

SECOND AMENDMENT TO DECLARATION OF HORIZONTAL PROPERTY  
REGIME AND COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

LAKE PARK VILLAGE 1

This SECOND AMENDMENT to Declaration is made as of the date hereinafter set forth by LAKE PARK DEVELOPMENT an Arizona Joint Venture, comprised of COSMIC PROJECTS, INC., an Arizona corporation, METEOR DEVELOPMENTS, INC., an Oklahoma corporation authorized to do business in Arizona, ALL INVESTMENTS, LTD., a Canadian Corporation, ELKWATER APARTMENTS, LTD., a Canadian corporation and CASTLE REALTY, LTD., a Canadian Corporation, hereinafter referred to as the "Declarant" as present owner of the real property described in that certain Declaration of Covenants, Conditions and Restrictions dated December 21, 1973, and recorded at Docket 10456, Page 1499, Office of the Maricopa County Recorder, which Declaration was amended in that certain Amendment to the Declaration of Covenants, Conditions and Restrictions dated January 31, 1974 and recorded at Docket 10500, Page 782, Office of the Maricopa County Recorder. Declarant, as the sole owner of the real property described in the above referenced Declaration and Amendment thereto, pursuant to the provisions of A.R.S. 533-556, does hereby withdraw, revoke and nullify the said "Declaration and Amendment" thereto, which said Declaration and Amendment thereto shall be null and void and shall be deemed withdrawn and replaced in their entirety by this second Amendment to Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions:

WITNESSETH

WHEREAS, Declarant is the owner of the following described real property situated in the City of Mesa, County of Maricopa, State of Arizona: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and Tract B of LAKE PARK

DEVELOPMENT UNIT ONE Second Amended, as recorded in Book 213, Page 10, Office of the Maricopa County Recorder.

Hereinafter referred to as the "Parcel"; and

WHEREAS, Declarant desires to submit and subject the Parcel, together with all buildings, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging

or in any way pertaining thereto (hereinafter sometimes called "Condominium Property" or "Property") to a horizontal property regime pursuant to Section 33-551 through 33-561, Arizona Revised Statutes, as same may be amended: and

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

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

WHEREAS, Declarant desires to revoke in its entirety the Declaration of Covenants, Conditions and Restrictions and Amendment thereto, which Declaration and Amendment thereto were recorded upon the parcel by a prior owner and developer of said property, and the Declarant hereunder desires to establish a Horizontal Property Regime pursuant to 533-551 through 533-561, Arizona Revised Statutes and submit the property or parcel to certain Covenants, Conditions and Restrictions so that secondary mortgage financing will be available to apartment units within the parcel through the Federal Home Loan Mortgage Corporation;

NOW, THEREFORE, Declarant, as present owner of all the real property described above, and for the purposes above set forth, hereby amends said Declaration of Covenants, Conditions and Restrictions and Amendment thereto and declares as follows:

1.01 Name

The name of this Horizontal Property Regime shall be LAKE PARK VILLAGE I.

2. Definitions

As used herein, unless the context otherwise requires:

2.01 "Act" means Section 33-5 51 through Section 33-361, Arizona Revised Statutes, as the same may be amended.

2.02 "Apartment" means a part of the property consisting of one or more rooms (including the balcony, patio, storage areas, garages and areas of exclusive use pertinent to each apartment) designed by number and letter as shown on the plat. Apartments are designated by one of the following numbers:

- 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J,
- 2A, 2B, 2C, 2D, 2E, 2F,
- 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J
- 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J
- 5A, 5B, 5C, 5D, 5E, 5F,
- 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H,
- 7A, 7B, 7C, 7D, 7E, 7F,
- 8A, 8B, 8C, 8D, 8E, 8F,
- 9A, 9B, 9c, 9D, 9E, 9F, 9G, 9H, 9I, 9J,
- 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10G, 10H,
- 11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J,
- 12A, 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12I, 12J,12K, 12L,
- 13A, 13B, 13C, 13D, 13E, 13F,
- 14A, 14B, 14C, 14D, 14E, 14F,
- 15A, 15B, 15C, 15D, 15E, 15F,
- 16A, 16B, 16C, 16D, 16E, 16F.

Each apartment is located in one of the buildings shown on the plat and is composed of and includes the space enclosed and bounded by the interior finished surface of the floor, ceiling and perimeter walls thereof; provided, however, no structural parts of the building in which each apartment is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility, water and sewer lines up to the exterior wall of an apartment and forming part of any system serving one or more other apartments or the common areas shall be deemed to be part of an apartment.

2.03 "Apartment Unit" means an Apartment together with the balcony, patio, storage areas and garage, if any, appurtenant to ownership of that Apartment, as well as any areas of exclusive use assigned to or associated with the Apartment, and an Apartment Unit shall be referred to by the same means as an Apartment as described in paragraph 2.02.

All structural parts of the Building in which each Apartment Unit is located, and all pipes, wires, conduits, ducts, flues shafts, or public utility, water or sewer lines up to the exterior wall of such Apartment Unit and forming part of any system serving one or more other Apartment Units or the Common Elements shall be deemed to be part of the Common Elements.

2.04 "Articles of Incorporation" or "Articles" shall mean and refer to the articles of Incorporation of LAKE PARK VILLAGE I Homeowner's Association, which will be a non-profit corporation whose members will be comprised of the Owners of all of the Units.

2.05 "Association" means LAKE PARK VILLAGE I Homeowner's Association, an Arizona non-profit corporation, the members of which shall be the Owners of all of the Units.

2.06 "Board" or "Board of Directors" means the governing body of the Association as more particularly set forth in paragraph 12.02 hereof.

2.07 "Building" means either one (or both if the context requires) of the principal structures shown on the plat and erected upon the parcel described on page 1 of this Declaration. The Buildings designated on the plat contain the following Apartments:

<u>BUILDINGS</u>	<u>APARTMENTS</u>
1	1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J,
2	2A, 2B, 2C, 2D, 2E, 2F,
3	3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J
4	4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J
5	5A, 5B, 5C, 5D, 5E, 5F,
6	6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H,
7	7A, 7B, 7C, 7D, 7E, 7F,
8	8A, 8B, 8C, 8D, 8E, 8F,
9	9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9I, 9J,
10	10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 10I,
11	11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J,
12	12A, 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12I, 12J, 12K, 12L,
13	13A, 13B, 13C, 13D, 13E, 13F,
14	14A, 14B, 14C, 14D, 14E, 14F,
15	15A, 15B, 15C, 15D, 15E, 15F,
16	16A, 16B, 16C, 16D, 16E, 16F.

The Buildings are more particularly described in paragraph 4.02 hereof.

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

2.09 "Common Expenses" means the items more particularly described in paragraph 13.01 below.

2.10 "Common Elements" mean the "general common elements" as that term is defined in Section 33-551, Arizona Revised Statutes, and includes the parcel and other portions of the Property, except the Apartments, the balconies, the patios, and the garages. Common Elements are more particularly described in paragraph 4.05 below.

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

2.12 "Condominium Project" means the property and each and every component thereof, including the Apartment Units and the Common Elements.

2.13 "Declarant" , means LAKE PARK DEVELOPMENT, an Arizona Joint Venture, comprised of COSMIC PROJECTS, INC., an Arizona Corporation, METEOR DEVELOPMENTS, INC., an Oklahoma corporation authorized to do business in Arizona, ALL INVESTMENTS, LTD., a Canadian corporation, ELKWATER APARTMENTS, LTD., a Canadian corporation and CASTLE REALTY, LTD., a Canadian corporation; or LAKE PARK DEVELOPMENT'S successors and assigns (if specifically so designated by Declarant).

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

2.15 "Declaration" means this instrument by which the Property is submitted to a Horizontal Property Regime as such Declaration may from time to time be amended.

2.16 "Majority" or "Majority Owners" means the owners of more than fifty percent (50%) of the undivided ownership of the Common Elements. Any specified percentage of the Owners means that percentage of undivided ownership of the Common Elements.

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

2.18 "Owner or "Co-owner" means the person or persons whose estates or interests individually or collectively aggregates fee simple ownership of a Unit, and the person or

persons who are purchaser under a valid and outstanding recorded agreement of sale with respect to a Unit, but shall not include a person whose interest is limited to security for a loan unless the context otherwise requires. In the case of Units, fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et. seq., legal title for purposes of this definition shall be deemed to be in the trustor.

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

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

2.21 "Plat" means the plat of survey of the Property and of all Units submitted to this Horizontal Property Regime, which said Plat is recorded in Book 213, of Maps, at Page 10, on the official records of the County Recorder of Maricopa County, Arizona.

2.22 "Property" or "Condominium Property" shall have the same meaning as set forth in Section 33-551, Arizona Revised Statutes, as related to the development which is the subject matter of this Declaration, together with all fixtures and equipment intended for the mutual use, benefit and enjoyment of the Unit Owners and as set forth on page 2 hereof.

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

2.24 "Servicer" means the person or entity servicing a First Mortgage (including the First Mortgagee, if applicable), its successors and assigns.

2.25 "Units" means an Apartment Unit together with the undivided percentage interest in and to the General Common Elements which interest and the General Common Elements are more particularly described in part 4 below.

### 3. Submission of Property.

Declarant hereby submits and subjects the property to a

Horizontal Property regime pursuant to Sections 33-561 through 33-561, Arizona Revised Statutes, and does hereby declare that all of the units shall be owned, leased, sold or conveyed subject to the terms, conditions and other provisions of this Declaration

4.01 Horizontal Property Regime and Descriptions

The entire Horizontal Property Regime shall be composed of 126 units numbered and lettered as shown on the plat and described herein. The Units consist of an Apartment Unit together with the following undivided percentage interests in the common elements:

<u>UNITS</u>	<u>PERCENTAGE INTEREST</u>
1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J,	0.79365079
2A, 2B, 2C, 2D, 2E, 2F,	
3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J	
4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J	
5A, 5B, 5C, 5D, 5E, 5F,	
6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H,	
7A, 7B, 7C, 7D, 7E, 7F,	
8A, 8B, 8C, 8D, 8E, 8F,	
9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9I, 9J,	
10A, 10B, 10C, 10D, 10E, 10F, 10G, 10G, 10H,	
11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J,	
12A, 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12I, 12J, 12K, 12L,	
13A, 13B, 13C, 13D, 13E, 13F,	
14A, 14B, 14C, 14D, 14E, 14F,	
15A, 15B, 15C, 15D, 15E, 15F,	
16A, 16B, 16C, 16D, 16E, 16F.	

4.02 Description of Land. The Land is described on page 1 of this Declaration.

4.03 Description of the Cubic Content Space of the Buildings.

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

4.04 Description of Cubic Content Space of Each Apartment.

The cubic content space of the balcony, patio, storage area or garage, if any, appurtenant thereto shall consist of, and be measured by, the entire space between the horizontal and vertical boundaries thereof as shown on the Plat, in the drawings entitled typical section, basement, first floor and garage, second floor (2 bedrooms) and second floor (3 bedrooms) and further measured by the lineal dimensions set forth in the dimension chart thereon.

4.05 Description of Common Elements. The description of the Common Elements is the description provided for in paragraph 4.02 above, together with the description of the land provided for on page 1 hereof, less the description provided for in paragraph 4.04 above.

4.06 Exclusive Use. Each owner of a Unit shall have the exclusive right to use a driveway area appurtenant to the garage for his Unit all of which are located on the Condominium Property. The driveway areas are delineated on Lot 12 of the Plat which represents a typical building and are designated as shown thereon. This right of exclusive use shall be, and is hereby declared to be, an appurtenance to the ownership of the Units; provided, however, the actual space to be used shall be assigned by the Declarant (or subsequently by the Board), and the assignment shall be reflected on the records of the Association. The use of the driveway areas and storage areas, if any, shall be subject to the reasonable rules and regulations of the Board.



5. Consent to Restrictions, Covenants and Conditions.

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

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

6.01 Occupancy. No part of the Property shall be used for other than housing and the related purposes for which the Property was designed. Each of the Apartment Units shall be used as a residence for no other purpose, and shall be occupied only by a single family, its servants and guests. No Apartment Unit shall be divided, subdivided or combined into a smaller or larger unit than is shown on the Plat without first amending this Declaration as set forth in paragraph 25.09, below.

6.02 Common Elements.\_\_\_\_\_ Except for the rights of exclusive use set forth herein, each Owner shall have the right to use the Common Elements in common with all other Owners as more particularly set

forth in part 20, below. The use, maintenance and operation of the Common Elements will not be obstructed, damaged or unreasonably interfered with by any Owner or Occupant.

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

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

6.05 Leasing. Subject to the provisions of this Declaration, only entire apartment Units may be rented, provided, the occupancy is only by the lessee and his family, their servants and guests.

6.06 Pets. Only household pets may be kept in the apartment Units; provided, however, the Board, in accordance with paragraph 6.12 below may limit or restrict the number and kinds of pets which may be kept in an apartment Unit and otherwise regulate pets.

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

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

6.09 Plantings, Fences, Screens, Etc. No shades, awnings, aluminum screens or any other type of shade screening that can be viewed or seen from the outside of the Property shall be placed on a window on or about any Apartment Unit unless approved by the Board. Further, no fences, hedges, walls or landscaping shall be placed or maintained upon the Property or outside an apartment except as an initially installed by the Declarant or which may be approved from time to time by the Board.

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

6.11 Party Walls. Any wall which separates one Apartment Unit from another shall not be used by an Owner of the Apartment Unit for the purpose of attaching anything to said wall which is recreational or which produces noise or sound in any way whatsoever, nor shall an Owner be permitted to penetrate any said wall in excess of two (2) inches from the exterior of said wall.

6.12 Rules and Regulations. Reasonable rules and regulations concerning the use of the Property and all portions thereof and imposing reasonable restrictions upon the Owners and use of the apartment Units may be made and amended from time to time by the Board; provided, however, that all such rules and regulations and amendments thereto shall be approved by not less than the Majority of Owners before such shall become effective. Notwithstanding the foregoing, until seventy-five percent (75%) of all the Units are sold by Declarant, as evidenced by deeds (or recorded Agreements of Sale) delivered to the purchasers, the Board (without any additional approval of the members of the Association) shall be authorized to promulgate the rules and regulations referred to above. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners and residents of the Property upon request.

7. Easements. The following easements are covenants running with the Land of the Condominium Property:

7.01 Utility Easements. Easements for utilities are hereby reserved throughout the Condominium Property, as may be required for utility services in order to adequately serve the Condominium Project; provided, however such easements through an Apartment Unit shall be only according to the plans and specifications for the Buildings, or as the Buildings were constructed, unless approved in writing by the Unit Owner.

7.02 Ingress and Egress. Easements for ingress and egress are hereby reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Elements; and for vehicular traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes.

7.03 Easements in Parking Areas. Easements are hereby reserved to the Owners of Units in the Condominium for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes; and

for the construction and maintenance of water, sewer and other utilities.

7.04 Encroachments. Each Apartment Unit and the Common Elements shall be subject to an easement for encroachments, including but not limited to encroachments of walls, ceilings, ledges, floors, and roofs created by construction, settling and over hands as originally designed or constructed, or as created by discrepancies between the Plat and the actual construction. If any portion of the Common Elements shall actually encroach upon any apartment unit, or if any apartment unit shall actually encroach upon any portion of the common elements or if any Apartment Unit shall actually encroach upon another Apartment Unit, as the Common Elements and the Apartment Units are shown by the Plat, a valid easement for any of said encroachments and for the maintenance thereof, so long as they stand, shall and does exist. In the event that any apartment Unit or structure is repaired, altered or reconstructed, the Owners of the Units agree that similar encroachments shall be permitted and that a valid easement for said encroachments and for the maintenance thereof shall exist. owners and any other parties acquiring an interest in the Property shall acquiesce and agree to the existence of such easements by accepting a deed from any seller or by acquiring any interest in the Property.

8. Condemnation. If a portion of the Common Elements should be taken by exercise of the power of eminent domain, or should be transferred and conveyed to a condemning authority in anticipation of such exercise, the entire award made as compensation for such taking, including but without limitation, any amount awarded as severance damages, or the entire amount received and paid in anticipation of such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including but without limitation, attorney's fees, appraiser's fees and court costs (\*which net amount is hereinafter in this paragraph 8 referred to as the "Award") shall be paid to the Board, as trustee for all Owners and First Mortgagees. If the portion of the Common Elements taken or conveyed shall not be comprised of, or include, all or any part of a Building, as soon as practicable, the Board shall cause the award to be utilized

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

9. Maintenance, Repairs and Replacements. Responsibility for the maintenance, repairs and replacements of the Property shall be as follows:

9.01 In connection with Apartment Units, the Association shall maintain, repair and replace, at the Association's expenses:

(a) All areas of exclusive use appurtenant to the Apartment, except interiors of storage areas and garages.

(b) All items within an Apartment, and any balcony appurtenant thereto (except interior surfaces), which contribute to the support of the Building; which shall include but shall not be limited to the outside walls of the apartment, floor and ceiling slabs, load bearing columns, load bearing walls, and all fixtures on the exterior boundary walls of an apartment serving the Common Elements or other Apartment Units.

(c) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility service up to the exterior wall of an Apartment informing part of any system serving one or more other apartments or other Common Areas.

(d) Notwithstanding the foregoing, the Association shall have authority to require Unit Owners: (a) to maintain, repair and replace all damages to windows and sliding glass doors except in the case of damage for which insurance proceeds are paid under policies purchased by the Association; and (b) to undertake any other maintenance, repair and replacement work, by such work must be required by uniform regulations promulgated pursuant to paragraph 6.12 above.

9.02 In connection with Apartment Units, the Owner shall maintain, repair and replace, at the Owner's expense:

(a) All portions of his Apartment Unit except the portions to be maintained, repaired and replaced by the Association, such work shall be done without disturbing the rights of other Apartment Unit Owners.

(b) The portions of an Apartment Unit, including but not limited to the following items: service equipment such as dishwasher, laundry, refrigerator, oven, stove, water heater, whether or not such items are built in fixtures; floor coverings except the floor slab; all interior surfaces including but not limited to inside paint and other inside wall finishes (see paragraph 11 for additional provisions relating to decorating).

9.03 In connection with the Common Elements, maintenance, repairs and replacement of the Common Elements shall be furnished by the Association as part of the Common Expenses, subject to the provisions of this Declaration, the Articles of Incorporation, the Bylaws And the rules and regulations of the Association. Responsibility for portions of the Common Elements servicing or uniquely related to one Apartment Unit may be delegated to (or required of) that Apartment Unit owner in the reasonable discretion of the Board.

9.4 Additional Provisions:

(a) If, due to the act or neglect of an Owner or a member of his family or household pet or guest or other authorized Occupant, or visitor or invitee of such Owner, damage shall be caused to the Common Elements or to an Apartment Unit owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Owner shall pay for such damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's Insurance.



(b) No owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of the Building, balcony, patio or garage, without the prior written approval of the Board.

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

(d) An authorized representative of the Board, or of the manager or managing agent of the Property, and all contractors and repairmen employed or engaged by the Association or such manager or managing agent, shall be entitled to reasonable access to each of the Apartment Units as may be required in connection with maintenance, repairs or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Apartment Units and the Common Elements.

10 Alterations, Additions and Improvements. Except for original construction work undertaken by Declarant with respect to any Apartment Unit or the Common Elements, there shall be no structural alterations, additions or improvements to the Common Elements without the prior approval of the Majority of the Owners given at a regular or special meeting of members of the Association. Unless otherwise determined at any such meeting, the cost of such alterations, additions, or improvements to the Common Elements shall be paid by means of a special assessment against the Owners in the proportion of their respective undivided interests in and to the Common Elements. Any Owner may make nonstructural additions, alterations and improvements within his Apartment without the prior written approval of the Board, but such Owner shall be responsible for any damage to other Apartments, the Common Elements or the Condominium Property which results from any such alterations, additions or improvements. Owners are hereby prohibited from making any structural additions, alterations or improvements within an Apartment Unit, unless an architect or engineer, licensed in Arizona, certifies that

such addition, alteration or improvement will not impair the structural integrity of the Building within which such addition, alteration or improvement is to be made, and further, such addition, alteration or improvement must also be approved by the Board. The Owner shall be responsible for any damage to other Apartments, the Common Elements or the Condominium Property which result from any such additions, alterations, or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within an Apartment Unit, whether structural or not, shall be made without the prior written approval of the Board, if said additions, alteration or improvement is reasonably visible from other portions of the condominium property or from the surrounding neighborhood, and prior to granting such approval, the Board must affirmatively find that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding improvements and the Condominium property.

11. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all of the decorating within his own Apartment and balcony, patio, and garage, if any, from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating; provided however, no reflective materials shall be placed in the windows or on other surfaces which can be seen from the outside of the Buildings, without the approval of the Board. Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings within his apartment, and such owner shall maintain such surfaces in good condition at his sole expense. Said maintenance may be subject to such rules and regulations of the Association as may be necessary for the common good of the Property. Decorating of the Common Elements (other than interior surfaces within the Apartment as above provided), and any redecorating of Apartments to the extent made necessary by any damage to existing decorating of such Apartments caused by maintenance, repair or replacement work on the Common Elements by the Association, shall be furnished by the Association as part of the Common Expenses. The

interior and exterior surfaces of all windows and glass doors (if any) forming part of a perimeter wall of an Apartment shall be cleaned or washed at the expense of each Apartment Unit Owner unless the Board determines otherwise. Decorating of balconies, patios, and garages, shall be the responsibility of each Unit Owner having the use of one, but subject to the rules and regulations of the Board.

12. Association. The Association has been or will be formed and shall fulfill its functions pursuant to the provisions of the Condominium Constituent Documents.

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

12.02 Board of Directors of Association. The affairs of the Association shall be conducted by a Board of Directors, who shall be selected in the manner herein stated and as stated in the Articles of Incorporation and By-laws. Up to July 31, 1982, or the

date that all of the Units have been conveyed by Declarant to ultimate purchasers thereof as evidenced by recorded deeds (or recorded Agreement of Sale), "whichever date is first in time" all members of the Board may be designated by Declarant. The first meeting of the Members of the Association shall be held not later than August 31, 1982, or sixty (60) days after all of the Units have been conveyed by Declarant as aforesaid, whichever date is first to occur. Until the first meeting of the Members of the Association, Declarant shall have all rights, remedies and privileges accorded to the Association and its Board. Notwithstanding the foregoing, Declarant may prior to the time set forth above, relinquish an/or delegate all or part of such rights and authority to the Association; and Declarant shall have the right to do by written notice delivered to the Board at any time. Except for members designated by Declarant each director shall be an Owner or a member of the immediate family of an Owner (or if an Owner in a corporation, partnership or trust, a director may be an officer, director, partner, or beneficiary of such Owner). If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant.

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

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

thereof, nor any member of the Board, nor any agent nor any officer of the Association shall be liable for injuries or damages to persons or property resulting from the breach of such duties (except as may be covered by insurance).

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

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

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

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

(a) All expenses of administration of the Condominium Project (including but not limited to legal, accounting and management fees); water and all other utility service (except telephone)

for the Common Elements; insurance required hereunder pursuant to paragraphs 18.02(e), (f) and (g), and otherwise as determined by the Board; costs of maintenance, operation, repair, replacement and betterment of the Common Elements (including but not limited to painting, landscaping, repairs, replacements, alterations, additions, reconstruction, services, supplies, labor, materials, equipment and other related items); and any valid charge against the Condominium Project as a whole as determined by the Board of Directors (including but not limited to all costs of enforcing compliance with this Declaration, deficiencies due to non-payment by Unit Owners, and such costs as are deemed necessary to meet the purposes of the Association).

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

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

(a) If a Unit Owner fails to perform maintenance, repairs, and replacements which are his obligation, or permits a nuisance as defined in paragraph 6.03 above, then, after written notice from the Board to perform such maintenance, repairs or replacements or abate such nuisance, within a reasonable time limit as may be set by the Board, the Board may perform such needed maintenance, repairs and replacements, or abate such nuisance, and shall levy an assessment against such Unit Owner thereof equal to the amount so expended.

(b) All costs incurred in the enforcement of the provisions of this Declaration against any Unit Owner, including by not

limited to attorney's fees and court costs shall be assessed to the Unit and the Owner against who enforcement is sought.

13.03 Determination by Board. The total amount of the regular assessment and each Unit Owner's share thereof, as set forth herein, shall be determined and established by the Board at reasonable intervals, and in accordance with the terms of the Articles and By-Laws. Each Unit Owner's share of the total assessment shall be paid, as directed by the Board and as set forth in the By-Laws. In addition to the special assessments set forth in subparagraphs 13.02 (a) and (b) above, special assessments are hereby authorized in the event of unanticipated costs or expenses and any such special assessments for unanticipated costs or expenses shall be charged to the Units in the same proportion as regular assessments. Notwithstanding the foregoing, any First Mortgagee shall have no obligation to pay any assessments or installments that accrued prior to the time it became entitled to actual possession of or took title to the Unit, whichever is first in time.

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

13.05 Payment of Assessments and Lien Rights.

(a) The Board or its designated representative shall notify the Owners of Units of that Unit's share of the total assessment and when such amounts are due and payable. Each Unit Owner, for himself, his heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period that he is an Owner, he will remit these charges to the Association or the party or parties as directed by the Board.

(b) Assessments attributable to Units and/or installments thereof shall be paid on or before the dates established by the Board, and all sums not so paid may bear interest at the highest rate lawful for individuals to pay under the laws of Arizona from the due date until paid, at the election of the Board. In addition and to the maximum extent allowable under law, the Board, by appropriate regulation, may impose a charge for late payment. All payments on account shall be first applied to late charges, if any, interest and then to the assessment payment first due.

(c) No Owner may exempt himself from paying such assessments or charges by being a non-user of the General Common Elements or by abandoning the Unit of which he is the record Owner, or by otherwise avoiding such obligations.

(d) Each assessment or any other charge made on a Unit pursuant to the Condominium Constituent Documents shall constitute a lien on such Unit to secure the payment of such amounts, which lien and the right to foreclose the same shall be in addition to and not in substitution of all the rights and remedies which the Association and the Board may have in accordance with the provisions of this Declaration or otherwise.

(e) Each Owner by his acceptance of a deed to a Unit hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of all such assessment or charges as a debt, and to enforce the lien securing same by all methods available under Arizona law for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in the like manner as a mortgage of real property, and/or as a mechanic's lien, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The Association may make payments on any prior liens including any mortgage or taxes on the Unit, and such payments shall be added to the lien in favor of the Association. The lien provided for in this paragraph 13.05 shall be in favor of the Association and shall be for the benefit of all other



Unit Owners. The Association shall have the power to bid in any foreclosure sale pursuant to such foreclosure, and to acquire and hold, lease, mortgage and convey the Unit so purchased. The Association may institute suit to recover a money judgment for unpaid obligations of the Owner without being required to foreclose its lien on the Unit involved and without waiving the lien which secures such obligations. In any such foreclosure proceeding, the Owner shall be required to pay a reasonable rental for the Unit, commencing as of the date foreclosure proceedings are filed, and such proceedings the Association shall be entitled, subject only to the prior right of the First Mortgagee, to such rent, and to the appointment of a receiver to collect same.

(f) The provisions of this paragraph 13 are expressly declared to be subject to the provisions of paragraph 17, below.

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

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

ance for each Owner's personal liability, and such other insurance which is not carried by the Association as the Unit Owner desires.

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

(a) A multi-peril type policy covering the entire Condominium Project providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including by not limited to vandalism and malicious mischief, in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

(b) A comprehensive policy of public liability insurance covering all of the Common Elements and public ways in the Condominium Project in the minimum amount of at least One Million Dollars (\$1,000,000.00) per occurrence, of personal injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association and its agents or other Unit Owners. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location and use.

(c) If there is a steam boiler in operation in connection with the Condominium Project, there must be in force, boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing, as minimum coverage, Fifty Thousand Dollars (\$50,000.00) per accident per location.

(d) If the Condominium Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Condominium Project must be maintained in the amount of the outstanding principal balances of the First Mortgage

loans on the Units comprising the Condominium Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

(e) The Association must obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than one and one half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(f) A workmen's compensation policy, if necessary to meet the requirements of Arizona law.

(g) Such other insurance as the Board shall determine from time to time to be desirable.

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

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

(b) The conduct of any one or more Unit Owners shall not constitute grounds for avoiding liability on any such policies.

(c) There shall be no subrogation with respect to the Association, its employees, Unit Owners and members of their household and their families and employees, or the policy(ies) should name said persons as additional insureds.

(d) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

(e) A statement of the name of the insured shall be included in all policies, in form and substance similar to the following:

**"LAKE PARK VILLAGE 1 HOMEOWNER'S ASSOCIATION,**  
for the use and benefit of the individual owners"  
(designated by name, if required).

(f) A standard mortgage clause which must be endorsed to provide that any proceeds shall be paid to the LAKE PARK VILLAGE 1 HOMEOWNER'S ASSOCIATION, for the use and benefit of First Mortgagees as their interest may appear, or which must be otherwise endorsed to fully protect the interest of First Mortgagees their successors and assigns.

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

(h) Any "no other insurance" clause shall exclude insurance purchased by Unit Owners or First Mortgagees.

#### 14.4 First Mortgagee Protection.

(a) The Association shall provide each First Mortgagee with a letter wherein the Association agrees to give written notice to each first Mortgagee, or Servicer of a Mortgage, or any entity or person designated by such First Mortgagee or Servicer, whenever:

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

(2) Damage to the Common Elements and related facilities exceeds \$10,000.00.

(b) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financing rating by Best's Insurance Reports of Class VI or better, or if such rating be discontinued, by a successor thereto or a similar such rating service.

(c) Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

(d) Policies shall not be utilized where:

(1) Under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Unit Owner or First Mortgagee or any entity or person purchasing or guaranteeing any First Mortgage; or

(2) By the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or

(3) The policy includes any limiting clauses (other than insurance condition) which could prevent any Unit Owner or the First Mortgagee, its successors or assigns from collecting insurance proceeds.

(e) The mortgagee clause of each insurance policy shall be properly endorsed, and there must have been given necessary notices of transfer, and any other action required to be taken must be taken in order to fully protect, under the terms of the policies and applicable law, the interest of all First Mortgagees, their successors and assigns. Where permissible, the insurance carrier shall be required to name the Servicer of a First Mortgage, or

"(name of servicer) or assigns." as First Mortgagee under the Mortgage clause. If permissible, where a deed of trust is utilized, the insurance carrier shall be required to use "(name of servicer), beneficiary" or "(name of trustee) for the benefit of (name of servicer)" instead of only the name of trustee under the deed of trust.

(f) All insurance drafts, notices, policies, invoices and all other similar documents, or their equivalent, shall be delivered directly to each Servicer involved, regardless of the manner in which the mortgagee clause is endorsed. The Servicer's address on any First Mortgagee endorsement on a policy shall be used in the endorsements in lieu of the address of the First Mortgagee if requested by the First Mortgagee.

(g) First Mortgagees may pay overdue premiums, or may secure new insurance coverage on the lapse of a policy, with respect to any insurance required to be maintained by the Association as provided in this part, and First Mortgagees making expenditures therefore shall be owed immediate reimbursement by the Association.

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

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

14.07 Insurance Claims. The Association, acting by and

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

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

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

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

15.02 Apartments. If the damaged property is a Building or Buildings containing Apartment Units, the damage shall be repaired and reconstructed if the Board finds that thirty-five (35) or more of all of the Apartment Units are tenantable, unless within sixty (60) days after the loss or damage, the Owners of all of the Units and First Mortgagees decide to terminate the Condominium. If the damaged property is a Building or Buildings containing Apartment Units, the damage shall not be repaired or reconstructed if the Board finds that only thirty-four (34) or less of all of the Apartment units are tenantable, and in such case the Condominium will be terminated as provided, in paragraph 15.07 hereof, unless within sixty

(60) days of the loss or damage the Owners of eighty-five (85) or more of the Units, and two-thirds (2/3) of all of the First Mortgagees agree, in writing to such repair or reconstruction.

15.03 Construction.

(a) Any repair or reconstruction must be substantially in accordance with the plans and specifications for the original improvements; or if not, then according to plans and specifications approved by the Board and a Majority of the Owners.

(b) If the loss or damage is only to those parts of an Apartment Unit or Apartment Units for which the responsibility of maintenance and repair is that of the Apartment Unit Owner, then the Apartment Unit Owner shall be responsible for repair and reconstruction; provided, however, to the extent any insurance proceeds collected are attributable to the Apartment Units (and not the Common Elements) the share of the proceeds attributable to the Apartment Units shall be used for repairs and reconstruction of the Apartment Units.

(c) Immediately after a determination is made to repair or reconstruct damage to property for which the Association has the responsibility for repair and reconstruction, the Association shall obtain reliable and detailed estimates of the cost of the repair or reconstruction.

(d) In the case of damage to common elements, if the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, assessments shall be made against the apartment unit owners in sufficient amounts to provide funds to pay the estimated costs. Additional assessments may be made at any time during or following the completion of construction. Such assessments against Apartment Unit Owners for damage to Apartment Units shall be in proportion to the cost of reconstruction and repair of their respective Apartment Units. Such assessments on account of damage to Common Elements shall be in proportion to the Owner's percentage ownership in the Common Elements.



15.04 Insurance Trustee; Proceeds.

(a) Except for loss or damage which is less than one percent (1%) of the value of the Condominium Project, all insurance proceeds payable on account of damage or loss to the Condominium Project shall be paid to any bank in Arizona which is selected as a trustee by the Board, which bank is herein referred to as the "Insurance Trustee." The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of policies, or for the failure to collect any insurance proceeds. Insurance proceeds payable on account of loss or damage which equals less than one percent (1%) of the value of the Condominium Project shall be payable to and be used by the Association to repair such loss or damage.

(b) The duty of the Insurance Trustee shall be to receive the insurance proceeds that are paid, and to hold them in trust for the benefit of the Unit Owners and the First Mortgagees as follows: An undivided share of such proceeds on account of damage to Common elements shall be allocated to the Unit Owners according to their shares in the Common Elements set forth in paragraph 4, above. Proceeds, if any, on account of damage to Apartment Units shall be held for the Owners of damaged Apartment Units in proportion to the cost of repairing the damage suffered by each Apartment Unit Owner, which cost shall be determined by the Association. In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the First Mortgagee and the Unit Owners as their interests may appear.

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

(a) That portion of the insurance proceeds, if any, representing damage, the reconstruction and repair of which is the responsibility of the Apartment Unit Owner, shall be paid by the Insurance Trustee to the Apartment Unit Owner or, if there is a mortgagee endorsement, then to the Apartment Unit Owner and the

First Mortgagee jointly, who may use such proceeds as they may determine; provided, however, to the extent that any damage to an apartment Unit affects in any way the Common Elements or any other Owner's Apartment Unit, the proceeds must be used for reconstruction and repair of such damage.

(b) The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of the Association, shall be disbursed in payment of the costs of such repair and reconstruction in the manner required by the Board and upon approval of an architect qualified to practice in Arizona and employed by the Association to supervise the work.

(c) The Insurance Trustee shall not be required to determine whether a disbursement is to be made, the identity of the payee, or the amount to be paid, but may rely upon a certificate of the Board acting for and on behalf of the Association stating such information.

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

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

16. Management Agreements. Each Unit Owner hereby agrees to be

bound by the terms and conditions of all management agreements entered into by the Association acting through the Board. A copy of all management agreements shall be available to each Unit Owner. Any agreement for professional management of the Condominium Project, or any other contract providing for services of the Declarant or any other party, shall not exceed a term of three (3) years, and any such agreement shall provide for termination by either party with or without cause, without payment of a termination fee, upon ninety (90) days' written notice.

17. Rights and Duties of First Mortgagee. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles of Incorporation, By-laws, or any rules, regulations or management agreements, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Unit:

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

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

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

(a) By act or omission, seek to abandon or terminate this Declaration or the Condominium Project hereby established (except as set forth in paragraph 15 above).

(b) Change the pro rata interest or obligation of any individual Unit for the purpose of: (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (b) determining the pro rata share of ownership of each Unit in the Common Elements.

(c) Partition or subdivide any Apartment Unit or Units.

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easement for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium Project shall not be deemed a transfer within the meaning of this clause.)

(e) Use hazard insurance proceeds payable or paid due to losses to any Condominium Property or portion thereof (whether to Apartment Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium Property, except as provided herein or by statute. First Mortgagees shall have the right to participate in the adjustment and settlement of any claim under any insurance maintained by the Association.

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

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

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

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

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

17.09 Except as provided in this paragraph 17, a first mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge not the observance or performance of any covenant, restriction, regulation, rule, Association Articles of Incorporation of Bylaws, or management agreement, except for those matter which are enforceable by the injunction or other equitable actions, not requiring the payment of money.

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

17.11 During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any

such action, may but need not exercise any or all of the rights and privileges of the Owner in default of a Unit including, by not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner.

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

17.13 The First Mortgagee, or any other party acquiring title to a mortgaged Unit through foreclosure of the First Mortgage or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure or acquiring title at a trustee's sale under a first deed of trust, shall acquire title free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure or equivalent proceedings, including the expiration day of any period of redemption. Any such unpaid assessment against the Unit foreclosed shall be deemed to be a Common Expense charged proratably against all of the Units. Nevertheless, in the event the Unit Owner against whom the original assessment was made is the purchaser or redemptioner, the lien shall continue in effect and the said lien may be enforced by the Association, or by the Board for the Association, for the respective Unit's assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Unit to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a member of the Association.

17.14 The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Unit; provided that such First Mortgage

is in favor of a bank, savings and loan association, insurance company, mortgage banker, other institutional lender, Federal Home Loan Mortgage Corporation, their successors or assigns; and provided further that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure.

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

17.16 Notwithstanding and prevailing over all other provisions hereof, no amendment to this Declaration shall be made or become effective which in any way affects, diminishes or impairs any of the rights, privileges or powers granted to any First Mortgagee or which is in any way inconsistent with the customary rules, regulations or requirements of institutional First Mortgagees or their assigns without the prior written consent of all First Mortgagees. First Mortgagees shall have the right to enforce against Unit Owners, the Association and all others, any and all provisions of this Declaration including, without limitation, this paragraph 17. Enforcement by First Mortgagees may be by injunction, mandatory or prohibitory, or any other lawful procedure. This Declaration shall be interpreted in conformity with all rules, regulations and requirements of institutional mortgage holders, including expressly but not limited to the Federal Home Loan Mortgage Corporation, applicable to conventional mortgages on condominiums, in effect as of this date or as hereafter amended, and any provision hereof which is inconsistent therewith shall be deemed modified to conform thereto. The Articles, By-Laws and all rules and regulations of the Asso-

ciation shall be governed by this Declaration and all provisions thereof which are inconsistent herewith shall be void.

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

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



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

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

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

22.01 Violation of any of the restrictions or conditions or breach of any of the covenants or agreements contained herein or breach of any rules or regulations promulgated by the Board shall enable the Association, acting through the Board or an authorized agent, or an encumbrance holder in the event that the Association refuses to act, to enter an Apartment Unit as to which said violation or breach may exist and summarily enforce such restrictions, condi-

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

22.02 In the event of any default by an Owner or Occupant under the provisions of the Act, this Declaration, the Articles, the By-laws, or the rules and regulations of the Association, the Association, its successors or assigns, acting through the Board or an assigned agent, shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the Articles, the By-laws or said rules and regulations, or which may be available at law, and may prosecute any action or other proceedings against such defaulting Owner and/or Occupant for enforcement or foreclosure of its lien and the appointment of a receiver for the Unit without notice, without regard to the value of such Unit or the solvency of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to rent the Unit and apply the rent received to payment of unpaid assessments, late charges, if any, and interest accrued thereon, and to sell the same as provided herein, or for any combination of remedies or for any other relief. Nothing contained in this Declaration shall preclude the Association, its agents, the Board, Declarant, an aggrieved Owner, a First Mortgagee or other Person having an interest in the Property from exercising any available remedy at law or in equity. The proceeds of any judicial sale foreclosing the lien of the Association shall first be paid to discharge court costs, other litigation costs including but

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

22.03 If any Owner (either by his conduct or by the conduct of any Occupant of his Apartment Unit) shall violate any of the provisions of this Declaration, or the provisions of the other Condominium Constituent Documents, as then in effect, and such violation shall continue for fifteen (15) days after notice in writing, or shall occur repeatedly during any fifteen day period after written

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

23.01 Phased Construction. The construction of the apartment units and common areas will be completed in 3 construction phases, which may be completed without a vote of the owners within 5 years of the date here of. The phased construction will have no effect on the percentage interest of the ownership of the units as set forth in paragraph 4.01 above.

23.02 The first phase of construction shall consist of Lots 4, 5, 6, 7, 8, 17 and 18 and Tract B of LAKE PARK DEVELOPMENT UNIT ONE Second Amended as recorded in Book 213, Page 10, Office of the Maricopa County Recorder; all of which shall be common elements, except the cubic content space of the apartment units to be constructed, which are: 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 5A, 5B, 5C, 5D, 5E, 5F, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 7C, 7D, 7E, 7F, 8A, 8B, 8C, 8D, 8E, and 8F.

23.03 The second phase of construction shall consist of Lots 1, 2, 3, 12, 13 and 14 of LAKE PARK DEVELOPMENT UNIT ONE Second Amended as recorded in Book 213, Page 10, Office of the Maricopa County Recorder;

all of which shall be common elements, except the cubic content space of the apartment units to be constructed, which are: 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J, 2A, 2B, 2C, 2D, 2E, 2F, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3I, 3J, 12A, 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12I, 12J, 12K, 12L, 13A, 13B, 13C, 13D, 13E, 13F, 14A, 14B, 14C, 14D, 14E, and 14F.

23.04 The third phase of construction shall consist of Lots 9, 10, 11, 15 and 16 of LAKE PARK DEVELOPMENT UNIT ONE Second Amended as recorded in Book 213, Page 10, Office of the Maricopa County Recorder; all of which shall be common elements except the cubic content space of the apartment units to be constructed, which are: 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9J, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J, 15A, 15B, 15C, 15D, 15E, 15F, 16A, 16B, 16C, 16D, 16E, and 16F.

14. Membership in Dobson Association, Inc. Each Owner agrees by the acceptance of his deed, to abide by the rules regulations and assessments of the Dobson Association, Inc., an Arizona corporation, and recognizes that non-payment of any dues or assessments levied by the Dobson Association, Inc. is a lien against each residential condominium unit or apartment as provided in the Declaration of Covenants, Conditions and Restrictions of the Dobson Association, Inc. as recorded in the Office of the County Recorder of Maricopa County, Arizona in Docket 10365, Pages 923 through 943, as amended from time to time.

25. Miscellaneous.

25.01 Formation of Association and Additional Rights of Declarant.

The Declarant shall cause the Association to be formed no later than the date which is thirty (3) days prior to the date upon which the first meeting of the Members of the Association is to be held (see paragraph 12.02 above). Regardless of whether or not the Association has been formed, and notwithstanding any other provisions hereof, until the first meeting of the Members of the

Association, described in paragraph 12.02 above: (a) In addition to, and not in derogation of, all other rights and remedies of Declarant, Declarant shall have and may exercise all of the rights and remedies of the Association and the Board (b) Declarant shall not be obligated or required to pay assessments or charges on account of ownership of Units and Units owned by Declarant shall not be subject to any lien or assessment provided for herein; and (c) Declarant may impose and collect the assessments and charges provided for herein upon a uniform basis for Units not owned by Declarant, and all such amounts collected by Declarant may be commingled with Declarant's general funds and no accounting, budget, application of funds, or justification of any sort shall be required of Declarant.

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

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

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

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

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

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

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

25.08 Binding Effect. Subject to the provisions contained herein, this instrument shall be binding upon and inure to the benefit of successors, assigns, purchasers, mortgagees, trustees and beneficiaries of deeds of trust, encumbrances, grantees, donees and lienors of and from Declarant and upon and unto their respective successors, assigns, purchasers, mortgages, trustees and beneficiaries of deeds of trust, encumbrances, grantees, donees and lienors.

25.09 Amendments or Supplements to Declaration.

(a) Except as otherwise permitted or restricted in this paragraph 25.09, the provisions of this Declaration may be changed, modified or rescinded by an instrument in writing, setting forth such change, modification or rescission signed and acknowledged by Owners owning not less than two thirds (2/3) of the Units; provided, however, that all First Mortgagees under First Mortgages then covering Units shall have consented, in writing, to such change, modification or rescission.

(b) Notwithstanding the provisions of the foregoing paragraph (a), if the Act, this Declaration, or the Articles of Incorporation or the By-laws require the consent or agreement of all Owners and/or all of the leinholders for any actions specified in the Act or this Declaration, then any instrument changing, modifying or rescinding any provisions of this Declaration with respect to such action shall be signed by same as required by the Act, this Declaration, the Articles of Incorporation or the By-laws.

(c) Declarant may alter the interior design of Apartment Units, the size and boundaries between Apartment Units, and the percentage interest which Apartment Units bear to the entire Horizontal Property Regime at an time so long as (a) such altered Apartment Units are owned by Declarant; (b) all First Mortgagees then encumbering such altered Apartment Units agree in writing to such alter-



ations, and (c) such alterations do not modify or change the size, the boundaries, the percentage interest in and to the Common Elements, or the share of the Common Expenses of any Units not owned by Declarant.

(d) In addition to the right set forth above, and not in limitation thereof, until such time as eighty-five (85) of the Units are initially sold and deeds have been delivered to purchasers thereof, Declarant reserves and shall have the right to amend this Declaration; provided, however, that any such amendment shall be consented to in writing by the holders of all First Mortgages then of record with respect to Units.

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

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 19th day of June, 1979.

LAKE PARK DEVELOPMENT, an  
Arizona Joint Venture

By \_\_\_\_\_

Its \_\_\_\_\_  
"Declarant"

STATE OF ARIZONA  
COUNTY OF MARICOPA

On this 29th day of May, 1979, before me, the undersigned Notary Public, personally appeared Phil Marsden who acknowledged himself to be the Branch Manager of Meteor Developments, Inc., and Oklahoma corporation authorized to do business in Arizona, the Managing Joint Venturer of LAKE PARK DEVELOPMENT, an Arizona Joint Venture, and that he, as such Branch Manager of the Managing Joint Venturer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Joint Venture.

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

Judith Carlson  
Notary Public

My Commission Expires:

Oct 29, 1981

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STATE OF CALIFORNIA        )  
                                  )        ss.  
CITY & COUNTY OF        )  
SAN FRANCISCO            )

The foregoing instrument was acknowledged before me this  
  19th   day of June, 1979 by   John Oliver   and   W Grant   who are  
the   Assistant Agent and Agent   \_\_\_\_\_ respectively of the Bank of Nova Scotia, on  
behalf of the Bank.

  Susan Johnson   \_\_\_\_\_  
Notary Public

My Commission Expires:

  August 10, 1981