pursuant to Paragraph 6.13, above.

9.03. In connection with the apartment units, the owner shall maintain, repair and replace, at the owner's expense:

- (a) All portions of his, her or their apartment unit except the portions to be maintained, repaired and replaced by the Association. Such work shall be done without infringing upon the rights of other apartment units owners.
- (b) The fixtures within an apartment unit, including but not limited to the following items: Service equipment such as dishwasher, washer, dryer, refrigerator, oven, stove, and water heater, whether or not such items are built-in fixtures; floor coverings except the floor slab; and all interior surfaces including but not limited to inside paint and other inside wall finishes. [See Paragraph 11, below, for additional provisions relating to decorating].

DKT 14882 196

9.04. In connection with the common elements, maintenance, repairs and replacements of the common elements shall be furnished by the Association as part of the common expense, subject to the provisions of this declaration, the Articles of Incorporation, the By-Laws and the rules and regulations of the Association, except that Responsibility for portions of the common elements which service or are uniquely related to one apartment unit may be delegated to (or required of) that apartment unit owner in the reasonable discretion of the Board.

9.05. If, due to the act or neglect of an owner or other member of his, her or their family or household pet or guest or other authorized occupant, visitor or invitee of such owner, damage shall be caused to the common elements or to an apartment unit owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such owner shall pay for such damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance.

9.06. ^{Unofficial Document} No owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of the building, balcony or patio, without the prior written approval of the Board.

9.07. Each owner shall promptly report to the Association any defect or need for repairs, the responsibility for remedying of which is that of the Association.

9.08. An authorized representative of the Board, or of the manager or managing agent of the Property, and all contractors and repairmen employed or engaged by the Association or such manager or managing agent, shall be entitled to reasonable access to each apartment unit as may be required in connection with maintenance, repairs or replacements of or to that apartment, the common elements or any equipment, facilities or fixtures affecting or servicing other apartment units and the common elements.

10. Alteration, Additions and Improvements.

10.01. Except for original construction work undertaken by Declarant or the Developer with respect to any apartment unit or the common elements, there shall be no structural alterations, additions or improvements to the common elements without the prior approval of the majority of the owners given at a regular or special meeting of the members of the Association. Unless otherwise determined at any such meeting, the cost of such alterations, additions or improvements to the common elements shall be paid by means of a special assessment against the owners in the proportion to their respective undivided interests in and to the common elements.

DKT 14882 197

10.02. Any owner may make nonstructural additions, alterations and improvements within his, her or their apartment without the prior written approval of the Board, but such owner shall be responsible for any damage to other apartments, the common elements or the Condominium Property which results from any such alterations, additions or structural improvements.

10.03. Owners are hereby prohibited from making any structural additions, alterations or improvements within an apartment unit, unless (1) 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; and (2) such addition, alteration or improvement is also approved by the Board. The owner shall be responsible for any damage to other apartments, the common elements or the Condominium Property which results from any such structural addition, alteration or improvement.

10.04. Notwithstanding anything contained in Paragraphs 10.02 and 10.03, above, no addition, alteration or improvement Unofficial Document in an apartment unit, whether structural or not, shall be made without the prior written approval of the Board, if said addition, alteration or improvement is reasonably visible from other portions of the condominium Property or from the surrounding neighborhood, and prior to granting such approval, the Board must affirmatively find that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding improvements and the Condominium Property.

11. Decorating.

11.01. Each owner, at his, her or their own expense, shall furnish and be responsible for all of the decorating within his, her or their own apartment and balcony or patio, if any, from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating; provided, however, no reflective materials shall be placed in the windows or upon other surfaces which can be seen from the outside of the buildings, without prior approval of the Board.

11.02. Subject to the provisions of this Declaration, each owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings within his, her or their apartment, and such owner shall maintain such surfaces in good condition at his, her or their sole expense. Said maintenance may be subject to such

DKT 14882 188

rules and regulations of the Association as may be necessary for the common good of the property.

11.03. Decorating of the common elements (other than interior surfaces within the apartments as above provided) and any redecorating of the apartments (to the extent made necessary by any damage to existing decorating of such apartments caused by maintenance, repair or replacement work on the common elements by the Association) shall be furnished by the Association as part of the common expense.

11.04. The interior and exterior surfaces of all windows and glass doors (if any) forming part of a perimeter wall of an apartment shall be cleaned or washed at the expense of each apartment unit owner unless the Board determines otherwise.

11.05. Decorating of balconies and patios shall be the responsibility of each unit owner having the use of one, but subject to the rules and regulations of the Board.

12. Homeowners Association.

12.01. The Association has been or will be formed and shall fulfill its functions pursuant to the provisions of the condominium constituent documents.

12.02. Definition, Powers, Membership. The Association shall constitute the "council of co-owners" as that term is defined in the Act, and shall serve as the governing body for the Condominium Project, and without limiting its powers and function, the Association shall provide for the maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds, and other matters as provided in the Act and the Condominium Constituent Documents. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it in accordance with the provisions of the Condominium Constituent Documents. Each unit owner shall be a member of the Association so long as he, she or they shall be an owner or owners and such membership shall automatically terminate when he, she or they cease(s) to be an owner and upon the transfer of his, her or their ownership interest, the new owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. The aggregate number of votes for all members of the Association shall be one hundred (100) (except that in the election of directors, cumulative voting shall apply in accordance with Arizona Constitution) which shall be divided among the units in accordance with the respective percentage interests in the common elements as set forth in Paragraph 4, above.

DKT 14882, 199

12.03. Board of Directors of Association. The affairs of the Association shall be conducted by a Board of Directors, the members of which shall be selected in the manner provided herein and provided in the Articles of Incorporation and By-Laws. Up to December 31, 1982, or the date that all of the units have been conveyed by Declarant to ultimate purchasers thereof as evidenced by recorded deeds (or recorded agreements of sale), whichever date is first in time, all members of the Board may be designated by Developer. The first meeting of the members of the Association shall be held not later than January 31, 1983, or sixty (60) days after all of the units have been conveyed by Declarant, whichever date is first to occur. Until the first meeting of the members of the Association, Declarant shall have all rights, remedies and privileges accorded to the Association and its Board. Notwithstanding the foregoing, Declarant, prior to the time set forth above, may relinquish and/or delegate all or part of such rights and authorities to the Association, and Declarant shall have the right to do so by written notice delivered to the Board at any time. Except for members designated by Declarant, each director shall be an owner or member of the immediate family of an owner (or if an owner is a corporation, partnership Unofficial Document director may be an officer, director, partner or beneficiary of such owner). If a director shall cease to meet such qualifications during his or her term, he or she will thereupon cease to be a director and his or her place on the Board shall be deemed vacant.

12.04. Indemnification. Every director and every officer of the Association and the Association's Managing Agent shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a part, or in which he may become involved, by reason of his being or having been a director or officer of the Association, or Managing Agent of the Association in accordance with the provisions of the Articles of Incorporation and By-Laws. No director or officer of the Association or Managing Agent of the Association shall have any monetary liability for a failure of the Association or the Board to act in accordance with the terms of this Declaration unless such failure was due to the willful, wanton and intentional acts of such director or officer or Managing Agent of the Association.

12.05. Limitation upon Liability of Association. Notwithstanding any duty of the Association to maintain and repair parts of the Condominium Property, neither the Association, nor any member thereof, nor any member of the Board, nor any agent nor

DKT 14882 PG. 200

any officer of the Association shall be liable for injuries or damages to persons or property resulting from the breach of such duties (except as may be covered by insurance).

12.06. Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any question of interpretation or application of the provisions of the Condominium Constituent Documents, the determination by the Board shall be final and binding on each and all of such owners. If a decision cannot be reached by the Board upon any matter submitted to or considered by the Board, it shall be determined by the members of the Association or by arbitration as more fully set forth in paragraph 12.07 below.

12.07. Action by Owners. To the extent required by the Act, or by this Declaration, all action required to be taken by the Owners, acting as council for co-owners for the Property, shall be taken by the members of the Association acting as such council of co-owners. Any dispute as to any action or decision required to be taken or made by the Owners which cannot be ^{Unofficial Document} resolved by a vote of the Owners shall be submitted and settled in accordance with the rules and regulations then obtaining of the American Arbitration Association in Maricopa County, Arizona, and any decision made or rendered thereby shall be final and binding upon all of the Owners and the council of co-owners.

13. Assessments.

In accordance with and subject to the Condominium Constituent Documents, the Association shall levy, make and collect assessments against the Unit Owners so as to provide for the payment of the common expenses.

13.01. Common Expenses. The total amount to be assessed shall be the total of the common expenses which shall include:

- (a) All expenses of administration of the Condominium Project (including but not limited to legal, accounting and management fees); water and all other utility services (except telephone) for the common elements; insurance required hereunder pursuant to paragraph 13.02 (e), (f) and (g), and otherwise as determined by the Board; costs of maintenance, operation, repair, replacement and betterment of the common elements (including but not limited to painting, landscaping, repairs, replacements, alterations, additions, reconstruction, services, supplies, labor materials, equipment and

DKT 14882PG 201

other related items); and any valid charge against the Condominium Project as a whole as determined by the Board of Directors (including but not limited to all costs of enforcing compliance with this Declaration, deficiencies due to non-payment by Unit Owners, and such costs as are deemed necessary to meet the purposes of the Association).

- (b) Such amounts as determined by the Board for the establishment and maintenance of a reserve fund, which reserve fund shall be adequate to meet the costs and expenses of maintenance, repairs and replacements of those Common Elements which must be maintained, repaired and replaced on a periodic basis. Such reserve fund shall be funded and derived from the regular assessments payable in regular installments and not by means of a special assessment or levy.

13.02. Amount of Assessment. Each unit and the Owner thereof, subject to the terms hereof, shall be assessed an amount of the Common Expense equal to that Unit's percentage ownership interest in the ^{Unofficial Document} Common Elements, and in addition thereto, and by means of a special assessment:

- (a) If a Unit Owner fails to perform maintenance, repairs, and replacements which are his obligation, or permits a nuisance as defined in paragraph 6.03 above, then, after the Board gives such Unit Owner written notice to perform such maintenance, repairs or replacements or abate such nuisance, within a reasonable time limit as may be set by the Board; the Board may perform such needed maintenance, repairs and replacements, or abate such nuisance, and shall levy an assessment against such Unit Owner thereof equal to the amount so expended.
- (b) All costs incurred in the enforcement of the provisions of this Declaration against any Unit Owner, including but not limited to attorney's fees and court costs shall be assessed to the Unit and the Owner against whom enforcement is sought.

13.03. Determination by Board. The total amount of the regular assessment and each Unit Owner's share thereof, as set forth herein, shall be determined and established by the Board at reasonable intervals, and in accordance with the terms of the Articles and By-Laws. Each Unit Owner's share of the total assessment shall be paid, as directed by the Board and as set forth in the By-Laws. In addition to the special assessments set

DK1148820 202

forth in subparagraphs 13.02 (a) and (b) above, special assessments are hereby authorized in the event of unanticipated costs or expenses and any such special assessments for unanticipated costs or expenses shall be charged to the units in the same proportion as regular assessments. Notwithstanding the foregoing, no First Mortgagee shall have any obligation to pay any assessments or installments that accrued prior to the time it became entitled to actual possession of or took title to the Unit, whichever is first in time.

13.04. Accounting. The Board of Directors, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all voting Owners and First Mortgagees, at reasonable times, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

13.05. Payment of Assessments and Lien Rights.

- (a) The Board or its designated representative shall notify the owners of Units of that Unit's share of the ^{Unofficial Document} total assessment and when such amounts are due and payable. Each Unit Owner, for himself, his heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period that he is an owner, he will remit these charges to the Association or the party or parties as directed by the Board.
- (b) Assessments attributable to Units and/or installments thereof shall be paid on or before the dates established by the Board, and all sums not so paid may bear interest at the highest rate lawful for individuals to pay under the laws of Arizona from the due date until paid, at the election of the Board. In addition and to the maximum extent allowable under law, the Board, by appropriate regulation, may impose a charge for late payment. All payments on account shall be first applied to late charges, if any, interest, and then to the assessment payment first due.
- (c) No Owner may exempt himself from paying such assessments or charges by being a non-user of the General Common Elements or by abandoning the unit of which he is the record owner, or by otherwise attempting to avoid such obligation. Nor shall any Unit Owner be entitled to claim a set-off against the Association whatsoever.

DKT 14882 PG 233

- (d) Each assessment or any other charge made on a Unit pursuant to the Condominium Constituent Documents shall constitute a lien on such Unit to secure the payment of such amounts, which lien and the right to foreclose the same shall be in addition to and not in substitution of all rights and remedies which the Association and the Board may have in accordance with the provisions of this Declaration or otherwise.
- (e) Each Owner by his acceptance of a deed to a Unit hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of all such assessments or charges as a debt, and to enforce the lien securing same by all methods available under Arizona law for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the like manner as a mortgage of real property, and/or as a mechanic's lien, and such Owner hereby expressly grants to the Association a power of sale in connection with said Unofficial Document Association may make payments on any prior liens including any mortgage or taxes on the Unit, and such payments shall be added to the lien in favor of the Association. The lien provided for in this paragraph 13.05 shall be in favor of the Association and shall be for the benefit of all other Unit Owners. The Association shall have the power to bid in any foreclosure sale pursuant to such foreclosure, and to acquire and hold, lease, mortgage and convey the Unit so purchased. The Association may institute suit to recover a money judgment for unpaid obligations of the Owner without being required to foreclose its lien on the Unit involved and without waiving the lien which secures such obligations. In any such foreclosure proceeding, the Owner shall be required to pay a reasonable rental for the Unit, commencing as of the date foreclosure proceedings are filed, and in such proceedings the Association shall be entitled, subject only to the prior right of a First Mortgagee, to such rent, and to the appointment of a receiver to collect same.
- (f) Upon transfer of each unit to the initial purchaser an amount equal to two months assessment shall be paid to the Home Owners Association as and for working capital for the Home Owners Association.
- (g) The provisions of this paragraph 13 are expressly declared to be subject to the provisions of paragraph 17, below.

DKT 14882 204

14. Insurance.

Insurance shall be obtained by the Association on the Condominium Property and shall be governed by the following provisions:

14.01. Authority to Purchase. The Board shall purchase and maintain certain insurance upon the Condominium Property, including but not limited to the insurance described in paragraph 14.02, below, which insurance is to be purchased by the Association for the benefit of the Association, the Unit Owners, and the First Mortgagees, as their interests may appear. Provisions shall be made for the issuance of certificates of endorsement to the First Mortgagee of any First Mortgage. Such policies and endorsements thereof, or copies thereof, shall be deposited with the Association. The Board shall deliver a copy of the policies, or by and through their agent advise the Unit Owners of the coverage of said policies to determine which particular items are included within the coverage so that the Unit Owners may insure themselves as they see fit if certain items are not insured by the Association. Without limiting the generality of the foregoing, it shall be each Owner's responsibility to provide for himself Owner's liability insurance, theft or other insurance covering personal property damage and loss, insurance for each Owner's personal liability, and such other insurance which is not carried by the Association as the Unit Owner desires.

14.02. Coverage. The Association shall obtain and maintain the following policies of insurance in full force and effect:

- (a) A multi-peril type policy covering the entire Condominium Project providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including but not limited to vandalism and malicious mischief, in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement costs).
- (b) A comprehensive policy of public liability insurance covering all of the Common Elements and public ways in the Condominium Project in a minimum amount of at least One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the

DKI1486270 205

negligent acts of the Association and its agents or other Unit Owners. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use.

- (c) If there is a steam boiler in operation in connection with the Condominium Project, there must be in force, boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing, as minimum coverage, Fifty thousand Dollars (\$50,000.00) per accident per location.
- (d) If the Condominium Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Condominium Project must be maintained in the amount of the outstanding principal balance of the First Mortgage loans on the Units comprising the Condominium Project or the maximum limit of coverage available under the National Flood Insurance ^{Unofficial Document} Act of 1968, as amended, whichever is less.
- (e) The Association must obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.
- (f) A workmen's compensation policy, if necessary to meet the requirements of Arizona law.
- (g) Such other insurance as the Board shall determine from time to time to be desirable.

14.03. Provisions Required. The insurance policies purchased by the Association shall, to the extent possible, contain the following provisions:

- (a) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners of First Mortgagees.

DA1148820 206

- (b) The conduct of any one or more Unit Owners shall not constitute grounds for avoiding liability on any such policies.
- (c) There shall be no subrogation with respect to the Association, its employees, Unit Owners and members of their household and their families and employees, or the policy(ies) should name said persons as additional insured.
- (d) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.
- (e) A statement of the name of the insured shall be included in all policies, in form and substance similar to the following:
- (1) (Name of unit owner);
 - (2) (Name of first mortgagee);
 - (3) (Casa Requena Homeowner's Association);
- Unofficial Document
- (f) A standard mortgagee clause which must be endorsed to provide that any proceed shall be paid to the Casa Requena Homeowners Association, for the use and benefit of First Mortgagees as their interest may appear, or which must be otherwise endorsed to fully protect the interest of First Mortgagees, their successors and assigns.
- (g) For policies of hazard insurance, a standard mortgagee clause shall provide that the insurance carrier shall notify the First Mortgagee named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.
- (h) Any "no other insurance" clause shall exclude insurance purchased by Unit Owners or First Mortgagees.
- 14.04. First Mortgagee Protection.
- (a) The Association shall provide each First Mortgagee with a letter wherein the Association agrees to give written notice to each First Mortgagee, or Servicer of a Mortgage, or any entity or person designated by such First Mortgagee or Servicer, whenever:

(1) Damage to a Unit covered by a First Mortgage exceeds \$1,000.00;
and/or

DKT 1488276 207

- (2) Damage to the Common Elements and related facilities exceeds \$10,000.00.
- (b) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financing rating by Best's Insurance Reports of Class VI or better, or if such rating system be discontinued, by a successor thereto or a similar such rating service.
- (c) Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.
- (d) Policies shall not be utilized where:
- (1) Under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Unit Owner of First Mortgagee or any entity or person purchasing or guaranteeing any First Mortgage; or
 - (2) By the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or
 - (3) The policy includes any limiting clauses (other than insurance condition) which prevent any Unit Owner or the First Mortgagee, its successors or assigns from collecting insurance proceeds.
- (e) The mortgagee clause of each insurance policy shall be properly endorsed, and there must have been given necessary notice of transfer, and any other action required to be taken must be taken in order to fully protect, under the terms of the policies and applicable law, the interest of all First Mortgagees, their successors and assigns. Where permissible, the insurance carrier shall be required to name the servicer of a First Mortgage, or "(name of servicer) or assigns," as First Mortgagee under the mortgage clause. If permissible, where a deed of trust is utilized, the insurance carrier shall be required to use "(name of servicer), beneficiary" or "(name of trustee) for the benefit of (name of servicer)" instead of only the name of trustee under the deed of trust.
- (f) First Mortgagees may pay overdue premiums, or may secure new insurance coverage on the lapse of a policy, with respect to any insurance required to be maintained by the Association as provided in this part, and First

DKT 1488270, 208

Mortgagees making expenditures therefor shall be owed immediate reimbursement by the Association.

14.05. Non-Liability of Association/Board. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member shall be liable to any Owner or any other party if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure any payment for such additional insurance coverage and protection afforded by the Association's insurance and to procure any payment for such additional insurance coverage and protection the said Unit Owner may desire.

14.06. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of an Apartment Unit or its appurtenances, or of the Common Elements by an Owner, shall be assessed against that particular Owner.

Unofficial Document

14.07. Insurance Claims. The Association, acting by and through its Board, is hereby irrevocably appointed agent for each Owner and for each holder of a First Mortgage or other lien upon a Unit and for each Owner of any other interest in the Condominium Property, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Association in this regard.

14.08. Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners and First Mortgagees, as their interests may appear.

15. Damage and Repair.

If all or any part of the Condominium Property or any property in which the Association owns an interest is damaged or destroyed by fire or other hazard, whether or not it shall be repaired or reconstructed, shall be determined in the following manner:

15.01. Common Elements. If the damaged property is part of the Common Elements or any property in which the Association owns an interest, it shall be repaired or reconstructed, unless it is determined in the manner hereinafter provided that the Condominium shall be terminated.

DK114882PG 209

15.02. Apartment. If the damaged property is a Building or Buildings containing Apartment Units, the damage shall be repaired and reconstructed if the Board finds that seventy (70) or more of all of the Apartment Units are tenantable, unless within sixty (60) days after the loss or damage, the Owners of all of the Units and First Mortgagees decide to terminate the Condominium. If the damaged property is a Building or Buildings containing Apartment Units, the damage shall not be repaired or reconstructed if the Board finds that only seventy (70) or less of all of the Apartment Units are tenantable, and in such case the Condominium will be terminated as provided, in paragraph 15.07 hereof, unless within sixty (60) days of the loss or damage the owners of seventy-two (72) or more of the Units, and two-thirds (2/3) of all of the First Mortgagees agree, in writing to such repair or reconstruction.

15.03. Construction.

- (a) Any repair or reconstruction must be substantially in accordance with the plans and specifications for the original improvements; or if not, then according to plans and specifications approved by the board and a Majority of the Owners.
- (b) If the loss or damage is only to those parts of an Apartment Unit or Apartment Units for which the responsibility of maintenance and repair is that of the Apartment Unit Owner, then the Apartment Unit Owner shall be responsible for repair and reconstruction; provided, however, to the extent any insurance proceeds collected are attributable to the Apartment Units (and not the Common Elements) the share of the proceeds attributable to the Apartment Units shall be used for repairs and reconstruction of the Apartment Units.
- (c) Immediately after a determination is made to repair or reconstruct damage to property for which the Association has the responsibility for repair and reconstruction, the Association shall obtain reliable and detailed estimates of the costs of the repair or reconstruction.
- (d) In the case of damage to Common Elements or to portions of the Apartment Units for which the responsibility of repair and maintenance is that of the Association, if the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, assessments shall be made against the Apartment Unit owners in sufficient

Unofficial Document

DKI 148820, 210

amounts to provide funds to pay the estimated costs. Additional assessments may be made at any time prior to, during or following the completion of construction. Such assessments against Apartment Unit Owners for damage to Apartment Units shall be in proportion to the cost of reconstruction and repair of their respective Apartment Units. Such assessments on account of damage to Common Elements shall be in proportion to the Owner's percentage ownership in the Common Elements.

15.04. Insurance Trustee; Proceeds.

- (a) Except for loss or damage which is less than one percent (1%) of the value of the Condominium Project, all insurance proceeds payable on account of damage or loss to the Condominium Project shall be paid to any bank in Arizona which is selected as a trustee by the Board, which bank is herein referred to as the "Insurance Trustee." The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of policies, or for the failure to collect any insurance proceeds. Insurance proceeds payable on account of loss or damage which equals less than one percent (1%) of the value of the Condominium Project shall be payable to and be used by the Association to repair such loss or damage.
- (b) The duty of the Insurance Trustee shall be to receive the insurance proceeds that are paid, and to hold them in trust for the benefit of the Unit Owners and the First Mortgagees as follows: An undivided share of such proceeds on account of damage to Common Elements shall be allocated to the Unit Owners according to their shares in the Common Elements as set forth in paragraph 4, above. Proceeds, if any, on account of damage to Apartment Units shall be held for the Owners of damaged Apartment Units in proportion to the cost of repairing the damage suffered by each Apartment Unit Owner, which cost shall be determined by the Association. In the event a mortgagee endorsement has been issued as to a unit, the share of the Unit Owner shall be held in trust for the First Mortgagee and the Unit Owner as their interests may appear.

15.05. Manner of Disbursement. The proceeds from assessments and insurance received by the Insurance Trustee shall be disbursed in the following manner:

DKT 14882 PG 211

- (a) That portion of the insurance proceeds, if any, representing damage, the reconstruction and repair of which is the responsibility of the Apartment Unit Owner, shall be paid by the Insurance Trustee to the Apartment Unit Owner or, if there is a mortgagee endorsement, then to the Apartment Unit Owner and the First Mortgagee jointly, who may use such proceeds as they may determine; provided, however, to the extent that any damage to an Apartment Unit affects in any way the Common Elements or any other Owner's Apartment Units, the proceeds must be used for reconstruction and repair of such damage.
- (b) The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of the Association, shall be disbursed in payment of the costs of such repair and reconstruction in the manner required by the Board and upon approval of an architect qualified to practice in Arizona and employed by the Association to supervise the work.
- (c) The Insurance Trustee shall not be required to determine whether a disbursement is to be made, the identity of the payee, or the amount to be paid, but may rely upon a certificate of the Board acting for and on behalf of the Association stating such information.

Unofficial Document

15.06. Work. All repairs and construction work shall be done by licensed contractors, of good reputation. Payment bonds, performance bonds and statutory lien bonds may, but need not, be required in the discretion of the Board, but all work shall be done under written contracts.

15.07. Termination. If it is determined pursuant to paragraph 15.02 that the Building or Buildings containing Condominium Units shall not be repaired or reconstructed because of damage or destruction, then and in such event, this Condominium shall be terminated and all of the Owners and all of the mortgagees and lienholders of record of all of the Units hereby constitute and appoint the Board, and each of the members of the Board, as their attorney-in-fact for the purpose of executing, acknowledging and recording a declaration withdrawing the property from this Horizontal Property Regime, which power is irrevocable and coupled with an interest.

DKT14882% 212

16. Management Agreements.

16.01 Each Unit Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association acting through the Board. A copy of all management agreements shall be available to each Unit Owner. Any agreement for professional management of the Condominium Project, or any other contract providing for services of the Declarant or any other party, shall not exceed a term of one (1) year, and any such agreement shall provide for termination by either party with or without cause, without payment of a termination fee, upon thirty (30) days written notice.

16.02 Before terminating a professional management agreement and assuming self management, the Home Owners Association must comply with the provisions of paragraph 17.18, below.

17. Rights and Duties of First Mortgagee.

17.01 Notwithstanding and prevailing over any other provisions of this Declaration, the Articles of Incorporation, ^{Unofficial Document} By-Laws, or any rules, regulations or management agreements, the provisions set forth in 17.02 through 17.18 shall apply to and benefit each holder of a First Mortgage upon a Unit.

17.02. Any "right of first refusal" that may be contained in the Condominium Constituent Documents shall not impair or affect the rights of a First Mortgagee to foreclose or take title to a Unit pursuant to the remedies provided in the First Mortgage, to accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or interfere with a subsequent sale or lease of a Unit so acquired by the First Mortgagee.

17.03. Any First Mortgagee or third party purchaser at a foreclosure sale or trustee's sale under a deed of trust who obtains title to a Unit pursuant to the remedies provided in the First Mortgage for foreclosure of the mortgage will not be liable for such Unit's unpaid dues, charges or assessment which may accrue prior to the acquisition (including the expiration of any period of redemption) of title to such unit by the first mortgagee.

17.04. Unless all of the First Mortgagees (based upon one vote for each First Mortgage owned), and Owners of Units having two-thirds (2/3) of the ownership of the Common Elements, or such higher percentage as required in this Declaration, or by applicable law, have given their prior written approval, the Association shall not be entitled to:

DKT 14882 213

- (a) By act of omission, seek to abandon or terminate this Declaration or the Condominium Project hereby established (except as set forth in paragraph 15 above).
- (b) Change the pro rata interest or obligation of any individual unit for the purpose of: (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each Unit in the Common Elements.
- (c) Partition or subdivide any Apartment Unit or Units.
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easement for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium Project shall not be deemed a transfer within the meaning of this clause).
- (e) Use hazard insurance proceeds payable or paid due to losses to any Condominium Property or Unofficial Document portion thereof (whether to Apartment Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium Property, except as provided herein or by statute. First Mortgagees shall have the right to participate in the adjustment and settlement of any claim under any insurance maintained by the Association.

17.05. All taxes, assessments and charges which may become liens prior to a First Mortgage under local law shall relate only to the individual Unit and not to the Condominium Project as a whole.

17.06. No provision of the Condominium Constituent Documents shall give a Unit Owner, or any other party, priority over any rights of the First Mortgagee of the Units pursuant to its First Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or taking of units and/or Common Elements.

17.07. All amenities pertaining to the Condominium Project and located on the Property (such as driveways, recreation and service areas) are a part of the Condominium Project and shall be covered by and subject to a mortgage on a Unit to the same extent as are the Common Elements.

DK148820 214

17.08. A First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by the Unit mortgagor, on such First Mortgagee's mortgage, under the Condominium Constituent Documents which is not cured within thirty (30) days.

17.09. First Mortgagees shall have the right upon reasonable request to examine the books and records of the Association or the Condominium Project at reasonable times.

17.10. Except as provided in this paragraph 17, a First Mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge nor the observance or performance of any covenant, restriction, regulation or rules of the Association's Articles of Incorporation or By-Laws, or management agreement, except for those matters which are enforceable by the injunction or other equitable actions, not requiring the payment of money.

17.11. An action to abate the breach of any of these covenants, restrictions, reservations and conditions may be brought against the purchasers who have acquired title through foreclosure of a First Mortgage and the Subsequent Sheriff's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Unit.

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

17.13. At such time as the First Mortgagee shall become record Owner of a Unit, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all assessments and charges accruing thereafter, in the same manner as any other Unit Owner.

17.14. The First Mortgagee, or any other party acquiring title to a mortgaged Unit through foreclosure of the First Mortgage or through any equivalent proceeding, such as, but not limited to, the taking of a deed in lieu of foreclosure or acquiring title at

DK14882pg 215

a Trustee's sale under a First Deed of Trust, shall acquire title free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure or equivalent proceedings, including the expiration day of any period of redemption. Any such unpaid assessment against the Unit foreclosed shall be deemed to be a common expense charged proratably against all of the Units. Nevertheless, in the event the Unit Owner against whom the original assessment was made is the purchaser or redemptioner, the lien shall continue in effect and the said lien may be enforced by the Association, or by the Board for the Association, for the respective Unit's assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Unit to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a member of the Association.

17.15. The lien of the assessments ^{Unofficial Document} provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Unit; provided that such First Mortgage is in favor of a bank, savings and loan association, insurance company, mortgage banker, other institutional lender, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association and Veteran Administration, their successors or assigns; and provided further that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure.

17.16. Notwithstanding any provision in the Condominium Constituent Documents to the contrary, no provision of this Declaration or the Condominium Constituent Documents related to costs, use, set-back, minimum size, building material, architectural, aesthetic or similar matters shall provide for reversion or foreclosure of title to a Unit in the event of violation thereof. No breach or any violation of any provision of the Condominium Constituent Documents shall affect, impair, defeat or render invalid the interest or lien of any First Mortgagee.

17.17. Notwithstanding and prevailing over all other provisions hereof, no amendment to this Declaration shall be made or become effective which in any way affects, diminishes or impairs any of the rights, privileges or powers granted to any First

DK148820 216

Mortgagee or which is in any way inconsistent with the customary rules, regulations or requirements of institutional First Mortgagees or their assigns without the prior written consent of all First Mortgagees. First Mortgagees shall have the right to enforce against unit owners, the Association and all others, any and all provisions of this Declaration including, without limitation, this paragraph 17. Enforcement by First Mortgagees may be by injunction, mandatory or prohibitory, or any other lawful procedure. This Declaration shall be interpreted in conformity with all rules, regulations and requirements of institutional mortgage holders, including expressly but not limited to the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association and Veterans Administration, applicable to conventional mortgages on condominiums, in effect as of this date or as hereafter amended, and any provision hereof which is inconsistent therewith shall be deemed modified to conform thereto. The Articles, By-Laws and all rules and regulations of the Association shall be governed by this Declaration and all provisions thereof which are inconsistent herewith shall be void.

Unofficial Document

17.18 Before terminating any professional management agreement entered into pursuant to paragraph 16 above, the Home Owners Association must obtain the prior written approval of all institutional holders of first mortgages.

18. Covenants Running with the Land.

18.01 It is intended and is hereby declared that the provisions of this Declaration shall be covenants running with the land, and such provisions, except as otherwise provided herein, shall apply to and be binding to the fullest extent permitted by law, on all successors in interest to Declarant and shall benefit and be enforceable by every person who now, or at any time hereafter, owns or holds an interest in said Property. Declarant shall be deemed a beneficiary of said provisions hereof and such provisions shall run in favor of Declarant without regard to whether Declarant is or remains an Owner of said Property or retains an interest therein. As such beneficiary, Declarant shall have the right, in the event of any breach of any said provisions hereto, to exercise all the rights and remedies and to maintain any action at law or suits in equity or other proper proceedings to enforce the curing of such breach of any said provisions to which beneficiaries of such agreement may be entitled.

19. Invalidity of any Provisions.

19.01. The invalidity of any one or more phrases, sentences, clauses, paragraphs

DKT14882 217

or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and, in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this Declaration invalid, this Declaration shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the rule against perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving of the following individuals: James Earl Carter, Jr. a/k/a Jimmy Carter (President of the United States), and his children who shall be living at the time this instrument is recorded.

20. Use of the Common Elements.

20.01 Each Owner shall have the right to use the Common Elements in common with all other Owners as may be required ^{Unofficial Document} for the purposes of access and ingress and egress to, and use, occupancy and enjoyment of, the respective Apartment Units owned by such Owner, and for such other related purposes as from time to time may be prescribed by the Board, except the designated exclusive use driveway areas. Such right to use the Common Elements shall extend to each Owner and the agents, servants, tenants, family members and invitees of each Owner. Such rights to use and possess the Common Elements shall be subject to and governed by the provisions of this Declaration and all other Condominium Constituent Documents.

21. Termination of Condominium/Shares of Owners after Termination.

21.01. This Horizontal Property Regime may be terminated by the agreement of all Owners and holders of mortgages and encumbrances pursuant to the provisions of the Act, or as herein provided. After termination of the Horizontal Property Regime, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares, and their respective First Mortgagees and lienors shall have First Mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Owners shall be the same as the undivided shares in the Common Elements appurtenant to the Owners' Apartment Units prior to the termination (unless otherwise expressly set forth herein).

DKT 14882 218

22. Violation of Declaration; Remedies

22.01 The following provisions are in addition to and not in lieu of any other terms and conditions contained in the Declaration relating to remedies.

22.02. Violation of any of the restrictions or conditions or breach of any of the covenants or agreements contained herein or breach of any rules or regulations promulgated by the Board shall enable the Association, acting through the Board or an authorized agent, or an encumbrance holder in the event that the Association refuses to act, to enter an Apartment Unit as to which said violation or breach may exist and summarily enforce such restrictions, conditions, covenants, agreements, or rules and regulations and to abate or remove the thing or condition which may exist thereon contrary to the provisions hereof, at the sole expense of the Owner of said Apartment Unit, without being deemed guilty of having trespassed in any manner; provided, however, that the Association, acting through the Board or an authorized agent, shall not summarily enforce such restrictions, conditions, covenants, agreements, or rules and regulations or enter an Apartment Unit as to which said violation or breach may exist without seeking and obtaining a court ^{Unofficial Document} order from the appropriate court in the State of Arizona, unless the Association acting by and through the Board determines an emergency to exist which endangers the health, safety, morals and welfare of the Unit Owners.

22.03. In the event of any default by an Owner or Occupant under the provisions of the Act, this Declaration, the Articles, the By-Laws, or the rules and regulations of the Association, the Association, its successors or assigns, acting through the Board or an authorized agent, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the Articles, the By-Laws or said rules and regulations, or which may be available at law, and may prosecute any action or other proceedings against such defaulting Owner and/or Occupant for enforcement or foreclosure of its lien and the appointment of a receiver for the Unit without notice, without regard to the value of such Unit or the solvency of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to rent the Unit and apply the rent received to payment of unpaid assessments, late charges, if any, and interest accrued thereon, and to sell the same as provided herein, or for any combination of remedies or for any other relief. Nothing contained in this Declaration shall preclude

DK11488204 219

the Association, its agents, the Board, Declarant, an aggrieved Owner, a First Mortgagee or other Person having an interest in the property from exercising any available remedy at law or in equity. The proceeds of any judicial sale foreclosing the lien of the Association shall first be paid to discharge court costs, other litigation costs including but without limitation reasonable attorney's fees and all other expenses of the proceedings and sale, and all such items shall be taxed against the defaulting owner in a final judgment. Any balance of proceeds, after satisfaction of all charges, unpaid assessments, interest, late charges and other liens, shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of restitution for the purposes of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration. All expenses of the Association in connection with any action or proceedings, including court costs and reasonable attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the highest rate which may be charged individuals under law shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective share of the common expenses, and shall be a lien upon the Unit of such defaulting Owner and upon all of his additions and improvements thereto. The Association, acting through the Board or its authorized agent, shall have the authority to correct any default and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner, and such assessment shall constitute a lien against the defaulting Owner's Unit. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise. The liens provided for in this paragraph 22, shall be and are junior and subordinate to First Mortgagees, and shall be foreclosed in the same manner as a realty mortgage and/or a mechanic's lien in the State of Arizona.

22.04. If any Owner (either by his conduct or by the conduct of any Occupant of his Apartment Units) shall violate any of the provisions of the other Condominium Constituent Documents, as then in effect, and such violation shall continue for fifteen (15) days after notice in writing, or shall occur repeatedly during any fifteen-day period after written notice or request to cure such violation, then the Association, acting

DKT 14882, 220

through the Board, or any authorized agents, or any other Owner, or an encumbrance holder, shall have the power to file an action against the defaulting Owner for a judgment or injunction against the Owner or occupant requiring the defaulting Owner to comply with the provisions of this Declaration, the Articles, the By-Laws, or the rules and regulations, and granting other appropriate relief including money damages, reasonable attorney's fees, and court costs. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration shall not defeat or adversely affect the lien of any First Mortgage upon any Unit, but except as herein specifically provided, each and all of said covenants, restrictions, reservations, conditions, and servitudes shall be binding upon and effective against any Lessee or Owner of a Unit whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

23. Phased Construction.

23.01. The construction of Unofficial Document ment units and common areas will be completed in 2 construction phases, which may be completed without a vote of the Owners within 5 years of the date hereof. The phased construction will have no affect on the percentage interest of the ownership of the Units as set forth in paragraph 4.01. above.

23.02. The first phase of construction shall consist of Buildings 1, 2, 3 and 4, the West 326 feet of Tract A and Tracts B and D of CASA REQUENA, a condominium project as recorded in Book of Maps 226, page 36, office of the Maricopa County Recorder.

23.03. The second phase of construction shall consist of Buildings 5, 6, 7, and 8, the East 260.67 feet of Tract A and Tracts C and E of CASA REQUENA, a condominium project as recorded in Book of Maps 226, page 36, office of the Maricopa County Recorder.

24. Membership in Casa Requena Homeowner's Association, Inc.

24.01. Each Owner agrees by the acceptance of his deed, to abide by the rules, regulations and assessments of CASA REQUENA HOMEOWNER'S ASSOCIATION, INC., an Arizona corporation, and recognizes that non-payment of any dues or assessments levied by the Casa Requena Homeowner's Association, Inc. is a lien against each residential Condominium Unit or Apartment as provided in this Declaration.

DK114882 221

25. Miscellaneous.

25.01. Formation of Association and Additional Rights of Declarant. The Declarant shall cause the Association to be formed no later than the date which is thirty (30) days prior to the date upon which the first meeting of the members of the Association is to be held (see paragraph 12.02 above). Regardless of whether or not the Association has been formed, and notwithstanding any other provision hereof, until the first meeting of the members of the Association, described in paragraph 12.02 above:

(a) In addition to, and not in derogation of, all other rights and remedies of Declarant, and the Developer, Declarant shall have and may exercise all of the rights and remedies of the Association and the Board; (b) Declarant shall not be obligated or required to pay assessments or charges on account of ownership of Units and Units owned by Declarant, and shall not be subject to any lien or assessment provided for herein; and (c) Declarant may impose and collect the assessments and charges provided for herein upon a uniform basis for Units not owned by Declarant, and all such amounts collected by Declarant may be commingled with Declarant's general (Unofficial Document) accounting, budget, application of funds, or justification of any sort shall be required of Declarant.

25.02. Notices. All notices, requests, demands or other communications to or upon the persons referred to herein shall be deemed to have been given or made when deposited in the mails, properly addressed, postage prepaid, or in the case of telegraphic notice, when delivered to the telegraph company. No other method of giving notice is hereby precluded.

25.03. No Waiver; Remedies Cumulative No failure or delay on the part of any person in exercising any right, power or privilege hereunder and no course of dealing between or among the persons subject hereto, shall operate as a waiver of any provision hereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof nor the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which any person subject hereto would otherwise have. No notice to or demand on any person in any case shall entitle such person to any other or further notice or demand in similar or other circumstances or constitute a waiver of rights to any other or further action in any circumstances.

25.04. Judicial Proceedings All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court or courts of the State of

DK11488200_222

Arizona or of the United States of America having jurisdiction in the State of Arizona, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter; provided, however, as to those matters to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail. For the purposes of instituting or defending any action with respect to the Common Elements, or with respect to any matter affecting the Owners with regard to the Common Elements, and further in connection with enforcing this Declaration, the Articles, the By-Laws or any rules and regulations adopted pursuant to this Declaration, the Articles or the By-Laws, or in any other instance where the Board of the members of the Association deem it necessary for the best interests of the Condominium as a whole, the Association, acting by and through its Board, shall be deemed the Real Party in interest and is hereby authorized to commence and prosecute any such proceedings or to defend any such action. Nothing contained in this paragraph 25.04 shall be deemed or construed to impose upon the Association, its members or the Board, any rights that any of said above-named parties would not otherwise have if this paragraph were not contained herein.

25.05. Interpretation. This Declaration shall be interpreted in conformity with all rules, regulations and requirements of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association and Veterans Administration, applicable to conventional mortgages, in effect as of the day of this Declaration or as hereafter amended, and any provision hereof which is inconsistent therewith shall be deemed modified to conform thereto. If there is any conflict among or between the Condominium Constituent Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to the Articles, then to the By-Laws and then to the rules and regulations of the Association.

25.06. Descriptive Headings. The descriptive headings of the several sections of this instrument are inserted for convenience only and shall not be deemed to affect the meaning of construction of any of the provisions hereof.

25.07. Governing Law. This instrument and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the State of Arizona.

25.08. Binding Effect. Subject to the provisions contained herein, this instrument shall be binding upon and inure to the benefit of successors, assigns, purchasers,

DKT 14882'S 223

mortgagees, trustees and beneficiaries of deeds of trust, encumbrancers, grantees, donees and lienors of and from Declarant and upon and unto its respective successors, assigns, purchasers, mortgagees, trustees and beneficiaries of deeds of trust, encumbrancers, grantees, donees and lienors.

25.09. Amendments or Supplements to Declaration

- (a) Except as otherwise permitted or restricted in this paragraph 24.09, the provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission signed and acknowledged by Owners owning not less than two-thirds (2/3) of the Units; provided, however, that all First Mortgagees under First Mortgages then covering Units shall have consented, in writing, to such change, modification or rescission.
- (b) Notwithstanding the provisions of the foregoing paragraph (a), if the Act, this Declaration, or the Articles of Incorporation or the By-Laws require the consent or agreement ^{Unofficial Document} of all Owners and/or all of the lienholders for any actions specified in the Act or this Declaration, then any instrument changing, modifying or rescinding any provisions of this Declaration with respect to such action shall be signed by all persons or entities required by the Act, this Declaration, the Articles of Incorporation or the By-Laws.
- (c) Declarant may alter the interior design of Apartment Units, the size and boundaries between Apartment Units, and the percentage interest which Apartment Units bear to the entire Horizontal Property Regime at any time so long as (a) such altered Apartment Units are owned by Declarant; (b) all First Mortgagees then encumbering such altered Apartment Units agree in writing to such alterations, and (c) such alterations do not modify or change the size, the boundaries, the percentage interest in and to the Common Elements, or the share of the Common Expenses of any Units not owned by Declarant.
- (d) In addition to the rights set forth above, and not in limitation thereof, until such time as thirty-nine (39) of the Units are initially sold and deeds have been delivered to purchasers thereof, Declarant reserve and shall have the right to amend this Declaration.

DKT 14882, 224

(e) Notwithstanding anything contained herein to the contrary or otherwise, no amendment of this Declaration shall be made or effective which amendment diminishes or otherwise impairs any of the rights, privileges or powers granted herein to Declarant, or to any First Mortgagee without the prior written consent of Declarant and the holders of all First Mortgages.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 2nd day of December, 1980.

CASA REQUENA, LTD.
an Arizona Limited Partnership

By Timothy Brunet
Timothy Brunet, Vice President

"Declarant"

STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa) Unofficial Document

On this 2nd day of December, 1980, before me the undersigned Notary Public, personally appeared Timothy J. Brunet, who acknowledged himself to be the Vice President of CASA REQUENA, LTD., an Arizona Limited Partnership, and that he, as such Agent, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation.

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

My Commission Expires:

July 12, 1983

Dolores C. Hernandez
NOTARY PUBLIC

DEC 9 1980-3 30
STATE OF ARIZONA
County of Maricopa

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

in Decret 14882
on page 183-224
Witness my hand and official seal this 9th day of December, 1980.

Bill Henry
County Recorder
By M. Levanter
Deputy Recorder

2150