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DXT 16046-1489

DECLARATION OF HORIZONTAL PROPERTY REGIME

161083

AND

COVENANTS, CONDITIONS AND RESTRICTIONS

BROP. RSTR (PR)

FOR

OSBORN GARDENS CONDOMINIUM

THIS DECLARATION OF HORIZONTAL PROPERTY REGIME AND COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the date hereinafter set forth by Pioneer Trust Company of Arizona, an Arizona corporation, as Trustee ("Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the holder of legal title, as trustee, of certain real property located in Maricopa County, Arizona, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Real Property") and desires to submit and subject the Real Property, including the improvements constructed and to be constructed thereon, and the appurtenances, easements and rights appurtenant thereto, collectively referred to herein as the "Property" or "Condominium Property", to a Horizontal Property Regime pursuant to Arizona Revised Statutes, Sections 33-551 through 33-561, inclusive;

WHEREAS, it is declared that these covenants, conditions and restrictions are intended to benefit the owners and their successors of all or any portion of the Condominium Property.

NOW, THEREFORE, pursuant to Arizona Revised Statutes, Sections 33-551 through 33-561 inclusive, Declarant hereby submits the Condominium Property to a Horizontal Property Regime (hereinafter referred to as the "Project" or "Condominium Project"), to be held, conveyed, encumbered, leased, used and improved subject to the following restrictions, covenants, conditions, easements and equitable servitudes, all of which shall run with the Condominium Property, shall be binding upon all persons having or acquiring any right, title or interest in the Condominium Property or any part thereof, shall inure to the benefit of each owner of any portion of the Condominium Property or any interest therein, shall inure to the benefit of and be binding upon each successor in interest, and may be enforced as hereinafter provided.

ARTICLE I

Definitions

The terms defined in this Article of this Declaration shall have the meanings herein specified, except as may be expressly otherwise provided herein.

Section 1.1. "Act" shall mean Sections 33-551 through 33-561, inclusive, Arizona Revised Statutes, as and if amended.

Section 1.2. "Apartment" shall mean a separate freehold estate designated by a number on the Plat, consisting of an airspace defined as follows:

A. The lower horizontal boundary is the surface of the unfinished floor thereof.

I do hereby certify that the within named instrument was recorded at request of Pioneer Title
Docket 16046 Page 1489 Records of Maricopa Co., Arizona
MAY 25 1982-12 30
WITNESS my hand and official seal the day and year aforesaid
BILL HENRY, Maricopa County Recorder, By C. J. Laughlin Deputy

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B. The upper horizontal boundary is a plane, the elevation of which coincides with the elevation of the surface of the unfinished ceilings thereof.

C. The lateral boundaries are the interior surfaces of the perimeter walls, windows and doors thereof and the vertical planes coincidental with the interior surfaces of the perimeter walls thereof, extended upwards to intersect the upper horizontal boundary, and extended downwards to intersect the lower horizontal boundary.

D. Each Apartment includes the surfaces so described, and the portions of the Building and Improvements lying within said boundaries; provided, however, that no structural components of the Building in which each Apartment is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility, water or sewer lines situated within an Apartment and forming a part of any system serving one or more other Apartments or the Common Elements shall be deemed to be part of an Apartment. Each such Apartment may also include the range, dishwasher, garbage disposal unit, refrigerator, and/or other household appliances lying within said boundaries and/or appurtenant areas.

E. The airspaces for patios and/or balconies, heating and air conditioning units, and/or storage lockers and yard areas, if any, where so designated on the Plat by number are to be considered common elements for the exclusive use of the Apartment and are to be maintained by each respective Apartment Owner.

F. Unless otherwise indicated, all airspace boundary lines intersect at right angles.

Section 1.3. "Articles of Incorporation" or "Articles" shall mean the Articles of Incorporation of the Association, as and if amended.

Section 1.4. "Assessment" shall mean all assessments authorized and provided by Article VII. "Regular Assessments" shall mean the Assessments pursuant to Section 7.3.A., and "Special Assessments" shall mean the Assessments pursuant to Section 7.3.B.

Section 1.5. "Association" and "Council of Co-Owners" shall mean and refer to Osborn Gardens Homeowners' Association, its successors and assigns.

Section 1.6. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 1.7. "Building" shall mean any one of the principal structures, as shown on the Plat, erected upon the Real Property.

Section 1.8. "Bylaws" shall mean the Bylaws of the Association, as and if amended.

Section 1.9. "Common Elements" shall mean the description of the Condominium Property less the description of all Apartments as defined in Section 1.2 hereof including, but not limited to, all recreational facilities including equipment, stairwells, walks and walkways, parking areas, community and commercial facilities, if any, trees, exterior lighting, pavements, streets, pipes, wires, general heating and cooling system, exterior general garbage area, central patios, storage and laundry areas, boiler room, swimming pool(s), ducts and duct work, conduits and other public utility lines, and all other property controlled and regulated by the Association for the common use and enjoyment of the Members of the Association.

Section 1.10. "Common Element Interest" shall mean the undivided one eighteenth (1/18) interest in and to the Common Elements, which shall be appurtenant to each Apartment and included within ownership of each Unit.

Section 1.11. "Common Expenses" shall have the meaning provided in Section 7.2.

Section 1.12. "Condominium Constituent Documents" shall mean the Declaration, the Articles, Bylaws, and Rules and Regulations of the Association, and all other documents or instruments pertaining to and affecting the Condominium Project. Any discrepancies or conflicts between the provisions of the Arizona Revised Statutes or applicable law and this Declaration, the Articles and Bylaws and the rules and regulations of the Association shall, unless otherwise provided, be resolved by giving priority first to the Arizona Revised Statutes or applicable law, second to this Declaration, third to the Articles, fourth to the Bylaws, and fifth to the Rules and Regulations.

Section 1.13. "Declarant" shall mean and refer to Pioneer Trust Company of Arizona, an Arizona corporation, as trustee, its successors and assigns. All references to "Declarant" in this Declaration shall mean and refer to Trustee, only insofar as the holding of legal title to the property by Pioneer Trust Company of Arizona, as trustee, is concerned, and shall mean and refer to Developer for all other purposes.

Section 1.14. "Developer" shall mean and refer to J. D. Kent and Robert G. Dickinson, their successors and assigns.

Section 1.15. "Declaration" means this instrument by which the Condominium Property is submitted to a Horizontal Property Regime pursuant to the Act, as such Declaration may from time to time be amended.

Section 1.16. "First Mortgage" shall mean a first deed of trust, as well as a first mortgage, on a Unit or any portion thereof. "First Mortgagee" shall mean the Mortgagee or holder of a First Mortgage, including a beneficiary or trustee under a first deed of trust, its successors and assigns.

Section 1.17. "Improvements" shall mean all physical structures including, but not limited to, the Buildings, private drives, parking areas, any existing fences, walls, swimming pool and jacuzzi, and all landscaping including, but not limited to, hedges, plantings, trees and shrubs of every type and kind, located upon the Real Property.

Section 1.18. "Member" shall mean any person, corporation, partnership, or other legal entity who is a member of the Association as provided in Article IV. "Membership" shall mean the participating interest of a Member in the Association.

Section 1.19. "Mortgage" shall refer to a mortgage as well as a deed of trust and any reference to rights and/or remedies under a Mortgage shall also mean rights and/or remedies under a deed of trust including, but not limited to, trustee's sale and foreclosure. "Mortgagee" shall mean the mortgagee, holder or beneficiary (or trustee) under a Mortgage or deed of trust, as the case may be, and "Mortgagor" shall mean a mortgagor or trustor, as the case may be, under a Mortgage. "Governmental Mortgagee" shall mean the Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), Government

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National Mortgage Association ("GNMA") or other governmental agency or entity which is a Mortgagee or purchaser and/or assignee of a Mortgage. "Institutional Holder" shall mean a mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 1.20. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title, or legal title if same has merged, of a Unit regardless of whether such holder actually resides in the Unit. "Owner" shall include the purchaser of a Unit under an executory contract for the sale of property. "Owner" shall not include persons or entities who hold an interest in any Unit solely as security for the performance of an obligation.

Section 1.21. "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 1.22. "Plat" shall mean the plat of survey of the Condominium Property and all Apartments submitted to this Horizontal Property Regime, as recorded in the Maricopa County Recorder's Office in Book 342 of Maps, page 110, an exact reduced copy of which is attached hereto as Exhibit "B". Such recorded Plat and Exhibit "B" are by this reference incorporated herein.

Section 1.23. "Rules and Regulations" shall mean such rules and regulations as shall be adopted and/or amended from time to time by the Association for the Condominium Project.

Section 1.24. "Servicer" shall mean the person or entity servicing a Mortgage, including a Mortgagee, if applicable, its successors and assigns.

Section 1.25. "Unit" shall mean an Apartment together with its appurtenant Common Element Interest, and the right to exclusive use of those items set forth in paragraph 1.2 E above.

ARTICLE II

Description of Horizontal Property Regime

Section 2.1. The entire Horizontal Property Regime shall be composed of the Common Elements and eighteen (18) Apartments as designated on the Plat. Each Unit shall include an Apartment and an undivided one eighteenth (1/18) interest in and to the Common Elements.

Section 2.2. The Condominium Project shall be referred to as Osborn Gardens Condominium.

Section 2.3. The following provisions are made in compliance with Section 33-553 of the Act:

A. Description of Land. The land is the Real Property.

B. Description of Cubic Content Space of Buildings. The cubic content space of the Buildings with reference to their location on the Real Property is described on the Plat. The boundaries of each Building shall be the exterior of the outside walls of said Building, except that where there are patios and balconies extending beyond the exterior of the outside walls, the boundaries of each Building shall be the plane of the outer edge of the walls or the

plane of the boundary lines shown on the Plat for said patios and balconies which extend outward farthest from the exterior wall of said Building, all as shown on the Plat. The upper boundaries of each Building shall be the plane of the top elevation of said Building, except that where there are patios and balconies, the upper boundaries with respect to the patio and balcony portions of the Buildings shall be the plane of the top elevation of said patios and balconies, respectively, all as shown on the Plat. The lower boundaries of each Building shall be the plane of the floor sub-base elevation of said Building, except that where there are patios and balconies the lower boundaries with respect to the patio and balcony portions of the Building shall be the base elevation of said patios and balconies, all as shown on the Plat.

C. Description of Cubic Content Space of Each Apartment. The cubic content space of each Apartment, as defined in Section 1.2, is as described on the Plat.

D. Description of Common Elements. The description of the Common Elements shall be as provided in Section 1.9.

E. Interest Which Each Apartment Bears to the Entire Condominium Project. Each Apartment shall bear a one eighteenth (1/18) interest in the entire Condominium Project.

Section 2.4. In interpreting the Plat, this Declaration, and/or any deeds, maps, plans or similar instruments pertaining to the Property and/or the Project, the existing physical boundaries of an Apartment, or an Apartment reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its actual boundaries rather than the description expressed in the Plat, this Declaration, or on any such deeds, maps, plans or similar instruments regardless of settling, shifting, lateral or other movements of any of the Buildings, and regardless of minor variances between the boundaries as shown on the Plat, this Declaration, or on any such deeds, maps, plans or similar instruments and those of the Apartment.

ARTICLE III

Homeowners' Association

Section 3.1. The operation of the Condominium Project shall be by the Association, a non-profit corporation organized under the laws of the State of Arizona, which shall fulfill its obligations pursuant to the provisions of the Act and the Condominium Constituent Documents. The Association shall constitute the "council of co-owners" as that term is defined in Section 33-551 of the Act. 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 for the benefit of the Owners in accordance with the provisions of the Act and the Condominium Constituent Documents.

Section 3.2. Articles of Incorporation for the Association shall be prepared and executed and the Association incorporated prior to the initial sale of any Unit. Upon being incorporated, the Association shall promptly take all necessary steps to conclude its formation and to commence the discharge of its duties under this Declaration and the Articles including, but not limited to, the adoption of Bylaws and Rules and Regulations.

Section 3.3. Each and every Owner, in accepting a deed, entering into an agreement for sale, or displaying some other evidence of ownership interest in a Unit, agrees

to become a Member of the Association and to be bound by the provisions of the Condominium Constituent Documents.

Section 3.4. The Association shall from time to time establish such Rules and Regulations as it deems necessary for the conduct and operation of the Condominium Project including, by way of illustration and not by way of limitation, rules and regulations for the purpose of establishing and maintaining general beautification features within the Condominium Project, providing for the health, safety and welfare of occupants of and visitors to the Condominium Project, and establishing such common community services as the Association shall deem desirable for the general use and benefit of occupants of the Condominium Project.

Section 3.5. The Association shall serve as a governing body for all Owners and occupants of Units and shall provide necessary and appropriate action for the maintenance, repair, replacement and management of the Common Elements, assessment of expenses, payment of losses, disposition of insurance proceeds, and other matters as provided in the Act and the Condominium Constituent Documents; provided, however, that the foregoing shall not operate to relieve the Owners of their responsibilities under the Act and the Condominium Constituent Documents.

Section 3.6. The affairs of the Association shall be conducted by a Board of Directors who shall be selected in the manner stated in this Declaration, the Articles and Bylaws; subject, however, to the provisions of Section 3.7. Except as provided by Section 3.7, each director shall be an Owner or the spouse of an Owner, or, if an Owner is a corporation, partnership, trust or other legal entity, a director may be an officer, director, partner, beneficiary or authorized agent of such Owner. If a director shall cease to meet such directorship qualifications during his term, he shall automatically cease to be a director and his place on the Board shall be deemed vacant.

Section 3.7. All members of the Board shall be designated by Declarant, and Declarant shall have all rights, authority and obligations accorded to the Association by the Condominium Constituent Documents (hereinafter collectively referred to as "Control of the Association"), until the first to occur of the following:

- A. August 1, 1984;
- B. Conveyance of an aggregate of one hundred percent (100%) of the Units by Declarant to purchasers thereof as evidenced by the record date of recorded deeds or recorded agreements for sale (in such case, Control of the Association shall become vested within not more than one hundred twenty (120) days after the completion of such eighteen (18) transfers); or
- C. Relinquishment of Control of the Association by Declarant upon giving fifteen (15) days written notice of such relinquishment to all Owners.

Upon the first of the foregoing to occur, Control of the Association shall pass to the Owners, and the Declarant's relation to and interest in the Association shall be limited to that of a Member for each Unit, if any, then or thereafter owned by Declarant.

Section 3.8. Until such time as Control of the Association has passed from Declarant to the Owners pursuant

to Section 3.7, Units owned by Declarant shall not be subject to, and Declarant shall not be liable for, any Assessment provided for in Article VII. In lieu of payment of such Assessment, Declarant will assume responsibility for the Common Expenses, month-to-month maintenance, repair and management of the Common Elements, and the obtaining of insurance required to be obtained by the Association in accordance with Article XII, and all other matters for which Assessments are levied, until such time as Control of the Association passes from Declarant to the Owners pursuant to Section 3.7. Assumption of such responsibility by Declarant shall not relieve any Owner of the responsibility to pay any Assessment; provided, however, that Declarant shall apply all Assessments collected while Declarant retains Control of the Association pursuant to Section 3.7 to the matters for which such Assessments are levied including, but not limited to, the Common Expenses.

Section 3.9. The Association shall not have any outstanding or accrued debts or obligations at the time Control of the Association is transferred from Declarant to the Owners pursuant to Section 3.7.

Section 3.10. In the event of any dispute or disagreement between any Owners relating to the Condominium Project or any question of interpretation or application of this Declaration, the Articles, Bylaws or Rules and Regulations, the determination thereof by the Board shall be final and binding on each and all of the Owners. If a decision cannot be reached by the Board in connection with any matter submitted to or considered by the Board, such matter shall be determined by the Members, voting as provided by Article V. If the Members are unable to resolve such matter, it shall be submitted and settled in accordance with the current rules and regulations of the American Arbitration Association in Maricopa County, Arizona, and any decision made or rendered thereof shall be final and binding upon all of the Owners and the Association.

Section 3.11. All funds received by and the titles of all properties acquired by the Association shall be held in trust for the Members of the Association in accordance with this Declaration, the Articles and Bylaws.

ARTICLE IV

Membership

Section 4.1. Membership in the Association, with the exception of the Declarant until Control of the Association is transferred to the Owners pursuant to Section 3.7, shall be limited to Owners of Units. An Owner of a Unit shall automatically, upon becoming the Owner of a Unit, become a Member and shall remain a Member until such time as his ownership ceases for any reason, at which time his Membership shall automatically cease.

Section 4.2. A Membership shall not be transferred, pledged or alienated in any way, except upon the sale of a Unit and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of Mortgage of record or deed in lieu of foreclosure of a Mortgage, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void and will not be reflected upon the books and records of the Association. In the event the Owner of any Unit should fail or refuse to transfer the Membership registered in his name to the transferee of such Unit, the Association shall have the right to record the transfer upon the books of the Association and issue a new

Membership to the transferee and thereupon the old Membership outstanding in the name of the transferring Owner shall be null and void as though the same had been surrendered. The new Membership shall become effective as of the date of transfer of record of the ownership of the Unit.

Section 4.3. The Owner of each Unit shall be entitled to one (1) Membership in the Association, which Membership shall be subject to all of the provisions of the Condominium Constituent Documents. If a Unit shall have more than one (1) Owner, all Owners of that Unit shall be Members of the Association; provided, however, that such Members' voting rights shall be limited as provided in Section 5.1.

ARTICLE V

Voting Rights

Section 5.1. The aggregate number of votes for all Members shall be equal to the number of Units in the Condominium Project. Each Member shall be entitled to cast one (1) vote for each Unit owned; provided, however, that if a Unit is owned by more than one individual Member, the Members owning such Unit shall collectively be entitled to cast one (1) vote for that Unit. The method by which that vote shall be cast, and the person authorized and designated to cast that vote on behalf of the Members owning such Unit, shall be as provided in the Articles and/or Bylaws of the Association.

Section 5.2. In the event any Owner is in arrears in the payment of any Assessment or other amount due under or otherwise in default in the performance of any of the provisions of this Declaration, the Articles or Bylaws for a period of fifteen (15) days after written notice thereof from the Association, such Owner's right to vote as a Member shall be suspended until all such payments are brought current and/or all such defaults are remedied. The foregoing shall be in addition to, and not in lieu of, all other remedies provided in this Declaration, the Articles, the Bylaws or by applicable law for such non-payment or default.

Section 5.3. Notwithstanding any other provision in Article IV or Article V to the contrary, Members shall not be entitled to vote until Control of the Association shall have been transferred from the Declarant to the Owners pursuant to Section 3.7.

ARTICLE VI

Property Rights

Section 6.1. Every Member shall have a right and easement of use and enjoyment in and to the Common Elements, and such easement shall be appurtenant to, indivisible from, and shall pass with title to each Unit. Such rights of use and enjoyment to the Common Elements may be exercised by any person legally in possession of a Unit not in violation of the Act, this Declaration, the Articles and/or Bylaws and any Rules and Regulations adopted by the Association; provided, however, that nothing herein shall be deemed to alter or amend the definition of Owner, as set forth in Section 1.20, or to affect the provisions of Articles IV or V.

Section 6.2. The right and easement of use and enjoyment accorded hereby shall be subject to the Rules and Regulations promulgated by the Board, which may include, but shall not be limited to:

A. The right of the Association to limit the

B. The right of the Association to charge reasonable admission or other fees for the use of any recreational facility constituting a part of the Common Elements;

C. The right of the Association, in accordance with the Condominium Constituent Documents, to borrow money for the purpose of improving the Common Elements and to encumber the Common Elements therefor; provided, however, that the Association shall not have such right until Control of the Association has passed from the Declarant to the Owners pursuant to Section 3.7; and provided further, that such right shall not be exercised or authorized, nor shall any such encumbrance be created, in violation of the Act or other applicable law;

D. The right of the Association to reasonably suspend the voting rights and the right to use of all or any portion of the recreation facilities by an Owner for any period during which an Assessment against such Owner's Unit remains unpaid following fifteen (15) days written notice thereof to such delinquent Owner in accordance with the Condominium Constituent Documents;

E. The right of the Owners of Units to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners representing seventy-five percent (75%) of the Units, or such higher percentage and by such parties including, but not limited to, Owners and First Mortgagees, as shall be required by this Declaration or applicable law, has been recorded in the books of the Association, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Owner not less than thirty (30) days nor more than sixty (60) days in advance of such action.

ARTICLE VII

Assessments

Section 7.1. The making and collection of Assessments against Owners shall be pursuant to this Article VII, and each Owner, for himself, his heirs, successors and assigns, covenants and agrees by accepting a deed, entering into an agreement for sale, or other conveyance of an interest in a Unit, that he shall pay and his Unit shall be subject to Assessments as follows:

A. Amount of Assessment.

(1) Each Unit's proportionate share of all Common Expenses;

(2) Each Unit's proportionate share of such additional sums as the Board shall determine to be necessary to meet the primary purposes of the Association; and

(3) Each Unit's respective obligations, if any, pursuant to Section 7.1.C.

B. Unit's Proportionate Share. Each Unit's proportionate share of the total amount determined under Section 7.1.A(1) and 7.1.A.(2) shall be equal to such Unit's Common Element Interest, together with any additional amount owed by the Owners of such Unit pursuant to Section 7.1.C.

C. Unit Costs. Notwithstanding each Unit Owner's obligation for its proportionate share of the Assessments as stated herein, in addition thereto each Owner shall

pay and reimburse the Association for any and all costs and expenses in connection with the following:

(1) Obligations of such Owner pursuant to any other provision of this Declaration including, but not limited to, the charges and obligations required pursuant to Articles VII, IX, X, XI, XII, XIII, XIV, XV and/or XVI.

(2) All costs incurred in the enforcement of the provisions of this Declaration against any Owner including, but not limited to, attorneys' fees and court costs.

D. Purpose. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the residents in the Condominium Project and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements.

Section 7.2 - Common Expenses. The Board is hereby authorized to obtain and secure the following items and services which shall be deemed Common Expenses:

A. Expenses of administration of the Condominium Project, Common Elements and/or the Association including, but not limited to, legal, accounting and management fees contracted for, at the discretion of the Board, if it deems such necessary for such administration;

B. Utility service for the Common Elements and for all Apartments, provided such utility service is not individually metered and/or charged to the Apartments;

C. Insurance as required by Article XII;

D. 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;

E. Any valid charge against the Condominium Project as a whole as determined by the Board including, but not limited to, all costs of enforcing compliance with this Declaration, together with such costs as are deemed necessary to meet the primary purpose of the Association;

F. An adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis, such reserve to be funded by Regular, and not Special Assessments, and a working capital fund for the initial months of operation of the Condominium Project equal to at least two (2) months' Assessments for all Units;

G. Taxes, assessments and similar charges assessed against or payable in connection with the Common Elements; and

H. Removal of rubbish from the Condominium Property.

Section 7.3 - Determination of Assessments.

A. Regular Assessments. The amount to be pro-rated among the Owners pursuant to Section 7.1.A. shall be established annually by the Board, and the proportionate share to be paid pursuant to Section 7.1.B. shall be paid monthly or in such other installments as may be determined by the Board; provided, however, that the amount to be paid

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by any Owners pursuant to Section 7.1.A.(3) shall be established and assessed at such time as the Board shall deem appropriate. Said amounts shall be based upon an estimated annual budget and report which the Board shall cause to be prepared for each fiscal year of the Association. The budget shall take into account the estimated Common Expenses, including amounts for reserves, and any other sums which the Board may deem to be prudent for the protection of the Condominium Project. The amounts for reserves shall include an adequate fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis. The budget and report shall also provide a summary of the Common Expense allocation, Assessments, and other fiscal activity of the Association for the previous fiscal year of the Association. Copies of the proposed budget and report shall be transmitted to each Owner on or before the first day of the fiscal year of the Association for which the budget is made, or as soon thereafter as the Board is able to adopt such budget. If at any time during such fiscal year it appears that the amounts determined by the Board are not sufficient, or are in excess of the amounts required, the Board may amend the budget and increase or decrease the Regular Assessments, the amount prorated to each Owner, and the monthly amount to be paid by each Owner. If the budget is amended, a copy of the amended budget shall be furnished to each Owner within fifteen (15) days of the adoption thereof. After approval by the Board of the budget, the Assessments and each installment thereof shall be determined for each Unit and shall be assessed and paid as set forth in Section 7.4.

B. Special Assessments. In the event the Board is required to make any expenditure which was not anticipated as of the first of any fiscal year of the Association, or for which there are not sufficient funds available, the Board is authorized to levy Special Assessments. Any such Special Assessment shall be charged to the Units in the same proportion as Regular Assessments, as provided by Section 7.1.B. The Owners shall pay all Special Assessments to the Board, or such depository as may be designated by the Board, within fifteen (15) days after the levy thereof or in such other manner and within such greater time as the Board may direct.

C. Accounting. The Board shall at all times keep true and correct records of account for the Condominium Project and Association in accordance with generally accepted accounting principles applied on a consistent basis, and shall furnish for the inspection of all voting Owners at reasonable times such records which shall specify in detail all expenses incurred and funds accumulated from Assessments or otherwise. If a management agent contracts with the Association to perform all or a part of the Association's duties, the management agreement therefor shall require such management agent to maintain records in accordance with the foregoing requirements, and to provide the Board with a report of its activities under such management agreement prior to the close of each fiscal year of the Association, and at such additional times as may be requested by the Board. The information set forth in such report shall be included in the annual budget and report from the Board to the Owners required by Section 7.3.A.

Section 7.4 - Payment of Assessments and Lien Rights.

A. From and after the time of the first conveyance of a Unit, and from time to time thereafter, at least annually and prior to the first day of each fiscal year of

the Association, the Board or its designated representative shall notify the Owners of Units of the total amount of the Assessments for such fiscal year for all Units, the amount to be prorated and assessed to each Unit for such fiscal year, and the monthly amount which each Owner shall pay, which amount shall be due and payable monthly on the first (1st) day of each calendar month, and shall be paid prior to the fifteenth (15) day of each month, until the monthly amount due is changed by appropriate action of the Board, at which time the amount as changed shall be due and payable as aforesaid. Such monthly amount shall be paid to the Board or to any agent appointed by the Board to collect such payments, which agent may be a Mortgagee of a Unit. The Board, with the consent of Owners owning a majority of the Units, may alter and change the above-designated dates and time periods. Each Owner, for himself, his heirs, successors, grantees and assigns, covenants that, with respect to Assessments so determined during the period that he is an Owner, he will remit these Assessments directly to the party or parties as directed by the Board.

B. Assessments and installments of such Assessments paid on or before fifteen (15) days after the date when due and payable shall not bear interest, but all sums not paid on or before fifteen (15) days after the date when due and payable shall bear interest at the highest legal rate from the due date until paid. All payments on account shall first be applied to interest and then to the Assessment payment first due.

C. No Owner may exempt himself from paying Assessments by being a non-user of the 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 this Declaration 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 or 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, or by becoming an Owner in any other fashion, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of all such Assessments or charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the like manner as a Mortgage of real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. In addition, the Association may make payments on any prior liens, including any Mortgage, tax or other assessment on the Unit, and such payments shall be added to the lien in favor of the Association. The lien provided for in this Section 7.4 shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid in such a foreclosure sale and to acquire and hold, lease, mortgage and convey the property so purchased. Either the Association, or the Board on behalf of the Association, may institute a suit to recover a money judgment for unpaid obligations of the Owner without being required to foreclose 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 the plaintiff in such proceedings shall be entitled, subject only to the prior right of any holder of a recorded bona fide First Mortgage on such Unit, to such rent and to the appointment of a receiver to collect same.

Section 7.5 - Commencement of Payment of Assessments. Unless otherwise specified by the Board, Assessments for each Unit, and the liability of the respective owners therefor, shall commence upon the date of the acquisition of a Unit.

ARTICLE VIII

Party Walls

The rights and duties of the Owners of Units in the Condominium Project with respect to party walls shall be governed by the following:

A. Each wall, which is constructed as a part of the original construction of the Building containing any Apartment, any part of which is placed on the dividing line between separate Apartments, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume any burdens and be entitled to the benefits of this Declaration and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

B. In the event a party wall is damaged or destroyed, excluding ordinary wear and tear and deterioration from lapse of time, through the act of any Owner, or any of his guests, pets, tenants, licensees, agents or members of his family, whether or not such act is negligent or otherwise culpable, so as to deprive any other adjoining Owner of the full use and enjoyment of such party wall, then the negligent Owner shall forthwith proceed to rebuild and repair the same to as good condition as formerly, and to bear the cost thereof, without cost to the adjoining Owner.

C. In the event any such party wall is damaged or destroyed by some cause other than the act of another Owner, or any of his guests, pets, tenants, licensees, agents or members of his family, including ordinary wear and tear and deterioration from lapse of time, then in such event it shall be the obligation of the Association to proceed forthwith to rebuild or repair the same to as good condition as formerly.

D. Notwithstanding any other provision of this Article VIII, any Owner who, by his neglect or willful act, causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

E. The right of any Owner to contribution from any other Owner under this Article VIII shall be appurtenant to the Unit and shall pass to such Owner's successors in title.

F. In addition to meeting the other requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his Apartment in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the Board.

structural or not, shall be made without the prior written approval of the Board if said addition, alteration or improvement is visible from other portions of the Condominium Project or from the surrounding neighborhood. Prior to and as a condition precedent to granting such approval, the Board shall affirmatively find that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding portion of the Condominium Project.

Section 9.3 - Decorating. Each Owner, at his own expense, shall furnish and be responsible for all of the decorating within his own Apartment 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 other surfaces which can be seen from the outside of the Buildings without the prior 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 as may be required from time to time. Such maintenance and use shall be subject to the Rules and Regulations and each such Owner shall have the right to decorate such surfaces from time to time as he may see fit and at his sole expense. 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 Apartment 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 enclosing an Apartment shall be cleaned and washed at the expense of such Apartment's Owner unless the Board determines otherwise.

ARTICLE X

Maintenance

Section 10.1 - General. Responsibility for the maintenance of the Condominium Property shall be as follows:

A. Apartments.

(1) By the Association. The Association shall maintain, repair and replace, at the Association's expense:

(a) All Common Elements within an Apartment, except interior surfaces, which contribute to the support of the Buildings, 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 forming a part of the Common Elements, on the exterior boundary walls of Apartments; provided, however, that the foregoing shall not be deemed to include doors, windows and appurtenant hardware opening into, within or benefitting an Apartment, or heating and air conditioning components not a part of the Common Elements;

(b) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions of an Apartment maintained by the Association, and all facilities contained

within an Apartment which service part or parts of the Condominium Property other than the Apartment within which such facilities are contained; and

(c) Notwithstanding the foregoing, the Association shall have the authority to require Apartment Owners: (i) to maintain, repair and replace all damages to windows and doors except to the extent of damage for which insurance proceeds are paid under policies purchased by the Association; and (ii) to undertake any other maintenance, repair and replacement work covered by Rules and Regulations and/or Article IX.

(2) By the Apartment Owner. The responsibility of each Owner shall be as follows:

(a) To maintain, repair and replace at his expense all portions of his Apartment including, but not limited to, property damaged or destroyed by casualty loss except the portions to be maintained, repaired and replaced by the Association. Such work shall be done without disturbing the rights of other Owners.

(b) The portions of an Apartment to be maintained, repaired and replaced by the Owner thereof at his expense shall include, but not be limited to, the following items: air conditioning and heating equipment unless forming a part of the Common Elements, service equipment such as dishwasher, laundry, refrigerator, oven, stove, water heater, regardless of whether such items are built-in fixtures; interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor slab; and all interior surfaces including, but not limited to, inside paint and other inside wall finishes. Owners shall also maintain all windows, doors and all hardware appurtenant thereto, within or benefitting their respective Apartments. Except for the presently existing facilities or such facilities as Declarant may install prior to transferring Control of the Association to the Owners pursuant to Section 3.7, the appearance, type and method of installation of air conditioning and heating units must first be approved by the Board.

B. 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 the Condominium Constituent Documents.

Section 10.2 - Additional Provisions.

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

B. No Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of a Building without the prior written approval of the 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.

G. In the event any Owner shall be responsible for the repair or rebuilding of a party wall, such repair and rebuilding shall be in accordance with, and the Owner shall be subject to, the provisions of Section 11.1.

H. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of an Owner addressed to the Association, the matter shall be submitted to arbitration in accordance with the provisions of Section 3.10. The cost of such arbitration shall be borne by the non-prevailing party.

ARTICLE IX

Alterations, Additions and Improvements

Section 9.1 - Common Elements.

A. Except as provided by Section 9.2.A., no structural alterations, additions or improvements shall be made to the Common Elements without the prior approval of the Owners of a majority of the Units given at a regular or special meeting of Members of the Association; provided, however, that the Declarant may make structural additions, alterations or improvements to the Common Elements which do not detract from the value or appearance thereof without such approval until Control of the Association is transferred from Declarant to the Owners pursuant to Section 3.7. Unless otherwise determined at any such meeting by the Members of the Association, the cost of such structural alterations, additions or improvements to the Common Elements shall be paid by means of a Special Assessment against the Owners in the manner provided by Section 7.3.B. or, if applicable, from the reserve fund provided by Section 7.2.F.

B. Non-structural alterations, additions or improvements to the Common Elements may be authorized by the Board; provided, however, that any such alteration, addition or improvement requiring a Special Assessment to fund shall be subject to the requirements of Section 9.1.A.

Section 9.2 - Apartments.

A. 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 any other Apartment, the Common Elements or the Condominium Property, which results from any such alterations, additions or improvements. Owners shall not make structural additions, alterations or improvements within an Apartment unless:

(1) An architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity of the Building within which such addition, alteration or improvement is to be made;

(2) Such addition, alteration or improvement is approved in writing in advance thereof by the Board; and

(3) The Owner shall be responsible for any damage to other Apartments, the Common Elements or the Condominium Property which results from any such addition, alteration or improvement.

B. Notwithstanding the foregoing, no addition, alteration or improvement within an Apartment, whether

D. An authorized representative of the Board, or of the management agent of the Condominium Project, and all contractors and repairmen employed or engaged by the Board or such management agent, shall be entitled to reasonable access to each of the Apartments as may be required in connection with maintenance, repairs or replacement of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Apartments and the Common Elements.

ARTICLE XI

Damage or Destruction of Condominium Property

Section 11.1. In the event the Common Elements or Apartments, or any portion thereof, is damaged or destroyed by an Owner or any of his guests, authorized occupants, tenants, licensees, pets, agents or members of his family, and to the extent not covered by insurance, such Owner shall, within fifteen (15) days from the date of the occurrence of such damage or destruction, repair and rebuild or use best efforts to commence the repair and rebuilding of the damaged or destroyed portion of the Common Elements and/or Apartments. If such damage or destruction is not repaired, rebuilt, or such repair and rebuilding is not commenced by the Owner within such period in a manner and form acceptable to the Board and in conformance with the original plans and specifications of the Condominium Property or such other plans and specifications as shall be approved by the Board, the Association, by and through its Board, is hereby irrevocably authorized by each Owner to perform such repair and rebuilding in a good and workmanlike manner in general conformance with the original plans and specifications of the Condominium Property or such other plans and specifications as shall be approved by the Board. The amount actually expended for such repair and/or rebuilding shall then be collectible as an Assessment against such Owner, subject to all means of collection and enforcement, including lien remedies provided by Article VII.

Section 11.2. In the event of a dispute between an Owner and the Association with respect to the cause of damage or the extent of repair or rebuilding necessitated thereby or with respect to the cost thereof, then upon written request of either party addressed to the other party, the matter shall be submitted to arbitration in accordance with Section 3.10, with the costs of such arbitration to be borne by the non-prevailing party.

ARTICLE XII

Insurance

Section 12.1 - Insurance Coverage. Insurance which shall be carried by the Association on the Condominium Property and on any portion of the property owned by Unit Owners shall be governed by the following provisions:

A. Authority to Purchase. The Board shall purchase and maintain certain insurance upon the Condominium Property including, without limitation, the insurance described in Section 12.1.B., which insurance is to be purchased by the Association for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear, and provisions shall be made for the issuance of certificates of endorsement to the 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 Owners of the coverage of said policies to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit with respect to any items not insured by the Association. Without limiting the generality of the foregoing, it shall be each Owner's responsibility to provide for himself:

- (1) Owner's liability insurance;
- (2) Theft or other insurance covering personal property damage and loss;
- (3) Casualty insurance on the portion of his Apartment which is not considered part of the Common Elements including, but not limited to, carpeting, drapes, wall covering, fixtures, furniture, furnishings, appliances and other personal property; and
- (4) Insurance which is not carried by the Association and which the Owner desires.

B. Coverage. A multi-peril, "master", "blanket" type policy or equivalent coverage to provide the following coverages:

(1) Property - Fire and Extended Coverage ("E.C.") insurance covering the entire Condominium Project in an amount not less than the full replacement value (i.e., one hundred percent [100%] of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the Condominium Project (including all building service equipment and the like and any fixtures or equipment within any Apartment which is financed under a Mortgage) with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and, if required by any Governmental or other Mortgagee, Demolition and Contingent Liability from Operation of Building Laws Endorsements, an Increased Cost of Construction Endorsement, an Earthquake Damage Endorsement and other endorsements as necessary. Such insurance shall afford protection against at least the following:

(a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler, garbage, debris removal, cost of demolition, vandalism and malicious mischief, windstorm and water damage; and

(b) Such other risks in such kinds and amounts as are customarily acquired or required for projects similar in construction, location and use.

(2) Public liability - A comprehensive policy of public liability insurance covering all of the Common Elements, commercial spaces and public ways in the Condominium Project in a minimum amount of at least One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage, or such higher amount as shall be required by any Governmental Mortgagee. Such insurance policy shall contain a "severability of interest" endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association and its agents or another Owner or Owners. The scope of such coverage shall include protection against water damage liability, liability for nonowned and hired automobile, liability for property of others and, if applicable, elevator collision, garage-keeper's liability,

host liquor liability, and all such other risks and coverages in the kinds and amounts customarily acquired or required for projects similar in construction, location and use.

(3) Fidelity - The Association must obtain and maintain fidelity coverage to protect against dishonest acts on the part of its officers, directors, managers, trustees, employees, volunteers and all others who are responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall:

(a) Name the Association as the named obligee or named insured;

(b) 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, unless a greater amount is required by any Governmental Mortgagee;

(c) Contain an appropriate endorsement to the policy covering any persons who serve without compensation if the policy would not otherwise cover volunteers and waiving any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and

(d) Provide that it shall not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any First Mortgagee or Servicer servicing a Mortgage on behalf of any Governmental Mortgagee.

(4) Steam Boiler - 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 broad form of boiler and machinery insurance policy and providing as a minimum, coverage of \$100,000.00 per accident per location.

(5) Flood - 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 issued by members of the National Flood Insurers Association or a policy which meets the criteria set forth in the Guidelines published by the Flood Insurance Administration in the Federal Register on July 17, 1974 (or superseding authority or guidelines), on the Condominium Project in the name of the Association or designated trustee must be maintained in the amount of the outstanding principal balances of the Mortgage loans on the Units comprising the Condominium Project, the value of the insurable improvements in the Condominium Project, the maximum amount of flood insurance available, or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

(6) Workmen's Compensation - A workmen's compensation policy, if necessary, to meet the requirements of law.

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

(8) The insurance policies purchased by the Association shall, to the extent possible, contain the following provisions:

(a) That the coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their Mortgagees.

(b) That the conduct of any one or more Owners shall not constitute grounds for avoiding liability on any such policies and, further, that the coverage thereunder shall not be prejudiced by (i) any act or neglect of the Owners when such act or neglect is not within the control of the Association; or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

(c) That there shall be no subrogation by the insurer as to any and all claims against the Association, the Owners and/or their respective agents, employees or tenants, and that there shall be no defenses based on co-insurance or on invalidity arising from the acts of the insured.

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

(e) Statement of the name of the insured in form and substance similar to the following:

"Osborn Gardens Homeowners' Association, of 1402 East Osborn, Phoenix, Arizona, for use and benefit of the individual owners" (designated by name, if required).

(f) Standard Mortgagee clause without contribution which must be endorsed to provide that any proceeds shall be paid to the Association, for the use and benefit of Mortgagees as their interest may appear or which must be otherwise endorsed to fully protect the interest of Mortgagees, their successors and assigns.

(g) All policies including, but not limited to, policies of hazard insurance, shall provide (by standard Mortgagee clause if applicable) that coverage thereunder shall not be cancelled, reduced, or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice by the insurance carrier to any and all insureds, including the Servicers on behalf of any Governmental Mortgagee.

(h) That any "no other insurance" clause shall exclude insurance purchased by Owners or their Mortgagees.

(i) That, where property insurance is concerned, such policies shall provide that, despite any provisions giving the insurance carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or its authorized insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.

(9) Each hazard insurance policy shall be a multi-peril type policy, where possible, or equivalent coverages and written by an insurance carrier acceptable to any Governmental Mortgagee(s) holding First Mortgages on Units and which has a financial rating by Best's Insurance Reports of B/VI or better.

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

(11) Policies shall not be utilized where:

(a) Under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owner or Mortgagee or any Governmental Mortgagee or Governmental Mortgagee's designee; or

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

(c) The policy includes any limiting clauses, other than insurance condition, which could prevent any Governmental Mortgagee or the Mortgagor from collecting insurance proceeds.

(12) 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, including any Governmental Mortgagee. 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 Mortgagee clause instead of the Governmental Mortgagee. 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.

(13) All insurance drafts, notices, policies, invoices and all other similar documents, or their equivalent, shall be delivered directly to each Servicer of the Mortgage involved, regardless of the manner in which the Mortgagee clause is endorsed. If a Governmental Mortgagee is named as First Mortgagee on any policy or endorsement, the Servicer's address shall be used in the endorsements in lieu of the address of such Governmental Mortgagee.

(14) 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 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 as such Owner may desire.

(15) First Mortgagees may pay overdue premiums and 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 Section 12.1.B. and First Mortgagees making expenditures therefor shall be immediately reimbursed by the Association.

(16) No policy shall contain a deductible clause applicable to fire and/or extended coverage in an amount greater than Two Hundred Fifty and NO/100 Dollars (\$250.00) unless a higher amount is required by applicable law.

C. Governmental Mortgagee Requirements. Notwithstanding any other provision of this Article XII, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bond, meeting the insurance and fidelity bond requirements for condominium projects established by Governmental Mortgagees, so long as any such Governmental Mortgagee is a mortgagee or owner of a Unit within the Condominium Project, except to the extent such coverage is not available or has been named, in writing, by such Governmental Mortgagees.

Section 12.2 - Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Unit, or its appurtenances, or of the Common Elements, by an Owner shall be assessed against that particular Owner.

Section 12.3 - Insurance Claims. The Association, acting by and through its Board, is hereby irrevocably authorized and appointed agent for each Owner and for each holder of a Mortgage or other lien upon a Unit, and for each Owner of any other interest in the Condominium Project, subject to the provisions contained herein, to negotiate 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.

Section 12.4 - Insurance Trustee; Proceeds.

A. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and Mortgagees as their interests may appear, shall name the Association (as trustee for the Owners, or the Association's authorized representatives, including any trustee with which the Association may enter into any Insurance Trust Agreement, or any successor trustee), as named insured thereunder, and shall provide that proceeds covering property losses 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.

B. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold them in trust for the benefit of the Owners and their Mortgagees as follows:

(1) An undivided share of such proceeds on account of damage to Common Elements shall be allocated to Owners according to their respective Common Element Interests.

(2) Proceeds, if any, on account of Apartments shall be held for the Owners of damaged Apartments in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

(3) In the event a Mortgagee endorsement has been issued as to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their interests may appear.

C. Proceeds of insurance policies received by the Insurance Trustee shall be distributed as follows:

(1) All expenses of the Insurance Trustee shall be first paid.

(2) If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds, after payment of Section 12.4.C.(1) above, shall be expended as provided in Section 12.6.

(3) If it is determined as provided in Section 12.5 that the damage for which the proceeds are paid shall not be reconstructed or repaired, or if there are excess proceeds remaining after a reconstruction and repair, the remaining proceeds shall be distributed to the beneficial owners, remittances to Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

D. In making a distribution to Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the names of the Owners and their respective shares of the distribution, and as to whether or not the Building or Buildings are to be reconstructed or repaired.

Section 12.5 - Damage and Repair. If any part of the Condominium Project or any property in which the Association owns an interest shall suffer loss or damage by casualty, whether it shall be repaired and/or reconstructed, shall be determined in the following manner:

A. 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 Project shall be terminated.

B. Subject to compliance with applicable provisions of Article XV, if the damaged property is a Building or Buildings containing Apartments, the damage shall be repaired and reconstructed if the Board finds that more than twenty percent (20%) of all of the Apartments are tenantable, unless within sixty (60) days after the loss or damage, the Owners and Mortgagees of all of the Units decide to terminate the Condominium Project. If the damaged property is a Building or Buildings containing Apartments, the damage shall not be repaired or reconstructed if the Board finds that twenty percent (20%) or less of all of the Apartments are tenantable, and in such case the Condominium Project will be terminated as hereinafter provided, unless within sixty (60) days of the loss or damage the Owners of eighty percent (80%) or more of the Common Elements and eighty percent (80%) or more of the Mortgagees of record, or such percentage as may be otherwise required by this Declaration or applicable law, agree in writing to such repair or reconstruction.

C. Any repair or reconstruction must be substantially in accordance with the plans and specifications for the original Condominium Property, or if not, then according to plans and specifications approved by the Board.

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

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

F. 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 Owners who own the damaged property, and against all Owners in the case of damage to Common Elements, 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 Owners for damage to Apartments shall be in proportion to the cost of reconstruction and repair of their respective Apartments. Such Assessments on account of damage to Common Elements shall be in proportion to the Owner's respective Common Element Interests.

Section 12.6 - 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 Owner, shall be paid by the Insurance Trustee to the Owner or, if there is a Mortgagee endorsement, then to the Owner and the Mortgagee jointly, who may use such proceeds as they may determine; provided, however, to the extent that any damage to an Apartment affects in any way the Common Elements or any other Owner's Apartment, 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.

Section 12.7 - Termination. If it is determined, in the manner provided in this Declaration, that the Building or Buildings containing Apartments shall not be repaired or reconstructed because of damage or destruction as set forth in Section 12.5 above, then and in such event, this Condominium Project shall be terminated and all of the Owners and all of the Mortgagees and lienholders of record of all of the Units hereby constitute and appoint the Board, and each of the members of the Board, as their attorney-in-fact for the purpose of executing, acknowledging and recording a declaration withdrawing the Condominium Property from this Horizontal Property Regime, which power is irrevocable and coupled with an interest.

ARTICLE XIII

Use Restrictions

Section 13.1. Each Unit in the Condominium Project shall be known as, and limited to, a single family residential use. The use and occupancy of the Condominium Property shall be in conformity with all applicable zoning ordinances, and other laws.

Section 13.2. No noxious or offensive activity may be carried on or permitted in any part of the Condominium Property, nor shall any part of the Condominium Property be used for business, professional, commercial, religious, institutional or other non-residential purposes; provided, however, the foregoing restrictions shall not apply to the Association in furtherance of its powers and purposes as set forth herein.

Section 13.3. No nuisance shall be permitted to exist or operate upon the Condominium Property or in connection with any Apartment so as to be offensive or detrimental to any other property or Apartment in the vicinity thereof or to its occupants. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Condominium Property or adjacent to any Apartment and no odors shall be permitted to arise therefrom, so as to render the Common Elements, Apartments or portions thereof unsanitary, unsightly, offensive or detrimental to any other Apartment or property in the vicinity thereof, or to its occupants. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes, shall be located, used or placed on the Condominium Property, nor shall any offensive activity be carried on in any Apartment, nor shall anything be done thereon which may be or may become an annoyance or a detriment to other Apartments or their occupants or Owners. The Board, in its sole discretion, shall have the right to determine the existence of any nuisance.

Section 13.4. No animals, fish, fowl, poultry, livestock, or birds or any kind shall be raised, bred or kept on the Condominium Property, except that commonly accepted household pets including domestic dogs, cats, fish, and birds in cages may be kept, provided that such pets are kept solely for domestic purposes and are not kept, bred or maintained for any commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be visible from another Apartment or street. All pets, at all times, must be carried or on a leash while in any part of the Common Elements. Pets are not permitted on the landscaped areas of the Common Elements. The Owner of each pet is responsible for cleaning any dirt or soilage occasioned by the pet on the Common Elements as well as damage to the Property. When such conditions are created, the Owner of such Apartment shall be assessed an amount not less than \$20.00, as determined by the Board, for clean-up expenses by the Association and may seek other satisfaction as permitted by law and this Declaration.

Section 13.5. All clotheslines, equipment, service yards, woodpiles or storage piles, if any are allowed, shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Apartments and streets. Each Unit shall have a sufficient number of covered garbage containers of a type, size and style which are approved by the Board. To the extent feasible, all rubbish, trash or garbage shall be kept in such containers and not allowed to accumulate on the Condominium Property. Any rubbish, garbage or trash not capable of being kept in said containers shall be kept in other appropriate containers and screened from view of neighboring Apartments and streets until the date of pickup by a trash collection service. No rubbish, trash or garbage shall be burned on the Condominium Property. Incinerators of every kind shall be prohibited.

Section 13.6. Gas, electric, power, telephone, water, sewer, cable television and other utility service

Section 13.14. Subject to the provisions of the Condominium Constituent Documents, only entire Units may be rented, provided the occupancy thereof is only by the lessee and his family and guests. With the exception of a lender in possession of a Unit following a default in a First Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his Unit for transient or hotel purposes. No Owner may lease less than the entire Unit. All lease agreements shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, Articles, Bylaws and Rules and Regulations and any failure by lessee to comply with the terms of such documents shall be a default under the lease. For purposes of this Declaration, "lease" shall mean any agreement for the leasing or rental of all or any portion of a Unit on the Property including, but not limited to, "month-to-month" rentals.

Section 13.15. Notwithstanding any provision in this Article XIII to the contrary, until Declarant has completed and sold all of the Units of the Condominium Project, or relinquished control of the Association, neither the Owners nor the Association, nor the use of the Condominium Property, shall interfere with the completion of any contemplated Improvements and the sale of the Units; and Declarant may make such use of the unsold Units and Common Elements as may facilitate such completion and sale including, but not limited to, maintenance of a sales office, the showing of Units and the Condominium Property, and the display of signs.

ARTICLE XIV

Easements

Section 14.1. There is hereby created a blanket easement upon, across, over and under the Condominium Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems including, but not limited to, water, sewers, gas, telephones, electricity, air conditioning, heating, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, or the Association or their agent, to install and maintain facilities and equipment on the Condominium Property and, subject to the provisions of Article XIII, to affix and maintain wires, pipes, lines, mains, circuits, conduits, ducts, vents, and cables, and other appurtenant items, on, in and under the roofs and exterior walls of the Buildings and the Condominium Property. Notwithstanding anything to the contrary contained herein, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Condominium Property except as initially programmed and approved by the Declarant and/or the Board. This easement shall in no way affect other recorded easements on the Condominium Property. There shall be an access easement in all Buildings for the delivery and collection of the United States mail. The Association and its authorized agents shall have a reasonable right of entry upon the Unit to effect emergency or other necessary repairs which the Owner has failed to perform.

Section 14.2. Each Apartment 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, reconstruction, repair, shifting, settling, movement and overhangs. If any portion of the Common Elements shall actually

encroach upon any Apartment, or if any Apartment shall actually encroach upon any portion of the Common Elements, or if any Apartment shall actually encroach upon another Apartment, as the Common Elements and Apartments 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, Building or other Improvement is repaired, altered or reconstructed, similar encroachments shall be permitted and a valid easement for said encroachments and for the maintenance thereof shall exist. Owners and any other parties acquiring any interest in the Condominium Property shall acquiesce and agree to the existence of such easements by accepting a deed or other ownership interest from any seller of a Unit or by acquiring any interest whatsoever in the Condominium Property.

Section 14.3. Each Unit Owner shall have the right of ingress and egress to his Unit, and no provisions of the Condominium Constituent Documents shall restrict such right.

ARTICLE XV

Rights and Duties of First Mortgagee and Declarant

Section 15.1. Notwithstanding and prevailing over any other provisions of this Declaration and of the Association's Articles, Bylaws, Rules and Regulations and management agreements, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Unit and Declarant:

A. Any First Mortgagee or any purchaser at a foreclosure sale, who obtains title to a Unit pursuant to the remedies provided in the Mortgage for foreclosure of the Mortgage will not be liable for such Unit's unpaid dues, charges or Assessments which may accrue prior to the acquisition, including the expiration of any period of redemption, of title to such Unit by the Mortgagee.

B. Unless each Institutional First Mortgagee and not less than two-thirds (2/3) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than Declarant) of the Units, have given their prior written approval, neither the Association nor any Owners shall be entitled to:

(1) By act or omission, seek to abandon or terminate this Declaration or the Condominium Project hereby established, except for abandonment or termination provided by law in case of substantial destruction by fire, other casualty or the taking by condemnation or eminent domain;

(2) Change the pro rata interest or obligations 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;

(3) Partition or subdivide any Unit;

(4) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements 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);

(5) To use hazard insurance proceeds for losses to any Condominium Property or portion thereof, whether to Units or to Common Elements, for other than the repair, replacement or reconstruction of such Condominium Property, except as provided by statute in case of substantial loss to the Units and/or Common Elements of the Condominium Project;

(6) Materially amend this Declaration or the Bylaws of the Association including, but not limited to, any amendment which would change the percentage interests of the Owners in the Condominium Property; or

(7) Effectuate any decision by the Association to terminate professional management and assume self-management of the Condominium Project.

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

D. If any Unit or portion thereof or the Common Elements or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then all Institutional First Mortgagees affected thereby shall be entitled to timely written notice of any such proceeding or proposed acquisition. No provision of the Condominium Constituent Documents shall give an Owner, or any other party, priority over any rights of the First Mortgagee of the Units pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds, eminent domain or condemnation awards for losses to or a taking of Units and/or Common Elements.

E. All amenities pertaining to the Condominium Project and located on the Property, such as parking, 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.

F. The Association shall give a First Mortgagee written notification 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 of default.

G. First Mortgagees shall have the right upon request (1) to examine the books and records of the Association or the Condominium Project at reasonable times during normal business hours; (2) receive an annual audited financial statement of the Condominium Project within ninety (90) days following the end of any fiscal year of the Project; and (3) receive written notice of all meetings of the Association and be permitted to designate a representative to attend all meetings.

H. A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, regulation, rule, Association Articles of Incorporation, Bylaws, Rules and Regulations, or management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as provided in this Article XV.

I. An action to abate the breach of any of the Condominium Constituent Documents 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.

J. During the pendency of any foreclosure proceedings to foreclose any 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 the beneficiary (or trustee) under a deed of trust, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner of the Unit in default including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner.

K. 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 for all Assessments and charges accruing thereafter, in the same manner as any Owner.

L. The First Mortgagee, or any other party acquiring title or coming into possession of a mortgaged Unit through foreclosure of the First Mortgage, purchase at a foreclosure sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, or the beneficiary or any other party, acquiring title through enforcement of a first deed of trust or through any equivalent proceedings, shall acquire title free and clear of any lien or claim 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, or the time such First Mortgagee or other party comes into possession of the Unit, including the expiration day of any period of redemption. Notwithstanding the foregoing, however, in the event the Owner against whom the original Assessment was made is the purchaser or redemptionor, 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 nevertheless 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.

M. Any lien which the Association may have on any Unit for the payment of Assessments provided for herein and attributable to such Unit shall be subordinate to the lien or equivalent security interest of any First Mortgage on the Unit recorded prior to the date such Assessment becomes due, provided 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.

N. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, all Institutional First Mortgagees affected thereby shall be entitled to timely written notice of any such damage or destruction, and no provision of the Condominium Constituent Documents shall entitle any Owner or other party to priority over such First Mortgagees with respect to the distribution of any insurance proceeds.

Section 15.2. Notwithstanding any provision in the Condominium Constituent Documents to the contrary, no provision of this Declaration or the Condominium Constituent Documents related to costs, use, set-back, minimum-size, building 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 violation of any provision of any of the Condominium Constituent Documents shall affect, impair, defeat or invalidate the interest or lien of any First Mortgagee as a Mortgagee.

Section 15.3. No Unit shall be subject to any unreasonable restraints on alienation which would adversely affect the title or marketability of the Unit, or the ability of the First Mortgagee on any Unit to foreclose its First Mortgage Lien and thereafter to sell or lease such Unit.

ARTICLE XVI

General Provisions

Section 16.1 - Binding Effect and Enforcement.

The provisions, covenants, conditions, charges, liens, reservations, easements and restrictions contained herein shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing or occupying or otherwise having any interest in the Condominium Property or any Unit in the Condominium Project, their heirs, executors, administrators, successors, lessees, grantees and assigns. After the date on which this Declaration has been recorded, the provisions hereof may be enforced by any one or more of the following: (a) the Association or its Board which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof; (b) the Declarant, its successors and assigns so long as such entity has an interest in any part of the Condominium Property; and (c) the Owner or Owners of any Unit. Such enforcement may be in any court now or hereafter having jurisdiction of any nature whatsoever over or with respect to all or part of the Condominium Property. Any person who acquires title to a Unit, except through foreclosure or other remedy provided by a Mortgage, shall take title to such Unit subject to the lien hereof for all charges and Assessments that have accrued prior to such acquisition of title, and subject to the lien hereof for all charges and Assessments that shall accrue subsequent to the date such person takes title; and, provided also, that the breach of any provision of the Declaration, Articles, Bylaws or Rules and Regulations or of the Act may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any Mortgage. The personal obligation to pay previously accrued Regular and Special Assessments shall not pass to a successor in title unless the obligation is expressly assumed by the successor in title or unless, prior to such transfer of title as evidenced by the records of the Maricopa County Recorder, State of Arizona, or other appropriate governmental agency, a lien for such Assessments has been recorded in writing with the Maricopa County Recorder, State of Arizona or such other appropriate governmental agency. All instruments of conveyance of any interest in all or any part of a Unit may contain reference to this Declaration; provided, however, that the terms and conditions of this Declaration shall be binding upon all persons affected by its terms, regardless of whether any reference is made to this Declaration in the deed or other instrument of conveyance. Enforcement of the provisions of this Declaration may be by proceedings at law or in equity, against any person or persons violating or attempting to violate all or any of such provisions, either to restrain such violation or attempted

violation, and/or to recover damages. In the event the Declarant or the Association employs an attorney or attorneys to enforce a lien or the collection of any amounts, including Assessments, due pursuant to this Declaration, or to enforce compliance with or specific performance of the provisions of this Declaration, the Owners and parties against whom the action is brought shall pay all attorneys' fees and costs incurred by such enforcing parties. Nothing herein shall be deemed to indicate or provide that damages at law shall constitute an adequate remedy for violation of any provision of this Declaration.

Section 16.2 - Waiver or Abandonment. The waiver of, or failure to enforce any breach or violation of any provision contained in this Declaration shall not be deemed to be a waiver or abandonment of such provisions, or a waiver of the right to enforce any subsequent breach or violation of such provisions. The foregoing shall apply regardless of whether any person affected hereby, or having the right to enforce these provisions, had knowledge of the breach or violation. No provision contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such provision pursuant to Section 16.7.

Section 16.3 - Equal Treatment of Owners. This Declaration shall be applied to all Owners without discrimination.

Section 16.4 - Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs, or sections hereof shall not affect the remaining portions of this Declaration or any part thereof, all of which are inserted conditionally upon their being held valid in law. 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.

Section 16.5 - Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities, or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 16.6 - Topic Headings. The marginal or topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of this Declaration.

Section 16.7 - Amendment. This Declaration shall remain in full force and effect for a period of twenty (20) years from the date hereof. Subject to the provisions of Article XV, amendment of this Declaration during such twenty (20) year period or at any time thereafter shall require an amendment in writing, executed and acknowledged by the then Owners representing not less than three-fourths (3/4) of the Units in the Condominium Project, or such higher percentage as required by law, and recorded in the Maricopa County Recorder's Office, Arizona. After such twenty (20) year period, this Declaration shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked by an amendment in writing, executed and acknowledged by the then Owners representing not less than three-fourths (3/4) of the Units in the Condominium Project, or such higher percentage as required by applicable law, and recorded in the Maricopa County Recorder's Office, Arizona, within ninety

(90) days prior to the expiration of the initial period hereof or any ten (10) year extension. Notwithstanding anything to the contrary in this Section 16.7, the provisions of this Declaration shall not be revoked or amended, and any such attempted amendment or revocation shall not be valid or effective, without compliance with applicable provisions of the Act and/or Article XV, if any.

Section 16.8 - Termination.

A. This Condominium Project may be terminated pursuant to the provisions of Section 33-556 of the Act, other applicable law, and this Declaration.

B. Unless otherwise provided by applicable law, after termination of the Horizontal Property Regime, the Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares in proportion to their respective Common Element Interests and their respective Mortgagees and lienors shall have Mortgages and liens upon the respective undivided shares of the Owners.

Section 16.9 - Violations. Any violation of federal, state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Condominium Property is hereby declared to be in violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 16.10 - Guests. Each Owner shall be responsible for compliance by such Owner's agent, tenant, guest, invitee, licensee, and their respective servants and employees with the provisions of this Declaration, the Articles, Bylaws, and Rules and Regulations, as such may be amended from time to time. The Owner's failure to so ensure compliance by such persons shall be grounds for the same action available to the Board by reason of such Owner's own noncompliance.

Section 16.11 - Management Agreements. Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Board, provided such agreements are not in violation of this Declaration, the Articles, the Bylaws and the Act or other applicable law. A copy of all management agreements shall be made available to each Owner by the Board upon request. Any and all management agreements entered into by the Association shall provide that such management agreements may be cancelled and terminated by an affirmative vote of Owners of two-thirds (2/3) of the Units. Any agreement for professional management of the Condominium Project, or any other contract providing for services of the developer, sponsor, or builder of all or any portion of the Condominium Project, shall not exceed one (1) year and be renewable by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee on thirty (30) days prior written notice thereof. In the event that professional management is terminated by the Association and the Board elects to return to self-management, the prior consent of the Mortgagees must be obtained.

Section 16.12 - Notices. All notices, requests, demands or other communications to or upon the Association or the persons referred to herein shall be deemed to have been given or made upon personal service thereof forty-eight (48) hours after being deposited in the United States mail, postage prepaid, or in the case of telegraphic notice, when delivered to the telegraphic company addressed: (i) Osborn Gardens Homeowners' Association, 1402 East Osborn, Phoenix,

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Arizona, or (ii) to the Owners at their respective Units as designated by the street address thereof. No other method of giving notice is hereby precluded.

Section 16.13 - 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.

Section 16.14 - Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey the Owner's Unit shall not be subject to any right of first refusal or any similar restriction in favor of the Association or any similar restriction in favor of the Association or any other party, and no provision of the Declaration, the Articles, Bylaws or Rules and Regulations shall be enacted, construed or applied to create or effect such a right.

Section 16.15 - Condemnation.

A. Total. In the event all of the Condominium Property is taken by condemnation, eminent domain, or equivalent proceeding, the proceeds, if any, deriving from such proceedings shall be apportioned equally among the Owners in accordance with their respective Common Element Interest.

B. Partial - Common Elements Other Than Building. In the event all or any portion of the Common Elements, excluding a Building or any portion of the Common Elements contained within an Apartment, is taken by condemnation, eminent domain, or equivalent proceeding, the award, if any, derived from such proceedings shall be used by the Association for needed restoration and/or repair to the remaining Common Elements, and any portion of the award not so used shall be apportioned equally and distributed among the Owners in accordance with their respective Common Element Interests.

C. Partial - Including Building or Apartment. In the event of any condemnation, eminent domain or equivalent proceeding, taking or including the taking of a Building or any portion thereof, or Apartments or any portion thereof, any award therefor shall compensate the Owner of the affected Apartment (the "Affected Apartment") for the reasonable reduction in value of the Affected Apartment. If such taking shall render an Affected Apartment uninhabitable or not practically or lawfully usable for the purposes permitted by this Declaration, any award for such taking shall be utilized by the Association to acquire and compensate the Owner of the Affected Apartment for the Affected Apartment and appurtenant Common Element Interest (based on fair market value as determined by qualified appraisal or, if the Owner thereof shall not concur in such appraisal, by arbitration as provided by Section 3.10). Upon acquisition of an Affected Apartment and appurtenant Common Element Interest, the Common Elements shall be reapportioned equally among the remaining Units and the Association will cause an amendment to be made to this Declaration reflecting such reapportionment and the new Common Element Interests. Any remnant of an Apartment remaining after part of an Apartment is taken pursuant to this Section 16.15.C. shall become a part of the Common Elements. If any taking covered by this Section 16.15.C. also includes a taking of a portion of the Common Elements, any award therefor shall, after compensation to Owners of Affected Apartments and repair and restoration of the Common Elements, be distributed in accordance with Section 16.15.B.

D. Mortgagee's Rights. The provisions of this Section 16.15 shall not be deemed to affect the rights of

EXHIBIT 160461524

EXHIBIT "A"

Lot 1, OSBORN GARDENS, according to Book 239 of Maps,
Page 48, records of Maricopa County, Arizona.

lines used for the general benefit of the Owners and other utility or service lines of every kind or character, whether now or hereafter invented or used, shall be placed and kept underground up to the walls of the buildings on the Property, except to the extent, if any, such underground placement may be prohibited by law, or by the nature of the service to be rendered, such underground placement prevents the lines from being functional; provided, however, that the foregoing shall not apply to such utility or service lines as are on the Condominium Property as of the effective date of this Declaration. This restriction shall apply to the service and utility lines for each and every Apartment and the Common Elements, as well as to the distribution lines located in the Condominium Property. However, the foregoing shall not prohibit service pedestals and above-ground switch cabinets and transformers, where required. No provision hereof shall be deemed to forbid the erection of temporary power, telephone or similar structures incident to the construction of buildings or structures approved by the Board.

Section 13.7. Except on the private patios of every Unit, no planting or gardening shall be done, and no fences, hedges or walls, improvements, exterior painting, landscaping or decorative alterations, repairs, excavation, or other work which in any way alters the exterior appearance of the Condominium Property, or the improvements located thereon shall be commenced, erected, maintained, made or done except as provided by Article IX.

Section 13.8. Placement and location of all radio, television and other antennas of every kind or nature upon the Condominium Property shall be subject to the prior approval of the Board.

Section 13.9. No sign, other than a name and address sign not exceeding 9" by 30" in size, of any nature whatsoever shall be permitted on the Condominium Property in connection with any Unit without prior written approval of the Board.

Section 13.10. No mobile home, boat, trailer of any kind, commercial-use truck, truck camper, tent or similar structure shall be kept, placed, maintained, constructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired upon the Condominium Property without the prior approval of the Board; provided, however, that such approval shall not be unreasonably withheld. No motor vehicle, boat, trailer, recreational vehicle, camper, motorcycle or other similar vehicle shall be parked or stored on any part of the Condominium Property except as assigned. The Ownership of a Unit shall also include the right to the use for at least one (1) automobile, of such space.

Section 13.11. No portion less than all of a Unit shall be conveyed or encumbered. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of the Condominium Property for public utilities or other public purposes, in which event the remaining portion of any Unit affected shall, for the purpose of these restrictions, be considered as a whole Unit.

Section 13.12. Appurtenant to each Unit shall be the right to the use of one (1) assigned parking space. Parking for each Unit shall be in the parking space as designated by the Association. Parking rights shall not be severed from the Project.

Section 13.13. The Common Elements shall at all times be controlled and regulated by the Association or its successors in order to preserve the rights of the Owners with respect to the operation and management of the Common Elements.

When recorded return to:
Richard W. Clark
FOLEY, CLARK & NYE, P.A.
4222 East Camelback Road
Suite 100H
Phoenix, Arizona 85018

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FIRST AMENDMENT TO
DECLARATION OF HORIZONTAL PROPERTY REGIME
AND
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
OSBORN GARDENS CONDOMINIUM

By this First Amendment, the Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Osborn Gardens Condominium (the "Declaration") as recorded May 25, 1982, in Docket 16046, pages 1489-1525, Records of Maricopa County, Arizona, are amended as follows:

1. Section 3.7.B. of the Declaration is amended to read as follows:

"Conveyance of an aggregate of fourteen (14) of the Units by Declarant to purchasers thereof as evidenced by the record date of recorded deeds or recorded agreements for sale (in such case, Control of the Association shall become vested within not more than one hundred twenty (120) days after the completion of such fourteen (14) transfers); or"

2. Section 7.2.F. of the Declaration is amended to read as follows:

"An adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis, such reserve to be funded by Regular and not Special Assessments, and a working capital fund for the initial months of operation of the Condominium Project equal to at least two (2) months' Assessments for all Units. Each Unit's share of the working capital fund will be collected and transferred to the Association at the time of closing of each Unit and will be maintained in a segregated account for the use and benefit of the Association. The contribution to the working capital fund for each unsold Unit shall be paid to the Association within sixty (60) days of the date of the conveyance of the first Unit;"

3. Section 7.5 of the Declaration is amended to read as follows:

"Unless otherwise specified by the Board, Assessments for each Unit, and the liability of the respective Owners therefor, shall commence no later than sixty (60) days after conveyance of the first Unit."

4. Section 12.1.B.(3)(b) of the Declaration is amended to read as follows:

"Be written to provide protection which is no event less than one and one-half (1½) times

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the insured's estimated annual operating expenses and reserves or three (3) months' aggregate Assessments for all Units plus reserve funds;"

5. Section 12.1.B.(5) of the Declaration is amended to read as follows:

"Flood - 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 issued by members of the National Flood Insurance Administration or a policy which meets the criteria set forth in the Guidelines published by the Flood Insurance Administration in the Federal Register on July 17, 1974 (or superseding authority or guidelines), on the Condominium Project in the name of the Association or designated trustee must be maintained in the amount of the aggregate outstanding principal balances of the Mortgage loans on the Units comprising the Condominium Project, one hundred percent (100%) of the current "replacement cost" of all Buildings and other insurable property within any portion of the Condominium Project, the maximum amount of flood insurance available under the National Flood Insurance Program for all Buildings and other insurable property within any portion of the Condominium Project within a designated flood area, or the maximum limit of coverage available under the National Flood Insurance Act of 1963, as amended, whichever is less."

6. Section 15.1.E. of the Declaration is amended to read as follows:

"All amenities pertaining to the Condominium Project and located on the Property, such as parking, 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. All such Common Elements and amenities are fully installed, completed and in operation for use by the Unit Owners."

7. Section 15.3. of the Declaration is amended to read as follows:

"No Unit shall be subject to any unreasonable restraints on alienation which would adversely affect the title or marketability of the Unit, or the ability of the First Mortgagee on any Unit to foreclose its First Mortgage Lien or accept a deed in lieu of foreclosure, and thereafter to sell or to lease such Unit."

8. Section 16.11 of the Declaration is amended to read as follows:

"Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Board, provided such agreements are not in violation of this Declaration, the Articles, the Bylaws and the Act or other applicable law. A copy of all management agreements shall be made available to each Owner

by the Board upon request. Any and all management agreements entered into by the Association shall provide that such management agreements may be cancelled and terminated by an affirmative vote of the Owners of two-thirds (2/3) of the Units. Any agreement for professional management of the Condominium Project, or any other contract providing for services of the developer, sponsor or builder of all or any portion of the Condominium Project, shall not exceed three (3) years and be renewable by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by each party with or without cause and without payment of a termination fee on ninety (90) days' or less prior written notice thereof. In the event that professional management is terminated by the Association and the Board elects to return to self-management, the prior consent of the Mortgagees must be obtained."

IN WITNESS WHEREOF, the undersigned has executed this First Amendment to Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Osborn Gardens Condominium this 5 day of November 1982.

PIONEER TRUST COMPANY OF ARIZONA,
an Arizona corporation, as
Trustee

By Charles A. Johnson
Its Trust Officer

STATE OF ARIZONA)
)
County of Maricopa)

On this 5th day of January, before me, the undersigned officer, personally appeared Charles A. Johnson, who acknowledged himself to be the Trust Officer of PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as trustee, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

James D. [Signature]
Notary Public

My commission expires:
OFFICIAL SEAL
CHAS. WIND
NOTARY PUBLIC, STATE OF ARIZONA
MARIICOPA COUNTY
My Comm. Expires June 22, 1986

83 C11813

CONSENT TO FIRST AMENDMENT
TO DECLARATION OF HORIZONTAL PROPERTY REGIME
AND
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
OSBORN GARDENS CONDOMINIUM

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, being the beneficiary of record of that certain Deed of Trust dated March 5, 1982, and recorded March 10, 1982, in Docket 15682, page 296, Records of Maricopa County, Arizona, covering certain property which has subsequently been subdivided and platted, hereby consents and confirms to this the First Amendment to Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Osborn Gardens Condominium, according to the plat of record in the office of the Maricopa County Recorder in Book 239 of Maps, page 48.

IN WITNESS WHEREOF, the undersigned has caused its corporate name to be signed by the undersigned officer thereunto duly authorized this 5th day of January 1982.

GREAT WESTERN BANK & TRUST,
an Arizona corporation

By: Thomas L. Hall
Its Assistant Vice-President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 5th day of January 1982, before me, the undersigned officer, personally appeared Thomas L. Hall, who acknowledged himself to be the Assistant Vice President of GREAT WESTERN BANK & TRUST, an Arizona corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as such officer.

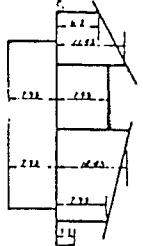
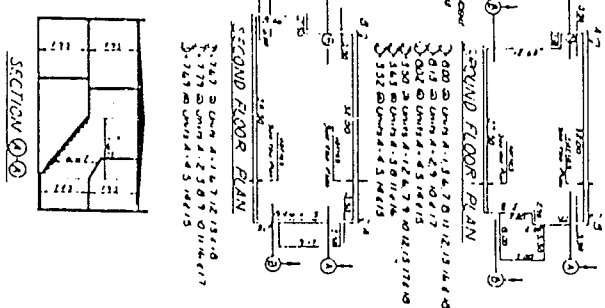
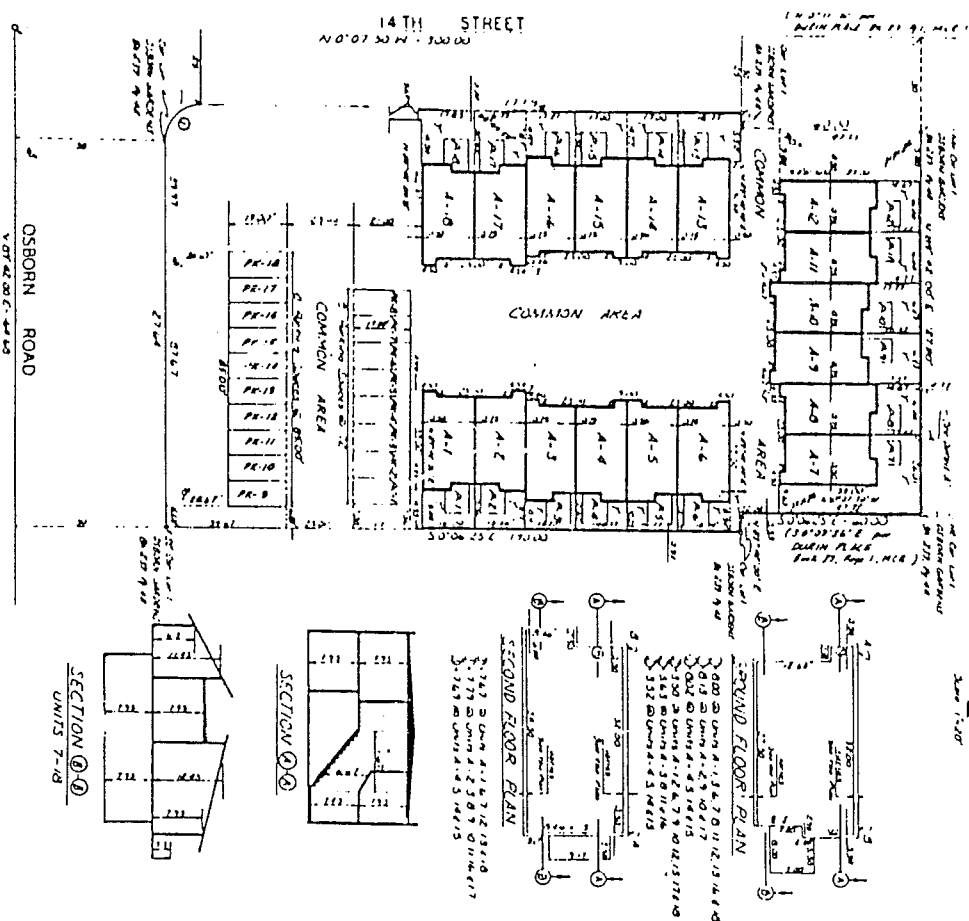
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Douglas D. Elliott
Notary Public

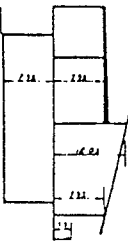
My commission expires:

2/19/85

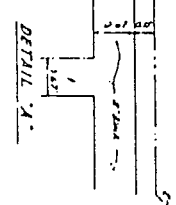
RECORDED IN OFFICIAL RECORDS
OF MARICOPA COUNTY, ARIZONA
JAN 12 1983 -8 02
BILL HENRY, COUNTY RECORDER
FEE \$ 5.00 PGS 4



SECTION 7-10



SECTION 7-6



DETAIL X

OSBORN GARDENS CONDOMINIUM

RESIDENTIAL PROPERTY REGIME PLAT
 LOT OF OSBORN GARDENS, BK 239, PG. 49,
 MARICOPA COUNTY, ARIZONA

1. The undersigned, SAHER LAHUM & ASSOCIATES, P.C., a limited liability partnership organized under the laws of the State of Arizona, and acting as the architect for the project, hereby certifies that the attached drawings were prepared by the undersigned or under the direct supervision and control of the undersigned, and that the undersigned is a duly licensed professional architect in the State of Arizona.

2. The undersigned hereby certifies that the attached drawings were prepared by the undersigned or under the direct supervision and control of the undersigned, and that the undersigned is a duly licensed professional architect in the State of Arizona.

3. The undersigned hereby certifies that the attached drawings were prepared by the undersigned or under the direct supervision and control of the undersigned, and that the undersigned is a duly licensed professional architect in the State of Arizona.

SAHER LAHUM & ASSOCIATES, P.C.
 11111 N. CENTRAL AVENUE, SUITE 100
 PHOENIX, ARIZONA 85028
 PHONE: (602) 998-1111
 FAX: (602) 998-1112

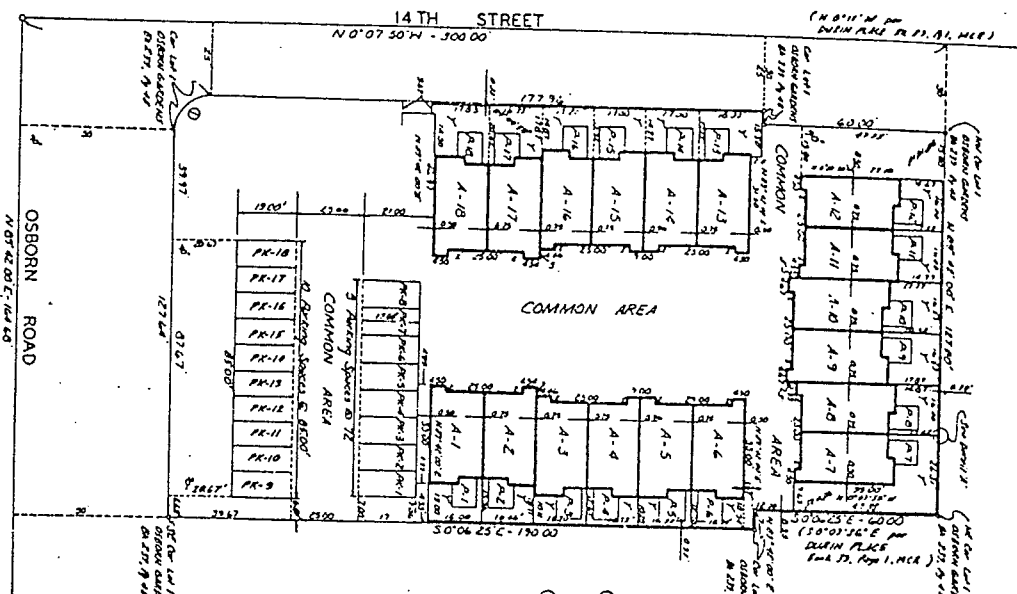
SAHER LAHUM & ASSOCIATES, P.C.
 11111 N. CENTRAL AVENUE, SUITE 100
 PHOENIX, ARIZONA 85028
 PHONE: (602) 998-1111
 FAX: (602) 998-1112

Mason

242-16 525-82

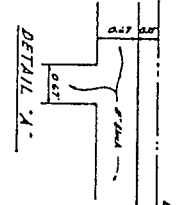
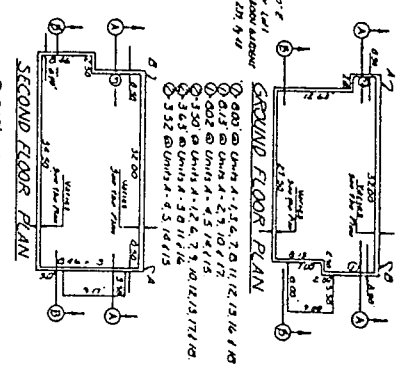
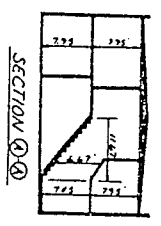
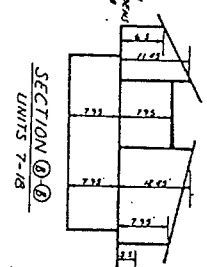
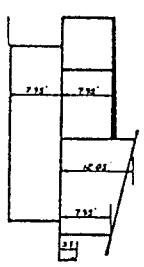
OSBORN GARDENS CONDOMINIUM

HORIZONTAL PROPERTY REGIME PLAT
 LOT 1 OF OSBORN GARDENS, BK 239, PG 48,
 MARICOPA COUNTY, ARIZONA



UNITS	Q.F.
A-1-A	0-43.00
A-1-B	0-50.00
A-1-C	0-50.00
A-1-D	0-50.00
A-1-E	0-50.00
A-1-F	0-50.00
A-1-G	0-50.00
A-1-H	0-50.00
A-1-I	0-50.00
A-1-J	0-50.00
A-1-K	0-50.00
A-1-L	0-50.00
A-1-M	0-50.00
A-1-N	0-50.00
A-1-O	0-50.00
A-1-P	0-50.00
A-1-Q	0-50.00
A-1-R	0-50.00
A-1-S	0-50.00
A-1-T	0-50.00
A-1-U	0-50.00
A-1-V	0-50.00
A-1-W	0-50.00
A-1-X	0-50.00
A-1-Y	0-50.00
A-1-Z	0-50.00

1. First floor of all units to have a minimum floor area of 1135.00 square feet.
 2. Building shall be constructed in accordance with the provisions of the Arizona Condominium Act, Chapter 48, Article 1, R.S.A.



Interpretation: In the event of any conflict between the provisions of this Declaration and the provisions of any other instrument, the provisions of this Declaration shall prevail.

Legal Description: Lot 1 of Osborn Gardens, Block 239, Page 48, Maricopa County, Arizona.

Map: A map showing the location of the property within the City of Phoenix, Arizona.

SAMER, LAHLIN & ASSOCIATES, INC.
 ARCHITECTS
 1400 N. CENTRAL AVENUE, SUITE 100
 PHOENIX, ARIZONA 85004
 PHONE: 948-4411

