

HOLD FOR LAWYERS

M

98-0197920 03/16/98 10:32

VIRGINIA 2 OF 2

DECLARATION OF  
HORIZONTAL PROPERTY REGIME AND  
COVENANTS, CONDITIONS AND RESTRICTIONS

LORNA PARK VIEW ESTATES  
CONDOMINIUMS

MARICOPA COUNTY, ARIZONA

THIS DECLARATION, made on the date hereinafter set forth, by LORNA PARK VIEW, L.L.C., an Arizona Limited Liability Company ("Declarant"), is made with reference to the following facts:

A. Declarant is the owner of a certain tract of land located in the State of Arizona, County of Maricopa, more particularly described in Exhibit "A" attached hereto and incorporated by reference. The property described in Exhibit "A," together with any property annexed thereto under this Declaration, shall be referred to herein as the "Property."

B. Declarant has improved or intends to improve the property by constructing thereon certain residential improvements and amenities, and desires to submit and subject the

Project to a Horizontal Property Regime pursuant to Arizona Revised Statutes, Sections 33-1201, et. seq.

C. Declarant intends by this document to impose upon the property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Condominium Units in the Project and the Owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and the attractiveness of the property, the project and every part thereof, in accordance with the plan for the improvement of the property and the division thereof into condominium units. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon <sup>Unofficial Document</sup> Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in or to any part of the Property or the Project.

## ARTICLE 1

### Definitions

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association as amended from time to time.

1.2 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the property which is to be paid by each Unit Owner as determined by the Association and as provided herein.

1.3 "Association" shall mean and refer to the Lorna Park View Estates Owners' Association, an Arizona nonprofit corporation, the Members of which shall be the owners of Condominium Units in the Project.

1.4 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.5 "Bylaws" shall mean and refer to the bylaws of the Association as amended from time to time.

1.6 "Common Areas" shall mean and refer to those cross-hatched portions of the Project on the Subdivision Plat attached hereto as Exhibit "A" for which title is held by all of the Owners as tenants in common, but excluding the individual Units as defined herein. The Common Areas include without limitation: land; driveway areas; conduits, pipes, plumbing, wires and other utility installations located outside the boundaries of the Units required to provide power, light, telephone, gas, water, <sup>Unofficial Document</sup> sewage, and drainage; and all improvements located within the Common Areas.

1.7 "Common Expenses" means and includes the actual and estimated expenses of operating the Project and the Association and any reasonable reserve for such purpose as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Project Documents.

1.8 "Common Interest" means the proportionate undivided interest in the Common Areas which is appurtenant to each Condominium Unit as set forth in the Declaration.

1.9 "Condominium Floor Plan" shall mean and refer to the recorded diagrammatic floor plan or plans of the Units built or to be built on the Property which identifies each Unit and shows its dimensions as set forth on the Map.

1.10 "Condominium Unit" shall mean an estate in real property consisting of title to a Unit within the Horizontal Property Regime hereby established and designated Unit 1-10 on Exhibit "A" hereof and an undivided interest in the Common Areas which fractional interest shall be calculated by dividing 1 by the total number of Units in the Project, together with a non-exclusive right to use the Common Areas and a membership in the Association. Each Condominium Unit shall be a separate freehold estate.

1.11 "Declarant" shall mean and refer to LORNA PARK VIEW, L.L.C., an Arizona Limited Liability Company, its successors and assigns, but shall not include members of the public purchasing completed Condominium Units.

1.12 "Declaration" shall mean and refer to this enabling Declaration.

1.13 "First Mortgage" shall mean any Mortgage which is a first priority lien on any Condominium Unit.

1.14 "First Mortgagee" shall mean <sup>Unofficial Document</sup> the holder of a First Mortgage.

1.15 "Member" shall mean and refer to a Person entitled to membership in the Association as provided herein.

1.16 "Mortgage" shall include a recorded deed of trust as well as a recorded mortgage.

1.17 "Mortgagee" shall include the beneficiary or a holder of a deed of trust as well as a mortgagee.

1.18 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.19 "Owner" shall mean and refer to the record holder of title to a Condominium Unit in the Project. This shall include any Person having a fee simple title to any Condominium Unit, but shall exclude Persons or entities having any interest merely as security for the performance of any obligation. Further, if a Condominium Unit is sold under a recorded

contract of sale to the purchaser, rather than the fee owner, shall be considered the "Owner" as long as he or a successor in interest remains the contract purchaser under the recorded contract.

1.20 "Person" means a natural person, a corporation, a partnership, a trustee or other legal entity.

1.21 "Project" shall mean and refer to the entire Property, together with all buildings, structures and improvements erected or to be erected thereon.

1.22 "Project Documents" means and includes this Declaration as it may be amended from time to time, the exhibits, if any, attached hereto, the Condominium Floor Plan, the Map, the Articles and Bylaws of the Association and the rules and regulations for the Members as established from time to time.

1.23 "Project Map" shall mean the map which illustrates the relationships between Condominium Units and the various Common Areas. A copy of the Project Map is attached to this Declaration as Exhibit "A".

Unofficial Document

1.24 "Property" means and includes the real property covered by this Declaration (including property annexed pursuant to this Declaration, if any).

1.25 "Subdivision Plat" shall mean and refer to that subdivision plat recorded at Page 21, Book 461 of maps in the Official Records of Maricopa County, Arizona, and any subsequently recorded subdivision plat and all amendments thereto which cover the Property or a portion thereof. The plat is hereby made a part hereof with the same force and effect as if incorporated herein at length.

1.26 "Unit" shall mean and refer to the elements of an individual unit as described in Article 2, which are not owned in common with the Owners of other Condominium Units in the Project.

1.27 "Unit Designation" means the number, letter (or combination thereof) or other official designation shown on the Condominium Floor Plan.

1.28 "Item Visible from Another Unit or the Common Areas" means visible to a person six feet tall, standing on another Unit or the Common Areas at the same elevation as the base of the item.

## ARTICLE 2

### Description of Project, Division of Project and Creation of Property Rights

#### 2.1 Description of Project

The Project consists of the underlying Property with the residential Units and all other improvements located or to be located thereon, including the perimeter wall on the west, north and east boundaries of the Property. The cubic content space of the Units and their location on the Project Property is <sup>Unofficial Document</sup> described on, or can be determined from the Condominium Floor Plan.

#### 2.2 Division of Project

The Project is hereby divided into the following:

##### 2.2.1 Units

Each of the Units as separately shown, numbered and designated on the Condominium Floor Plan As Units 1-10 is bounded by and contained within the boundaries of such Unit set forth on Exhibit "A" and also includes all windows, the underside of the pad and foundation, and the exterior of the foundation, doors, electrical outlets, water faucets, air conditioning and heating units. Each Unit includes both portions of the Condominium Building so described or contained within such boundaries and the airspace so encompassed.

2.2.1.1 A patio or balcony, or multiples thereof; the upper boundary of which shall be the upper surface of the roof or patio cover overhanging such patio or balcony, if any, or to the extent there is no overhanging roof or patio cover, a horizontal plane parallel to the unit's exterior roof surface at an elevation equal to such exterior roof surface; and the side boundaries of which shall be the exterior perimeter walls thereof, if any, or to the extent there is no exterior wall, a vertical plane extending upward from the outside edge of the floor surface. Each area includes both the portions and the airspace so encompassed. The approximate square footage and cubic content of each Unit and the appurtenant patio and balcony are set forth on, or can be calculated from the Condominium Floor Plan. The Unit does not include those areas and those things which are defined below as "Common Areas." In interpreting deeds and plans, the then existing physical boundaries of a Unit or appurtenant area, whether in its original state or reconstructed substantially in accordance with the original plans thereto, shall be conclusively presumed to be its boundaries, rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the Unit building and regardless of minor variances between boundaries shown on the plan or deed and those of the Condominium Building.

#### 2.2.2 Common Areas

The remaining portion of the Property, referred to herein as "Common Areas," shall include all of the elements set forth in Subarticle 1.6. Each Condominium Unit Owner shall have, as appurtenant to and a part of his Condominium Unit, an undivided interest in the Common Areas calculated pursuant to Subarticle 1.10. The Common Interest appurtenant to each Condominium Unit is declared to be permanent in character and cannot be altered without the consent of all the Condominium Unit Owners and the First Mortgagees of such Condominium Unit Owners, as expressed in an amended Declaration, subject to the terms and

provisions of Subarticle 9.4.2 herein. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Except for the limited access of Owners to the Limited Common Areas and Shared Common Areas, each Condominium Unit Owner shall have a nonexclusive right to use the Common Areas in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Condominium Unit Owners, subject to easements and rights created herein. Notwithstanding the transfer of the Common Areas to the Condominium Unit Owners as tenants in common, the Declarant shall reserve and hereby reserves in itself and its successors and assigns, as long as there are two classes of membership in the Association, an easement over and onto the Common Areas for common driveway purposes, for drainage and for encroachment purposes and for ingress to and egress from the Common Areas for the purpose of completing improvements thereon or for the performance of necessary repair work.

### 2.3 No Separate Conveyance of <sup>Unofficial Document</sup> Interests and Easements

The interests (including the Common Interest) and easements described in this Declaration as being part of or appurtenant to each respective Condominium Unit are to be conveyed only as part of or with the respective Condominium Unit and cannot be changed except as set forth herein. Declarant, its successors, assigns and grantees covenant and agree that the fee title to each Condominium Unit conveyed shall include the Unit and all of the interests and easements referred to in the preceding sentence, all of which shall be deemed to be conveyed or encumbered with the Condominium Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Condominium Unit.

#### 2.4 Partition Prohibited

The Common Areas shall remain undivided as set forth above. Except as provided by applicable Arizona Revised Statutes, no Owner shall bring any action for partition of a Condominium Unit, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium Unit owned by two or more Persons and division of the sale proceeds is not prohibited hereby (but partition of title to a single Condominium Unit is prohibited).

### ARTICLE 3

#### Association, Administration, Membership

#### Unofficial Document and Voting Rights

#### 3.1 Association to Manage Common Areas

The management of the Common Areas shall be vested in the Association in accordance with the Bylaws. The Owners of all the Condominium Units covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles and the Bylaws of the Association, subject to the standards set forth in this Declaration and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project.

### 3.2 Membership

The Owner of a Condominium Unit shall automatically, upon becoming the Owner of same, be a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and the Bylaws of the Association.

### 3.3 Transferred Membership

Membership in the Association shall not be transferred pledged or alienated in any way, except upon the transfer of ownership of the Condominium Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. Upon the transfer of an ownership interest in a Condominium Unit, the Association shall record the transfer upon its books, causing an automatic transfer of membership.

### 3.4 Classes of Membership

Unofficial Document

The Association shall have two (2) classes of voting membership established according to the following provisions:

#### 3.4.1 Class A Membership

Class A Membership shall be that held by each Owner of a Condominium Unit other than Declarant (while two classes of membership exist), and each Class A Member shall be entitled to one (1) vote for each Condominium Unit owned. If a Condominium Unit is owned by more than one (1) Person, each such Person shall be a Member of the Association, but there shall be no more than one (1) vote for each Condominium Unit.

### 3.4.2 Class B Membership

Class B Membership shall be that held by Declarant (or its successor) which shall be entitled to three (3) votes for each Condominium Unit owned by Declarant, provided that Class B Membership shall be converted to Class A Membership and shall forever cease to exist on the occurrence of whichever of the following is first in time: (1) The total outstanding votes held by Class A Members equal the total outstanding votes (tripled as above) held by the Class B Member; or (2) The fifth anniversary of the close of escrow for the sale of the first Condominium Unit by Declarant.

For purposes of determining the above conversion of Class B Membership to Class A Membership, the votes of the Members shall be calculated as though there were ten Condominium Units in the Project, said Condominium Units being the planned total of the Project with the voting rights of all ten Condominium Units allocated to Declarant except for the voting rights for Condominium Units which <sup>Unofficial Document</sup> vest or have vested in other Condominium Unit Owners; provided however, that the foregoing provision shall forever expire and cease to be effective on the fifth anniversary of the close of escrow for the sale of the first Condominium Unit. Thereafter, the conversion of Class B Membership to Class A Membership shall be calculated based on the actual number of Condominium Units in the Project.

### 3.5 Voting Requirements; Proxy

Any action by the Association which must have the approval of the Association membership before being undertaken shall require the vote of fifty-one per cent (51%) of the membership present and voting at a duly called and held meeting of the membership at which a quorum as prescribed herein or in the Bylaws has been constituted, or the written assent of fifty-one per cent (51%) of the membership, unless another percentage is specifically prescribed by a provision within this Declaration, the Bylaws or the Articles of the Association.

If an Owner is unable to attend a meeting of the Association, he/she may appoint any other Owner as his/her proxy.

### 3.6 Voting Rights

Voting rights attributable to all Condominium Units owned by Declarant shall vest immediately by virtue of Declarant's ownership thereof.

### 3.7 Membership Meetings

Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place set forth in and otherwise in accordance with the provisions of the Bylaws of the Association.

### 3.8 Board of Directors

The affairs of the Association shall be managed by a Board of Directors which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association.

Unofficial Document

## ARTICLE 4

### Assessments and Charges

#### 4.1 Creation of the Lien and Personal Obligations for Assessments and Charges

Each Owner of any Condominium Unit, by acceptance of a deed or recorded contract of sale therefor, whether or not it shall be so expressed in such document, is deemed to covenant and agree to pay to the Association (a) regular annual Assessments, (b) special Assessments for capital improvements and unexpected expenses and (c) other charges made or levied by the Association against the Owner or Condominium Unit pursuant to this Declaration or the Bylaws, such Assessments and charges to be established and collected as

provided herein and in the Bylaws of the Association. Any part of any Assessment (or other amount due from the Owner to the Association, including interest) not paid within thirty (30) days after the due date established in this Article 4, or elsewhere in this Declaration shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid. The annual and special Assessments and any other charge made against an Owner or a Condominium Unit pursuant to this Declaration or the Bylaws, together with interest, costs and reasonable attorneys' fees incurred by the Association in enforcing compliance with this Declaration (whether or not a lawsuit or other legal action is instituted or commenced) shall be a charge and a continuing lien upon the Condominium Unit (hereinafter "Assessment lien"). Each such Assessment and charge, together with interest, costs and reasonable attorneys' fees as provided above, shall also be the personal obligation of the Person who was the Owner of such Condominium Unit at the time the Assessment or other charge became due. The Assessment lien on each Condominium Unit shall be prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto and (b) the lien or charge of any First Mortgage on that Condominium Unit. No Owner of a Condominium Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Condominium Unit.

#### 4.2 Purpose of Assessments

The Assessments by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project, for the improvement and maintenance and to sustain the overall value of the Common Areas and for the common good of the Project. Annual Assessments shall include an adequate reserve fund for taxes, insurance, maintenance, repairs and replacement of the Common Areas, which fund shall be

maintained in a separate account of the Association to be drawn upon only for those purposes.

#### 4.3 Annual Assessments

The Board shall annually determine and fix the amount of the annual (calendar year) Assessment against each Condominium Unit, including those owned by Declarant and shall notify the Owner of each Condominium Unit in writing as to the amount of such annual Assessment not less than sixty (60) days prior to the date that such Assessment is to commence. Except as to the first annual Assessment, the annual Assessment may not be increased by more than one hundred twenty percent (120%) of the increase, if any, in the Consumer Price Index - United States City Average for Urban Wage Earners and Clerical Workers - All Items (published by the Department of Labor, Washington, D.C.), for the year ending with the preceding July (or a similar Index if the above described Index is no longer published), nor decreased by more than twenty percent (20%) below the annual Assessment for the previous year, without the affirmative vote of seventy-five percent (75%) of the Members of each class of the Association membership voting in person or by proxy, at a meeting duly called for this purpose. All annual Assessments shall be payable in one lump sum or in twelve (12) equal monthly installments at the Owner's option. In the year prior to January 1 of the year immediately following the close of escrow on the sale of the first Condominium Unit in the Project, the maximum annual Assessment per Condominium Unit shall be \$ 542.40. The annual assessment shall be prorated based on the number of months remaining before January 1 of such year, as well as any partial months remaining.

Declarant shall establish a reserve working capital fund for the Association for the initial months of the Project operations each equal to at least two (2) months' estimated monthly

Assessments for each Condominium Unit. Within sixty (60) days after closing the sale of the first Unit in the Project, Declarant shall pay each unsold Unit's share of such reserve working capital fund to the Association, but Declarant may be reimbursed therefor from the buyers of those Units. These monies shall be held in a segregated fund.

#### 4.4 Special Assessments

In addition to the regular annual Assessments authorized above, the Board may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated expense normally covered by a regular Assessment (and, where necessary, for taxes assessed against the Common Areas), provided however, that no such special Assessment shall be made without the affirmative vote of seventy-five percent <sup>Unofficial Document</sup> (75%) of each class of the Association membership voting in person or by proxy, at a meeting duly called for this purpose.

#### 4.5 Notice and Quorum for Any Action Authorized Under Subarticles 4.3 and 4.4

Written notice of any meeting called for the purpose of taking any action authorized under Subarticles 4.3 or 4.4 shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies therefor entitled to cast fifty-one percent (51%) of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### 4.6 Date of Commencement of Annual Assessment; Due Dates

The regular annual Assessments provided for herein shall commence as to each Condominium Unit in the Project on the first day of the month following the close of escrow on the sale of that Condominium Unit in the Project. Due day of Assessments shall be established by the Board and notice shall be given to each Condominium Unit Owner at least thirty (30) days prior to any due date, provided that if Assessments are to be due on a monthly basis, no notice shall be required other than an annual notice setting forth the amount of the monthly Assessment and the date of each month on which each Assessment is due.

#### 4.7 Transfer of Unit by Sale or Foreclosure

The sale or transfer of any Condominium Unit shall not affect the Assessment lien or liability for Assessments due and payable except as provided below. No sale or transfer of a Condominium Unit shall relieve such Condominium Unit from liability for any Assessments thereafter becoming due or from the lien therefor. Unofficial Document Where, however, title to a Unit is obtained as a result of foreclosure, trustee's sale or deed in lieu thereof of any First Mortgage, the Person thus obtaining title shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Condominium Unit which became due prior to this acquisition of title to such Condominium Unit, and the Assessment lien therefor on such Condominium Unit shall be extinguished. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Condominium Units. In a voluntary sale of a Condominium Unit, the buyer shall not be personally liable for Assessments or any other charges due to the Association in connection with that Condominium Unit which accrued prior to the buyer's purchase, unless liability therefor is specifically assumed by the buyer. Any such buyer shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments due the Association,

and such buyer shall not be liable for, nor shall the Condominium Unit conveyed be subject to a lien for any unpaid Assessments made by the Association against the seller in excess of the amount set forth in the statement, provided however, the buyer shall be liable for any such Assessment becoming due after the date of any such statement.

4.8 Enforcement of Assessment and Other Monetary Obligations; Discipline; Remedies Cumulative

4.8.1 Enforcement and Foreclosure of Lien

When any Assessment or other amount due from an Owner to the Association is not paid within 30 days after the due date, the lien therefor may be enforced by foreclosure of the lien and/or sale of the Owner's Condominium Unit by the Association, its attorney or other Person authorized by this Declaration or by law to make the sale or as provided herein. The lien may be foreclosed and the Condominium Unit sold in the same manner as a realty mortgage and property mortgaged thereunder, <sup>Unofficial Document</sup> the Condominium Unit may be sold pursuant to the statutory or customary procedures for sales of trust property under deeds of trust (with the Association acting as trustee), or the lien may be enforced or foreclosed in any other manner permitted by law for the enforcement or foreclosure of liens against real property or the sale of property subject to such a lien. Any such enforcement, foreclosure or sale action may be taken without regard to the value of such Condominium Unit, the solvency of the Owner thereof, or the relative size of the Owner's default. Upon the sale of a Condominium Unit pursuant to this subarticle, the purchaser thereof shall be entitled to a deed to the Condominium Unit and to immediate possession thereof, and said purchaser may apply to a court of competent jurisdiction for a writ of restitution or other relief for the purpose of acquiring such possession. The proceeds of any such sale shall be applied as provided by applicable law but, in the absence of any such law, shall be applied first to discharge costs

thereof, including but not limited to court costs, other litigation costs, costs and attorneys' fees incurred by the Association, all other expenses of the proceedings, interest, late charges, unpaid Assessments and other amounts due to the Association, and the balance thereof shall be paid to the Owner. It shall be a condition of any such sale, and any judgments or orders shall so provide, that the purchaser shall take the interest in the Condominium Unit sold subject to this Declaration. The Association, acting on behalf of the Condominium Unit Owners, shall have the power to bid for the Condominium Unit at any sale and to acquire and hold, lease, mortgage or convey the same. In the event the Owner against whom the original Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and said lien may be enforced by the Association for the Condominium Unit's Assessments and other amounts that were due prior to the final conclusion of any such foreclosure, sale or equivalent proceedings. Further, notwithstanding any foreclosure of the lien or sale of the Condominium Unit, any Assessments and Unofficial Document other amounts due after application of any sale proceeds as provided above shall continue to exist as personal obligations of the defaulting Owner of the Condominium 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.

#### 4.8.2 Suspension of Rights

In addition to all other remedies provided for in this Declaration, or at law, or in equity, the Board may temporarily suspend the Association voting rights of a Condominium Unit Owner who is in default in the payment of any Assessment or any other amount due to the Association as provided in the Bylaws.

#### 4.8.3 Other Remedies

The rights, remedies and powers created and described in this Declaration, the Articles or the Bylaws are cumulative and may be used or employed by the Association in any order

or combination, except as specifically provided to the contrary herein. Without limiting the foregoing sentence, suit to recover a money judgment for unpaid Assessments, interest, rent, costs, attorneys' fees and/or other amounts due hereunder, to obtain specific performance of obligations imposed hereunder and/or to obtain injunctive relief may be maintained without foreclosing, waiving, releasing or satisfying the liens created for Assessments or other amounts due hereunder.

#### 4.9 Unallocated Taxes

In the event that any taxes are assessed against the Common Areas or the personal property of the Association, rather than against the Condominium Units, said taxes shall be included in the Assessments made under the provisions of this Article, and, if necessary, a special Assessment may be levied against all of the Condominium Units in an amount equal to said taxes on a pro rata basis equal to the Common Interest appurtenant to each Condominium Unit.

Unofficial Document

#### 4.10 Tax Assessments

No taxes, assessments or charges which may become liens on any Condominium Unit prior to any First Mortgage under Arizona law shall affect the Common Areas as a whole. Such taxes, assessments or charges shall only be levied separately on each Condominium Unit and its respective appurtenant Common Interest.

### ARTICLE 5

#### Duties and Powers of the Association

##### 5.1 Duties and Powers

The Association will serve as the governing body for all Owners and shall make provisions for the maintenance, repair, replacement, administration and operation of the

Common Areas, assessment of expenses, payment of losses, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in Arizona law, the Declaration, and the Bylaws. 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 Owners in accordance with the Declaration and the Bylaws. In addition to the duties and powers enumerated in the Bylaws and the Articles, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

5.1.1 Except as provided in Subarticle 5.3, maintain, repair, replace, restore, operate and manage all of the Common Areas, including lighting fixtures, all drainways, improvements, all common area walls, equipment and landscaping thereon be in good condition. This obligation shall not extend to the maintenance of any portion of the Common Areas required to be maintained by an individual Owner under this Declaration or the Bylaws.

5.1.2 Enforce the provisions of <sup>Unofficial Document</sup> this Declaration by appropriate means, including without limitation the expenditure of funds of the Association, the employment of legal counsel and the commencement of legal actions.

5.1.3 Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.

5.1.4 Have the authority to employ a manager or other Persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, subject to the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the Project.

5.1.5 Adopt reasonable rules and regulations not inconsistent with this Declaration, the Articles or the Bylaws relating to the use of the Common Areas and all

facilities thereon and the conduct of Owners and their tenants and guests with respect to the Project and other Owners.

#### 5.2 Association's Right to Assess and Collect Fines

The Association may promulgate and enforce fines against persons and entities violating the Declaration, the Articles, Bylaws or the rules and regulations adopted by the Association. Such fine(s) shall become a part of the assessment of the Owner who is fined and shall be secured by the lien for assessments against such Owner's Unit.

#### 5.3 Maintenance of Project by Association

The Association shall provide maintenance of the Common Areas. The Association shall also maintain landscaping in all Common Areas, and shall maintain the perimeter walls of the Project.

#### 5.4 Maintenance By Owners

All other repair, replacement and maintenance shall be done by the respective Owners, including but not limited to private patio areas, landscaping or improvements within an Owner's Unit, the cleaning and replacing of windows or other glass surfaces, the maintenance, repair and replacement of roofs, heating and cooling equipment, any exterior hardware, and light bulbs. No Owner shall do any act or create any obstruction which would unreasonably interfere with the right or ability of the Association to perform any of its obligations or exercise any of its rights under this Declaration.

## ARTICLE 6

### Utilities

#### 6.1 Owners' Rights and Duties

The rights and duties of the Owners of Condominium Units within the Project with respect to utilities shall be as follows:

6.1.1 Whenever sanitary sewer, water, electric, gas, television cable receiving, telephone or telecommunication lines or connections, heating or air-conditioning conduits, ducts or flues are located or installed within the Project, which connections or any portion thereof lie in or upon Units owned by other than the Owner of a Unit served by said connections, the Owners of any Units served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Units or to have the utility companies enter upon the Units in or upon which said connections or any portion thereof lie to repair, replace, and Unofficial Document generally maintain said connections as and when necessary. An Owner or utility company exercising his/its right of entry pursuant to this subarticle shall give reasonable notice to the Owner of a Unit prior to entering therein.

6.1.2 Whenever sanitary sewer, water, electric, gas, television cable receiving, telephone or telecommunication lines or connections are located or installed within the Project, which connections serve more than one Unit, the Owner of each Unit served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Unit.

6.1.3 In the event of a dispute between Owners with respect to the repair or rebuilding of said connections or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be

submitted to the Board which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

6.2 Easements for Utilities and Maintenance

Easements over and under the Common Areas for the installation, repair and maintenance of sanitary sewer, water, electric, gas, telephone and telecommunication lines and facilities, cable or master television antenna lines, drainways, driveways, walkways and landscaping, as shown on the Map of the Property and as hereafter may be required to service the Property, are hereby reserved for the Association, and its successors and assigns, together with the right to grant and transfer the same.

6.3 Association's Duties

The Association shall maintain all utility installations located in the Common Areas, except for those installations maintained by utility companies, public, private or municipal. The Association shall pay all charges for utilities <sup>Unofficial Document</sup> supplied to the Project, except those metered or charged separately to the Units, which shall be paid by the respective Owners of those Units.

ARTICLE 7

Use Restrictions

In addition to all of the covenants contained herein, the use of the Property and Project and each Unit therein is subject to the following:

7.1 Use of Individual Units

No Unit shall be occupied and used except for single family residential purposes by the Owners, their tenants and social guests. Except as provided in the Rules and Regulations to be adopted by the Association, no trade or business shall be conducted therein, except that

Declarant, its successors or assigns may use any Unit or Units in the Project owned by Declarant for a model homesite or sites and sales office during construction and until the last Unit in the entire Project is sold. Declarant may use signs advertising Unit(s) for sale until Declarant sells the last Unit in the Project.

### 7.2 Nuisances

No noxious, illegal or offensive activities shall be conducted in any Unit or on any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to, or which may in any way interfere with, the quiet enjoyment of each Owner of his respective Condominium Unit, or which shall in any way increase the rate of insurance for the Project or cause any insurance policy to be canceled or cause a refusal to renew the same, or which will impair the structural integrity of any Condominium Unit building. Any increase in the insurance premiums for the Project caused by an Owner shall be paid for by such Owner.

Unofficial Document

### 7.3 Vehicle Restrictions

No trailer, camper, mobile home, commercial vehicle, truck (other than standard size pick-up truck), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Project other than temporarily (for purposes of loading and unloading of passengers or personal property), unless placed or maintained within an enclosed garage. Commercial vehicles shall not include sedans or standard size pick-up trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Property. No off-road, licensed or unlicensed, motor vehicles shall be maintained or operated upon the Property.

#### 7.4 Signs

No signs advertising Condominium Units for sale or rent may be displayed on the Property except during open houses.

#### 7.5 Animals

No animals or birds of any kind shall be raised, bred or kept in any Unit or on any portion of the Property, except that usual and ordinary household pets such as dogs, cats or birds may be kept, provided that they are kept under reasonable control at all times. The Board may enact reasonable rules respecting the keeping of such animals within the Project and may designate certain areas in which such animals may be taken. The Association, by and through the Board, reserves the right to have such pets removed if the pets' behavior becomes objectionable to the Members of the Association, which right shall not be unreasonably applied.

#### 7.6 Garbage and Refuse Disposal Unofficial Document

All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, woodpiles or storage piles shall be kept screened and concealed from view of the other Units, streets and the Common Areas.

#### 7.7 Radio and Television Antennas, and Telecommunication Devices

No external radio or television antenna or other telecommunication devices shall be permitted on the Property without the consent of the Board.

#### 7.8 Right to Lease

The respective Units shall not be rented by the Owners thereof for transient or hotel purposes which shall be defined as (a) rental for any period less than thirty (30) days or (b) any rental if the occupants of the Unit are provided customary hotel service such as room

service for food and beverages, maid service, laundry and linen service and bellboy service. Subject to the foregoing restrictions, the Owners of the respective Units shall have the absolute right to lease the Units, provided that the lease is in writing and is specifically made subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and the Bylaws and any reasonable rules and regulations published by the Association. The Owner of a leased Unit shall provide a copy of the proposed lease to the Association within seven (7) calendar days prior to its execution.

#### 7.9 Clothes Lines; Window Coverings

No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes. Furthermore, no clothing, laundry or other personal items are to be hung out on the patios, balconies, carports or entry decks of the Units. Within ninety (90) days of close of escrow for a Condominium Unit, all temporary window covering (such as sheets or blankets) shall be removed. Unofficial Document No kind of foil or darkening screen shall be placed upon the windows of the Units.

#### 7.10 Power Equipment and Vehicle Maintenance

No power equipment, work shops or vehicle maintenance [other than emergency work or minor repairs requiring less than one (1) day's work] shall be permitted on the Project, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio, television or telecommunication reception and similar objections.

#### 7.11 Landscaping

No landscaping shall be done in any Unit without the prior written approval of the Association or its designated committee. No planting may unreasonably intrude onto a

neighboring Unit. The Association may remove vines from walls of a Unit, if necessary to permit painting of the walls. There shall be no changes in grading without prior approval of a civil engineer acceptable to the Board of Directors. The engineer's fees must be paid by the Owner seeking such approval.

7.12 Liability of Owners for Damage to Common Areas

The Owner of each Condominium Unit shall be liable to the Association for all damage to the Common Areas or improvements thereon caused by such Owner or any occupant, guest or invitee of, or to his Unit, to the extent such Owner is responsible therefor under the statutory or case laws of the State of Arizona.

7.13 Patios and balconies shall at all times be kept, by the Owners of the appurtenant Units, in compliance with all rules and regulations of the Association and neat, clean and free of debris and shall not be used for storage.

7.14 No Warranty of Enforceability Unofficial Document

While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 7 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Condominium Unit in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof, and by acquiring the Condominium Unit, agrees to hold Declarant harmless therefrom.

## ARTICLE 8

### Architectural Control

#### 8.1 Prohibition of Alteration and Improvement

Subject to the exemption of Declarant permitted in this Declaration, no building, fence, wall, obstruction, balcony, screen, patio, patio cover, tent, awning, parking area, improvement or structure of any kind shall be commenced, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by an Architectural Control Committee (the "Committee") appointed by Declarant or elected by the Board as provided in this Article. There shall be no construction, alteration or removal of any structure or improvement in the Project which would impair or affect the integrity or stability of any existing structure. No Owner shall install or replace an air-conditioning, heating, or solar unit without the prior written approval of the Committee which shall have the right to approve or disapprove the size, shape, noise level and proposed location of such Unit. No addition or alteration which changes the exterior appearance of a Unit Building, including the addition of sun screens, shall be permitted without the prior written approval of the Committee.

#### 8.2 Plans and Approval

Plans and specifications showing the nature, kind, shape, color, size, materials and location of proposed improvements or alterations shall be submitted to the Committee for approval as to quality of workmanship, and harmony of external design with existing structures and as to location in relation to surrounding structures, topography and finished grade elevation. No permission or approval shall be required to rebuild in accordance with plans and specifications previously approved by the Committee. No landscaping of patios or yards visible from another Unit or from the Common Areas shall be undertaken by any Owner

until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Committee. There shall be no changes in grading without prior approval of a civil engineer acceptable to the Board of Directors. The engineer's fees must be paid by the Owner seeking such approval. In the event the Committee fails to approve or disapprove any plans and specifications for proposed improvement or alteration within forty-five (45) days after complete plans and specifications have been submitted to it, written approval by the Committee will not be required, and this Article will be deemed to have been fully complied with.

### 8.3 Architectural Control Committee

8.3.1 There shall be three (3) members on the Committee, and one member shall serve as Chairperson and one member as recorder of actions and records keeper.

Declarant may appoint all of the original and replacement members of the Committee and, at any time, may remove and replace any of the <sup>Unofficial Document</sup>members of the Committee until the termination of Class B Membership as provided herein. The Board shall thereafter have the power to appoint replacements for or remove and replace any or all of the members of the Committee. Subject to the right and power of the Board to remove and replace, at any time, any member of the Committee, Committee members or replacements appointed by the Board shall serve one (1) year terms.

8.3.2 Committee members appointed by Declarant need not be Members of the Association. Committee members appointed by the Board shall be Members of the Association. Officers and Directors of the Association can be members of the Committee.

8.3.3 When considering requests for Committee approval which affect the external appearance of the Project, the Committee shall consult with a member of Project

Architect's firm, Cook Associates. The Owner requesting Committee approval shall pay the architect's fee.

## ARTICLE 9

### General Provisions

#### 9.1 Invalidity of Any Provision

Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

#### 9.2 Amendments

Subject to the standards set forth in any applicable laws, regulations or ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project and the rights of the Owners and First Mortgagees <sup>Unofficial Document</sup> provided herein, this Declaration may be amended only by the vote or written assent of seventy-five percent (75%) or more of the total voting power of the Association, provided however, that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. The requirements of Subarticle 9.2.1 for the amendment of certain provisions of the Project Documents shall be in addition to the requirements set forth in this Subarticle 9.2.

##### 9.2.1 Additional Requirements for Amendment of Certain Provisions

The following Subarticles do not apply to amendments to the Project Documents or termination of the Horizontal Property Regime made as a result of destruction, damage or condemnation.

9.2.1.1 The consent of Owners of Condominium Units to which at least seventy-five percent (75%) of the votes in the Association are allocated and the approval of Eligible First Mortgagees (as defined in Subarticle 9.4.3.1) holding First Mortgages on Condominium Units which have at least fifty-one per cent (51%) of the votes of Condominium Units subject to First Mortgages held by Eligible First Mortgagees shall be required to terminate the legal status of the Project as a statutory Horizontal Property Regime under Arizona law; and

9.2.1.2 The consent of Owners of Condominium Units to which at least seventy-five percent (75%) of the votes in the Association are allocated and the approval of Eligible First Mortgagees holding First Mortgages on Condominium Units which have at least fifty-one percent (51%) of the votes of Condominium Units subject to First Mortgages held by Eligible First Mortgagees shall be required to add to or amend any "material" provisions of the Project Documents <sup>Unofficial Document</sup> which establish, provide for, govern or regulate any of the following: Voting; Assessments, assessment liens or the property of such liens; Reserves for maintenance, repair and replacement of the Common Areas; Insurance or fidelity bonds; Reallocation of interests in the general or limited common elements, or rights to their use; Rights to use of the Common Areas; Responsibility for maintenance and repair of the various portions of the Project; Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; Boundaries of any Unit; Common Interests of the Condominium Units; Convertibility of Units into Common Areas or of Common Areas into Units; Leasing of Condominium Units; Imposition of any right of first refusal or similar restriction on the right of a condominium Unit Owner to sell, transfer or otherwise convey his/her Condominium Unit; and Any provisions which are for the express benefit of

Mortgagees, Eligible First Mortgagees or Eligible Insurers or Guarantors (as defined in Subarticle 9.4.3.2) of First Mortgages on Condominium Units.

9.2.1.3 An addition or amendment to the Project Documents shall not be considered "material" if it is for the purpose of correcting technical errors or for clarification only. An Eligible First Mortgagee which receives a written request to approve additions or amendments as provided in this Declaration, and which does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

### 9.3 Encroachment Easements

Each Unit within the Project is hereby declared to have an easement over all adjoining Units and the Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of buildings or any other similar cause. There shall be <sup>Unofficial Document</sup> valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting, provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a Unit is partially or totally destroyed and then repaired or rebuilt, the Owners of all Units agree that minor encroachments over adjoining Units or the Common Areas shall be permitted, and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

## 9.4 Mortgagee Protection Clause

### 9.4.1 Rights of First Mortgagees

9.4.1.1 No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Condominium Unit, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

9.4.1.2 All amenities pertaining to the Project and located on the Property (such as parking, recreation and service areas) are a part of the Project and shall be covered by and subject to a Mortgage on a Condominium Unit to the same extent as is the Common Areas.

9.4.1.3 An action to abate the breach of any of these covenants, conditions, restrictions and reservations Unofficial Document may be brought against the purchaser who has acquired title through foreclosure of a First Mortgage and the subsequent sheriff's sale (or through any equivalent proceedings) and the successor in interest to said purchaser if the breach continues to exist after the time said purchaser acquired an interest in such Condominium Unit.

9.4.1.4 During the pendency (including any period for redemption) of any proceedings to foreclose a First Mortgage (or from the time a trustee under a first deed of trust has given notice of sale pursuant to the power of sale conferred under the deed of trust and pursuant to law), the First Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the owner of the Condominium 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.

9.4.1.5 Notwithstanding anything contained herein to the contrary, at such time as the First Mortgagee shall become record Owner of a Condominium Unit, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including but not limited to the obligation to pay all Assessments and charges accruing thereafter in the same manner as any other condominium Unit Owner.

#### 9.4.2 Changes Requiring Approval of Mortgagees

Notwithstanding anything to the contrary contained in this Declaration, without the prior written approval of Declarant (while Declarant is an Owner of any Units) and of at least sixty-six and two-thirds per cent (66-2/3%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) or of the Owners other than Declarant (except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Areas of the Project), the Association or Owners shall not be entitled to and no provision of this Declaration shall be applied, effective, interpreted or construed to (or entitle the Association or Owners to): (1) Change the Common Interests of the Condominium Units, the share of Assessments charged to any Condominium Unit or the method of determining such Assessments; (2) By act or omission, seek to terminate or abandon the status of the Project as a statutory Horizontal Property Regime; (3) Allow partition or subdivision of any Condominium Unit except as provided in Subarticle 2.4; (4) Change the interest of any Condominium Unit in the allocation or distribution of hazard insurance proceeds or condemnation awards; (5) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any portion or element of the Common Areas (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Property shall not be deemed a transfer within the meaning of this clause); (6) Use hazard insurance proceeds for losses or damages to any portion of the Project for other than the repair, replacement or reconstruction thereof; or (7)

Change the provisions of this Declaration so as to give an Owner, or any other party, priority over any rights of First Mortgagees pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or the Common Areas. The foregoing requirements are in addition to the requirements set forth in Subarticle 9.2.

#### 9.4.3 Rights of First Mortgagees and Insurers or Guarantors of First Mortgages

9.4.3.1 Upon written request to the Association identifying the name and address of the First Mortgagee for any Condominium Unit or the insurer or guarantor of such First Mortgage and the Condominium Unit number or address, any such First Mortgagee or insurer or guarantor of such First Mortgage will be entitled to timely written notice of: (1) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee or insurer or guarantor, as applicable; (2) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (3) Any proposed action which would require the consent of a specified percentage of "Eligible First Mortgagees" (meaning First Mortgagees who have filed a written request as described above.

9.4.3.2 When professional management previously has been required by an Eligible First Mortgagee or any "Eligible Insurer or Guarantor" (meaning an insurer or governmental guarantor of a First Mortgage which has requested notice of certain matters in accordance with Subarticle 9.4.3.1 above), whether such entity became an Eligible First Mortgagee or Eligible Insurer or Guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of Condominium Units to which at least fifty-one per cent (51%) of the votes in the Association are allocated

and the approval of Eligible First Mortgagees of Condominium Units which have at least fifty-one percent (51%) of the votes of Condominium Units subject to First Mortgages held by Eligible First Mortgagees.

#### 9.4.4 Mortgage Priority

Notwithstanding any language contained in this Declaration to the contrary, no Condominium Unit Owner and no other party shall have priority over any rights of First Mortgagees pursuant to their Mortgages in the case of a distribution to Condominium Unit Owners of insurance proceeds or condemnation awards for losses to or taking of Condominium Units and/or any portion or element of the Common Areas.

#### 9.4.5 Compliance with FHLMC and FNMA Regulations

The Declarant intends that the Project shall comply with all requirements of the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA) pertaining to the purchase by the <sup>Unofficial Document</sup> FHLMC and FNMA of conventional home loans. Declarant and all Unit Owners therefore agree that, in the event the Project or any of the Project Documents do not comply with the FHLMC and FNMA requirements, the Board shall have the power (on behalf of the Association) to enter into any agreement with the FHLMC or FNMA to allow the Project to comply with such requirements and make such changes in the Project Documents to effectuate the same.

#### 9.4.6 Payment of Taxes and Insurance Premiums by Mortgagees

First Mortgagees may, jointly or singly, pay any taxes, Assessments or other charges which are in default and may or have become a lien or charge against the Common Areas and may pay overdue premiums on hazard insurance policies (or secure new hazard insurance coverage on the lapse of a policy) for the Common Areas. Any First Mortgagee making such payments shall be entitled to immediate reimbursement therefor from the Association.

#### 9.4.7 Owners' Right to Sell Condominium Unit

The right of any Owner to sell, transfer or otherwise convey his Condominium Unit shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

#### 9.4.8 Right to Inspect Documents; Audited Financial Statements

The Association shall make available to Owners, Mortgagees and insurers or guarantors of First Mortgages current copies of the Declaration, Articles, Bylaws, rules of the Association and the books, records and financial statements of the Association. "Available" means available for inspection (and copying at the expense of the requesting party), upon request, during normal business hours or under other reasonable circumstances. In addition, First Mortgagees holding fifty-one percent (51%) or more of First Mortgages shall be entitled to have prepared, at their expense, an audited financial statement of the Association for the immediately preceding fiscal year if one is not otherwise available, and the Association shall have prepared and distributed such statement <sup>Unofficial Document</sup> to the First Mortgagees requesting it within a reasonable time following receipt by the Association of the required requests.

#### 9.5 Owner's Right and Obligation to Maintain and Repair

Except for those portions of the Project which the Association is required to maintain and repair as provided herein, each Unit Owner shall, at his sole cost and expense, maintain and repair his Unit, keeping the same in good condition. Additionally, each Owner shall maintain, repair and replace as necessary the roof of his Unit, any separate air-conditioning, cooling, heating and/or water-heating units (and all wires and connections therefor) which service his Unit, and further, the Owner shall repair any glass surfaces of a Unit which are damaged within seven (7) days of such damage. Each Owner shall keep open and free of obstruction all his drainways into the Common Areas. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner

surfaces of the walls, ceilings, floors, windows and doors bounding his Condominium Unit. In the event an Owner fails to maintain his Unit in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify such Owner of the work required and request that it be done within thirty (30) days from the giving of such notice. In the event an Owner fails to carry out such maintenance within said period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner and collect and enforce said Assessment as provided in this Declaration.

## 9.6 Insurance; Damage or Destruction

### 9.6.1 Reconstruction by Unit Owners

Subject to other provisions of this Declaration, in the event of damage to or destruction of any part of a Unit, the Owner shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications therefor. Each Owner shall have an easement of reasonable <sup>Unofficial Document</sup> access into or onto the Common Areas for purposes of repair or reconstruction of Owner Unit as provided in this subarticle.

### 9.6.2 Association Liability Insurance

The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant, the agents and employees of each and the Owners and their respective family members, guests and invitees against any liability incident to the ownership or use of the Common Areas including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners or the Association. Such insurance shall be in amounts deemed appropriate by the Board but, in any event, shall be in amounts which satisfy FHLMC or FNMA requirements as amended from time to time.

### 9.6.3 Additional Association Insurance

The Association may purchase such other insurance as it may deem necessary, including without limitation, workmen's compensation, directors' liability and errors and omissions insurance, and shall purchase fidelity coverage against dishonest acts by any directors, managers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half (1-1/2) times the Association's estimated annual operating expenses and reserves.

### 9.6.4 Choice of Carriers; Insurance Premiums

The insurance policies required under this Subarticle 9.6 shall be acquired from carriers meeting the qualifications specified by the FHLMC and FNMA from time to time. Insurance premiums shall be a Common Expense to <sup>Unofficial Document</sup> be included in the Assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right of any Condominium Unit Owner to obtain additional individual insurance.

Neither the Declarant, the Association nor any officer or director thereof shall be liable to any Owner or other party if any risk or hazard is not covered by insurance or the amount is inadequate. Each Owner is responsible for ascertaining the Association's coverage and for procuring such additional coverage as such Owner deems necessary. First Mortgagees may pay overdue premiums and may secure new insurance coverage upon the lapse of any policy with respect to any insurance required to be maintained by the Association or by any Owner under this Declaration, and any First Mortgagee making such an expenditure shall be entitled to immediate reimbursement from the Association or Owner on whose behalf the expenditure was made.

#### 9.6.5 Proceeds from Insurance

If any improvements on the Common Areas are damaged by fire or other casualty, insurance proceeds payable to the Association shall be used to rebuild or repair such damage substantially in accordance with original plans and specifications therefor. Any excess insurance proceeds shall be deposited into the general funds of the Association. In the event the proceeds of the Association's insurance policy are insufficient to rebuild or repair the damaged improvements, then the Association may use funds from its general account or, if necessary, from levying a special Assessment on all Unit Owners to restore or rebuild said improvements. The Association's use of funds from its general account or levy of a special Assessment shall not constitute a waiver of the Association's or any Owner's right to institute any legal proceeding or suit against the Person or Persons responsible, purposely or negligently, for the damage.

#### 9.6.6 Waiver of Subrogation; <sup>Unofficial Document</sup> Notice of Cancellation

All property and liability insurance carried by the Association or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, officers, directors, Members and their guests, agents and employees. All insurance carried by the Association shall contain a provision requiring the insurer to notify First Mortgagees requesting notice of cancellation at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

#### 9.6.7 Additional Insurance Requirements

It is the intent of Subarticle 9.6 of this Declaration to generally set forth the insurance requirements for the Project which are, at all times, to comply with FHLMC and FNMA requirements. Because FHLMC and FNMA Project Insurance requirements are very lengthy and subject to change from time to time, it is impractical to set forth all of those requirements

herein. Therefore, the Association, Board and Owners shall at all times carry, maintain in good standing and pay for all hazard, liability, fidelity and other insurance policies, binders and bonds required by the FHLMC and FNMA, and FHLMC and FNMA regulations or guidelines as such requirements change from time to time, including but not limited to all insurance bonds required by Section 3.203 of the FHLMC Sellers' Guide Conventional Mortgages, and FNMA regulations, and shall provide satisfactory evidence thereof promptly to any First Mortgagee or insurer or guarantor of any First Mortgage which requests such evidence. All such policies, binders and bonds shall comply with and be consistent in form and substance with all such FHLMC and FNMA requirements as they change from time to time, and shall include all mortgage clauses and endorsements of any kind or nature required by the FHLMC and FNMA, and FHLMC and FNMA regulations or guidelines as such requirements change from time to time.

#### 9.7 Condemnation

Unofficial Document

Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Common Areas is to be taken by any governmental body by exercise of the power of condemnation or eminent domain, all Owners and First Mortgagees shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisitions of any part of the Common Areas, and every Owner appoints the Association his/her attorney-in-fact for this purpose. The entire award made as compensation for such taking, including but not limited to any amount awarded as severance damages, or the entire amount received and paid in anticipation and settlement for such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including but not limited to attorneys' fees, appraisers' fees and court costs (which

net amount shall hereinafter be referred to as the "Award"), shall be paid to the Association as trustee for the use and benefit of the Owners and their First Mortgagees as their interests may appear.

9.8 Limitation of Restrictions on Declarant; Additional Restrictions on Declarant

Declarant is undertaking the work of construction of the Units and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of the Condominium Units are essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to: (1) Prevent Declarant, its contractors or subcontractors from doing on the Project or any Unit whatever is reasonably necessary or advisable in connection with the completion of the work; (2) Prevent Declarant or its representatives from erecting, constructing <sup>Unofficial Document</sup> and maintaining on any part or parts of the Project such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and disposing of the same in parcels by sale, lease or otherwise; (3) Prevent Declarant from conducting on any part of the Project its business of completing the work and of establishing a plan of Condominium Unit ownership and of disposing of said Project in Condominium Units by sale, lease or otherwise; or (4) Prevent Declarant from maintaining such sign or signs on any portion of the Project as may be necessary for the sale, lease or disposition thereof.

9.8.1 Additional Restrictions on Declarant

So long as Declarant or its successors or assigns owns one or more of the Condominium Units established and described in this Declaration and, except as otherwise specifically provided herein, Declarant and its successors or assigns shall be subject to the

provisions of this Declaration. Declarant shall not, and shall not have authority or power to bind the Association prior to termination of Class B Membership, either directly or indirectly, to contracts or leases (including management contracts) unless the Association is provided with a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after such termination of Class B Membership, upon not more than thirty (30) days' notice to the other party thereto.

#### 9.9 Termination of Any Responsibility of Declarant

In the event Declarant shall convey all of its right, title and interest in and to the Project to any partnership(s), individual(s) or corporation(s), then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership(s), individual(s), or corporation(s) shall be obligated to perform all such duties and obligations of the Declarant.

#### 9.10 Owner's Compliance

Unofficial Document

Each Owner, tenant or occupant of a Unit shall comply with the provisions of the Project Documents and all decisions and resolutions of the Association or its duly authorized representative(s). Failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due, for damages and/or fines (including costs and attorneys' fees), and/or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws shall be deemed to be binding on all Condominium Unit Owners, their successors and assigns.

#### 9.11 Conflict of Project Documents

If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail. Thereafter, priority shall be given to Project Documents in the

following order: Subdivision Plat, Project Map, Condominium Floor Plan, Articles, Bylaws and rules and regulations of the Association.

#### 9.12 Termination of Horizontal Property Regime

Notwithstanding any contrary provision of the Project Documents, this Horizontal Property Regime may be terminated by the agreement of all the Owners and all of the creditors holding encumbrances or liens against any Condominium Unit pursuant to applicable Arizona Revised Statutes. In the event there is no statutory scheme governing horizontal property regimes, or the provisions thereof are less restrictive than those contained in this Declaration, this Horizontal Property Regime may be terminated as provided herein. After termination of the Horizontal Property Regime, the Owners shall own the Common Areas and all assets of the Association as tenants in common, and their respective First Mortgagees and lienors shall have First Mortgages and liens upon the respective undivided shares of the Owners. Such undivided shares of the Owners shall be the <sup>Unofficial Document</sup> same as the undivided shares in the Common Areas appurtenant to the Owners' Condominium Units prior to the termination (unless otherwise expressly set forth herein).

#### 9.13 Persons Entitled to Enforce Declaration

The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court. Failure by any such Person or the Association to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

#### 9.14 Remedies for Violation of Declaration

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

9.14.1 Violation of any of the covenants, conditions or restrictions, the breach of any of the covenants or agreements contained herein or the breach of any rules and regulations promulgated by the Board, whether by an Owner or occupant of any Unit, shall enable the Association, acting through the Board or an authorized agent, to enter the Unit as to which said violation or breach may exist, and summarily enforce such covenants, conditions, restrictions, agreements, rules and regulations and to abate and remove the thing or condition which may exist thereon contrary to the provisions hereof, at the sole expense of the Owner of said Unit, without being deemed guilty of having trespassed in any manner, provided, however, that an appropriate court order shall be required before any items of construction can be removed or altered.

Unofficial Document

9.14.2 In the event of any default by an Owner or occupant under the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the Association, its successors and assigns, acting through the Board or an authorized agent, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, the Bylaws and said rules and regulations, or which may be available at law or in equity, including but not limited to an action for the appointment of a receiver for the Condominium Unit without regard to the value of such Condominium Unit or the solvency of such Owner, or for damages, injunction, specific performance or for a judgment for payment of money and collection thereof. Nothing contained in this Declaration shall preclude the Association, its agents, the Board, Declarant, an aggrieved Owner, a First Mortgagee or other Person having an interest in the Project from exercising any available

remedy at law or in equity. All costs and attorneys' fees incurred by the Association in enforcing compliance with this Declaration, the Articles, Bylaws and Rules and Regulations of the Association or in connection with any legal action or proceedings in connection with any default under this Declaration by an Owner or an occupant of any Condominium Unit and all damages, liquidated or otherwise, together with interest as provided in this Declaration shall be charged to and paid by such defaulting Owner, whether or not a lawsuit or other legal action is instituted or commenced. The Association, acting through the Board or its authorized agents, shall have the authority to correct any default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and paid by such defaulting Owner, and such charges shall be part of and be secured by the lien against the defaulting Owner's Condominium Unit as provided in Subarticle 4.1. Any amounts charged to an Owner of a Condominium Unit pursuant to this Subarticle or Subarticle 4.1 shall be immediately due and payable upon notice <sup>Unofficial Document</sup> to the Owner, unless a specific due date is established therefor pursuant to this Declaration.

9.14.3 Anything to the contrary herein notwithstanding, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration shall not defeat or adversely affect the lien of any First Mortgagee upon any Condominium Unit, but, except as herein specifically provided, each and all of said covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any lessee or Owner of a Condominium Unit whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

9.15 Waiver; Remedies Cumulative

No failure or delay on the part of any Person in exercising any right, power or privilege hereunder, and no course of dealing between or among the Persons subject hereto shall

operate as a waiver of any provision hereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which any Person subject hereto would otherwise have. No notice to or demand upon any Person in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances, or constitute a waiver of rights to any other or further action in any circumstances.

#### 9.16 Judicial Proceedings

All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court or courts having jurisdiction over such matter in the State of Arizona, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter, provided however, as to those matters to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail. For the purpose of instituting or defending any action with respect to the Common Areas, or with respect to any matter affecting the Owners with respect to the Common Areas, and further in connection with enforcing this Declaration, the Articles, the Bylaws and any rules and regulations adopted pursuant to this Declaration, the Articles or the Bylaws, or in any other instance where the Board and/or the Members of the Association deem it is necessary for the best interest of the Project as a whole, the Association, acting by and through its Board, shall be deemed the real party in interest and is hereby authorized to commence and prosecute any such proceedings or to defend any such action. Nothing contained in this Subarticle shall be deemed or construed to impose upon the Association, its Members or the Board any liabilities or obligations, nor grant to any third party

or parties any rights that any of said above-named parties would not otherwise have if this article were not contained herein.

9.17 Governing Law

This Declaration 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.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 8<sup>th</sup> day of October, 1997.

DECLARANT:

LORNA PARK VIEW, L.L.C.,  
an Arizona Limited Liability Company

By: \_\_\_\_\_

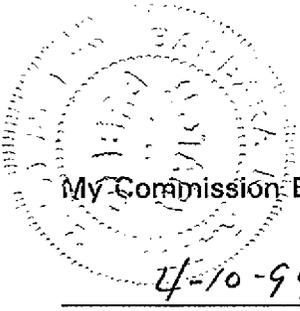
Its: Manager

Unofficial Document

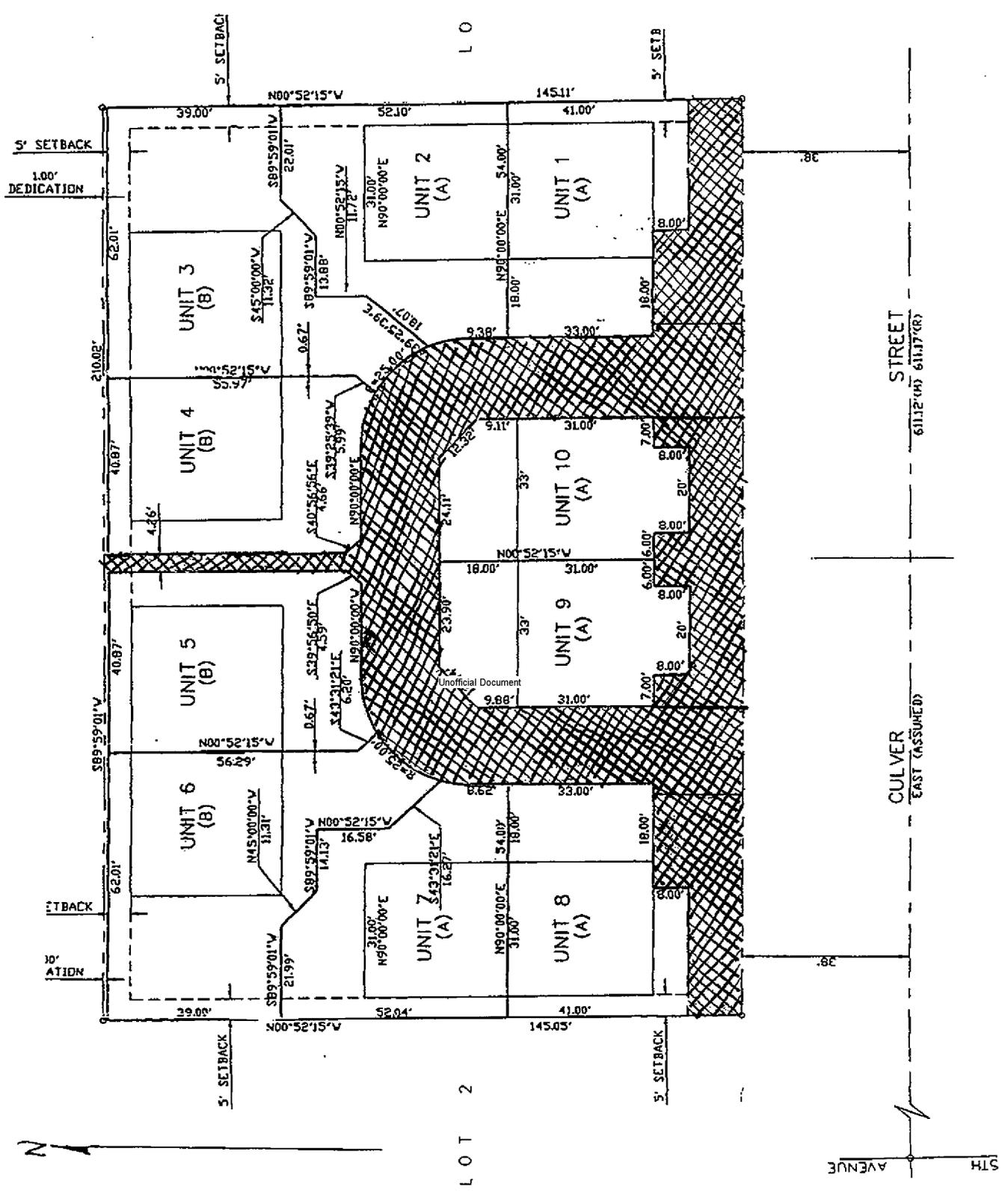
STATE OF Arizona )  
County of Maricopa )

ss.

On October 8, 1997, before me, the undersigned notary public in and for the county and state, appeared GLENN SCHULTZ, known to, or satisfactorily proven to me and acknowledged that he/she executed the foregoing as the MANAGER of Lorna Park View, L.L.C., an Arizona Limited Liability Company.



Barbara F. Ratti  
Notary Public



LOT 2

LOT

Unofficial Document

## LEGAL DESCRIPTION

UNITS 1 thru 10, CORNA PARK VIEW ESTATES  
~~LOTS 3, 4, AND 5 BLOCK 10 OF KENILWORTH~~, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY  
RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK ~~8~~ OF MAPS, PAGE ~~39~~  
Unofficial Document 461 21.

## BENCH MARK

BRASS CAP IN HANDHOLE AT THE INTERSECTION OF 7TH AVENUE AND MCDOWELL ROAD  
ELEV. = 1084.11 (C.O.P. DATUM)

Exhibit A-2

**LORNA PARK VIEW ESTATES HOMEOWNERS ASSOCIATION**  
**ESTIMATED ASSESSMENT:**

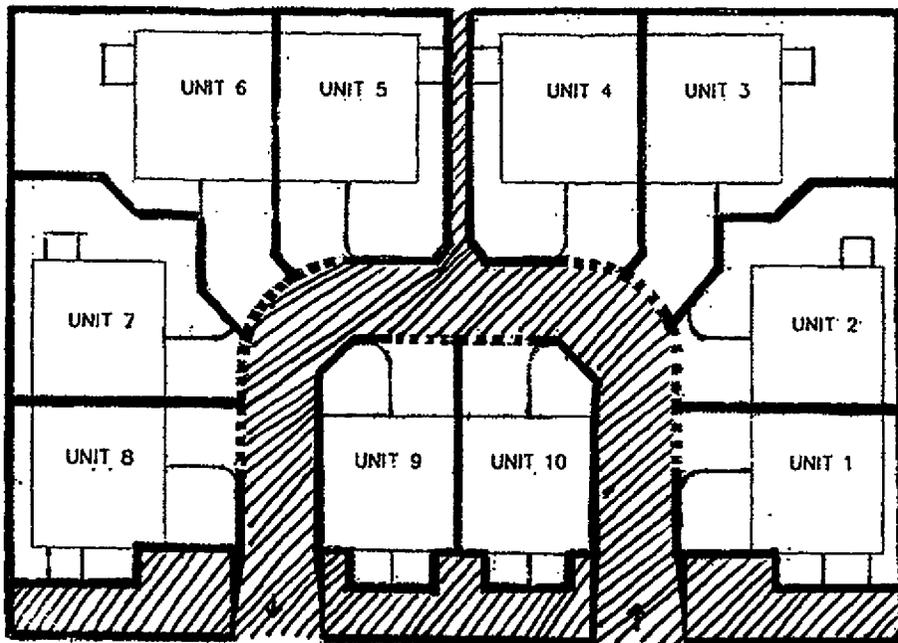
	Monthly	Annual
Landscaping and yard maintenance	\$250.00	\$3,000.00
Common area electricity for lights and sign	20.00	240.00
Water for common area	10.00	120.00
Real Estate taxes	20.00	240.00
Liability Insurance	25.00	300.00
Printing and postage	9.00	108.00
Management and bookkeeping	100.00	1,200.00
Reserve for replacement and miscellaneous	<u>18.00</u>	<u>216.00</u>
TOTAL-----	\$452.00	\$5,424.00

TOTAL PER HOUSEHOLD PER YEAR= \$542.40 = \$45.20 monthly.

# Lorna Park View Estates

324 West Culver Street

ALLEY



CULVER STREET

## ASSOCIATION INFORMATION:

### ESTIMATED ASSESSMENT:

	Monthly	Annual
Landscaping and yard maintenance	\$250.00	\$3,000.00
Common area electricity for lights and sign	20.00	240.00
Water for common area	10.00	120.00
Real Estate taxes	20.00	240.00
Liability Insurance	25.00	300.00
Printing and postage	9.00	108.00
Management and bookkeeping	100.00	1,200.00
Reserve for replacement and miscellaneous	18.00	216.00
<b>TOTAL</b>	<b>\$452.00</b>	<b>\$5,424.00</b>

TOTAL PER HOUSEHOLD PER YEAR= \$542.40 =

\$45.20 monthly

 = ASSOCIATION AREA.

The owners will pay real estate taxes, insurance, and maintenance on their home, yard, and landscaping. The other areas including the private road, driveways, sidewalks, and planting areas are common areas owned and maintained by <sup>Unofficial Document</sup> all of the owners through a Condominium Home Owners Association. These common areas are restricted for the use and enjoyment of all the members of the Lorna Park View Estates Home Owners Association, their families, and guests.

The cost of maintaining the common area including the management of the association, taxes, insurance, landscaping, private road, driveways, and utilities will be paid for by an annual assessment divided equally among each property, payable monthly. The initial assessment is expected to be no more than \$45.00 per month. The annual budget will be created by the Homeowners Association and must be approved by a majority of the homeowners. There are provisions within the Bylaws allowing for a Special Assessment, if approved by a majority of the owners, to cover unusual and unexpected circumstances.

The Home Owners Association is governed by a Board of Directors elected by the members, (each home appoints one member who has one vote), who adhere to a set of Bylaws that spell out how members are to be notified of meetings, nominated, and elected as board members and officers, annual budgets, and other issues effecting the home owners. The developer will manage the Association until six of the homes are sold and occupied. Then the homeowners will elect a Board of Directors from among the owners. The Developer will retain a vote for each unsold home and will pay monthly fees and assessments to the Homeowners Association upon occupancy by the first homeowner. The Board may elect to hire a management company to run the Association.

For additional information please contact:

**Julian J. Blum, Broker, INFILL Development and Realty Services, LLC®,**  
**7657 E. Coolidge, Scottsdale, Arizona 85251, 990-2939, FAX 994-9816**

Regardless of terminology used in this information, the Legal Documents take precedence. All prices, terms, and conditions are subject to change without notice. All contracts are subject to prior sale. Sales are conditional and can't close until after issuance of the final Public Report from the Arizona Department of Real Estate and acceptance thereof by buyer. Until issuance of the Public Report the purchaser has the right to rescind the purchase and to a refund of all money remitted to the seller.



