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WHEN RECORDED RETURN TO:

Donald E. Dyekman, Esq.
Dyekman & Meda, P.L.C.
6750 E. Camelback Road
Suite 104
Scottsdale, AZ 85251

AMENDED AND RESTATED
DECLARATION OF HORIZONTAL PROPERTY REGIME
AND COVENANTS, CONDITIONS AND
RESTRICTIONS FOR PEACHTREE LANE

This Amended and Restated Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Peachtree Lane (this "Declaration") is made as of this 16th day of November, 1995, by Peachtree Lane Improvement Association, Inc., an Arizona nonprofit corporation (the "Association"), and by the other persons and entities who have executed this Declaration (the "Consenting Owners").

RECITALS

A. A Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Peachtree Lane (the "Initial Declaration") was recorded at Recording No. 85-350206, records of Maricopa County, Arizona, submitting the real property described on Exhibit "A" attached to the Initial Declaration to a horizontal property regime pursuant to Arizona Revised Statutes Section 33-551, et seq., and subjecting such real property to the covenants, conditions and restrictions set forth in the Initial Declaration.

B. Article XIII, Section 3 of the Initial Declaration provides that the Initial Declaration may be amended at any time prior to December 31, 1999, by the recording in the office

of the County Recorder of Maricopa County, Arizona, of an instrument in writing reciting the amendments bearing the signed and acknowledged concurrence of the then Owners of seventy-five percent (75%) of the Units subject to the Initial Declaration and by Georgia Development Company, an Arizona limited partnership, which was the Declarant under the Initial Declaration, so long as the Declarant holds any interest in any of the property subject to the Initial Declaration.

C. The Association and the Consenting Owners desire to amend and restate the Initial Declaration in its entirety. Georgia Development Company no longer holds any interest in any of the property subject to the Initial Declaration and, therefore, the consent of Georgia Development Company is not required to amend and restate the Initial Declaration.

D. The Consenting Owners constitute the Owners of more than seventy-five percent (75%) of the Units in the Development.

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NOW, THEREFORE, the Initial Declaration is amended and restated as follows:

ARTICLE I.

Definitions

Section 1.: "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

Section 2.: "Association" shall mean and refer to Peachtree Lane Improvement Association, Inc., an Arizona non-profit corporation, its successors and assigns.

Section 3.: "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4: "Building" or "Buildings" means each of the buildings located or to be located on the Parcel which constitutes or are to constitute part of the Property.

Section 5: "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 6: "Common Elements" shall mean and include the "General Common Elements", as that term is defined in Section 33-551 (6), Arizona Revised Statutes and as that term is described in Article V, Section I.D. of this Declaration.

Section 7: "Declaration" means this instrument by which the Property is submitted to a Horizontal Property Regime, as from time to time amended.

Section 8: "Improvement" or "Improvements" shall mean all physical structures, including, but not limited, to, the Buildings, private drives, parking areas, fences and walls, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

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Section 9. "Limited Common Elements" means a portion of the Common Elements specifically designated in this Declaration as a Limited Common Element and allocated by this Declaration for the exclusive use of one or more but less than all of the Units.

Section 10: "Member" shall mean every person, corporation, partnership, joint venture or other legal entity who holds membership in the Association.

Section 11: "Owner" shall mean the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) of any Unit. "Owner" shall not include the purchaser of any Unit under any executory contract for the sale of real property. An "Owner" does not include a person or entity who holds an interest in a Unit merely as security for the performance

of an obligation. "Owner" shall not include a lessee or tenant of a Unit. For the purpose of Article II, only, unless the context otherwise requires, "Owner" shall also include the family, invitees, licensees, and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner of any Unit.

Section 12.: "Parcel" means the real property described on Exhibit "A" attached to this Declaration, and all Improvements situated thereon, which is hereby submitted to a Horizontal Property Regime.

Section 13.: "Plat" shall mean and refer to that certain plat of Peachtree Lane Amended, recorded in Book 285, page 37, records of Maricopa County, Arizona, and all amendments, supplements and corrections thereto.

Section 14.: "Property" or "Premises" or "Development" shall mean the Parcel, the Buildings and the Units comprising the Horizontal Property Regime hereby created, together with all buildings, fixtures and other Improvements of whatsoever kind thereon, all rights and privileges belonging or in any way pertaining thereto, and all furniture, furnishings, fixtures, machinery, equipment and appliances and personal property located thereon, intended for the mutual use, benefit and enjoyment of the Owners; and such terms shall in general have the same meanings set forth in Section 33-551, Arizona Revised Statutes, as relating to the Horizontal Property Regime hereby created.

Section 15. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, together with their domestic servants, who maintain a common household in a Unit.

Section 16: A Unit is an "apartment" within the meaning of Section 33-551(1), Arizona Revised Statutes, and the term "Unit" means any of the 31 portions of the Property described in Article V, Section 1.C hereinafter.

ARTICLE II.

Use Restrictions

Section 1: Residential Use. All Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Unit or in or from any Unit, except that an Owner or other resident of a Unit may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Development; (iii) the business activity does not involve persons coming on to the Unit or the door-to-door ^{Unofficial Document} solicitation of Unit Owners or other residents in the Development; (iv) the business activity does not create additional vehicle traffic in the Development; and (v) the business activity is consistent with the residential character of the Development and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Development, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged

in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof shall not be considered a trade or business within the meaning of this Section.

Section 2.: Temporary Structures. No structures of a temporary character shall be permitted on the Premises, and no trailers (except those permitted to be parked pursuant to Section 7 of this Article), and no tents, shacks, tool or storage sheds, or barns shall be permitted on the Premises, either temporarily or permanently.

Section 3.: Offensive Activities. No noxious or offensive activity may be carried on or permitted on any part of the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Owners or other residents of the Development. This Section does not apply to the activities of the Association in furtherance of its powers and purposes as set forth in this Declaration.

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Section 4.: Signs. No signs other than a "For Sale" or "For Rent" sign and a name and address sign not exceeding 9 x 30 inches in size shall be permitted on the exterior of any Unit or Building or any other portion of the Development without the prior written approval of the Board of Directors.

Section 5.: Outside Lighting. Except as may have been initially installed as part of the initial construction of the Buildings, no spotlights, floodlights or similar type high intensity lighting shall be placed or utilized upon the Premises without the written authorization of the Board. Other types of low intensity lighting which do not disturb the owners or other occupants of the Property shall be allowed.

Section 6.: Animals; Pets. Only commonly accepted household pets may be kept within any Unit, provided that such commonly accepted household pets are not kept, bred or maintained for any commercial purpose, and provided further, that the Board shall have the right to regulate the number and kind of pets kept within any Unit. Except as stated above, no other animals, reptiles or birds of any kind shall be raised, bred or kept on the Premises or any part thereof without the written consent of the Board first obtained. Pets shall not be allowed loose or unsupervised on any part of the Property, and walking of pets shall be allowed only on such portions of the Property as the Board may prescribe by its rules and regulations.

Section 7.: Trucks, Trailers, Campers and Boats. No truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Development except in the garages ^{Unofficial Document} which are part of the Units.

Section 8.: Garage Doors. Garage doors shall be kept closed at all times, except as may be necessary for reasonable ingress and egress.

Section 9.: Windows and Awnings. No reflective materials, including but not limited to aluminum foil, reflective screens or glass, mirrors or items of a similar nature, shall be permitted to be installed or placed on the outside or inside of any windows or any other part of a Unit which can be seen from the outside of the Development or from other portions of the Development. Further, no metal or rigid plastic awnings of any nature whatsoever shall be permitted to be placed or installed on or attached to the outside of any of the Buildings, or elsewhere on the Premises, and only

awnings of canvas or other materials that shall have been first approved in accordance with Article IV shall be allowed.

Section 10: Screening Areas; Fences. All screened areas and fences, hedges or walls shall be maintained upon the Premises in accordance with their original construction or installation, except as otherwise approved in accordance with Article IV.

Section 11: Trash Unsightly Items. All clotheslines, garbage cans, equipment, service areas, woodpiles, storage piles and storage areas shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring property and streets. Rubbish, trash and garbage shall not be burned on or allowed to accumulate on the Premises. No incinerators shall be permitted on the Premises or any part thereof.

Section 12: Underground Utilities. All electric, gas, power, telephone, water and other service and utility lines, pipes and/or other structures and media for transmission thereof shall be placed and maintained underground, except above-ground service pedestals and switch cabinets, and except to the extent (if any) such underground placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by Developer or as may be otherwise approved in writing by the Board.

Section 13: Noisy Equipment. Except for emergencies, no equipment which emanates disturbing sounds or loud noises, including but not limited to lawn mowers, power hedge clippers, power chain saws and other similarly noisy equipment, shall be operated in any part of the Property between 8:00 p.m. and 8:00 a.m.

Section 14.: Antennas. No radio, television and other antennas of any kind or nature shall be placed or maintained or extend from outside any Unit or the Premises or any Part thereof (or the improvements located thereon) unless approved in writing by the Board.

Section 15.: Renting. No portion of the Premises but for an entire Unit may be rented, and then only to a Single Family.

Section 16.: Subdividing. None of the Units shall be divided into smaller parts or conveyed or encumbered in less than the full original dimensions as shown on the Plat of this Development. However, this restriction shall not prevent conveyances which combine in common ownership more than one Unit. An Owner of each Unit as originally shown on the Plat shall be entitled to that number of votes and shall be subject to assessments attributable to each Unit owned as originally shown on the Plat. Nothing contained in this Section shall prevent the dedication, conveyance, granting or use of any of the easements set forth in Article VII below, or of any easements over, across and under portions of the Premises for public or quasi-public uses or for purposes which benefit any Unit Owners.

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Section 17.: Walls. The walls of any building or improvements and fences constructed on the Premises shall not exceed the height of the original construction unless approved in writing by the Board. Setback lines shall be maintained in accordance with the original construction on the Premises unless otherwise permitted by written approval of the Board.

ARTICLE III.

Peachtree Lane Improvement Association, Inc.
and
Membership in the Association

Section 1: Purpose. The Association is a non-profit corporation organized under and by virtue of the laws of the State of Arizona for the general welfare and benefit of the property Owners in the Development. The Association, through its Members and Board, shall take the appropriate action to manage and maintain, repair, replace and improve the Common Elements together with improvements located thereon, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration, all in accordance with this Declaration and with the Articles of Incorporation and Bylaws.

Section 2: Membership. Membership in the Association shall be limited to the Owners of Units as hereinabove defined, and such membership shall be subject to all the provisions of this Declaration and to the Association's Articles of Incorporation and Bylaws as the same may be amended from time to time. Upon becoming the Owner of a Unit, such Owner shall automatically become a Member of the Association. An Owner shall remain a Member of the Association until such time as his ownership of a Unit ceases, at which time his membership in the Association shall cease automatically. Ownership of a Unit shall be the sole qualification and criterion for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the sale of such

Unit and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process. Any attempt to make a prohibited transfer is 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 purchaser 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 purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered. The record Owner of a Unit shall be entitled to one membership in the Association for himself and his family residing in a Unit; provided, however, in the event any such Unit is owned by two or more persons, the membership as to each Unit shall be joint, and a single membership for such Unit shall be issued in the name of all Owners, and they shall designate to the Association one of their number who shall hold the membership and shall have the power to vote said membership. At the discretion of the Board, no certificates of membership need be issued, and if certificates are not issued, membership shall be evidenced by an official list of Members kept by the Secretary of the Association.

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Section 3.: The Voting Rights. Subject to the provisions hereof, each membership representing ownership of one of the Units in the Development shall be entitled to one vote. Each purchaser of a Unit shall notify the Association of its purchase within ten (10) days after becoming the Owner of the Unit. The Association shall not be required to recognize the transfer of ownership of a Unit until such time as the new Owner has furnished to the Association a recorded deed or other evidence satisfactory to the Board establishing that the ownership of the Unit has been transferred. The voting

rights of an Owner may be suspended by the Board for any period during which such Owner is delinquent in the payment of assessments, interest, late charges, lien fees, monetary penalties or any other fees or charges due to the Association by the Owner.

ARTICLE IV.

Architectural Control

Section 1. Submission of Plans for Original Construction. Except as hereinbelow set forth, no building, fence, wall, antenna, tower, awning or structure of any kind or character shall be commenced, erected, placed or maintained on the Premises unless and until plans and specifications showing the location, kind, material, approximate cost, area, height, color, shape and design thereof first shall have been submitted to and approved by the Board as hereinbelow set forth and a copy of said plans and specifications as finally approved is lodged permanently with the Board. After such plans and specifications have been submitted to the Board, ^{Unofficial Document} the Board shall have thirty (30) days to approve or disapprove same. Failure of the Board to reject in writing plans and specifications submitted to it within thirty (30) days from the date same were submitted shall constitute approval of said plans and specifications, provided that the building, structure or other improvement to be built or placed on the Unit shall be governed by all of the restrictions in this Declaration, and that each such building, structure, or other improvement shall be in harmony with existing buildings, structures and improvements within the Property. The Board shall have the right to deny approval of any plans or specifications which, in its opinion, are not suitable or desirable for aesthetic or any other reasons. In this regard the Board shall have the right to take into consideration all matters mentioned above (i.e., location, kind, material, etc.), as well as the effect any proposed building,

structure or improvement may have upon the site where it is proposed to be constructed or placed, and the suitability of the same with respect to the surrounding area and the effect thereof (including but not limited to harmony of external design and location) upon adjacent Units and the Property as a whole. The Board shall have the right to condition approval of any plans or specifications upon compliance with changes or modifications set forth in writing by the Board. Notwithstanding any other provision of this Section or of this Declaration to the contrary, approval of the Board shall not be required for any structures or objects erected, placed or maintained on the patio of a Unit if the structure or object is not visible to a person six feet (6') tall standing on the floor of the patio of any adjoining Unit or Units.

Section 2. Improvements and Alterations. Any Owner may make non-structural additions, alterations and improvements within his Unit without the prior approval of the Board, but such Owner shall be responsible for any damage to other Units or to the Common Elements which results from any such alterations, additions or improvements. No Owner shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of such addition, alteration or improvement the Owner receives the prior written approval of the Board and 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. The Owner shall be responsible for any damage to other Units and to Common Elements which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit or within any Limited Common Element allocated to the exclusive use of a Unit, whether structural or not, which

would be visible from the exterior of the Building in which the Unit is located or from the exterior of the Limited Common Element, shall be made without the prior written approval of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board.

ARTICLE V.

Property Rights

Section 1: Description of the Premises, Units and Common Elements.

A. Description of the Premises. The Premises shall be as described in the Plat.

B. Description of the Space of the Buildings. There shall be six (6) multi-unit buildings in the Horizontal Property Regime, each of which shall contain such number of Units as is reflected by the Plat. The cubic content space of each Building, and its location on the Premises, is as more fully set forth and described in the Plat.

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C. Description of Space of Unit. The Horizontal Property Regime shall be composed of thirty-one (31) individual Units. Each Unit within each Building is separately identified numerically as one (1) through thirty-one (31), as shown on the Plat. Each of the Units shall have one of four configurations, respectively identified as configuration A, B, C, or D, as is described in the Plat. The cubic content space of each Unit is more fully set forth and described on the Plat. Each Unit includes the garage designated on the Plat with the same number as the Unit.

The boundaries of each Unit are as follows:

- (i) The lower vertical boundary is the surface of the finished floor thereof.
- (ii) The upper vertical boundary is a horizontal plane, the elevation of which coincides with the elevation of the surface of the finished ceiling or ceilings thereof.
- (iii) The lateral boundaries are the interior surfaces of the perimeter walls, windows and doors thereof and vertical planes coincidental with the interior surfaces of the perimeter walls thereof, extended upwards to intersect to the upper horizontal boundary.
- (iv) Each such Unit includes the surfaces so described, and, subject to Subparagraph (v) of this Subsection C, the portions of the Building and improvements lying within such boundaries. Each such Unit shall also include the ranges, ^{Unofficial Document} dishwasher, garbage disposal units, water heaters, and other household appliances lying within such boundaries and appurtenant areas and any heating and air conditioning unit and related appurtenances serving only that Unit whether located within or outside of the Unit.
- (v) Any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture, whether located within or outside the boundaries of a Unit, which serve only that Unit, are a Limited Common Element allocated to that Unit and any portions serving more than one Unit or serving any portion of the Common Elements is a part of the Common Elements.

- (vi) Unless otherwise indicated, all air space boundary lines intersect at right angles.
- (vii) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways or patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

In interpreting deeds, plats, declarations, and plans, the existing physical boundaries of a Unit or a Unit constructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plat, plan, or declaration, regardless of settling or lateral movement of the Building, and regardless of minor variances between the boundaries as shown on the Plat or in the Deed and Declaration and of those of the Building.

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D. Description of General Common Elements. The General Common Elements shall include all of the Property, except for the Units. The Common Elements shall remain undivided; and no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order for it to preserve the rights of the Owners with respect to the operation and management of the Common Elements.

E. Fractional Interest. Each Unit shall have a one thirty-oneth (1/31th) undivided fractional interest in the General Common Elements.

F. Vertical Dimension. All reference to vertical dimension made in this document or on the Plat shall be based upon the elevations as described below:

Benchmark: Top of brass cap in hand hole at the intersection of Central Avenue and Missouri, elevation 1141.81 (City of Phoenix datum).

Section 2: Use of Common Elements. Every Owner shall have the non-exclusive right to use the Common Elements (except for any part of the Common Elements allocated to exclusive use of one Unit pursuant to Section 4 of this Article V) in common with all other Owners as may be required for the purposes of access and ingress and egress to and from and the use, occupancy and enjoyment of the respective Unit held by such Owner and of the Common Elements for their intended purposes, as herein provided. It is expressly acknowledged and agreed by all parties concerned that this Section is for mutual benefit of all Owners of Units and is necessary for the protection of all Owners. The rights of the Owners to use and enjoy the Common Elements shall be subject to the following provisions:

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A. The right of the Association, acting by and through its Board of Directors, to limit the number of guests of Members;

B. The right of the Association, acting by and through its Board of Directors, to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements, and to enact and enforce reasonable rules and regulations governing the use of all Common Elements and facilities;

C. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and facilities, and in aid thereof

to mortgage same, and the rights of such mortgagee in such property shall be subordinate to the rights of the Owners hereunder;

D. The right of the Association, acting by and through its Board of Directors, to suspend the voting rights and right to use of the recreational facilities of an Owner for any period during which any assessment against his Unit remains unpaid, or for any infraction by an Owner of the conditions of this Declaration, the Articles of Incorporation, the Bylaws, or published rules and regulations of the Association;

E. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, or authority for such purposes and subject to such conditions as may be agreed to by the Board of Directors. No dedication or transfer shall be valid unless such dedication or transfer, and the purposes and conditions agreed to in connection therewith, are expressly approved in writing by the Owners of at least twenty-three (23) of the Units. ^{Unofficial Document} Notwithstanding the foregoing, the Board shall have the right to grant easements for the construction and maintenance of facilities for utilities over, under and across the Common Elements and any portion thereof without the approval of the Owners.

F. The right of the Association to designate certain parking areas as being for use only by visitors and guests of members, and to exclude Members' vehicles therefrom.

Section 3: Delegation of Use. Any Owner may delegate, subject to and in accordance with this Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations of the Board, his right of use the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on the Premises.

Section 4: Allocation of Limited Common Elements.

A. The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one Unit as follows:

(i) Each Unit is allocated the patio shown on the Plat as being adjacent to the Unit which and bears the same identification number as the Unit;

(ii) Any chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixtures, whether located within or outside of the boundaries of a Unit, which serve only one Unit is a Limited Common Element allocated solely to the Unit served;

(iii) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element allocated solely to the Unit, the use of which is limited to that Unit and any ^{Unofficial Document} portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements;

(iv) Any shutters, awnings, window boxes, doorsteps, stoops, porches and exterior doors and windows or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit;

B. The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors

shall be made by an amendment to this Declaration and an amendment to the Plat if required by applicable law.

ARTICLE VI.

Easements

Section 1: Ingress, Egress, Utilities. There is hereby created a blanket easement upon, across and over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities including, but not limited to, water, sewers, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary facilities and equipment on the Property and to affix and maintain wires, circuits, conduits and related facilities and equipment on, above, across and under the roofs and exterior walls of the Units. Notwithstanding anything to the contrary contained in this Section, no easements shall be created nor shall any ^{Unofficial Document} sewers, electrical lines, water lines or other facilities for utilities be installed or relocated on the Property except as initially created, programmed and constructed or thereafter created or approved by the Board. This provision shall in no way affect any other recorded easements on the Property.

Section 2. Each Unit and the Common Elements shall be subject to an easement for encroachments including but not limited to encroachments of balconies, ledges, roofs, walls, fences and trellises, created by construction, settling and overhangs, as designed or constructed by Developer. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event any Unit or structure is partially or totally destroyed and then rebuilt, the Owners of Units agree that similar encroachments of parts of the adjacent Units

or Common Elements due to construction, settling and overhangs shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

Section 3: Non-interference. Except as initially constructed or as specifically allowed by this Declaration and the Plat, no building or other structures shall be placed or erected on any easements nor interference made with the free use thereof for the purposes intended.

ARTICLE VII.

Maintenance

Section 1. Obligation of Board. The Board, acting for and on behalf of the Association shall have the obligation to maintain, repair and replace the Common Elements and all landscaping, recreational facilities and other Improvements located thereon, in accordance with the terms and conditions hereof except for any portion of a Limited Common Element which an Owner is obligated to maintain, repair and replace pursuant to Section 2 of this Article VII. Any cooperative action necessary or appropriate for the proper maintenance and upkeep of the Common Elements shall be taken by the Board, acting for and on behalf of the Association. Without limiting the generality of the foregoing, the Association shall have the right at any and all times to promulgate reasonable rules and regulations concerning the landscaping, color scheme and other related matters affecting the outside appearance of the Development as a whole, and the individual Unit Owners shall be bound thereby.

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Section 2: Owner Responsibility.

A. Each Owner shall have the responsibility for maintaining, repairing or replacing his Unit, and the glass windows and doors allocated the Owner's Unit as Limited Common Elements.

B. Each Owner shall also maintain, repair and replace the interior surfaces of the floor, ceiling and walls of the garage allocated to his Unit as a Limited Common Element. The Association shall maintain, repair and replace the garage door of the garage, but the Owner shall be responsible for the maintenance, repair and replacement of any garage door opening device.

C. Each Owner shall also be responsible for maintaining, repairing and replacing the interior surfaces of the floor, ceiling and walls, if any, of the patio allocated to the Unit as a Limited Common Element and all landscaping and other Improvements within the boundaries of such patio.

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D. Termite and pest control within the Unit shall be the responsibility of the Unit Owners. Unit Owners shall promptly report to the Board any evidence of termite infestation or damage within the Unit or the Common Elements. The Association shall have the right to enter the Units upon reasonable notice to the Owner in order to repair any termite damage to the Common Elements or to take any necessary action to prevent or eradicate termite infestation in the Common Elements.

Section 3: Cost of Repair. In the event that the need for any maintenance or repairs to the Common Elements (or other areas which the Association have undertaken or are responsible for) is caused through the willful or negligent act of the Owner of a Unit, his family, guests or invitees, the

cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject.

ARTICLE VIII.

Covenant for Assessments

Section 1: Creation of the Lien and Personal Obligation For Assessments. The owner of each Unit, by acceptance of a deed or other instrument therefor, whether or not it should be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association:

(a) annual or periodic assessments or charges, (b) special assessments for capital improvements, and (c) individual assessments as provided for under Section 6 of this Article. The annual or periodic, special and individual assessments, together with such interest thereon and costs of collection thereof (including reasonable attorney's fees) and all other amounts levied, imposed or charged against a Unit, or the Owner thereof, by the Association as ^{Unofficial Document} hereinafter provided, shall be a charge on the land and shall be a continuing lien (hereinafter sometimes called an assessment lien) upon the Unit against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees, shall be the personal obligation of the person who is the Owner of such Unit at the time when the assessment became due, but such personal obligation or liability of the Owner shall not be deemed to limit or discharge the charge on the land and the continuing lien upon the Unit against which such assessment is made. No Owner may exempt himself from liability for any assessment which becomes due while he is the Owner by failure or waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit or otherwise.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the general benefit, recreation, health, safety and welfare of the Owners of the Property. Such purposes shall include, but shall not be limited to, and the Association's rights and Powers shall include (in addition to the rights and powers set forth in this Declaration and in the Articles of Incorporation and Bylaws provision for the improvement, construction, repair, maintenance, care, upkeep and management of the Common Elements and the improvements and facilities thereon; and shall include provision for the payment of all taxes and assessments which may properly be levied or assessed against and upon any property owned by the Association, and all premiums for hazard and public liability insurance, together with all other costs and expenses related to the management and maintenance of the Common Elements. Nothing contained herein shall limit the Association's rights and powers granted in this article or granted elsewhere in this Declaration and the ^{Unofficial Document} Articles of Incorporation and Bylaws of the Association.

Section 3: Annual Assessments or Charges.

A. The Board, on behalf of the Association, shall determine and establish a budget and make assessments upon the Owners of Units on the basis of costs and expenses incurred or estimated to be incurred by the Association. The Owner of each Unit for said Owner and for said Owner's heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees that each Unit shall be subject to an assessment in an amount to be determined, which amount shall be the said Unit's pro rata share of the following:

(1) The actual cost to the Association of all taxes and improvement assessments, water, utilities, repairs, construction, replacement and maintenance of the Common Elements and the improvements and facilities located thereon, and, shall include but not be limited to charges in connection with the sprinkler systems, street paving, pathways, security guard service (if any) and other services benefiting the Owners, and all other charges necessary or appropriate to carry out the purposes of the Association as set forth in this Declaration, the Articles and Bylaws, its rules and regulations; and

(2) Such sums as the Board shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes, management and administrative costs and other charges as specified herein.

B. Each Owner's pro rata ^{Unofficial Document} share shall be that portion of the total cost determined pursuant to subsections 3A(1) and (2) above, which is in the ratio that one (1) bears to the total number of Units within the Property (to wit: a 1/31th share).

C. The amounts to be prorated pursuant to subsection 3A above shall be established annually by the Board. The Association shall establish a fiscal year and shall collect each Unit's share of the annual assessments at regular intervals as stated in Section 6 below.

D. The premiums for the insurance to be maintained by the Association pursuant to Article IX of this Declaration shall be billed to each Unit annually or at such other intervals as may be determined by the Board. The portion of such insurance premium to be billed to each Unit shall be the amount obtained by multiplying the total insurance premium by a fraction the numerator

of which is the square footage of the Unit and the denominator of which is the total square footage of all Units in the Development. Insurance premiums billed to the Units shall be deemed assessments for all purposes of this Declaration.

Section 4: Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Elements, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the Members who are voting at any meeting duly called for such purpose.

Section 5. Quorum for Any Action Authorized under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 above shall be sent to all Members not less than ten (10) days nor more than ^{Unofficial Document} twenty (20) days in advance of the meeting. At the first meeting called, as provided in Section 4 above, the presence at the meeting of Members or of proxies entitled to cast seventy-five percent (75%) of all the votes shall constitute a quorum. If the required quorum is not forthcoming at the first meeting, another meeting may be called, subject to the same notice requirement, and the required quorum at such subsequent meeting shall be fifty percent (50%) of all the votes.

Section 6: Uniform Mode of Assessments. Subject to the provisions contained in this Declaration, both annual and special assessments shall be fixed at a uniform rate for the Units obligated to pay the particular assessment, and may be collected on a monthly or other periodic basis as determined by the Board.

Section 7: Due Date of Annual Assessments. The Board shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period, but the failure to give such notice shall not affect the validity or commencement of the annual assessment established by the Board nor relieve any Owner from his obligation to pay the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand of any Member at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8: Individual Assessment for Restoration of Property Immediately Adjacent to Owner's Unit.

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A. In the event the Owner of a Unit fails to maintain, repair or replace any part of the Property which the Owner is obligated to maintain under this Declaration, in a first-class, neat and clean condition, and generally in a manner satisfactory to the Board, the Association or the Board, through its agents, employees and/or independent contractors, shall have the right, and each Owner expressly grants and assigns the Association the right (subject to prior notice as hereinbelow set forth) to enter upon such Property and repair, maintain, rehabilitate and restore such Property to the condition deemed satisfactory to the Board. The cost thereof shall be charged against and collected from the Owner of the of the Unit, the amount thereof to be paid by the Owner, and further,

said amount shall be secured by and subject to all provisions regarding the assessment lien as provided in this Article.

B. Prior to exercising the aforesaid right of restoration, the Board shall give written notice to the Owner of said Unit specifying the necessary repairs, maintenance, rehabilitation or restoration to be undertaken, and granting the Owner thirty (30) days to accomplish the same. If, at the end of said period, the work required to be performed has not been completed (or has been completed in a manner unsatisfactory to the Board), or if, in the opinion of the Board, sufficient action has not been taken to effect same, then the Association or the Board shall have the right, as above set forth, to make such repairs, maintenance, rehabilitation or restoration.

C. Nothing herein contained shall be construed as granting to the Association or the Board any right to enter into any Unit without the consent of the Owner thereof.

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Section 9: Effect of Nonpayment of Assessments and Remedies of the Association. Each Owner, for himself, his heirs, executors, administrators, successors and assigns, covenants and agrees that with respect to assessments determined during the period that he is an Owner, he will remit those assessments directly to the Association or to such other party or parties as directed by the Board; and further agrees that any assessments which are not paid when due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board, and the Owner shall be obligated for the assessment and interest thereon, together with all costs incurred by the Association in collecting the same, including reasonable attorney's fees. The Association shall have a lien on each Unit for all assessments, interest, late fees, lien fees, monetary penalties and other fees and charges imposed or levied against the Unit or the

Owner thereof pursuant to this Declaration. The recording of this Declaration constitutes record notice and perfection of the assessment lien of the Association, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the assessment lien of the Association, the Association shall have the right, but not the obligation, to record a notice setting forth the amount of any delinquent assessments, interest, late charges, lien fees, penalties or other fees or charges imposed or levied against a Unit or the Owner thereof. The assessment lien of the Association shall have priority over all liens or encumbrances against the Units except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any first mortgage or first deed of trust. If the Association records a notice of lien against the Unit, the Association may assess against the Unit a lien fee in such amount as established from time to time by the Board. If any assessment is not paid when due, the Association may assess a late charge in an amount established from time to time ^{Unofficial Document} by the Board. In the event the Owner of any Unit fails to pay an assessment due, the Association, by and through its Board, may enforce the payment of the assessment by foreclosure of the lien or by taking any or all of the following actions concurrently or separately (and by exercising any of the remedies hereinafter set forth the Association does not prejudice or waive its right to exercise any other remedies):

A. Bring an action at law against the Owner personally obligated to pay the assessment.

B. Foreclose the assessment lien against the unit in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Unit may be redeemed after foreclosure sale as provided by law. The

Association, acting on behalf of the Owners, shall have the power to bid on an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

C. Foreclose such lien or liens in the manner provided by the statutes of the State of Arizona for the foreclosure of materialmen's liens.

D. Anything hereinabove to the contrary notwithstanding, the remedies above set forth for the Association are not exclusive, and the Association, acting by and through the Board, may seek any and all other remedies available to it at law or equity.

Section 10: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be junior and subordinate to the lien of any first mortgage or first deed of trust against any Unit. Sale or transfer of any Unit shall not affect the assessment lien; provided, however, the sale or transfer of any Unit pursuant to mortgage foreclosure, trustee's sale under a deed of trust, or any proceeding in lieu thereof of a first mortgage or first deed of trust, shall extinguish the lien of such assessments as to payments which became due prior to completion of such sale or transfer including any period of redemption. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof; nor shall it relieve any Owner from the personal obligation for any assessment (together with interest, costs and attorney's fees) becoming due during the period of his ownership.

Section 11: Notification to First Mortgagees. Upon request of any first mortgagee of any Unit, the Association shall notify such first mortgagee in writing of any default, not cured within sixty (60) days; in the performance by the Owner of such Unit of any obligation under this Declaration, the

Articles, the Bylaws, or any comparable instrument which creates rights and obligations running with title to the Units, and such other documents that pertain to the Development.

Section 12: Monetary Penalties. In accordance with the procedures set forth in the Bylaws, the Board shall have the right to levy reasonable monetary penalties against an Owner for violations of this Declaration or the rules and regulations of the Association by the Owner or any tenant or other person residing in such Owner's Unit.

Section 13: Transfer Fee. Each purchaser of a Unit shall pay to the Association immediately upon becoming the Owner of the Unit a transfer fee in such amount as is established from time to time by the Board.

ARTICLE IX.

Insurance and Destruction of Units

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Section 1: Scope of Coverage.

A. The Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Common Elements and Units, exclusive of improvements and betterments installed in Units by Unit Owners, issued under a standard form "All Risk of Direct Physical Loss Form" in an amount equal to the maximum insurable replacement value of the Common Elements and Units, as determined by the Board of Directors; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured

property, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy.

(ii) Broad Form Comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include (a) a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner, (b) medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles, and (c) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona.

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(iv) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

(v) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Unit Owners.

(vi) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(a) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.

(b) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household.

(c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(d) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.

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

(f) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).

(g) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(h) Any Insurance Trust Agreement will be recognized by the insurer.

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

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

Section 2: Fidelity Bonds.

A. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. ^{Unofficial Document} The total amount of the fidelity bonds maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the estimated maximum funds, including reserve funds, in the custody of the Association or the management agent of the Association, as the case may be, at any given time during the term of each bond.

B. The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

Section 3: Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this Article shall be assessed to the Owners as provided in Section 3D of Article VIII of this Declaration.

Section 4: Insurance Obtained by Unit Owners. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining insurance for his own benefit and at his own expense covering his Unit, his personal property and providing personal liability coverage. Any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies obtained by the Association and must, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claims against the Association, its officers, directors, agents and employees and against other Owners and their employees, agents and invitees or other persons for whom the Association or any such Owner may be responsible.

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Section 5: Payment of Insurance Proceeds.

A. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholder its their interests may appear.

B. Subject to the provisions of Subsection C of this Section 5, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a

surplus of proceeds after the property has been completely repaired or restored, or the horizontal property regime is terminated.

C. Any portion of the Development for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless any of the following apply: (i) the horizontal property regime is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit, who is allocated a Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense of the Association and assessed to the members as a part of the annual assessment or as a special assessment.

D. If the entire ^{Unofficial Document} Development is not repaired or replaced, then: (i) the insurance proceeds attributable to the damaged Common Elements in proportion to their Common Element interest shall be used to restore the damaged area to a condition compatible with the remainder of the Development; (ii) the insurance proceeds attributable to Units and allocated Limited Common Elements which are not rebuilt shall be distributed in proportion to their Common Element interest to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders as their interest may appear; and (iii) the remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interest may appear in proportion to the Common Element interest of all the Units.

Section 6: Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article IX shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under at deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a Deed of Trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

Section 7: Limitation of Liability. Notwithstanding anything contained herein to the contrary or otherwise, neither the Board nor the Association shall be liable to any party whomsoever for a failure to procure any insurance, nor shall the above-mentioned parties be liable in any manner whatsoever for the risk covered by such insurance or for the failure of such insurance to cover any risk.

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Section 8: Right to Cure. In the event there exists any tax or other charge which is in default and which may or have become a charge against the Common Elements or any property of the Association, the first mortgagees of any such Property, jointly or singlely, may pay such tax or other charge. In addition, such first mortgagees may pay any overdue premium on any hazard insurance policy, or secure new hazard insurance coverage on the lapse of the policy, for such Common Elements or Property of the Association. Any first mortgagee making any such payment set forth herein shall be owed immediately reimbursement therefor from the Association.

ARTICLE X.

Restrictions on Powers of The Association

Unless it has first obtained the written consent of not less than two-thirds (2/3rds) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners of the individual Units, the Association shall not be entitled to:

A. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements owned, directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements by the Association shall not be deemed a transfer within the meaning of this clause);

B. Change the method of determining the obligations, assessments, dues or other charges which may be levied against any Owner;^{Unofficial Document}

C. By act or omission change, waive or abandon any scheme of regulations, or the enforcement thereof, pertaining to the architectural design or the exterior appearance of improvements, the exterior maintenance of Buildings and other improvements, the maintenance of the Common Elements, walkways or common fences and driveways, or the upkeep of lawns and plantings in the Development;

D. Fail to maintain fire and extended coverage on insurable Common Elements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs);

E. Use hazard insurance proceeds for losses to any Property of the Association, including the Common Elements, for other than the repair, replacement or reconstruction of such Property or Common Elements.

ARTICLE XI.

General Provisions

Section 1: These Restrictions shall run with, bind and burden the Property, and said Restrictions shall be binding upon each Owner and his heirs, executors, administrators, successors and assigns and all other persons claiming an interest in and to said Property until December 21, 1999. After said date these Restrictions, as amended from time to time (unless terminated as provided in Section 3 hereof), shall be automatically extended for successive periods of ten (10) years each.

Section 2: All instruments of conveyance or transfer of any interest of all or any part of the Property may contain the Restrictions herein set forth by reference to this Declaration. However, the Restrictions contained herein shall be binding in accordance with their provisions upon all persons affected by the terms and conditions of this Declaration, regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance.

Section 3: This Declaration may only be amended by the vote or written consent of the Owners of at least sixty-seven percent (67%) of the Units. Any amendment adopted by the Owners shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Notwithstanding anything contained herein to the contrary or otherwise, without the signed and acknowledged concurrence of the first mortgagee(s)

or the beneficiary(s), under first deeds of trust then encumbering seventy-five percent (75%) of the Units, none of the terms and conditions contained in this Declaration shall be subject to amendment or termination, which directly or indirectly relate to any of the following matters:

- (1) rights and privileges accorded to any mortgagee under a first mortgage or any beneficiary and trustee under a first deed of trust;
- (2) the granting, reserving, creation, existence or other rights in connection with any easements created herein or otherwise.

Section 4: Reasonable rules and regulations concerning use of the Property and all portions thereof, and imposing reasonable restrictions upon the Owners in the use of the Units and Common Elements, may be made and amended from time to time by the Board; provided, however, that all such rules and regulations and amendments thereto promulgated by the Board shall be approved by a the Owners of more than fifty percent (50%) of the Units. ^{Unofficial Document} Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners and occupants of the Development upon request.

Section 5: Wherever the words "mortgage" or mortgagee" are used or referred to in this Declaration, the words will also be deemed to include "deed of trust," or "trustee," or "beneficiary" under a deed of trust which terms may be used interchangeably.

Section 6: The Association, any Owner or the holder of any encumbrance upon any portion of the Property shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, by any Owner or by the holder of any encumbrance

on any portion of the Property to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 7: Violation of any provision of this Declaration may be restrained or enjoined by a court of competent jurisdiction and/or damages may be awarded against the Owner violating the Declaration. Nothing contained in this Declaration shall be construed as meaning that damages are an adequate remedy when equitable relief is sought by the Association or an Owner. In any action to enforce this Declaration or in any other action arising out of this Declaration, the prevailing party in such action shall be entitled to recover from the non-prevailing party all the attorneys' fees and court costs incurred by the prevailing party in the action.

Section 8: Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders. Words used in the neuter gender shall include the masculine and feminine genders, words in the singular shall include the plural, and words in the plural shall include the singular.

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Section 9: All captions, titles and headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or contents hereof.

Section 10: All Owners agree that any matter arising under this Declaration may be finally adjudged or determined in any court or courts of the State of Arizona or of the United States of America having jurisdiction in the State of Arizona, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter.

Nothing contained in this Section shall be deemed or construed to impose upon the Association, its Members or its 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 Section were not contained herein.

Section 11: Wherever the Association is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association in accordance with the Articles of Incorporation and by Bylaws. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do any act, including but not limited to action or acts in connection with the Common Elements, the Owners and each of them hereby constitute and appoint the Board and each of its members as their attorney-in-fact for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by accepting a deed to a Unit, or by acquiring any interest in the Property, each Owner or other person shall be deemed and construed to have ratified and expressly granted the above power of attorney.

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Section 12: This Declaration shall supersede the Initial Declaration in its entirety, and upon the recording of this Declaration with the County Recorder of Maricopa County, Arizona, the Initial Declaration shall be of no further force and effect.

PEACHTREE LANE IMPROVEMENT
ASSOCIATION, INC., an Arizona nonprofit
corporation

By: Gredonna J. Boverman

Its: President

ATTEST:

Carol Bedner

Secretary, Peachtree Lane Improvement
Association, Inc.

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

On this the 16th day of December, 1995, before me, the undersigned Notary
Public, personally appeared Gredonna J. Boverman, the President of Peachtree Lane Improvement
Association, Inc., an Arizona nonprofit corporation, on behalf of the corporation.

Unofficial Document

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

Janice M. Kautz
Notary Public



My Commission Expires:
4-10-99

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

On this the 16th day of November, 1995, before me, the undersigned Notary Public, personally appeared Carol Rejzner, the Secretary of Peachtree Lane Improvement Association, Inc., an Arizona nonprofit corporation, on behalf of the corporation.

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

Janice M. Kautz
Notary Public

My Commission Expires:

4-10-99



Unofficial Document

EXHIBIT "A"

PARCEL NO. 1:

That part of Lot 2, Block 2, EVANS ADDITION TO ORANGEWOOD, according to Book 2 of Maps, page 56, records of Maricopa County, Arizona, described as follows: BEGINNING at a point 30 feet North and 220 feet West of the Southeast corner of said Lot 2, running thence North 295 feet, more or less, to the North line of said Lot 2;
thence West along the North line of said Lot 2, a distance of 130 feet; thence south 295 feet, more or less, to a point 30 feet North of the South line of Lot 2;
thence East 130 feet to the point of beginning;
EXCEPT any portion thereof lying within the right of way of Georgia Avenue.

PARCEL NO. 2:

That part of Lot 2, Block 2, EVANS ADDITION TO ORANGEWOOD, according to Book 2 of Maps, page 56, records of Maricopa County, Arizona, described as follows:
BEGINNING at a point 30 feet North and 350 feet West of the Southeast corner of Lot 2;
thence North 295 feet, more or less, to the ^{Unofficial Document} Northerly boundary line of said Lot 2;
thence West along said Northerly boundary lines 132 feet;
thence South 295 feet, more or less to a point 30 feet North of the Southerly boundary line of said Lot 2;
thence East 132 feet to the point of beginning;
EXCEPT the North 9.25 feet of the south 39.25 feet thereof.

PARCEL NO. 3:

The East half of that part of Lot 2, Block 2, EVANS ADDITION TO ORANGEWOOD, according to Book 2 of Maps, page 56, records of Maricopa County, Arizona, described as follows:
BEGINNING at a point 482 feet West and 30 feet North of the Southeast corner of Lot 2, and running thence North 295 feet;
thence West 130 feet;
thence South 295 feet;
thence East 130 feet to the place of beginning;
EXCEPT the North 9.25 feet of the South 39.25 feet thereof.

PARCEL NO. 4:

The West half of that part of Lot 2, Block 2, EVANS ADDITION TO ORANGEWOOD, according to Book 2 of Maps, page 56, records of Maricopa County, Arizona described as follows:

BEGINNING at a point 482 feet West and 30 feet North of the southeast corner of Lot 2, and running thence North 295 feet;

thence West 130 feet;

thence South 295 feet;

thence East 130 feet to the place of beginning;

EXCEPT the North 9.25 feet of the South 39.25 feet thereof

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