

536 | 33



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2000-0481569 05/26/2000 11:53
VEZENIA 1 OF 1

When recorded return to:

Steven Bisbee
Attorney at Law
7527 E. First Street
Scottsdale AZ 85251

CONDOMINIUM DECLARATION

TOGETHER WITH COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

TOWN LAKE CONDOS

COPY

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE 1	DEFINITIONS	
1.0	General Definitions	1
1.1	Defined Terms	1
ARTICLE 2	SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION OF PERCENTAGE INTERESTS, VOTES AND COMMON EXPENSE LIABILITIES	
2.0	Submission of Property	3
2.1	Unit Boundaries	3
2.2	Allocation of Common Element Interest, Votes and Liabilities	3
2.3	Allocation of Association Votes	3
2.4	Allocation of Limited Common Elements	3
2.5	Assignment of Parking Spaces	4
ARTICLE 3	EASEMENTS	
3.0	Utility Easement	4
3.1	Easements for Ingress and Egress	4
3.2	Unit Owners' Easements of Enjoyment	4
3.3	Declarant's Use for Sales and Leasing	4
3.4	Declarant's Easements	5
3.5	Easements for Support	5
3.6	Common Elements Easement in Favor of the Association	5
3.7	Common Elements Easement in Favor of Unit Owners	5
3.8	Units/Limited Common Elements Easement	5
3.9	Easement for Encroachments	6
ARTICLE 4	USE AND OCCUPANCY RESTRICTIONS	
4.0	Single Family Residential Use	6
4.1	Antennae	6
4.2	Utility Service	6
4.3	Improvements and alterations	6
4.4	Trash Containers and Collection	6
4.5	Machinery and Equipment	6
4.6	Animals	6
4.7	Temporary Occupancy	7

4.8 Clothes Drying Facilities7
 4.9 Mineral Exploration7
 4.10 Diseases and Insects7
 4.11 Trucks, Trailers, Campers and Boats7
 4.12 Motor Vehicles7
 4.13 Vehicle Towing7
 4.14 Signs7
 4.15 Lawful Use7
 4.16 Nuisances; Offensive Activity7
 4.17 Window Coverings7
 4.18 Limitation on Leasing of Units7
 4.19 Patios and Yards7

ARTICLE 5 MAINTENANCE AND REPAIR OF
COMMON ELEMENTS AND UNITS

5.0 Duties of the Association 8
 5.1 Duties of Unit Owners 8
 5.2 Repair or Restoration Necessitated by Owner .. 8
 5.3 Unit Owner's Failure to Maintain 8

ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

6.0 Rights, Powers and duties
of the Association 8
 6.1 Directors and Officers 8
 6.2 Rules 9
 6.3 Architectural Committee 9
 6.4 Composition of Members 9

ARTICLE 7 PREPARATION OF BUDGET

7.0 Preparation of Budget 9
 7.1 Common Expense Assessment 9
 7.2 Special Assessments 10
 7.3 Notice and Quorum for Action
Authorized Under Section 7.1 or 7.2 10
 7.4 Effect of Non-Payment of Assessments;
Remedies 11
 7.5 Subordination of Assessment Lien
to Mortgages 11
 7.6 Exemption of Unit Owner 11
 7.7 Certificate of Payment 11
 7.8 No Offsets 11
 7.9 Working Capital Fund 11
 7.10 Surplus Funds 11
 7.11 Monetary Penalties 12

ARTICLE 8 INSURANCE

8.0 Scope of Coverage12

8.1 Fidelity Bonds13

8.2 Payment of Premiums13

8.3 Insurance Obtained by Unit Owners13

8.4 Payment of Insurance Proceeds13

8.5 Certificate of Insurance13

ARTICLE 9 RIGHTS OF FIRST MORTGAGEES

9.0 Notification to First Mortgagees14

9.1 Approval Required for Amendment to
Condominium Documents14

9.2 Prohibition Against Right of First Refusal ..14

9.3 Right of Inspection of Records14

9.4 Prior Written Approval of First Mortgagees ..15

9.5 Liens Prior to First Mortgage15

9.6 Condemnation or Insurance Proceeds15

9.7 Conflicting Provisions15

ARTICLE 10 GENERAL PROVISIONS

10.0 Enforcement15

10.1 Severability16

10.2 Duration16

10.3 Termination of Condominium16

10.4 Amendment16

10.5 Remedies Cumulative16

10.6 Notices16

10.7 Binding Effect17

10.8 Gender17

10.9 Paragraph Headings17

10.10 Survival of Liability17

10.11 Construction17

10.12 Joint and Several Liability17

10.13 Guests and Tenants17

10.14 Attorneys' Fees17

10.15 Number of Days17

10.16 Declarant's Right to Use Similar Name17

10.17 Notice of Violation18

10.18 Governing Law18

Exhibit A19

THIS CONDOMINIUM DECLARATION TOGETHER WITH COVENANTS, CONDITIONS AND RESTRICTIONS IS MADE BY TOWN LAKE CONDOS LLC, AN ARIZONA LIMITED LIABILITY COMPANY.

ARTICLE I DEFINITIONS

- 1.0 General Definitions. Terms not otherwise defined herein shall have the meanings specified in the Arizona Condominium Act, A.R.S. §33-1201, et seq.
- 1.1 Defined Terms. The following terms shall have the meanings described in the Act, and shall have the specific meanings set forth below:
- (A) "Architectural Committee": Committee established pursuant to §6.3;
 - (B) "Architectural Committee Rules": Rules adopted by the Architectural Committee, as amended.
 - (C) "Articles": Articles of Organization of the Association, as amended.
 - (D) "Assessments": Special Assessments and Common Expenses assessed against each Unit pursuant to Article 7.
 - (E) "Assessment Lien": Lien granted to the Association by the Act to secure the payment of Assessments, penalties and other charges owed to it.
 - (F) "Association": The Arizona limited liability company organized by Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein. The name of the Association will be "TOWN LAKE CONDOS HOMEOWNERS' ASSOCIATION INC."
 - (G) "Board of Directors": Association Board of Directors.
 - (H) "Building": Structures so designated on the Plat.
 - (I) "Bylaws": Bylaws of the Association, as amended.
 - (J) "Common Elements": All portions of the Condominium other than Units.
 - (K) "Common Expenses": Expenditures made by or financial liabilities of the Association, plus any allocations to reserves.
 - (L) "Common Expense Assessment": The assessment levied against the Units pursuant to section 7.1 of this Declaration.
 - (M) "Common Expense Liability": The liability for Common Expenses allocated to each Unit by this Declaration.
 - (N) "Condominium": Real property in Maricopa County, Arizona, described in Exhibit "A" attached hereto, together with all buildings and improvements located thereon and all easements, rights, and appurtenances thereto.
 - (O) "Condominium Act" or "the Act": The Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended.
 - (P) "Condominium Documents": This Declaration, Articles, Bylaws, Rules and Architectural Committee Rules, as amended.
 - (Q) "Declarant": TOWN LAKE CONDOS LLC, an Arizona limited liability company, and its successors and any person or entity to whom it may transfer any Special Declarant Right.
 - (R) "Declaration": This Declaration, as amended.
 - (S) "Development Rights": Any right or combination of rights reserved by or granted to Declarant in this Declaration to:
 - (1) Add real estate to the Condominium;
 - (2) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;
 - (3) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;
 - (4) Withdraw real estate from the Condominium;

- (5) Make the Condominium part of a larger condominium; -
- (6) Amend the Declaration during the Period of Declarant Control to correct any error or inconsistency in the Declaration, or comply with applicable law, if the amendment does not adversely affect the rights of any Unit Owner;
- (7) Amend the Declaration during the Period of Declarant Control to comply with (i) the Condominium Act, (ii) the rules or guidelines of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration, or (iii) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Plat, the Condominium or the Condominium Documents as required.
- (T) "Eligible Insurer Or Guarantor": An insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with this Declaration.
- (U) "Eligible Mortgage Holder": A First Mortgagee who has requested notice of certain matters from the Association, pursuant to Section 9.0 herein.
- (V) "First Mortgage": Any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust.
- (W) "First Mortgagee": The holder of any First Mortgage.
- (X) "Improvement": All physical structures including, but not limited to, buildings, storage sheds, parking areas, fences, walls, and all landscaping, including plantings, trees, shrubs and cactus of every type and kind.
- (Y) "Limited Common Elements": A portion of the Common Elements specifically designated as a Limited Common Element and allocated for the exclusive use of one or more but fewer than all of the Units.
- (Z) "Member": Any legal entity who becomes a member of the Association.
- (AA) "Period of Declarant Control": Period commencing on the recording date hereof and ending on the earlier of (i) 90 days after the conveyance of 67% of the Units to Unit Owners other than Declarant, or (ii) four years after Declarant has ceased to offer Units for sale in the ordinary course of business.
- (BB) "Person": Natural person, corporation, limited liability company, trust, estate, partnership, association, joint venture, government, governmental agency or subdivision or other legal or commercial entity.
- (CC) "Plat": The condominium plat for TOWN LAKE CONDOS, which has been recorded with the Maricopa County Recorder, document number _____ and any amendments, supplements or corrections thereto.
- (DD) "Purchaser": Any Person, other than Declarant, who by means of a voluntary transfer becomes a Unit Owner except for (i) a Person who purchases a Unit and then leases it to the Declarant for use as a model in connection with the sale of other Units or (ii) a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.
- (EE) "Rules": Rules and regulations adopted by the Association, as amended.
- (FF) "Single Family": A group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, who maintain a common household in a Unit.
- (GG) "Special Declarant Rights": Any right or combination of rights reserved by or granted to Declarant in this Declaration or by the Condominium Act to do any of the following:
- (1) Construct improvements provided for in this Declaration or shown on the Condominium Plat;
 - (2) Exercise any Development Right;
 - (3) Maintain offices, models, and signs advertising the Condominium;
 - (4) Use easements through the Common Elements for the purpose of making improvements within the Condominium.
- (5) Appoint or remove any officer or Board member during the Period of Declarant Control.
- (HH) "Unit": A portion of the Condominium described on the Plat, designated for separate ownership and occupancy.
- (II) "Unit Owner": Owner of record of beneficial or equitable title to the fee simple interest of a Unit.
- (JJ) "Visible From A Neighboring Unit": Any given object that is or would be visible to a person six feet tall, standing on any part of such neighboring unit at no greater elevation than the base of the viewed object being viewed.

ARTICLE 2
SUBMISSION OF PROPERTY; UNIT BOUNDARIES;
ALLOCATION OF PERCENTAGE INTERESTS, VOTES
AND COMMON EXPENSE LIABILITIES

2.0 Submission of Property. The real property described on Exhibit "A" attached hereto, together with all improvements, easements, rights and appurtenances thereto, is hereby submitted to a Condominium in accordance with the provisions of the Condominium Act. The Condominium hereby created may be expanded in accordance with the provisions of this Declaration. The Identifying Numbers of the Units are 101, 102, 103, 104, 105, 106, 201, 202, 203, 204, 205 and 206.

2.1 Unit Boundaries.

- (A) Boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors and windows of the Unit. All lath, furring, drywall, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements.
- (B) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, heating or air conditioning unit or apparatus or other fixture lies partially within and partially outside the boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.
- (C) Subject to the foregoing provisions, all spaces, partitions, fixtures and improvements within the boundaries of a Unit are part of that Unit.
- (D) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways, patios or yards, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside of the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.
- (E) Declarant reserves the right to relocate boundaries between adjoining Units owned by Declarant, to reallocate each such Unit's Common Element interest, and votes in the Association and Common Expenses in accordance with the Act.

2.2 Allocation of Common Element Interest, Votes and Liabilities. Undivided interests in the Common Elements and Expenses of the Association shall be allocated equally among the Units.

2.3 Allocation of Association Votes. Each Unit shall have one Association vote.

2.4 Allocation of Limited Common Elements.

- (A) The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one Unit as follows:
 - (1) Any patio or entryway which adjoins the Unit and is designed for the exclusive use of the Unit;
 - (2) Any fenced yard which adjoins a Unit and is designed for the exclusive use of the Unit;
 - (3) Any awnings, window boxes, doorsteps, stoops, porches, entryways, exterior doors and windows or other fixtures designed to serve a single Unit but which are located outside of the Unit's boundaries;
 - (4) Any gas, electric or water meter which serves only one Unit is allocated to the Unit which it serves;
 - (5) Each Unit is allocated those portions of the Common Elements designated as Limited Common Elements in Sections 2.1(B) and (D) of this Declaration that serve the Unit;
 - (6) Any storage unit assigned for the exclusive use of the Unit.
- (B) A Limited Common Element may be reallocated by amendment to this Declaration; ARS §33-1218(B).
- (C) The Board of Directors shall have the right, without a vote of Unit Owners, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated. Any such allocation

shall be made by amendment to this Declaration and to the Plat if required by the Condominium Act.

- 2.5 Assignment of Parking Spaces. Declarant may allocate at least one parking space to the exclusive use of each Unit as a Limited Common Element.

ARTICLE 3 EASEMENTS

- 3.0 Utility Easement. There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining all utilities, including gas, water, sewer, telephone, cable television and electricity. Utility companies are permitted to erect and maintain necessary equipment on the Common Elements but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially constructed by Declarant or as approved by the Board. This easement shall in no way affect any other recorded easements on the Common Elements.
- 3.1 Easements for Ingress and Egress. Easements are created hereby upon the Common Elements for ingress/egress for pedestrian and vehicular traffic across sidewalks, driveways and parking areas that exist or may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Unit Owners and occupants of the Units and their invitees, guests and families but shall not extend to any Limited Common Elements.
- 3.2 Unit Owners' Easements of Enjoyment.
- (A) Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and pass with the title to every Unit, subject to the right of the Association to; (1) adopt reasonable rules and regulations governing the use thereof; (2) suspend the voting rights of a Unit Owner for any period during which any Assessment against his Unit remains unpaid, and for a period not to exceed 60 days for any other infraction or violation of the Condominium Documents; (3) convey the Common Elements or subject same to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act; and (4) subject to all rights and easements set forth in this Declaration.
 - (B) Any tenant of a Unit shall have the right to use the Common Elements during the rent/lease term, and the Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease.
 - (C) Guests and invitees of any person entitled to use the Common Elements may use such if accompanied by such entitled person. The Board shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict such use to specified times.
 - (D) The provisions of this Section shall not apply to any Limited Common Elements allocated to less than all of the Units.
- 3.3 Declarant's Use for Sales and Leasing Purposes.
- (A) Declarant shall have the right and an easement to maintain sales offices and models throughout the Condominium; to maintain advertising signs on the Common Elements while Declarant is selling Units; to place models and offices in any Units owned or leased by Declarant and on Common Elements in such number, of such size and in such locations as Declarant deems appropriate.
 - (B) Declarant may from time to time relocate models and offices to different locations within the Condominium, and may remove all personal property and fixtures therefrom.
 - (C) So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to restrict the use of the parking spaces which are not allocated as Limited Common Elements, including reserving such spaces for use by prospective purchasers, Declarant's employees, and other sales, leasing, maintenance, construction or management individuals.
 - (D) Declarant reserves the right to retain and/or remove all personal property, equipment and improvements used in the sales, development, construction or maintenance of the Condominium that

has not been represented as property of the Association, whether or not they have become fixtures.

- 3.4 Declarant's Easements. Declarant has the following rights and easements on, over and through the Common Elements;
- (A) to construct Common Elements and Units shown on the Plat and all other buildings and improvements Declarant may deem necessary; and to use the Common Elements and any Units owned by Declarant for construction or related purposes including storage of tools, equipment, materials, supplies and fixtures;
 - (B) to maintain and correct drainage of water, expressly including the right to cut any trees or plants to grade the soil, and to take any other action reasonably necessary;
 - (C) for access necessary to complete warranty work;
 - (D) as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.
- 3.5 Easements for Support. To the extent necessary, each Unit shall have and be subject to an easement for structural support over and by every other Unit in the Building, the Common Elements and the Limited Common Elements.
- 3.6 Common Elements Easement in Favor of the Association. Common Elements are subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of inspection, upkeep, maintenance, repair or replacement of Common Elements.
- 3.7 Common Elements Easement in Favor of Unit Owners. Common Elements shall be subject to the following easements in favor of the Units benefited:
- (A) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.
 - (B) For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element adjacent to such Unit.
 - (C) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of any walls bounding the Unit and studs which support the dry wall or plaster perimeter walls bounding the Unit, the bottom surface of floor joists above the Unit and the top surface of the floor joists below the Unit to the extent such attachment devices may encroach into a part of a Common Element adjacent to such Unit.
 - (D) For the maintenance of any lighting devices, outlets, exhaust fans, ventilation ducts, registers, grills and similar fixtures which serve only one Unit but which encroach into any part of the Common Elements.
 - (E) For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 5.1 of this Declaration.
 - (F) No easement or action permitted by this Section shall be allowed to the extent that it unreasonably interferes with the common use of any part of the Common Elements, adversely affects either the thermal or acoustical character of the Building or impairs or structurally weakens the Building.
- 3.8 Units/Limited Common Elements Easement. Units and the Limited Common Elements are subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors, for:
- (A) Inspection, at reasonable times and upon reasonable notice to the Unit Owner, of Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible, and to verify compliance with Condominium Documents.
 - (B) Inspection, maintenance, repair and replacement of Common Elements or Limited Common Elements

- situated in or accessible from such Units or Limited Common Elements;
- (C) Correction of emergency conditions or casualties in any Unit(s) or Limited Common Elements;
 - (D) To enable the Association or the Board to exercise and discharge their respective rights, powers and duties under the Condominium Documents;

3.9 Easement for Encroachments. If any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction shifting or settling, or alteration or restoration authorized by this Declaration, a valid easement exists for the encroachment, and for its maintenance.

ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS

- 4.0 Single Family Residential Use. All Units and Limited Common Elements shall be used and devoted exclusively to residential use by a Single Family. No occupation, profession, trade or business shall be conducted on or in any Unit or Limited Common Element.
- 4.1 Antennae. No antenna, satellite dish or other device for the transmission or reception of television or radio signals shall be erected, used or maintained outdoors on any portion of the Condominium whether attached to a Building or structure or otherwise, unless approved by the Architectural Committee. Satellite television dishes will generally be approved, providing the size and placement of the dish will be in character for the Condominium and will not interfere with the enjoyment and use of the Unit Owner of any other Unit.
- 4.2 Utility Service. Except for those existing on the Condominium as of the date of this Declaration, no lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be placed in or upon the Condominium unless they are contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board.
- 4.3 Improvements and Alterations. No Person shall make any structural additions, alterations or improvements within a Unit, without the prior written approval of the Architectural Committee, and an architect or engineer (licensed in Arizona) certification that such addition, alteration or improvement will not impair the structural integrity of the Building involved. To the extent permitted under Arizona law, any such Unit Owner shall be responsible for any damage to other Units and to the Common Elements which results from such work.
- 4.4 Trash Containers and Collection. Trash shall be placed only in covered containers of a type, size and style approved by the Architectural Committee. The Board shall have the right to subscribe to a trash service for the use and benefit of all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection.
- 4.5 Machinery and Equipment. No machinery or equipment of any kind shall be placed or operated upon the Condominium except in connection with the maintenance or construction of buildings, improvements or structures which are within the permitted uses of such property, or which Declarant or the Association may require for the construction, operation and maintenance of Common Elements.
- 4.6 Animals. No animals, other than a reasonable number of house pets, shall be maintained in/on the Condominium and then only if kept solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. All dogs shall be kept on a leash when on any Common Element, and shall be directly under the Unit Owner's control at all times. No Unit Owner, lessee or guest shall permit any dog to relieve itself on any portion of the Common Elements. It shall be the responsibility of Unit Owner, Tenant or guest to immediately remove any pet droppings. No structure for any animal shall be Visible From A Neighboring Unit. Upon written request of any Unit Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house pet, a nuisance, or whether the number of pets on any property is reasonable. The Board shall have the authority to restrict pets to certain portions of the Condominium and to restrict the number of pets.

- 4.7 Temporary Occupancy. No trailer, tent or temporary improvement of any kind shall be used at any time for a residence either temporarily or permanently.
- 4.8 Clothes Drying Facilities. Outside clotheslines shall not be erected, placed or used on the Condominium.
- 4.9 Mineral Exploration. No portion of the Condominium shall be used in any manner for exploration, extraction or processing any minerals, fluids, or other earth substances of any kind.
- 4.10 Diseases and Insects. No Unit Owner shall permit any condition to exist upon the Condominium which could induce, breed or harbor infectious plant diseases or noxious insects.
- 4.11 Trucks, Trailers, Campers and Boats. No truck, trailer, boat, recreational vehicle, camper, or similar vehicle or equipment may be parked or kept on any part of the Condominium except for (i) pickup trucks with camper shells not exceeding 7 feet in height; (ii) mini-motor homes not exceeding 7 feet in height and 18 feet in length, parked in compliance with this Declaration and the Rules and used on a regular and recurring basis; and (ii) temporary parking of vehicles by the guests and invitees of a Unit Owner or tenant subject to the Rules.
- 4.12 Motor Vehicles. Except for emergency repairs, no motor vehicle shall be serviced or repaired, and no inoperable vehicle may be stored or parked on any portion of the Condominium, so as to be Visible From A Neighboring Unit. Unit Owner or tenant shall be responsible for immediate cleanup of any oil or fluid spill, leakage or discharge from any vehicle being used by the Unit Owner or tenant, or their guests or invitees.
- 4.13 Vehicle Towing. The Board has the right to have any vehicle/equipment, that is in violation of the Condominium Documents, towed away at the sole cost and expense of the owner of such vehicle/equipment. Any expense so incurred in connection with the towing shall be paid by the owner of such vehicle/equipment, upon demand by the Association.
- 4.14 Signs. No signs shall be permitted on the Condominium without prior written approval of the Architectural Committee, which shall not be unreasonably withheld.
- 4.15 Lawful Use. No offensive or unlawful use shall be made of any part of the Condominium. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium shall be observed, and any violation shall be a violation hereof.
- 4.16 Nuisances, Offensive Activity. No nuisance shall be permitted to exist on the Condominium. No activity shall be conducted on the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium. No exterior speakers, horns, or other sound devices shall be located or used on the Condominium.
- 4.17 Window Coverings. No reflective materials shall be placed upon any window of a Unit without prior written approval of the Architectural Committee. No enclosures or window coverings affecting the exterior appearance of a Unit or Limited Common Element allocated to the Unit shall be constructed or installed without the prior written consent of the Architectural Committee.
- 4.18 Limitation on Leasing of Units. All leases shall be in writing and shall provide that Tenant shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the Tenant to comply with the terms of the Condominium Documents shall be a default under the lease. Upon leasing his Unit, a Unit Owner shall promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will be occupying the Unit during the term of the lease.
- 4.19 Patios and Yards. Any portion of a patio or yard visible from any part of the Condominium shall be maintained in an attractive condition, neatly trimmed and free of weeds or debris. The Architectural Committee shall have the right to alter, remove or replace any patio or yard landscaping, if such action is reasonably necessary in the sole discretion of the Architectural Committee, for aesthetic appearance of the Condominium, the drainage requirements of the Condominium, or to preserve the views from surrounding Units. All patios and yards must

be kept neat and clean, and shall not be used as storage areas. Patios may be glazed-in, and awnings may be installed on patios, with prior approval of the Architecture Committee and in compliance with local codes, regulations and rules.

ARTICLE 5 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.0 Duties of the Association

(A) Maintenance and Improvements. The Association shall maintain and make necessary improvements to all Common Elements whether inside or outside the Units, except for the Limited Common Elements which the Unit Owners are obligated to maintain. The cost of all such repairs and maintenance shall be a Common Expense, and shall be paid for by the Association.

(B) Landscaping Maintenance. The Association shall be responsible for and maintain all landscaping, both required by Ordinance and in the common area. The cost of all such maintenance shall be a Common Expense, and shall be paid for by the Association. This paragraph 5.0(A) may not be amended without prior approval by the Tempe City Attorney and the Tempe Community Development Director.

5.1 Duties of Unit Owners. Each Unit Owner shall maintain, repair, replace and restore, at his own expense, all portions of his Unit, subject to the Condominium Documents. Each Unit Owner shall be responsible for maintenance and repair of Limited Common Elements allocated to his Unit herein, except for the structural parts of such Limited Common Elements. Each Unit Owner shall take all necessary action to keep such Limited Common Elements free of accumulations of weeds, trash and litter.

5.2 Repair or Restoration Necessitated by Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements, improvements or landscaping which results from the negligence or willful conduct of the Unit Owner. The cost to the Association of repair, maintenance or replacements required by such act of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.3 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain his unit in good condition and repair or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within 15 days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. Cost of such maintenance, repair or replacement shall be assessed against the Unit Owner pursuant to paragraph 7.1(E) of this Declaration.

ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

6.0 Rights, Powers and Duties of the Association. As of the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as an Arizona non-profit corporation. The Association shall be the entity through which the Unit Owners shall act and shall have the rights, powers and duties prescribed by law and set forth in the Condominium Documents and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than 50% of the votes in the Association. Unless the Condominium Documents or the Act require a vote of the members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

6.1 Directors and Officers

(A) During the Period of Declarant Control, Declarant shall have the right to appoint and remove members of the Board and Officers of the Association, who do not have to be Unit Owners.

- (B) Upon termination of the Period of Declarant Control, the Unit Owners shall elect the Board which must consist of at least three members, all of whom must be Unit Owners: The Board shall then elect the officers of the Association.
- (C) Declarant may voluntarily surrender his right to appoint and remove members of the Board and officers of the Association before termination of the Period of Declarant Control. Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before becoming effective.

6.2 Rules. Subject to the provisions hereof and the Act, the board may adopt, amend and repeal regulations and rules, from time to time. Rules may, among other things, restrict and govern the use of any area-by any Unit Owner, his family, or by any invitee, licensee or Tenant of such Unit Owner. Rules may not unreasonably discriminate among Unit Owners, nor be inconsistent with Condominium Documents or the Act. A copy of the Rules as adopted, amended or repealed, shall be mailed to each Unit owner and may be recorded

6.3 Architectural Committee. The Board shall also serve as the Architectural Committee to regulate the external design and appearance of the Condominium.

6.4 Composition of Members. Each Unit Owner shall be a member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners.

ARTICLE 7 ASSESSMENTS

7.0 Preparation of Budget

(A) At least 60 days before the beginning of each fiscal year commencing with the year in which the first Unit is conveyed to a Purchaser, the Board shall adopt a budget for the Association containing an estimate of the total funds which will be required during the ensuing year to pay all Common Expenses including, but not limited to: (i) cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to provide all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements; and shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Section 7.1(E) or (F) herein.

(B) Within 30 days after the adoption of a budget, the Board shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit in accordance with Section 7.1 herein. Failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not act as any waiver or release of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided herein, and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established.

(C) The Board is authorized to adopt and amend budgets for the Association, without ratification of any budget by the Unit Owners.

7.1 Common Expense Assessment

(A) For each fiscal year of the Association commencing with the year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections (E) and (F) of this Section) shall be assessed against each Unit in proportion to the Unit's Common

Expense Liability as set forth in Section 2.2 herein. The amount of the Common Expense Assessment assessed pursuant to this Subsection shall be in the sole discretion of the Board except that it shall not exceed the maximum Common Expense Assessment for the fiscal year as computed pursuant to Subsection (B) of this Section. If the Board determines during any fiscal year that its funds budgeted or available for that year are, or will become inadequate to meet all Common Expenses for any reason, including nonpayment of Assessments by Unit Owners, it may increase the Common Expense Assessment for that fiscal year, to commence on the date designated by the Board. No increase for any fiscal year which would result in exceeding the maximum Common Expense Assessment for such fiscal year shall become effective until approved by Unit Owners entitled to cast at least 2/3 of the votes entitled to be cast by Unit Owners who are voting in person or by proxy at a meeting duly called for such purpose.

(B) The maximum Common Expense Assessment for each fiscal year of the Association shall be as follows:

(1) Until January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the maximum Common Expense Assessment shall be \$2,400 for each Unit.

(2) The Board may, without a vote of the Unit Owners, increase the maximum Common Expense Assessment during each fiscal year of the Association by an amount proportional to the amount of increase during the prior fiscal year in the Consumer Price Index for All Urban Consumers (All Items), U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics.

(3) Subsequent assessments may be increased by an amount greater than the maximum increase allowed pursuant to (2) above, only by a vote of members entitled to cast at least 2/3 of the votes entitled to be cast by members who are voting in person or by proxy at a meeting duly called for such purpose.

(4) The maximum Common Expense Assessment shall apply only to the amount assessed pursuant to Subsection (A) of this Section and shall not apply to the amount assessed pursuant to Subsection (E) or (F) of this Section.

(C) The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser. The first assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the Common Expense or Special Assessments be paid in installments.

(D) Except as otherwise set forth herein, Common Expenses shall be assessed against all of the Units in accordance with Subsection 7.1(A) above.

(E) If any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that expense exclusively against such Unit.

(F) Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liabilities.

7.2 Special Assessments. In addition to Common Expense Assessments, the Association may, in any fiscal year, levy a special assessment applicable to that fiscal year, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by Unit Owners representing 2/3 of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Such assessments shall be due 30 days after notice is given.

7.3 Notice and Quorum for any Action Authorized Under Section 7.1 or 7.2. Written notice of any meeting called for the purpose of obtaining the consent of the Unit Owners for any action for which such consent is required under Sections 7.1 or 7.2 shall be sent to all Unit Owners not less than 30 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of Unit Owners or proxies entitled to cast

50% of all the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be held within 60 days of the first meeting, subject to the same notice requirement, and the required quorum at such meeting shall be ½ of the required quorum at the preceding meeting.

7.4 Effect of Nonpayment of Assessments; Remedies.

(A) Any Assessment or any installment of an Assessment, which is not paid within 15 days after becoming due, shall be deemed delinquent and shall bear interest from the date of delinquency at the rate set by the Board at its annual meeting. Until the first such meeting, interest shall be 18% per annum.

(B) All Assessments, monetary penalties and other fees and charges imposed or levied against any Unit or Unit Owner shall be secured by the Assessment Lien as provided for in the Condominium Act. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien and no further recordation of any claim of lien shall be required.

(C) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in the manner allowed by law including, (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts, without waiving the Assessment Lien securing any such delinquent amounts, or (ii) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

- 7.5 Subordination of Assessment Lien to Mortgages. An Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchased at a foreclosure sale or trustee sale or through the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other fees and charges against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units as a Common Expense. Any Assessments, monetary penalties or other charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner.
- 7.6 Exemption of Unit Owner. No Unit Owner may exempt himself from liability for payment of Assessments, monetary penalties or other fees and charges levied pursuant to the Condominium Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit.
- 7.7 Certificate of Payment. On written request, the Association shall furnish to a lienholder, Unit Owner or person designated by a Unit Owner, a recordable statement setting forth the amount of unpaid Assessments against a Unit. The statement shall be furnished within 20 days after receipt of the request and is binding on the Association, the Board, and every Unit Owner. The Association may charge a reasonable fee for such certificate.
- 7.8 No Offsets. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets shall be permitted for any reason, including a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.
- 7.9 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Unit from Declarant shall pay to the Association, immediately upon becoming the Unit Owner, a sum equal to 1/6th of the Common Expense Assessment on his Unit for the then current fiscal year. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.
- 7.10 Surplus Funds. Surplus funds of the Association, after payment of or provisions for Common Expenses

and prepayment of reserves, may in the discretion of the Board be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense Liability, or be credited on a pro rata basis to the Unit Owners to reduce future Common Expense Assessments.

- 7.11 Monetary Penalties. In accordance with the procedures set forth in the Bylaws, the Board shall have the right to levy reasonable monetary penalties against a Unit Owner for violations of the Condominium Documents.

ARTICLE 8 INSURANCE

8.0 Scope of Coverage.

- (A) Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:
- (1) Property insurance on the Common Elements and Units, exclusive of improvements installed in Units by Owners, issued under a standard form "All Risk of Direct Physical Loss Form" in an amount equal to the maximum insurable replacement value of the Common Elements and Units, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than 100% of the current replacement costs of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy.
 - (2) Broad Form Comprehensive General Liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include (i) a cross-liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner, (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles, and (iii) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.
 - (3) Workmen's Compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.
 - (4) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board may determine from time to time.
 - (5) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the board, the Architectural Committee or the Unit Owners.
 - (6) Policies purchased by the Association shall, to the extent available, contain the following provisions:
 - (a) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.
 - (b) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household.
 - (c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.
 - (d) Coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners, their mortgagees or deed of trust beneficiaries.
 - (e) "Severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.
 - (f) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).
 - (g) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least 10 days in advance of the effective date of any substantial change in coverage or cancellation of the policy.
 - (h) Any Insurance Trust Agreement will be recognized by the insurer.
 - (7) If the Condominium is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of 100% of the current replacement cost of the buildings and any other property covered on

the required form of policy, or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.

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

(B) If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Association's policy shall provide primary coverage.

8.1 Fidelity Bonds.

(A) The Association shall maintain blanket fidelity bonds for all officers and directors of the Association and all other persons handling or responsible for funds of or administered by the Association, including officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of the fidelity bonds maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the amount equal to 150% of the estimated annual operating expenses of the Condominium, (ii) the estimated maximum funds, including reserve funds in the custody of the Association or the manager at any given time during the term of each bond, or (iii) the sum equal to three months aggregate Common Expense Assessments on all Units plus reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

- (1) The Association shall be named as an obligee;
- (2) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;
- (3) The bonds may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days prior written notice to the Association and each First Mortgagee.

(B) The Association shall require any management agent to maintain a fidelity bond in an amount equal to or greater than the amount of the bond to be maintained by the Association pursuant to Subsection (A) of this Section, and shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

8.2 Payment of Premiums. Premiums for insurance obtained pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

8.3 Insurance Obtained by Unit Owners. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage.

8.4 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with and proceeds shall be payable to the Association and not to any mortgagee or deed of trust beneficiary. The Association shall hold insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and proceeds shall be disbursed and applied as provided for in section 33-1253 of the Act.

8.5 Certificate of Insurance. An insurer issuing an insurance policy pursuant to this Section 8 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or deed of trust beneficiary. The insurer issuing the policy shall not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

ARTICLE 9 RIGHTS OF FIRST MORTGAGEES

9.0 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of:

(A) Any condemnation loss or any casualty loss which affects a material portion of the condominium or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor.

(B) Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by the Unit Owner of any obligation under the Condominium Documents, which delinquency or default remains for the period of 60 days;

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

(D) Any proposed action which requires the consent of Eligible Mortgage Holders as set forth herein.

9.1 Approval Required for Amendment to Condominium Documents.

(A) Approval of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least 51% of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Condominium Documents which establish, provide for, govern or regulate:

- (1) Voting rights;
- (2) Assessments, Assessment Liens or subordination of Assessment Liens;
- (3) Reserves for maintenance, repair and replacement of Common Elements;
- (4) Insurance or fidelity bonds;
- (5) Responsibility for maintenance and repairs;
- (6) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.
- (7) Boundaries of any Unit;
- (8) Reallocation of interests in the Common or Limited Common Elements or rights to their use;
- (9) Convertibility of Units into Common Elements or of Common Elements into Units;
- (10) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- (11) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (12) Any action to terminate the legal status of the Condominium after condemnation or substantial destruction;

(B) Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Eligible Mortgage Holders holding mortgages on Units representing at least 67% of the votes in the Association.

(C) Any First Mortgagee who receives a written request to approve additions or amendments to the Condominium Documents which additions or amendments are not material, who does not deliver or mail to the requesting party a negative response within 30 days shall be deemed to have approved such request. Any addition or amendment of the Condominium Documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

(D) The approvals required by this Section shall not apply to amendments that may be executed by Declarant in the exercise of its Development rights.

9.2 Prohibition Against Right of First Refusal. The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

9.3 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor will, upon written request, be entitled to (i) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours, (ii) receive within 90 days following the end of any fiscal year of the Association, an audited financial statement of the Association for the

immediately preceding fiscal year of the Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the members of the Association and be permitted to designate a representative to attend such meetings.

9.4 Prior Written Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or Common Elements, unless at least 2/3 of all First Mortgagees (based upon one vote for each First Mortgage owned) or Unit Owners other than Declarant of the Units have given their prior written approval, the Association shall not:

- (A) By act or omission, seek to abandon or terminate this Declaration or the Condominium;
- (B) Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;
- (C) Partition or subdivide any Unit;
- (D) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this Subsection;
- (E) Use hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

Nothing contained in this Section or any other provision of this Declaration shall be deemed to grant the Association the right to partition any Unit without the consent of the Owners thereof. Any partition of a Unit shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as provided under Arizona law.

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

9.6 Condemnation or Insurance Proceeds. No Unit Owner or other party shall have priority over any rights of any First Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

9.7 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of any Condominium Documents (ii) a termination of the Condominium, or (iii) certain actions of the Association as specified in Sections 9.1 and 9.4 of this Declaration, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that Declarant, without the consent of any Unit Owner or First Mortgagee being required, shall have the right to amend any Condominium Documents in order to comply with (i) the Condominium Act, (ii) the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, or (iii) the rules or requirements of any federal, state or local governmental agency whose approval of the Condominium, the Plat or the Condominium Documents is required by law or requested by Declarant.

ARTICLE 10 GENERAL PROVISIONS

10.0 Enforcement. The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall not be a waiver of such right.

20000481569

- 10.1 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- 10.2 Duration. The covenants and restrictions herein shall run with and bind the Condominium, for a term of 20 years from the date this Declaration is recorded, and thereafter shall be automatically extended for successive periods of 10 years.
- 10.3 Termination of Condominium. The Condominium may be terminated in the manner provided for in the Condominium Act. During the period of Declarant Control, any termination of the Condominium must be approved by the Veterans Administration or the Federal Housing Administration, if appropriate.
- 10.4 Amendment.
- (A) Except in cases of amendments that may be executed by Declarant in the exercise of its Development Rights under this Declaration or under Section 33-1220 of the Condominium Act, by Declarant pursuant to Section 2.6 of this Declaration, by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, by the Association pursuant to Section 2.7 of this Declaration, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, and except to the extent permitted or required by other provisions of the Condominium Act, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least 67% of the votes in the Association are allocated.
- (B) Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.
- (C) An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing.
- (D) During the Period of Declarant Control, Declarant shall have the right to amend the Declaration and the Plat, to comply with (i) the Condominium Act; (ii) the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; (iii) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Plat, the Condominium or the Condominium Documents is required by law or requested by Declarant; (iv) to correct any inconsistency or error in the Declaration or Plat if the amendment does not adversely affect the rights of any Unit Owner; or (v) any amendment not otherwise prohibited by law or this Declaration.
- (E) Any amendment adopted by Unit Owners pursuant to Subsection (A) above shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of each County in which any portion of the Condominium is located. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant shall be executed by Declarant and shall be recorded with the County Recorder of each County in which any portion of the Condominium is located.
- 10.5 Remedies. Remedies provided herein are cumulative not exclusive.
- 10.6 Notices. All notices to be given under this Declaration shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner; (ii) if to the Association, Declarant, or the Architectural Committee, to such address as shall be designated by notice

in writing to the Unit Owners pursuant to this Section. A notice given by mail shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is received or rejected, or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change.

- 10.7 Binding Effect. By acquiring any ownership interest in any portion of the Condominium, each Unit Owner (i) binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations imposed by the Condominium Documents, including amendments; (ii) acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property; (iii) evidences his understanding that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees; and (iv) acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by subsequent and future Unit Owners. Declarant agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.
- 10.8 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.
- 10.9 Paragraph Headings herein are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.
- 10.10 Survival of Liability. Termination of Association membership shall not relieve or release any such former Unit Owner from any liability or obligation incurred during the period of such ownership, or impair rights or remedies which the Association may have against such former Unit Owner.
- 10.11 Construction. In the event of discrepancies, conflicts or inconsistencies between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, the provisions of this Declaration shall prevail.
- 10.12 Joint and Several Liability. In the case of joint ownership of a Unit, the liabilities and obligations of Unit Owners imposed by the Condominium Documents shall be joint and several.
- 10.13 Guests and Tenants. Each Unit Owner shall, to the extent permitted by Arizona law, be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. Non-compliance by such persons shall be deemed non-compliance by the Unit Owner.
- 10.14 Attorneys' Fees. If Declarant, the Association or any Unit Owner employs an attorney to enforce a lien, to collect any amounts due from a Unit Owner, or to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred.
- 10.15 Number of Days. In computing the number of days for purposes of any provision of the Condominium Documents, all calendar days shall be counted; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.
- 10.16 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by Declarant of a name which is the same or deceptively similar to the name of the Association provided the name of such

20000481569

other corporation is distinguished, in some manner, from the name of the Association. Within 5 days after being requested to do so by Declarant, the Association shall sign such letters, documents or other writings as may be required by Declarant, in order for any other entity formed by Declarant to use a name which is the same or deceptively similar to the name of the Association.

10.17 Notice of Violation. The Association shall have the right to record executed and acknowledged written Notice of a violation by any Unit Owner of the Condominium Documents, and shall give the following information: (i) Unit Owner's name; (ii) legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that notice is being recorded pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and any subsequent purchaser of the Unit that there is a violation of the provisions of Condominium Documents. If, after the recordation of such notice, the Association determines that the noticed violation does not exist or has been cured, the Association shall record a notice of compliance, stating the legal description of the Unit against which the Notice of Violation was recorded, recording date, and acknowledgment that such violation has been cured.

10.18 Governing Law. This Declaration shall be controlled and governed by the laws of the State of Arizona.

EFFECTIVE DATE: May 25, 2000

TOWN LAKE CONDOS ELC, an Arizona limited liability company

by: [Signature]
Managing Member

SUBSCRIBED AND SWORN to before me by D.J. Bisbee this 30th day of May, 2000.

[Signature]
Notary Public



Exhibit A

PARCEL NO. 1:

THE NORTH HALF OF THAT PART OF THE NORTH HALF OF TRACT 27, STATE PLAT NO. 9 OF SECTION 16, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN; AND IN BOOK 23 OF MAPS, PAGE 48; AND THEREAFTER AMENDED IN STATE PLAT NO. 12, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN BOOK 69 OF MAPS, PAGE 38;

BEGINNING AT A POINT 400 FEET EAST OF THE NORTHWEST CORNER OF TRACT 27;

THENCE SOUTH 308 FEET PARALLEL WITH THE WEST LINE OF TRACT 27;

THENCE EAST 100 FEET;

THENCE NORTH 308 FEET TO THE NORTH LINE OF TRACT 27;

THENCE WEST 100 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 2:

A PARCEL OF LAND IN THE NORTH HALF OF TRACT 27, STATE PLAT NO. 9 OF SECTION 16, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, IN BOOK 23, OF MAPS, PAGE 48; AND THEREAFTER AMENDED IN STATE PLAT NO. 12, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN BOOK 69 OF MAPS, PAGE 38, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE 67 ½ FEET WEST OF THE NORTHEAST CORNER OF THE NORTH HALF OF TRACT 27;

THENCE WEST 67 ½ FEET, MORE OR LESS, ALONG THE NORTH LINE TO A POINT 500 FEET EAST OF THE NORTHWEST CORNER OF THE NORTH HALF OF TRACT 27;

THENCE SOUTH 100 FEET PARALLEL WITH THE WEST LINE;

THENCE EAST 67 ½ FEET, MORE OR LESS, PARALLEL TO THE NORTH LINE;

THENCE NORTH 100 FEET PARALLEL WITH THE EAST LINE OF THE NORTH HALF OF TRACT 27 TO A POINT OF BEGINNING.