

Not recorded please return to:

and R. Builders, Inc.  
540 E. McKellips  
Mesa, AZ 85204

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PROP RSTR (RS)  
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RECORDED IN OFFICIAL RECORDS  
OF MARICOPA COUNTY, ARIZONA  
DEC 11 1985 9 00  
KEITH POLETIS, County Recorder  
FEE 27% PGS 7 LD.

**DECLARATION OF CONDOMINIUM**

**OF THE  
FOUNTAIN HILLS CONDOMINIUM PROJECT**

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THIS DECLARATION is made and executed this 20 day of November, 1985, by MICHAEL A. DuBOIS and CHRISTOPHER S. KENDALL, (hereinafter collectively referred to as "Declarant").

**R E C I T A L S**

A. Declarant is the record owner of that certain Tract of real property described on Exhibit "A".

B. Various improvements have been or will be made to the Tract so as to enable its use and operation as a Condominium Project. The construction of all of such improvements has been or will be performed in accordance with the information contained in this Declaration and in the Condominium Plat.

C. Declarant desires, by filing this Declaration and the Condominium Plat, to submit said Tract and all improvements now or hereafter constructed thereon to the provisions of the Uniform Condominium Act to be known as the "Fountain Hills Condominium Project".

D. Declarant intends to sell and convey to various persons fee title to the individual Units now or hereafter contained in the Project, together with the undivided ownership interests in the Common Elements appurtenant to such Units, subject to the covenants, conditions and restrictions herein set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby makes the following Declaration:

**ARTICLE I**

The name of this Condominium Project shall be known as "Fountain Hills Condominium Project".

**ARTICLE II**

**DEFINITIONS**

When used in this Declaration any of the following terms shall have the meaning indicated. Any term used herein which is defined by the Uniform Condominium Act shall have the meaning ascribed by said Act.

1. Act shall mean and refer to the Uniform Condominium Act found in A.R.S. § 33-1201 et seq.

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2. Declaration shall mean and refer to this Declaration of Condominium of the "Fountain Hills Condominium Project", as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions hereof.

3. Condominium Plat or Plat shall mean and refer to the Condominium Plat filed herewith entitled "Condominium Plat of the Fountain Hills Condominium Project", executed and acknowledged by Declarant on the 21 day of November, 1985, consisting of 2 sheets, and prepared and certified to by \_\_\_\_\_ as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions hereof and the same is attached hereto as Exhibit "A".

4. Unit Owners Association or Association shall mean and refer to the Fountain Hills Unit Owners Association, an Arizona non-profit corporation, as successors and assigns, to be organized as provided herein.

5. Common Elements shall mean and refer to all common elements, except all Limited Common Elements.

6. Limited Common Elements shall mean and refer to those common elements designated in this Declaration or in the Condominium Plat as reserved for the use of a certain Unit to the exclusion of all other Units.

7. Unit shall mean and refer to one of the living units which is designated as a Unit on the Condominium Plat in Exhibit "A" attached hereto (and incorporated herein by reference). Unless a wall on the perimeter of a Unit separates and is common to two or more Units, such perimeter wall shall constitute a part of the Common Elements. A wall on the perimeter of a Unit which separates such Unit from, and is common to, another Unit shall, from and including the surface of such wall to its center, constitute a part of the Unit to which it relates. A Unit shall include any walls, partitions, floors, ceilings, and stairs which are wholly contained within its vertical and horizontal perimeters and the surfaces of any floors, ceilings, walls, or coverings which bound it. A Unit shall not include pipes, wires, conduits, or other utility lines running through it which are utilized for or which serve more than one Unit and, notwithstanding anything to the contrary contained herein, shall not include any load-bearing walls or floors comprising a part of the Building in which the Unit is contained.

8. Unit Number shall mean and refer to the number, letter, or combination thereof which designates a Unit in the attached Exhibit "A" and on the Plat.

9. Condominium Unit shall mean, refer to, and include a Unit together with its appurtenant undivided ownership interest in the Common Elements (expressed as a fraction of the entire ownership in the Common Elements), as set forth in Exhibit "A" attached hereto and incorporated herein by reference herein.

10. Building shall mean and refer to a structure containing or to contain Units.

11. Common Expenses shall mean and refer to all sums which are expended on behalf of all the Unit Owners and all sums which are required by the Unit Owners Association to perform or exercise its functions, duties, or rights under the Act, this Declaration, any Management Agreement which may be entered into for operation of the Project, and such rules and regulations as the Board of Directors may from time to time make and adopt. Common Expenses shall include, but not be limited to, all costs and charges for water and sewer to the Units and to the Common Elements, insurance, ground maintenance, exterior building maintenance, garbage removal, management costs or fees.

12. Mortgage shall mean and include both a first mortgage on any Condominium Unit and a first deed of trust on any Condominium Unit.

13. Mortgagee shall mean and include both a mortgagee under a first mortgage on any Condominium Unit and a beneficiary under a first deed of trust on any Condominium Unit.

14. Declarant shall mean and refer to MICHAEL A. DuBOIS and CHRISTOPHER F. KENDALL, and/or any successor to said Declarants which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Project as did its predecessor.

15. Fractional Interest shall mean and refer to the fractional interest of each Unit Owner in the Common Elements of the Project at any point in time.

ARTICLE III

SUBMISSION

This is hereby submitted to the provisions of the Act, property described on Exhibit "B" and also shown on the Plat of Exhibit "A" which is located wholly within Maricopa County, State of Arizona:

See Exhibit "B" attached hereto and incorporated herein by this reference.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights of way; all easements, rights of way or record; any easements, rights of way, encroachments, or discrepancies shown on or revealed by the Condominium Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above described Tract at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above described Tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declarant):

- (i) To construct and complete all of the improvements described in this Declaration or in the Condominium Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith;
- (ii) To improve portions of the Tract with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Unit Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate. If, pursuant to the foregoing reservations,

the above described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire ten years after the date of this Declaration.

ARTICLE VI

STATEMENT OF INTENTION AND PURPOSE

Declarant hereby declares that the Project and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner, subject to provisions of this Declaration, each and all of the provisions are hereby declared to be in furtherance of the provisions are hereby declared to be furtherance of the general plan and scheme of condominium ownership referred to above, and are further declared to be for the benefit of each Unit Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land, or as equitable servitude, as the case may be, and shall constitute benefits and burdens to Declarant, and if assigned and to all persons hereafter acquiring or owning any interest in the Project, however, such interest may be obtained.

ARTICLE V

COVENANTS, CONDITIONS AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions, and restrictions:

1. Description of Improvement. The improvements included in the Project are now or will be located upon the real property described in Exhibit "A". The significant improvements contained in the Project include twelve (12) Condominium Units. The swimming pool and appurtenances thereto, concrete sidewalks or walkways, and landscaping shall be Common Elements. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Condominium Plat. The Project also contains or will contain other improvements of a less significant nature, such as outdoor lighting and landscaping, all of which are to be of the type and in the location reasonably determined to be appropriate by Declarant.

2. Description and Legal Status of Units. The Condominium Plat shows the Unit Number of each Unit, its location, dimensions from which its size may be determined, and the Common Elements to which it has immediate access. Each Unit

shall be capable of being separately owned, encumbered, and conveyed.

3. Computation of Undivided Interests. The fraction of undivided ownership interest in the Common Elements which, at any point in time, is appurtenant to a Unit shall be equal to the integer one (1) divided by 12.

4. Limited Common Elements. Limited Common Elements shall consist of one parking space, one patio, one balcony and one storage space for each Unit, all as shown on the Condominium Plat. The patio adjoining a Unit shall be used in connection with such Unit to the exclusion of the use thereof by the other owners of Common Elements except by invitation. One parking space will be identified by the same number by which the Unit is identified is a Limited Common Element.

5. Title. Title to a condominium Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Arizona, including, but without limitation, joint tenancy or tenancy in common.

6. Inseparability. No part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be separated from any other part thereof during the period of condominium ownership prescribed herein, so that each Unit and the undivided interest in the Common Elements appurtenant to such Unit shall always be conveyed, devised, encumbered and otherwise affected only as complete Condominium Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Condominium Unit or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Condominium Unit, together with all appurtenant right created by law or by this Declaration.

7. Partition Not Permitted. The Common Elements shall be owned in common by all the Owners of Condominium Units, and no Owner may bring any action for partition thereof.

8. Owner's Rights to Common Elements. Subject to the limitations contained in this Declaration, any Unit Owner shall have the nonexclusive right to use and enjoy the Common Elements and shall have the exclusive right to use and enjoy the Limited Common Elements designated herein for exclusive use by such Unit Owner.

9. Ad Valorem Taxation. All taxes, assessments and other charges of the state or any political subdivision of any special improvement district or any other taxing agent or assessing authority shall be assessed against and collected on each Condominium Unit, each of which shall be carried on the tax

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books as a separate and distinct parcel for the purpose, and not the Buildings or the Property as a whole. For the purpose of such assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the percentage interest in the Common Elements appurtenant to such Units. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

10. Owner's Rights With Respect to Interiors. Each Owner shall have the exclusive right at his sole cost and expense to maintain, repair, paint, repaint, tile, wax, paper or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his Unit, all walls, ceilings, floors, doors, and windows within such boundaries.

11. Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the common Elements, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building to be constructed on the Property, by error in the Condominium Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

12. Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Unit Owners of other Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repair therein necessary to prevent damage to the Common Elements to another Unit or Units. The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common elements or as a result of emergency repairs within another Unit at the instance of the Association or of Owners shall be an expenses of all the Owners; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored substantially to the

same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Sections 29 through 35 of this Article V.

13. Owner's Right to Ingress and Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Elements necessary for access to his Unit, and to the Limited Common elements designated for use in connection with his Unit, and each Owner shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Condominium Unit.

14. Association's Right to Use of Common Elements. The Association shall have a nonexclusive easement to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

15. Easement for Utility Services. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephone, electricity and other utility services.

16. Easements Deemed Created. All conveyances of Condominium Units hereinafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 11, 12, and 13 above even though no specific reference to such easements or to those Sections appears in any such conveyance.

17. Description of a Condominium Unit. Every instrument affecting titled to a Condominium Unit may describe that Condominium Unit by a number shown on the Condominium Plat with the appropriate reference to the Condominium Plat and to this Declaration, as each shall appear on the records of the County Recorder, Maricopa County, Arizona. Such description will be construed to describe the Unit, together with the appurtenant undivided fractional interest in the Common Elements, and to incorporate all the rights incident to ownership of a Condominium Unit and all the limitations on such ownership as described in this Declaration, including all appurtenant and undivided interests.

18. Mechanic's Lien Rights. No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of an Unit Owner or is agent or sub-mechanic's lien against the Unit of any other Unit Owner not expressly consenting to or requesting the same or against any interest in the Common Elements except as to the undivided

interest therein appurtenant to the Unit of the Unit Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Unit Owner shall indemnify and hold harmless each of the other Unit Owners from and against liability or loss arising from the claim of any lien against the Condominium Unit, or any part thereof, of any other Unit Owner for labor performed or for materials furnished in work on the first Owner's Unit. At the written request of any Unit Owner the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such liens, including all costs incidental thereto, and obtaining a discharge of the lien. Such collection shall be made by a special assessment pursuant to Section 29 through 35 of this Article V.

19. The Association; Membership. Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium Unit is held by more than one person, the membership related to that Condominium Unit shall be shared by all such person in the same fractional interests and by the same type of tenancy in which the title to the Condominium Unit is held. An Owner shall be entitled to one membership for each Condominium Unit owned by him. Each such membership shall be appurtenant to the Condominium Unit upon which it is based and shall be transferred automatically by conveyance of that Condominium Unit. No person or entity other than an Owner may be a member of the Association, and the Articles of Incorporation or By-Laws of the Association shall so state and shall in addition state that the membership in the Association may not be transferred except in connection with the transfer of a Condominium Unit; provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium Unit.

20. Board of Directors. The Board of Directors of the Association shall consist of three (3) members elected by the Owners, provided, however, that until three-fourths (3/4) of the Condominium Units in the Project (including any expansion thereof as provided herein) have been conveyed to purchasers, Declarant may select two (2) members of the Board. In addition to individual Owners, partners of partnerships and officers of corporations owning Units shall be eligible for membership on the Board. No amendment of this Section 21 may be made without the written consent of Declarant so long as Declarant owns three (3) or more unsold Units in the Project.

21. Votes. Each Unit shall be entitled to one vote. Except that in voting for members of the Board of Directors cumulative voting shall prevail. Each Unit may have votes equalling the number of Directors being elected and all votes may be cast for one Director or the votes may be split as the owner shall desire.

22. Transfer. Except as otherwise expressly stated herein, any of the rights, interests and obligations of the Association set forth herein and reserved herein may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any of the obligations set forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owners as set forth herein.

23. Amplification. The provisions of this Article may be amplified by the Articles of Incorporation of the Association and by the By-Laws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Unit Owners set forth herein.

24. Rights and Duties of the Association. The Association, subject to the rights of the Unit Owners set forth herein, shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair; provided, however that each Unit Owner of a Condominium Unit shall keep the patio and balcony designated for use in connection with his Unit, in a good, clean, sanitary and attractive condition, and shall maintain and repair any heating and air conditioning equipment which are designated for use in connection with his Unit. The Association shall be responsible for the maintenance and repair of exterior surfaces of the Buildings, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, the maintenance and repair of other Common Elements, including utility lines, and all other improvements or material located within or used in connection with the Common Elements. The specification of duties of the Association with respect to particular Common Elements shall not be construed to limit its duties with respect to other Common Elements, as set forth in the first sentence in this Section. The cost of such management, operation, maintenance and repair of the Association shall be borne as provided in Sections 29 through 34 of this Article V.

25. Miscellaneous Services. The Association may obtain any pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement

of this Declaration. The Association may arrange with others to furnish lighting, water, trash collection, grounds maintenance, sewer service, and other common services to each Unit. The cost of such services shall be borne as provided in Sections 28 through 34 of this Article V.

26. Personal Property for Common Use. The Association may acquire and hold for use and benefit of all of the Unit Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Unit Owners in the same proportion as their respective interests in the Common Elements. Such interest shall not be transferable except with the transfer of a Condominium Unit. A transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Unit Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Unit Owners. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium Unit.

27. Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units and of the Common Elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take judicial action against any Unit Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law. The rules and regulations promulgated by the Board may include, but shall not be limited to:

- (a) The right of the Association to limit the number of guests or invitees of Members;
- (b) The right of the Association to reasonably suspend the voting rights and the right to use of all or any portion of the recreation facilities by an Owner for any period during which an assessment against such Owner's Unit remains unpaid following fifteen (15) days written notice thereof to such delinquent Owner in accordance with the Condominium constituent documents;
- (c) Any Owner may delegate, in accordance with the Condominium documents, his right of enjoyment to the Common Elements to members of his family, his tenants, or contract

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purchasers who reside in such Owner's Unit.

- (d) The placement and location of all radio, television and other antennas of every kind or nature upon the Condominium property shall be subject to the prior approval of the Association.
- (e) No mobile home, boat, trailer of any kind, commercial-use truck, truck camper, tent or similar structure shall be kept, placed, maintained, constructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired upon the condominium property without the prior approval of the Association; provided, however, that such approval shall not be unreasonably withheld. No motor vehicle, boat, trailer, recreational vehicle, camper, motorcycle or other similar vehicle shall be parked or stored on any part of the Condominium property except as assigned.
- (f) Parking for each Unit shall be in the parking spaces designated for each Unit by the Association. Parking rights shall not be severed from the Project.

28. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

29. Assessments. Declarant, for each Condominium Unit owned by it within the Project, and for and as the Owner of the Project and every part thereof, hereby covenants, and each Unit Owner of any Condominium Unit by the acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association annual assessments made by the Association for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Declaration.

30. Amount of Total Annual Assessments. The total annual assessment against all Condominium Units shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements or furnishing utility services, which estimates may include, among other things, expenses of management; grounds maintenance, taxes and special assessments, until the Condominium Units are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; common lighting and heating; water charges; trash collection; sewer service charges; repairs and maintenance; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

31. Apportionment of Annual Assessments. Expenses attributable to the Common Elements and to the Project as a whole shall be apportioned among all Unit Owners in proportion to their respective interests.

32. Notice of Annual Assessments and Time for Payment Thereof. Annual assessments shall be made on a calendar year basis. The Association shall give written notice to each Owner as to the amount of the annual assessment with respect to this Condominium Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Such assessment shall be due and payable in monthly installments on the 1st day of each and every month of each year; provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Association as the date of commencement of the Project. Such assessment shall be due and payable within thirty (30) days after written notice of the amount thereof shall have been given to the respective Owner of a Condominium Unit. Each monthly assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Unit Owner of any Condominium Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall have been given.

33. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this Article, the Association may levy in any assessment year a special assessment, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the

cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof which shall make specific reference to this Article. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interest in the Common Elements. (Declarant's interest in Common Elements shall be determined on the same basis set forth in Section 31. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Unit Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

34. Lien for Assessments. All sums assessed to any Condominium Unit pursuant to this Article, together with interest thereon as provided herein, shall be secured by a lien on such Condominium Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Condominium Unit, except only for : (a) valid tax and special assessment liens on the Condominium Unit in favor of any governmental assessing authority; and (b) a lien for all sums unpaid on a first Mortgage, duly recorded in the office of the County Recorder, Maricopa County, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens on any Condominium Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such a notice shall be signed by the Association and may be recorded in the office of the County Recorder, Maricopa County. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Arizona. In any such foreclosure, the Unit Owner shall be required to pay the costs

and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The owner shall also be required to pay to the Association any assessments against the Condominium Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Unit Owner thereof.

A release of notice of lien shall be executed by the Association and recorded in the office of the County Recorder, Maricopa County, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Condominium Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Association shall report to any encumbrancer of a Condominium Unit any unpaid assessments remaining unpaid for longer than sixty (60) days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance.

35. Personal Obligation of Owner. The amount of any annual or special assessment against any Condominium Unit shall be the personal obligation of the Unit Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Unit Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Condominium Unit.

36. Statement of Account. Upon payment of a reasonable fee not to exceed twenty-five dollars (\$25.00) and upon written request of any Unit Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Condominium Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Condominium Unit; the amount of the current yearly assessment and the date that such assessment becomes or became due; credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments which became due prior to the date

of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser make such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the twenty (20) day period, and the purchaser subsequently acquires the Condominium Unit.

37. Restricted to Residential Use. Each Condominium Unit shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. Lease of a Condominium Unit for residential purposes shall be permitted, provided, however, that (i) no Owner may lease his Unit for transient or hotel purposes, (ii) no Owner may lease less than his entire Unit, (iii) any lease agreement shall provide that the same shall be subject in all respects to the terms of the Declaration and By-Laws and that any failure to comply therewith shall be a default under the lease, and (iv) all leases must be in writing. This Section 37 may not be amended without the written approval of all Mortgagees. Nothing contained in this Section shall prohibit Declarant from using one of the Units as a sales or rental office on the premises for a period of not to exceed two (2) years from the date of this Declaration.

38. Use of Common Elements. There shall be no obstruction of the Common Elements by the Unit Owners and/or their guests without the prior written consent of the Association. The Association may by rules and regulations prohibit or limit the use of the Common Elements as may be reasonably necessary for the purpose of protecting the interests of all the Owners or protecting the Units or the Common Elements. Nothing shall be kept or stored on any part of the Common Elements without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Elements except upon the prior written consent of the Association. No Unit Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of a Building without the prior written approval of the Association.

39. Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Elements of any part thereof shall be

committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees. No noxious destructive or offensive activity shall be carried on in any Unit or in the Common Elements or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other owner or to any person at any time lawfully residing in the Project.

40. Animals. No animals, fish, fowl, poultry, livestock, or birds or any kind shall be raised, bred or kept on the Condominium property, except that commonly accepted household pets including domestic dogs, cats, fish and birds in cages may be kept, provided that such pets are kept solely for domestic purposes and are not kept, bred or maintained for any commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be visible from another Unit or street. All pets, at all times, must be carried or on a leash while in any part of the Common Elements. Pets are not permitted on the landscaped areas of the Common Elements. The Owner of each pet is responsible for cleaning any dirt or soilage occasioned by the pet on the Common Elements as well as damage to the property. When such conditions are created, the Owner of such Unit shall be assessed an amount not less than Twenty Dollars (\$20.00), as determined by the Association, for clean-up expenses by the Association and may seek other satisfaction as permitted by law and this Declaration.

41. Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Units and of the Common Elements as adopted from time to time by the Association.

42. Maintenance of Interiors. Each Owner shall keep the interior of his Unit, including, without limitation, interior walls, windows, glass, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean, sanitary and attractive condition, and good state of repair at all times.

43. Structural Alterations. No structural alterations to any Unit shall be made, and no plumbing, electrical or similar work within the Common Elements shall be done, by any Owner without the prior written consent of the Association.

44. Signs. No signs whatsoever shall be erected or maintained in the Common Areas without the prior written consent of the Committee, except: (i) Such signs as may be required by legal proceedings, and (ii) Such signs as Declarant may erect or maintain incident to sale of Units.

45. Reservation of Declarant: Notwithstanding anything contained herein to the contrary, until the Declarant has completed and sold all of the Units, neither the Unit Owners who have purchased Units from the Declarant nor the Association shall interfere with the completion of improvements and sale of the remaining Units. The Declarant reserves the right to use any Units owned by Declarant as models, management offices or sales offices until such time as Declarant conveys title thereto to Unit Owners. Declarant reserves the right to relocate the same from time to time within the Project; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. Declarant further reserves the right to maintain on the Project such advertising signs, which may be placed in any location on the Project and may be relocated or removed, all at the sole discretion of Declarant.

46. Hazard Insurance. The Association shall at all times maintain in force hazard insurance meeting the following requirements:

- (i) A multi-peril type policy covering the entire Project (both Units and Common Areas) shall be maintained. As a minimum, such policy shall provide fire and extended coverage insurance (as well as all other coverage of the kinds and in the amounts commonly required by private institutional Mortgage investors for projects similar to the Project in connection, location, and use) on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value.
- (ii) The name of the insured under the policy required to be maintained by the foregoing items (i) and (ii) shall be in the form and substance essentially as follows: "The Fountain Hills Condominium Association for the use and benefit of the individual Owners". (Said Owners shall be designated by name, if required.)
- (iii) Each such policy shall include the standard mortgagee clause commonly accepted by private institutional Mortgage investors in the area in which the Project is located, which clause either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of

Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of Mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Mortgagee named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

47. Fidelity Insurance. The Association shall at all time maintain in force fidelity coverage against dishonest acts on the part of managers, directors, officers, employees, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall name the Association. The fidelity bond or insurance shall name the Association as the insured and shall be written in an amount sufficient to afford the protection reasonably necessary but in no event less than one and one-half (1 1/2) times the Project's estimated annual operating expenses and reserves. An appropriate endorsement to the policy shall be secured to cover persons who serve without compensation if the policy would not otherwise cover volunteers.

48. Public Liability and Property Damage. The Association of Unit Owners shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Elements and all public ways located within the Project. Such insurance shall include a "Severability of Interest Endorsement" which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners or the Association. The scope of coverage shall be such as to include all coverage in the kinds and amounts required by private institutional Mortgage investors for projects similar in construction, location and use. The coverage for personal injury and/or property damage shall be for at least One Million Dollars (\$1,000,000.00) per occurrence.

49. Workmen's Compensation and Employer's Liability Insurance. The Association shall purchase workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

50. General Requirements Concerning Insurance. Each insurance policy maintained pursuant to the foregoing Sections 46, 47, 48, and 49 shall be written by an insurance carrier which is licensed to transact business in the State of Arizona. No such policy shall be maintained where: (i) under the terms of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a Mortgagee or the Association; (ii) by the terms of the car-

rier's charter, By-Laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds. The provisions of this Section 50 and of the foregoing Sections 46, 47, 48, and 49, shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

51. Owner's Own Insurance. Notwithstanding the foregoing provisions, each Owner may obtain insurance at his own expense providing coverage upon his Condominium Unit, his personal property, for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to above Sections concerning insurance. All such insurance of the Owner's Condominium Unit shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents, guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver of rights of subrogation.

52. Affects Title. Title to each Condominium Unit is hereby made subject to the terms and conditions hereof, which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires his Condominium Unit.

53. Association as Agent. All of the unit Owners irrevocably constitute and appoint the Association their true and lawful agent in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney in fact herein provided.

54. General Authority of Association. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract deed, or other instrument with respect to the interest of a Condominium Unit Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same condition in which it existed prior to damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall available

to the Association for the purpose of repair or reconstruction unless the Owners and all first Mortgagees unanimously agree not to rebuild in accordance with the provisions set forth herein-after.

In the event any Mortgagee should not agree not to rebuild, the Association shall have the option to purchase such Mortgage by payment in full of the amount secured thereby if the Owners are in unanimous agreement not to rebuild. The Association shall obtain the funds for such purpose by special assessments under this Article of this Declaration.

55. Estimate of Costs. As soon as possible after an event causing damage to, or destruction of, any part of the Project, the Association shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

56. Repair and Reconstruction. As soon as practicable after receiving these estimates the Association shall diligently pursue to completion the repair or reconstruction of the part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than six percent (6%) from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the building shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared herein shall and do hereby apply under the provisions of this Section.

57. Funds for Reconstruction. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Section 33 hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in said Section 33. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

58. Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the

amounts received from the assessments provided for in Section 56 constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made pursuant to the assessments the Association made under Section 33 of this Article.

59. Decision Not to Rebuild. If all Owners and all holders of first Mortgages on Condominium Units agree not to rebuild, as provided herein, the Project shall be sold and the proceeds distributed as hereinafter provided. In such instance the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the Project shall be sold by the Association as attorney in fact for all of the Owners free and clear of the provisions contained in this Declaration, the Condominium Plat and the By-Laws of the Association. The sale proceeds shall be apportioned among the Owners in proportion to the respective Percentage Interest, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Association, and shall be further identified by the Condominium Unit designated and the name of the Owner. From each separate account the Association, as attorney in fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to encumbrancers (including the Association) in the order of the priority of their liens and the balance remaining to each respective Owners.

## ARTICLE VI

### RIGHTS OF MORTGAGEES

From and after the time a Mortgagee makes written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that the Owner of the Condominium Unit encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

The lien or claim against a Condominium Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration or the Act shall be subordinate to the Mortgage affecting such Condominium Unit, and the Mortgagee thereunder which comes into possession or which obtains title to the Condominium Unit shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of

the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure (except for claims for a pro-rata share of such prior assessments or charges resulting from a pro-rata reallocation thereof to all Condominium Units including the condominium Unit in which the Mortgagee is interested). No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not to burden a Mortgagee which comes into possession of which obtains title shall be collected or enforced by the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Condominium Unit affected or previously affected by the Mortgage concerned.

Unless all of the Mortgagees of the individual Condominium Units have given their prior written approval, the Association shall not be entitled, by act, omission or otherwise:

- (a) To abandon or terminate the Condominium Project or to abandon or terminate the arrangement which is established by this Declarant and the Condominium Plat;
- (b) To partition or subdivide any Unit;
- (c) To abandon, partition, subdivide, encumber, sell, or transfer all or any part of the Common Elements (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Elements).
- (d) To use hazard insurance proceeds resulting from damage to any part of the Condominium Project (whether to Units or to the Common Elements) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided in Article V in the event of Casualty Damage or Destruction;
- (e) To change the pro-rata interests or obligations of any Unit which apply for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro-rata share of ownership of each Unit in the Common Elements.
- (f) To make any material amendment to the Declaration or to the By-Laws of the Association;
- (g) To effectuate any decision of the Association to terminate professional management and assume self-management of the Project.

The Association shall not: (i) alter the provisions of Sections 46, 47, 48, 49, 50, and 51 of Article V in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby; or (ii) fail to maintain the insurance coverage described in said Sections.

Any institutional holder of a first Mortgage on a Unit in the Project shall, upon request be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association, and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

The Association shall establish an adequate reserve to recover the costs of reasonably predictable and if necessary major repairs and replacements of the Common Elements and shall cause such reserves to be funded by regular monthly or other periodic assessments against the Units rather than by special assessments.

Any agreement for professional management of the Condominium Project which may be entered into by the Association, and any contract (to which the Association is a party) shall call for a term not exceeding one (1) year renewable by agreement of the parties for successive one (1) year periods and shall provide that either party, with or without cause and without payment of any termination fee, may terminate same upon not in excess of thirty (30) days written notice.

From and after the time a Mortgagee makes written request to the Association, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (i) the Common elements involving an amount in excess of or reasonably estimated to be in excess of Ten Thousand Dollars (\$10,000.00); or (ii) any Unit encumbered by the Mortgage held by such Mortgagee, if the amount involved in such damage, loss, or taking is in excess of, or reasonably estimated to be in excess of One Thousand Dollars (\$1,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss, taking, or anticipated condemnation.

No provision of this Declaration gives or may give a Unit Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution of Unit Owners of insurance proceeds or condemnation awards for loss to or taking of Units and/or the Common elements.

Any Mortgagee which obtains title to the Unit encumbered by its Mortgage pursuant to the remedies provided for in said Mortgage, pursuant to foreclosure of said Mortgage, pursuant to exercise of a power of sale available under said Mortgage, or pursuant to deed or assignment in lieu of foreclosure, shall be exempt from and shall in no way be governed by or subject to any "right of first refusal".

In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

No amendment to this Section which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the Mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this Section shall be accomplished by an instrument executed by the Association and filed for record in the office of the County Recorder, Maricopa County, Arizona. In any such instrument an officer of the Association shall certify that any prior written approval of Mortgagees required by this Section as a condition to amendment has been obtained.

## ARTICLE VII

### AMENDMENT

Except as provided in, and/or subject to the terms of items (a) through (b) below, the vote of a least 2/3 of the Units shall be required to amend this Declaration or the Condominium Plat. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument the Association shall certify that the vote required by this Article for amendment has occurred. the foregoing right of amendment shall, however, be subject to the following:

- (a) Any amendment to the foregoing Section VI ("Rights to Mortgagees") shall be subject to the matters treated by the last Paragraph of said Article.
- (b) Until Declarant has conveyed all but three (3) Units in the Project, no amendment to the Condominium Plat or to any provision of this Declaration which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in

its capacity as Declarant) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

ARTICLE VIII

GENERAL PROVISIONS

1. Compliance. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Act, the terms of this Declaration, the By-Laws, and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association on behalf of Unit Owners, or, in a proper case, by aggrieved Unit Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

2. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration, or the Rights of Declarant hereunder respecting any given portion of the Additional Land, may be assigned or transferred either by operation or law or through a voluntary conveyance, transfer, or assignment.

3. Interpretation. To the extent the provisions of the Act are consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

4. Effective Date. This Declaration, any amendment or supplement thereto, and any amendment or supplement to the Condominium Plat shall take effect upon its being recorded in the office of the County Recorder, Maricopa County, Arizona.

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EXECUTED this 20 day of November, 1985.

"Declarant"

Michael A. Dubois  
MICHAEL A. DUBOIS

Christopher F. Kendall  
CHRISTOPHER F. KENDALL

STATE OF ARIZONA     )  
                                  ) ss:  
COUNTY OF MARICOPA )

On this 20<sup>th</sup> day of November, 1985, before me the undersigned Notary personally appeared MICHAEL A. DUBOIS and CHRISTOPHER F. KENDALL, who executed the foregoing instrument and acknowledged that they executed the same for the purposes therein stated.

Thomas A. Palmer  
Notary Public

My Commission Expires:  
My Commission Expires Feb. 14, 1987.

