

ASSOCIATION

CC & R's

107398

DECLARATION OF HORIZONTAL PROPERTY REGIME  
AND DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR SCOTTSDALE SHADOWS V

PROP RSTR (PR)

THIS DECLARATION, made as of the date hereinafter set forth by KENMAN PROPERTIES (hereinafter called the "Declarant"), a joint venture of THE ENVIRONMENTAL GROUP, INC. and ROSTLAND ARIZONA, INC., both Arizona corporations,

WITNESSETH:

WHEREAS, Declarant is the sole owner of the following described real property situated in the City of Scottsdale, County of Maricopa, State of Arizona:

That portion of the Southeast quarter of the Northeast quarter of Section 23, Township 2 North, Range 4 East of the G&SRB&M more particularly described as follows:

COMMENCING at the Southwest corner of the Southeast quarter of the Northeast quarter of said Section 23; thence South 89 degrees 59 minutes 55 seconds East (an assumed bearing) along the South line of the Southeast quarter of the Northeast quarter of said Section 23 for a distance of 356.20 feet; thence North 00 degrees 00 minutes 05 seconds East, a distance of 156.65 feet; thence North 44 degrees 59 minutes 54 seconds West a distance of 40.00 feet; thence North 45 degrees 00 minutes 06 seconds East, a distance of 739.01 feet to the true point of beginning; thence North 44 degrees 59 minutes 54 seconds West a distance of 275.33 feet; thence North 45 degrees 00 minutes 06 seconds East, a distance of 319.32 feet to a point which marks the beginning of a curve concave Southerly, the center of which bears South 44 degrees 59 minutes 54 seconds East a distance of 62.50 feet; thence Northeasterly along the arc of said curve through a central angle of 90 degrees 00 minutes 00 seconds, a distance of 98.18 feet; thence South 44 degrees 59 minutes 54 seconds East, a distance of 150.34 feet to a point which marks the beginning of a curve concave Westerly, the center of which bears South 45 degrees 00 minutes 06 seconds West, a distance of 62.50 feet, thence Southeasterly along the arc of said curve through a central angle of 90 degrees 00 minutes 00 seconds, a distance of 98.18 feet; thence South 45 degrees 00 minutes 06 seconds West a distance of 319.32 feet to the true point of beginning

(hereinafter sometimes called the "Parcel"); and

WHEREAS, Declarant desires hereby to submit and subject the Parcel to a horizontal property regime pursuant to



Section 33-551 through 33-561, Arizona Revised Statutes; and  
 WHEREAS, Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Property (as hereinafter defined), or any part thereof, certain easements and rights in, over and upon said Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant desires and intends that the Unit Owners, Mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth, all of which shall run with the land and be binding upon the said Property and all parties having or acquiring any right, title, or interest in or to said Property, or any part thereof, and shall inure to the benefit of each owner thereof, and all of which are declared to be in furtherance of a plan to promote and protect the cooperative use, conduct and maintenance of such Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness thereof.

NOW, THEREFORE, Declarant, as the sole owner of the Parcel hereinbefore described and for the purposes herein set forth, declares as follows:

1. Definitions. As used herein, unless the context otherwise requires:

1.1 "Act" means Section 33-551 through Section 33-561, Arizona Revised Statutes.

~~1.2 "Association" means Scottsdale Shadows V, Inc., an Arizona nonprofit corporation, its successors and assigns,~~

formed or to be formed by the Declarant, and unless otherwise provided, shall mean and include its Board of Directors, officers and other authorized agents.

1.3 "Building" means each building located or planned to be located on the Parcel which constitute or are to constitute a part of the Property. Two Buildings are currently planned by Declarant, as shown on the Plat attached hereto as Exhibit A, designated on such Plat as Building 5-A and Building 5-B, which Buildings have or are planned to have seven structural stories above the ground floor, contain or are planned to contain 82 and 73 Units, respectively, and various mechanical and equipment rooms, and are or are planned to be as further described on such Plat.

1.4 "Common Elements" means the "general common elements", as that term is defined in Section 33-551(6), Arizona Revised Statutes, including without limitation the Parcel, the roofs of the Buildings, any laundry rooms, storage rooms, mechanical rooms, central air conditioning/heating system (excluding any portion of such system which exclusively serves each unit), Guest Parking Spaces not assigned to any Unit, driveways, landscaping of the Common Elements, and all other portions of the Property, except the Units.

1.5 "Common Area" means all of the properties now or hereafter owned and held by Recreational Center, Inc., its successors and assigns for the common use and enjoyment of its members, including but not limited to such things as driveways and parking areas maintained by Recreational Center, Inc., walk areas, lighting fixtures, concessions, rights-of-way, easements, bicycle paths, pedestrian trails, a golf course, tennis courts maintained by Recreational Center, Inc., pool and other recreational areas and facilities, pumps, trees, landscaping of the Common Areas, streets, pipes, wire, conduits and other utility lines.

1.6 "Declarant" means KENMAN PROPERTIES, its successors and assigns in the ownership of the Property for the purpose of the original development and sale thereof.

1.7 "Declaration" means this instrument by which the Property is submitted to a horizontal property regime, as from time to time amended.

1.8 "Majority" or "Majority of Owners" means the Owners of Units to which more than fifty percent (50%) of the undivided ownership of the Common Elements is appurtenant, irrespective of the total number of Owners. Likewise, any specified fraction or percentage of the Owners means the Owners of Units to which that fraction or percentage of undivided ownership of the Common Elements is appurtenant.

1.9 "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, including without limitation deeds of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means a person secured by a Mortgage, including the trustee and beneficiary under any deed of trust; and "Mortgagor" means the party executing a Mortgage. "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.10 "Occupant" means a person or persons, other than an Owner, in rightful possession of a Unit.

1.11 "Owner" means the record owner, whether one or more persons or entities, of a fee simple title, whether or not subject to any Mortgage, to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the

performance of an obligation. In the case of Units the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor.

1.12 "Parcel" means the parcel or tract of real estate described above in this Declaration, which is hereby submitted to a horizontal property regime.

1.13 "Parking Space" means each of the separate parking spaces in the underground parking garage as shown on the Plat attached hereto as Exhibit B or in any outside parking area established from time to time by the Association. "Restricted Parking Space" means each Parking Space or Spaces in the underground parking garage. "Guest Parking Space" means any Parking Space in any outside parking area maintained by the Association.

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

1.15 "Plats" means the various plats of survey of the Property, as hereinbefore and hereinafter more fully described and identified, all of which are attached hereto as Exhibits A through R and are incorporated fully herein by this reference.

1.16 "Property" means the Parcel, the Buildings and the Units comprising the horizontal property regime hereby created, together with all buildings, improvements and other permanent fixtures 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 term shall in general have the same meaning as set forth in Section 33-551, Arizona Revised Statutes, as related to the horizontal property regime hereby created.

1.17 "Record" or "Recording" refers to record or recording in the office of the County Recorder of Maricopa County, Arizona.

1.18 "Apartment Unit" (hereinafter sometimes called "Unit") means each of the 155 portions of the Property contained or planned to be contained in the Buildings which consist or are planned to consist of one or more rooms and any patio or balcony designed or intended for independent use as a dwelling unit, as shown on the Plats attached hereto as Exhibits C through P, inclusive. A Unit is an "Apartment" within the meaning of Section 33-551(1), Arizona Revised Statutes, and includes an undivided interest in the Common Elements as set forth in paragraph 3 hereof.

2. Submission of Property. Declarant hereby submits and subjects the Property to a horizontal property regime pursuant to Sections 33-551 through 33-561, Arizona Revised Statutes, to be hereafter known as SCOTTSDALE SHADOWS V and does hereby declare that all of the Units shall be owned, leased, sold, conveyed and encumbered or otherwise held or disposed of subject to the terms, conditions and other provisions of this Declaration.

3. Description of the Building, the Units and the Common Elements. The entire horizontal property regime shall be constituted of the Common Elements and the Units.

3.1 Buildings. There are or are planned to be two (2) Buildings in the horizontal property regime known as Building 5-A and Building 5-B. Reference is hereby made to the Plats for a description of the cubic content space of or planned for each of the Buildings and its location or planned location on the Parcel.

3.2 Units. There are or are planned to be a total of 155 Units in the Buildings. Reference is hereby made to the

Plats attached hereto as Exhibits C through P, for a description of the cubic content space of each Unit and its location or planned location within the Buildings. Each Unit shall include the space enclosed and bounded by the interior unfinished surfaces of the ceiling or any extension of the elevation thereof, floor and any extension of the elevation thereof, perimeter walls and windows thereof (or, if there is no perimeter wall, then the interior boundary thereof), and the patio or balcony fences or any extension of the vertical interior surface thereof, together with any portion of the central air-conditioning/heating system which exclusively serves such Unit; provided, however, that no portion of the roof, bearing walls or other structural components of the Building in which each Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility, water or sewer lines situated within such Unit and forming part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of a Unit.

~~3.3 Common Elements~~ A description of the Common Elements included in and comprising parts of each Building is the description referred to in subparagraph 3.1 less the descriptions of the Units referred to in subparagraph 3.2. A description of the other Common Elements is as set forth in subparagraph 1.4.

~~3.4 Interest in the Common Elements~~ The percentage interest which each Unit bears to the entire horizontal property regime, which interest shall constitute an undivided interest in the Common Elements which is appurtenant to each such Unit, shall be as provided in Exhibit R attached hereto, subject to change upon the completion of Building 5-B as provided in such Exhibit R and in paragraph 34 hereof.



4. Association. The Association has been, or will be, formed to constitute the "Council of Co-Owners", as that term is defined in Section 33-551, Arizona Revised Statutes, and to serve as the governing body for all of the Owners for the protection, improvement, alteration, expansion, augmentation, disposal, divestment, redescription, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds, and other matters as provided in the Act, in this Declaration, in the Articles of Incorporation of the Association (hereinafter termed the "Articles") and in the Bylaws of the Association (hereinafter called the "Bylaws"). Upon the first delivery of a deed conveying any Unit and occupancy of such Unit, the Association shall acquire a membership and interest in Recreational Center, Inc. as provided in Article VI of the Articles of Incorporation and Article I of the By-Laws of such Recreational Center, Inc., and shall perform all obligations of membership therein and pay all assessments levied thereafter by Recreational Center, Inc. against the Association. 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 provisions of this Declaration, the Articles and the Bylaws. Each Owner shall be a Member of the Association as soon and so long as he shall be an Owner. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner, and the new Owner shall likewise automatically succeed to such membership in the Association. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it appurains (and then only to such purchaser)

or by intestate succession, testamentary disposition, foreclosure of a mortgage of record or other legal process transferring fee simple title to such Unit (and then only to the Person to whom such fee simple title is transferred). Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged or alienated the voting right of his Unit regarding special matters to a Mortgagee as additional security, only the vote of such Mortgagee will be recognized in regard to such special matters, if a copy of such proxy or other instrument pledging or alienating such vote has been filed with the Board of Directors. In the event that more than one such instrument has been filed, the Board of Directors shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves. Any attempt to make a prohibited transfer of a membership is void and will not be recognized by or 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 a 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.

4.1 Classes of Membership; Voting Rights of Classes.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and, except as hereafter provided in the case of election of directors, shall be entitled to one vote for each Unit owned, which vote shall be weighted as to all matters in accordance with

the percentage of the undivided ownership of the Common Elements appurtenant thereto. When more than one person holds an interest in any Unit, all such persons shall be members. The voting for such Unit shall be exercised as they as such Persons among themselves determine, but in no event shall more than one vote be cast with respect to any Class A Unit.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Unit owned, which vote shall be weighted as to all matters in accordance with the percentage of the undivided ownership of the Common Elements appurtenant thereto. Each such vote may be cast in such proportions on any matter as Declarant may determine. Class B memberships shall cease and be converted to Class A memberships, without further act or deed, upon the happening of any of the following events:

(a) Upon the sale or other disposition of any Unit by Declarant, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including a pledge or assignment by Declarant to any lender as security), with respect to the Unit or Units so sold or otherwise disposed of; or

(b) With respect to all remaining Class B memberships, upon the first to occur of the following:

(i) Within One Hundred Twenty (120) days following the first date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or

(ii) On January 1, 1984, unless Declarant shall have then commenced or completed construction of Building 5-B or other Building in accordance with paragraph 34 or shall have applied for or been granted a permit therefor, in which event the provisions of subparagraph (i) shall apply.

If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration succeeds to the interests of Declarant by virtue of said assignment, the Class B memberships shall not be terminated thereby, and such lender shall hold the Class B memberships on the same terms as they were held by Declarant pursuant hereto. So long as any Class B membership remains outstanding, the Class A memberships shall not be entitled to cast any vote with respect to the election of directors. PURSUANT TO THE TERMS OF THIS PARAGRAPH AND OF PARAGRAPH 34, THE RELATIVE VOTING STRENGTHS OF THE DECLARANT AND THE OTHER UNIT OWNERS MAY CHANGE, AND CONTROL, EVEN THOUGH VESTED IN OTHER UNIT OWNERS, MAY NEVERTHELESS REVERT TO THE DECLARANT, BY VIRTUE OF THE PROVISIONS OF SUCH PARAGRAPHS UPON COMPLETION OF BUILDING 5-B OR OTHER BUILDING CONSTRUCTED ON THE PARCEL IN ACCORDANCE WITH PARAGRAPH 34.

4.2 Qualifications of Directors. Each director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of such Owner). If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director, and his place on the Board shall be deemed vacant. The requirements of this subparagraph shall not apply to directors elected by the Class B member.

4.3 Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any question of interpretation or application of the provisions of this Declaration, the Articles or the Bylaws, the determination thereof by the Board shall be final and binding on each and all of such Owners.

4.4 Action by Owners. To the extent permitted by the Act, all actions required to be taken by the Owners, acting as a Council of Co-Owners for the Property, shall be taken by the members of the Association acting as such Council of Co-Owners, by and through its directors and officers, such actions to include, without limitation, adoption or ratification of the Bylaws and rules and regulations for the horizontal property regime created hereby.

4.5 Recreational Center, Inc. The Board of Directors, pursuant to Article VI of the Articles of Incorporation and Article I Section 3 of the Bylaws of Recreational Center, Inc., shall be empowered to designate one of the members of the Board as a representative to vote the membership of the Council of Co-Owners in all actions and all decisions required by such Council in connection with its membership in Recreational Center, Inc. The Board may meet and determine to the extent it considers appropriate how said designated director shall vote such membership on any issue or item, but said director shall be free to and shall act in accordance with his own best judgment on all other matters.

4.6 Additional Provisions in Articles of Incorporation and By-laws of the Association. The Articles of Incorporation and By-laws of the Association may contain any provision not inconsistent with law or with this Declaration relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members.

5. Use of Common Elements. Each Owner shall have the non-exclusive right to use the Common Elements and Common Areas 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 owned by such Owner and of the Common Elements and Common Areas for their intended purposes, as herein provided. Such right shall extend to each occupant and the agents, servants, tenants, family members and invitees of each Owner. Such right shall be subject to such reasonable limitations and restrictions as may from time to time be promulgated by the Board, and shall be subject to and governed by the provisions of this Declaration, the Articles and the Bylaws. The Board shall have authority to lease, convey easements or grant concessions consistent with the overall character and use of the Property with respect to parts of the Common Elements or to change the character, description and use thereof, subject to the provisions of this Declaration, the Articles and the Bylaws. Any income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe. Notwithstanding any other provision hereof to the contrary, Declarant shall be entitled to exclusive access to and occupancy of all or any portion of any Building or other Common Element or parking areas until such time as the construction thereof is complete and Declarant shall have certified the readiness of such Building, Common Element or portion thereof or parking area to the Board of Directors.

6. Parking Spaces. There shall be two types of Parking Spaces, called "Restricted Parking Spaces" and "Guest Parking Spaces."

6.1 Restricted Parking Spaces. Restricted Parking Spaces shall neither constitute part of the Common Elements or Common Areas nor of the Units or any Unit, and no interest in the Common Elements or rights of membership in the Association, or any other rights under this Declaration, shall be appurtenant thereto, except as herein expressly provided. Restricted Parking Spaces may be sold, leased, mortgaged or otherwise assigned and used apart from the ownership of any Unit, and the Owner or other person legally entitled to the use of any Restricted Parking Space shall be entitled to reasonable access thereto and to the use thereof for parking purposes, subject to such rules and regulations as may be adopted by the Board of Directors from time to time. Every Owner of a Unit shall be required to own at all times at least one (1) Restricted Parking Space for each Unit owned by him. No Restricted Parking Space shall be sold, leased, mortgaged or assigned to or otherwise used by any person who is not then the Owner, lessee or Mortgagee of a Unit in any horizontal property regime existing on the real property described in the Plat attached hereto as Exhibit Q. No Restricted Parking Space shall be sold, leased, mortgaged or assigned without the prior written consent of any First Mortgagee of such Restricted Parking Space. Any attempt to sell, lease, mortgage, assign or otherwise permit the use of any Restricted Parking Space contrary to the terms hereof shall be void and shall not be recognized by the Association, unless expressly approved by the Board of Directors. A complete list of the names and addresses of persons owning, leasing or otherwise entitled to use Restricted Parking Spaces shall be maintained by the Association at all times, and the Association may exclude from any Restricted Parking Space any person who is not so listed. The Association shall have the right and

power to assess on the Owners of the Restricted Parking Spaces their proportionate share of the expenses of administration, operation, maintenance and repair of the underground parking garage and the Restricted Parking Spaces. The proportionate share of such expenses attributable to each Restricted Parking Space shall equal the total amount of such expenses divided by the number of Restricted Parking Spaces. Such assessments shall be separate from and shall not constitute a part of assessments relating to the Common Elements and Common Areas as provided in paragraph 7 of this Declaration. Any unpaid assessment on the Restricted Parking Spaces shall bear interest at the rate of ten percent (10%) per annum from the date due until paid, and the Association shall have a lien for the amount thereof on the Restricted Parking Space to which such assessment is attributable, which lien shall be of the same priority, subject to the same terms and conditions, and shall be foreclosed in the same manner as the lien provided for in paragraph 7. Any conveyance of any Restricted Parking Space may be by deed, lease or other instrument and may be separately recorded, specifying the number of other designation of such Restricted Parking Space as shown on the Plat attached hereto as Exhibit B.

6.2 Guest Parking Spaces. Guest Parking Spaces shall be part of the Common Elements, may be assigned in any manner determined by the Board of Directors and may be assigned or otherwise transferred by the Owners in accordance with rules determined by the Board of Directors from time to time. The Board shall have full authority to establish, operate, manage and use for and on behalf of all Owners any parking areas on the Property, and the use thereof shall be subject to such rules and regulations as may be imposed by the Board.



~~Common Expenses~~ Each Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements and of any other expenses incurred in conformance with this Declaration, the Articles and the Bylaws (which expenses are herein sometimes referred to as "Common Expenses"), including specifically, but not by way of limitation, insurance, the maintenance and repair of the Common Elements and any and all replacements and additions thereto, and reasonable reserves for contingencies, replacements or other proper purposes. The Association shall maintain an adequate reserve for replacement of the Common Elements and, for a period of one (1) year from and after the sale and delivery of the first Unit, shall maintain a working capital fund equal to at least two (2) months estimated Common Expenses of the Association, or such greater amount and for such longer period as the Board of Directors may determine from time to time. ~~The expenses of the administration and operation of the Common Elements shall also include any assessments of the Owners for the Common Areas. The assessments for the Common Areas are further defined and set forth in Article XIII of the Articles of Incorporation and Articles I and VI of the By-Laws of Recreational Center, Inc. Each Owner's proportionate share of such Common Expenses shall be the same as the fractional undivided interest in the Common Elements appurtenant to his Unit as provided in paragraph~~

3.4.

~~Payment of Common Expenses, including any prepayment thereof required by contract for sale of a Unit, shall be in such amounts, at such times and in such manner as may be provided in the Articles and Bylaws or determined by the Board of Directors of the Association. Such payment, together with interest at the rate of ten percent (10%) per~~

annum, costs, and reasonable attorneys fees, shall constitute the personal obligation of the person who was the Owner of such Unit at the time such payment fell due. The personal

obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by him.

X If any Owner shall fail or refuse to make any such payment of Common Expenses when due, the amount thereof, together

with interest, costs and reasonable attorney's fees, shall,

constitute a lien on such Owner's Unit and on any rents or

proceeds therefrom; provided, however, that such lien shall

be subordinate to the lien of a prior recorded First Mortgage

on the applicable Unit, acquired in good faith and for

value, except for the amount of the unpaid Common Expenses

which accrues from and after the date on which such First

Mortgagee acquires title to or comes into possession of the

applicable Unit, and if any lien for unpaid assessments

prior to such date has not been extinguished by the process

by which such First Mortgagee acquired such title or possession,

such First Mortgagee shall not be liable for such unpaid

assessments and, upon written request to the Board of Directors

by such First Mortgagee, such lien shall be released in

writing by the Association. Any person acquiring an interest

in any Unit shall be entitled to a statement from the Association

setting forth the amount of unpaid assessments, if any, and

such person shall not be liable for, nor shall any lien

attach to such Unit in excess of, the amount set forth in

such statement, except for assessments which occur or become

due after the date thereof. The lien provided for in this

paragraph may be foreclosed by the Association in any manner

provided or permitted for the foreclosure of realty mortgages

or deeds of trust in the State of Arizona.

8. Mortgages. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages of his Unit. No Owner shall have the right or authority to make or create or cause to be made or created any mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Unit and its appurtenant interest in the Common Elements and any Restricted Parking Space or Guest Parking Space acquired by said Owner in accordance with paragraph 6.

9. Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Arizona with a rating in Best's Insurance Guide (or any comparable publication) of at least A-AAAA (or any comparable rating). All such insurance, to the extent possible, shall name the Association as the insured, in its individual capacity and also either as attorney-in-fact or trustee for all Owners. The Board of Directors shall review all such insurance at least annually and shall be responsible to increase the amounts thereof as it deems necessary or appropriate. To the extent possible, such casualty insurance shall:

(1) Provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents and against each Owner and each Owner's employees, agents and invitees, and against each Mortgagee of all and any part of the Property or of any Unit, and any other person for whom the Association, any Owner or Mortgagee may be responsible;

(2) Provide that the insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees and agents or of any Owner or such Owner's employees, agents or invitees or of any Mortgagee of all or any part of the Property or of any Unit or any other person for whom the Association, any Owner or Mortgagee may be responsible;

(3) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee of all or any part of the property or any Unit and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or Mortgagee of all or any part of the Property or any Unit;

(4) Contain a standard without contribution mortgage clause endorsement in favor of the Mortgagee of any Unit or all or any part of the Property;

(5) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least 10 days' prior written notice to the Association and to each Owner and to each Mortgagee covered by any standard mortgage clause endorsement; and

(6) Provide that the insurer shall not have the option to restore the premises if condominium ownership of the Units and Property is to be terminated or the Units and Property are to be sold as an entirety in accordance with the destruction, condemnation and obsolescence provisions of this Declaration.

To the extent possible, such public liability and property damage insurance shall provide for coverage of any cross

liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice.

Certificates of insurance coverage or copies of insurance policies shall be issued to and at the expense of each Owner and each Mortgagee who makes or on whose behalf written request is made to the Association for any such certificate or copy.

The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or improvements made to a Unit or Restricted Common Elements by an Owner or other insurance obtained at the request of and specifically benefiting any particular Owner, shall be a general common expense for which each Unit Owner shall be specially assessed.

9.1 Casualty Insurance. The Association shall obtain and maintain casualty insurance covering the Property and each Unit covering loss or damage by fire and such other hazards as are covered under standard extended coverage policies, including without limitation sprinkler leakage unless precluded by excessive costs or unavailability, earthquake, explosion of any pressure boiler or similar apparatus, vandalism and malicious mischief and, if available and if deemed appropriate by the Association, war risk, for the full insurable replacement cost of the Property, including each Unit, and a National Flood Insurance Association Standard Flood Insurance Policy, unless such insurance is not available or the Association shall determine that the Property does not fall within a flood hazard area. At the option of the Association, such insurance may also cover additions,

alterations or improvements to a Unit made by an Owner if the Owner reimburses the Association for any additional premiums attributable to such coverage. The Association shall not be obligated to apply any insurance proceeds to restore a Unit to a condition better than the conditions existing prior to the making of additions, alterations or improvements as aforesaid.

9.2 Public Liability and Property Damage Insurance.

The Association shall obtain and maintain comprehensive public liability and property damage insurance covering bodily injury liability, property damage liability and automobile bodily injury and property damage liability, as required of the Association. Each Owner shall be insured with respect to such Owner's liability arising out of the ownership, maintenance, repair or operations of the Common Elements and the Common Areas. Limits of liability for such coverage shall not be less than \$1,000,000 per injury and \$5,000,000 for each occurrence with respect to bodily injury liability and \$250,000 for each occurrence with respect to property damage liability.

9.3 Workmen's Compensation and Employer's Liability Insurance.

The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

9.4 Fidelity Bonding. The Association shall obtain and maintain bonds covering all persons or entities which handle funds of the Association, including without limitation employees of any professional manager of the Association, in amounts not less than one hundred fifty percent (150%) of the estimated annual budget of the Association from time to time.

9.5 Insurance by Owners. Except to the extent coverage therefor may be obtained by the Association and be satisfactory to an Owner, each Owner shall be free to obtain and responsible for obtaining such additional or other insurance as he deems desirable, including insurance covering his furnishings and personal property and covering personal liability of him and his employees, agents and invitees and any other person for whom such Owner may be responsible. Any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and must, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and their employees, agents and invitees and against any Mortgagee of all or any part of the Property or any Unit or other person for whom the Association or any such Owner or Mortgagee may be responsible.

9.6 Receipt and Application of Insurance Proceeds. Except as some particular person shall have a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries under policies maintained by the Association shall be paid to and received by an independent financial institution or title company selected by the Association authorized to act as escrow agent for the benefit of the Association, the Declarant, all Owners and all Mortgagees of any Unit or all or any part of the Property as their respective interests may appear. The Association shall have the right, acting alone, to adjust or settle any claim by it under any insurance maintained by it. Such funds shall be disbursed by said escrow agent in accordance with the following priorities, subject to such evidence of application as such escrow agent

shall require, and shall be applied by the Association as follows: first, as expressly provided elsewhere in this Declaration; second, to the Owners or persons whom the Association may determine are legally or equitably entitled thereto; and third, the balance, if any, to Owners in proportion to their respective interests in the Common Elements. The lien priority of any First Mortgagee shall not be disturbed by any loss, damage or destruction and shall continue in any insurance proceeds payable with respect to the Mortgaged Unit in accordance with the provisions of this paragraph.

9.7 Other Insurance by the Association. The Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, including but not limited to casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

10. Destruction, Condemnation, Obsolescence, and Restoration or Sale of Property.

10.1 Definitions. The following terms shall have the following definitions:

10.1.1 "Substantial Destruction" shall exist whenever the Board of Directors of the Association determines that, as a result of any casualty, damage or destruction to the Property or any part thereof, the excess of estimated costs of Restoration (as herein defined) over Available Funds (as herein defined) is fifty percent (50%) or more of the estimated Restored Value of the Property (as herein defined). "Partial Destruction" shall mean any other casualty, damage or destruction of the Property or any part thereof.

10.1.2 "Substantial Condemnation" shall exist whenever the Board of Directors of the Association determines that a



complete taking of the Property has occurred or that a taking of part of the Property by condemnation or eminent domain or by grant or conveyance in lieu of condemnation or eminent domain has occurred, and that the excess of the estimated costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Property. "Partial Condemnation" shall mean any other such taking by eminent domain or by grant or conveyance in lieu of eminent domain.

10.1.3 "Substantial Obsolescence" shall exist whenever the Owners of Units holding seventy-five percent (75%) of the undivided ownership of the Common Elements determine by vote that the Property or any part thereof has reached an undesirable state of obsolescence or disrepair, or whenever the Board of Directors determines that the Property or any part thereof has reached such a state of obsolescence or disrepair that the excess of estimated costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Property. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

10.1.4 "Restoration", in the case of any casualty, damage or destruction, shall mean restoration of the Property to a condition the same or substantially the same as the condition in which it existed prior to the casualty, damage or destruction; in the case of condemnation, shall mean restoration of the remaining portion of the Property to an attractive, sound and desirable condition; and, in the case of obsolescence, shall mean restoration of the Property to an attractive, sound and desirable condition.

10.1.5 "Restored Value of the Property" shall mean the value of the Property after restoration.

10.1.6 "Available Funds" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation and any uncommitted income or funds of the Association other than the income or funds derived through assessments or special assessments. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee of all or any part of the Property or of any Unit, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner of a Unit for the condemnation or taking of that Owner's individual air space unit.

10.2 Restoration of the Property. Restoration of the Property shall be undertaken by the Association without a vote of the Owners in the event of Partial Destruction, Partial Condemnation or Partial Obsolescence but shall be undertaken in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence only with the consent of the Owners of Units to which seventy-five percent (75%) of the undivided interest in the Common Elements are appurtenant and the unanimous consent of all First Mortgagees.

10.3 Sale of the Property. The Property shall be sold in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence unless consent to Restoration has been obtained from the Owners of Units to which seventy-five percent (75%) of the undivided interest in the Common Elements are appurtenant. In the event of such sale, condominium ownership under this Declaration shall terminate and the proceeds of sale and any insurance proceeds, condemnation awards or payments in lieu of condemnation shall be distributed by the Association to each Owner in accordance

with such Owner's individual interest in the Common Elements. Such payments shall be made to Owners or, as to Units which are Mortgaged of record at the time of such payment, jointly to such Owner and the First Mortgagee.

10.4 Authority of Association to Restore or Sell. The Association, as attorney-in-fact for each Owner, shall have full power and authority to restore or to sell the Property and each Unit whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

10.5 Special Assessments for Restoration. Whenever Restoration is to be undertaken, the Association may levy and collect assessments from each Owner in proportion to such Owner's undivided interest in the Common Elements, payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by Available Funds. Such special assessments shall be secured by a lien on the Unit of each such Owner as in the case of regular assessments. Notwithstanding any other provisions in this Declaration, in the case of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence, any such special assessment shall not be a personal obligation of any such Owner who did not vote in favor of or consent to Restoration but, if not paid, may be recovered only by foreclosure of the lien against the Unit of such Owner.

10.6 Receipt and Application of Condemnation Funds. Except as herein expressly provided, all compensation, damages or other proceeds constituting awards in condemnation or eminent domain or payments in lieu of condemnation or

eminent domain shall be payable to, or if received by the Association shall be turned over promptly, in the identical form received without commingling with any asset or property of the Association, to an independent financial institution or title company selected by the Association authorized to act as escrow agent for the benefit of the Association, the Declarant, all Owners and all Mortgagees of any Unit or all or any part of the Property as their respective interests appear. The Association shall have the right, acting alone, to adjust or settle any award payable to it. Such funds shall be disbursed by said escrow agent in accordance with the following priorities, subject to such evidence of application as such escrow agent shall require. The amount thereof equitably allocable as compensation for the taking of or injury to the individual air space unit of a particular Unit or to improvements of an Owner therein shall be apportioned and paid to the Owner of that Unit or to any Mortgagee of record of such Unit as their interests may appear. The balance of the award shall be applied to costs and expenses of Restoration, if undertaken, and, to the extent not so applied, shall be allocated as follows. First, any portion of the award allocable to the taking of or injury to Common Elements shall be apportioned among all Owners of the Common Elements in proportion to their respective undivided interests in the Common Elements. Secondly the amounts allocable to severance damages shall be apportioned to Owners of Units with individual air space units which were not taken or condemned in proportion to their respective undivided interests in the Common Elements. Thirdly, the amounts allocated to consequential damages or for other purposes shall be apportioned as the Association determines to be equitable under the circumstances. The lien priority of any First Mortgagee

shall not be disturbed by any condemnation proceeding and shall continue in the proceeds of any condemnation award attributable to the Mortgaged Unit in accordance with the provisions of this paragraph.

10.7 Reorganization in the Event of Condemnation. In the event all of the individual air space unit of a Unit is taken in condemnation, the Unit containing that individual air space unit shall upon payment of equitable compensation as hereinabove provided, cease to be part of the Property, the Owner thereof shall cease to be a member of the Association, and the undivided interest in Common Elements appurtenant to that Unit shall automatically become vested in the Owners of the remaining Units in proportion to their respective undivided interests in the Common Elements.

11. Rights of Owners in any Distributions. In the event that any Owner or Mortgagee is entitled to receive any distribution of money, property or other things from the Association for any reason, including without limitation the sale or other disposition of all or any part of the Common Elements or the cessation or termination for any reason of the horizontal property regime herein declared, such distribution shall be in proportion to the interest in the Common Elements appurtenant to the Unit or Units owned or held by such Owner or Mortgagee, except as provided in paragraphs 9 or 10 hereof or as otherwise determined by the Association to be required by equity.

12. Maintenance, Repairs and Replacements; Right of Access. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit and of any portion of the air-conditioning/heating system which exclusively services his Unit; and each Owner shall keep his patio areas and his

balcony, if any, in a neat clean and attractive condition. If, due to the willful or negligent act of an Owner or a member of his family or guest or other authorized occupant or visitor of such Owner, or other person for whom such Owner may be responsible, or household pet, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance. Such obligation of payment and performance shall be payable together with interest, costs and attorneys' fees, and secured by a lien, as provided in paragraph 7 with respect to Common Expenses. An authorized representative of the Board, or of the manager or managing agent of the Building, and all contractors and repairmen employed or engaged by the Board or such manager or managing agent, shall be entitled to reasonable access at reasonable times to each of the Units as may be required in connection with maintenance, repairs or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units and the Common Elements.

13. Alterations, Additions or Improvements. ~~No alter~~ *Palmer*  
~~ations of any Common Elements or any additions or improvements~~  
~~thereto or any alterations, additions or improvements to the~~  
~~patios or balconies associated with any Unit shall be made~~  
~~by any Owner without the prior written approval of the~~  
~~Board. Any Owner may make non-structural alterations,~~  
~~additions or improvements within the interior of his Unit~~  
~~(but excluding for purposes of the authority herein granted~~  
~~any patio or balcony) without the prior written approval of~~

the Board, but such Owner shall be responsible for any damage to other Units, the Common Elements, or the Property which may result from such alteration, addition or improvement.

\* In addition to the required approval of the Board, there shall be no structural alterations or additions to any Building without the prior approval of a Majority of the Owners given at a regular or special meeting of the members of the Association and the prior approval of all First Mortgagees. Unless otherwise determined at any such meeting, the cost of such alterations or additions shall be paid by means of a special assessment against the Owners in proportion to their respective undivided interests in the Common Elements. Such special assessments shall be secured by the lien provided for in paragraph 7.

14. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all of the decorating within his own Unit (but any furnishing or decorating of any patio or balcony shall be subject to the provisions of paragraph 18 of this Declaration) from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decorating. Notwithstanding any other provision hereof to the contrary, all draperies, window shades and curtains which can be seen from outside the Unit shall be subject to regulation as to color or design by the Board of Directors. Each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings and the surfaces within his Unit, and each Each Owner shall have the right to decorate such surfaces from time to time as he may see fit at his sole expense. However, each Owner shall maintain such surfaces in good condition, and all such use, maintenance and decoration shall be subject

to regulation by the Board of Directors. Decorating and maintenance of the Common Elements (other than interior surfaces within the Unit as above provided), and any redecorating of Units to the extent made necessary by any damage caused by defect in or by maintenance or repair work by the Association on the Common Elements shall be furnished by the Association and paid for as part of the Common Expenses.

15. Encroachments. If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements, or if any Unit or entryway providing ingress and egress thereto or therefrom shall actually encroach upon another Unit or entryway, as the Common Elements and the Units are shown on the appropriate Plat, whether such encroachment results from the initial construction or from subsequent repair, reconstruction, settlement or shifting, there shall be deemed to be mutual easements in favor of the Owners of the Common Elements and the respective Owners involved to the extent of such encroachment so long as the same shall exist; provided, however, that no such easement shall result from the misconduct of the Owner claiming entitlement thereto. The Association shall at all times have the right to maintain any Common Element now existing or hereafter constructed, regardless of any encroachment now or hereafter existing of any such Common Element on any Unit.

16. Purchase of Unit by Association. Upon the consent or approval of a majority of Owners present and voting at a special meeting of the members of the Association or in such other manner as may be deemed by the Board to be necessary or expedient, the Board of Directors shall have the power and authority to bid for and purchase any Unit at a sale pursuant to a mortgage foreclosure, trustee's or beneficiary's



sale under a trust deed, or a foreclosure of any lien for assessments provided for in this Declaration, or at a sale pursuant to an order or direction of a court, or other involuntary sale, and the Board shall have power and authority to finance such purchase of a Unit by mortgage, special assessment or any other financing arrangement that the Board may deem necessary or expedient.

*Rental*

17. Use and Occupancy Restrictions. No part of the Property shall be used other than as a dwelling and the related common purposes for which the Property was designed, except that Declarant shall have the right to maintain sales and any other offices, model units, and signs on the Property, together with rights of ingress and egress therefrom, and to do such other acts and maintain such other facilities as are incidental to the development and sale of the Units and all other apartment units now or hereafter existing in the horizontal property regime hereby created or any of the other horizontal property regimes referred to in paragraph 35 of this Declaration now or hereafter existing on any of the real property described in the Plat attached hereto as Exhibit Q. Without limiting the foregoing, no Owner shall permit his Unit to be used for transient or hotel purposes or shall lease less than the entire Unit. \*Any lease agreement shall be in writing, shall expressly provide that its terms are subject in all respects to the provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association and that a violation of any such provisions shall be a default under such lease, and a copy of any such lease shall be delivered to the Association. Each Unit or any two or more adjoining Units used together shall be used as a single family residence or for such other purposes as are permitted by this Declaration and for no other purpose. That part of

the Common Elements separating any two or more adjoining Units under Common ownership and used together for a proper purpose as aforesaid may be altered to afford ingress and egress to and from such adjoining Units at the sole expense of the Owner thereof if and only if specific plans are submitted to and prior approval is obtained from the Board of Directors. The foregoing restrictions shall not however be construed in such manner as to prohibit an Owner from (a) maintaining his personal and/or a reasonable professional library therein, (b) keeping his personal business or professional records or accounts therein, or (c) handling his personal business or professional telephone calls or correspondence therefrom.

The Common Elements shall be used only for access, ingress and egress to and from the respective Units by the Owners residing therein, members of their household and their guests, household help and other authorized visitors and for such other purposes as are incidental to the residential use of the Units. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Owner.

Any single person or the head of any family occupying any Unit shall be at least thirty-nine (39) years of age, and no person under the age of sixteen (16) years shall be a resident of any Unit.

No Owner shall keep or maintain any thing or shall suffer any condition to exist on his Unit or cause any other condition on the Property which materially impairs any easement or right of any other Owner or otherwise materially impairs or interferes with the use and enjoyment by the Owners of their Units and the Common Elements. Subject to the foregoing, commonly accepted household pets may be kept

in a Unit, but no such pets shall be bred or allowed loose or unsupervised on any part of the Property. Walking of pets shall be prohibited except at such times and on such portions of the Property as the Board may permit by its rules and regulations, and all pets shall be leashed.) If the Board determines that any motor vehicle is creating loud or annoying noises by virtue of its operation within the Property, or that the parking or storage of any vehicle or trailer on the Property is unsightly or detracts from the overall character of the Property, such determination shall be conclusive and final that the operation or storage of such vehicle is a nuisance, and said operation, upon notice by the Board to the owner or operator thereof, shall be prohibited within the Property.

No structure of a temporary character shall be permitted on the property, and no tent, shack, barn, or trailer shall be permitted on the property either temporarily or permanently, unless it is located thereon by or with the consent of Declarant.

No sign of any nature whatsoever, other than a dignified name and/or address sign, shall be displayed or placed on any Unit, in any window or on any part of the property. No "For Sale" or "For Rent" signs of any nature whatsoever shall be permitted on any part of the property, and no other signs or graphics shall be permitted on any patio or balcony or on any of the Common Elements without the prior written consent of the Board or as directed by the Board. A master "For Sale" sign may be placed on the property by the Board of Directors with a telephone number to call for information. These provisions shall not apply to the Declarant until the last Unit owned by Declarant has been sold.

Except as initially installed by Declarant, no spot-lights, flood lights or other high intensity lighting shall be placed or utilized upon any building, structure, balcony or patio which in any manner will allow light to be directed or reflected on the Property or the Common Elements, or any part thereof, or any other Unit.

No windbells, windchimes, or similar devices shall be permitted on the property.

\* Each Owner shall install and maintain at all times at his expense carpeting and/or other sound conditioned floor covering, in each case of grades and qualities from time to time approved by the Board of Directors, on all floors in his Unit, except in the kitchens, bathrooms and laundry areas.

No window air conditioners or portable Units of any kind shall be installed in any Building.

No reflective materials including but not limited to aluminum foil, reflective screens or glass, mirrors or similar type items, shall be permitted to be installed or placed on the outside or inside of any windows. Enclosures, shades, screens or other items affecting the exterior appearance of any patio or balcony shall not be permitted without the express written consent of the Board of Directors and shall be subject at all times to the rules and regulations of such Board and to the provisions of paragraph 18 of this Declaration.

No radio, television or other antennas of any kind of nature shall be placed or maintained upon any Unit or Building, except that Declarant shall have the right to install a master antenna or antennas and to provide access to such antenna to the Units.

Without limiting the foregoing, each Owner shall maintain and keep his Unit at all times in a safe, sound and

sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Units or of the Common Elements or Common Areas.

Pursuant to the right of entry hereinbelow set forth in paragraph 21, the Board of Directors or its authorized agents may enter any Unit in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Unit, and the Board shall be empowered to levy fines upon the Owner of any such Unit in the amount of up to \$50.00 per day for each such violation during the continuance thereof. Such expenses and fines shall be added to and constitute a lien upon such Unit in accordance with the provisions of paragraph 7.

~~The Association may modify or waive the foregoing restrictions, or otherwise restrict and regulate the use and occupancy of the Property and the Units by reasonable rules and regulations of general application adopted by the Board of Directors from time to time.~~

18. Architectural Control. No building, fence, wall, antenna, tower, awning, sign or other structure of any kind or character shall be commenced, erected or maintained upon the Property, nor shall any exterior addition, change or alteration be made thereto or therein, including without limitation to any exterior wall or balcony, whether or not part of any Unit, which is visible from the exterior of the Building, and no additions to, changes in, or alterations of landscaping, grade or drainage shall be made, until plans and specifications showing the nature, kind, color, shape, height, materials, location and other material attributes of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to

surrounding structures and topography by the Board of Directors or by an architectural committee appointed by the Board. In the event said Board, or such committee, if one has been appointed, fails to approve or disapprove such proposal at its next regular meeting occurring more than seven (7) days after proper plans and specifications have been duly submitted to it, such approval will not be required, and this paragraph will be deemed to have been fully complied with. These restrictions shall not apply to the Declarant in any way.

19. Party Walls. The rights and duties of the Owners of Units with respect to party walls shall be as follows:

(a) Each wall, including patio and balcony walls, which is constructed as part of the original construction of any structure any part of which is placed on the dividing line between separate Units shall constitute a party wall. With respect to any such party wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants. In addition, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied.

(b) In the event any party wall is damaged or destroyed through the act of the Owner of one adjoining Unit, or any of his guests, tenants, licensees, agents or members of his family or other person for whom such Owner is responsible (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Unit of the full use and enjoyment of such party wall, then the Owner responsible for such damage shall forthwith at his sole expense proceed to rebuild or repair the same in as good condition as formerly.

(c) In the event any party wall is damaged or destroyed due to ordinary wear-and-tear and deterioration from lapse of time, or by any cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family or other persons for whom such Owner is responsible, then both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

(d) Any Owner who by his negligent or wilful act or by the negligent or wilful act of any guest, tenant, licensee, agent or member of his family or other persons for whom such Owner is responsible, causes any party wall to be exposed to the elements shall at his sole expense furnish the necessary protection against such elements.

(e) The right of any Owner to contribute from any other Owner under this paragraph shall be appurtenant to the land and shall pass to the successors in title of each such Owner.

(f) In addition to satisfying the other requirements of this Declaration, any owner proposing to modify, make additions to or rebuild his Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner and shall complete such alterations in accordance with the provisions of any building code or similar regulations or ordinances.

(g) In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to

the Association, the matter shall be decided by the Board of Directors of the Association, whose determination shall be final and binding on such Owners.

(h) These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission of a previous Owner except as herein expressly provided.

20. Exemption of Declarant from Restrictions. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents, and subcontractors, or parties designated by it in connection with the construction, completion, sale or leasing of the Units.

21. Entry By Board or its Agent. The Board of Directors of the Association or its authorized agents may enter any Unit at any reasonable time, with or without notice, when any two (2) members of the Board of Directors deem it necessary or advisable for the enforcement of any restriction hereinabove set forth, to effect emergency or other necessary repairs or otherwise for the protection and preservation of that Unit or other Units. In addition, the Board of Directors or its authorized agents may enter any Unit at any time when any director or agent believes in his discretion that an emergency exists and that such entry is necessary in order to protect any person or property in such Unit or adjoining Units or for other good cause. If it becomes necessary to break into a Unit because no key or means of access was provided by the resident or Owner, as required herein, the Association, its directors, officers and agents shall not be liable for any damage done to the Unit as a result of the exercise of this right of entry. The party exercising this



right of entry shall see that adequate measures are taken to secure the Unit until either the Owner or resident shall be notified that the Unit has been entered. Each resident or Owner shall either (1) leave a key with the manager of the Association or (2) leave a key with another resident and inform the manager in writing of the name of the resident with whom such key has been left. In the event that the resident with whom such key has been left is not available at a time when it is necessary to exercise this right of entry, the Unit may be forceably entered pursuant to the conditions stated above.

22. Roof Leaks or Repairs. The Association shall maintain properly and repair promptly all leaks or other damage to the roofs of any of the Buildings.

~~23. Copy of Declaration to New Members. The Board of Directors shall give each new Owner of a Unit a copy of this~~  
 Declaration and any and all amendments hereto. However, the failure of the Board to provide such copy shall not relieve the new Owner from complying with this Declaration nor waive any of the rights, conditions or restrictions stated herein or create any liability on the part of the Association, the Board of Directors or their agents.

24. Remedies. In the event that any Owner shall fail to comply with the provisions of the Act, this Declaration, the Articles, the Bylaws, or the rules and regulations of the Association, the Association shall have each and all of the rights and remedies provided for in the Act, this Declaration, the Articles, the Bylaws or said rules and regulations, or which may be available at law or in equity and may prosecute any action or other proceedings against such Owner for enforcement of such provisions or foreclosure of its lien and the appointment of a receiver for the Unit,

or damages, or injunctive relief, or specific performance, or judgment for payment of money and collection thereof, or the right to take possession of the Unit and to rent said Unit and apply the rents received to payment of any amounts due and interest thereon, or to sell the same as hereinafter in this paragraph provided, or any combination of such remedies or any other and further relief which may be available at law or in equity, all without notice and without regard to the value of such Unit or the solvency of such Owner. The proceeds of any rental or sale shall first be applied to discharge court costs, other litigation costs, including without limitation reasonable attorney's fees, and all other expenses of the proceeding and sale. The remainder of such proceeds shall be applied first to the payment of any unpaid assessments or other charges and the satisfaction of any other damages, and any balance shall then be paid to the Owner. Upon the confirmation of the sale, the purchasers thereat shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of restitution for the purpose of acquiring such possession. The purchasers at any such sale shall take the Unit sold subject to this Declaration. All expenses of the Association in connection with any such action or proceeding, including court costs and reasonable attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of ten percent (10%) per annum until paid, shall be charged to and assessed against such defaulting Owner and shall be added to and deemed part of his Common Expenses, and the Association shall have a lien upon the Unit of such defaulting Owner and upon all of his additions and improvement thereto for all of the same, as well as for nonpayment of his respective share

of the Common Expenses. In the event of any such breach by any Owner, the Association shall also have the authority, with or without legal proceedings and with or without notice to such Owner, to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such Owner, and such assessment shall constitute a lien against such Owner's Unit. Any and all rights and remedies of the Association may be exercised at any time and from time to time, cumulatively or otherwise. The lien provided for in this paragraph 24 shall be of the same priority, subject to the same terms and conditions and may be foreclosed in the same manner as the lien provided for in paragraph 7 of this Declaration.

Notwithstanding any provision of this Declaration to the contrary, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage made in good faith and for value upon any Unit and its appurtenant undivided interest in the Common Elements, but, except as herein expressly provided, each and all of such covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any Lessee or Owner of any Unit whose title thereto is acquired by foreclosure, Trustee's sale, sale, deed in lieu of foreclosure or otherwise.

25. ~~Amendment:~~ The provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, ~~signed by Owners of Units to which not less than two-thirds~~  
~~(2/3) of the undivided ownership of the Common Elements is~~

appurtenant and acknowledged; provided, however, that no amendment limiting, rescinding or otherwise modifying in any respect any right, power, privilege, immunity, or easement granted or reserved to Declarant in this Declaration shall be effective unless such instrument is also signed and acknowledged by Declarant; and provided further that all

~~First Mortgagees, including without limitation the beneficiaries under all first deeds of trust, shall have consented~~

~~in writing to each such material change, modification or rescission, which consent shall not be unreasonably withheld.~~

Notwithstanding the provisions of the foregoing paragraph, if the Act, this Declaration, the Articles or the Bylaws require the consent or agreement of all of the Owners or the Owners of Units to which a specified percentage of the individual interest in the Common Areas exceeding two-thirds (2/3) is appurtenant for any such amendment or for any action specified in the Act or this Declaration, then any instrument so changing, modifying or rescinding this Declaration or any provision hereof with respect to such action shall be signed by the Owners of not less than such specified percentage, as well as the Declarant and any First Mortgagees or beneficiaries required by the foregoing paragraph.

Anything to the contrary herein notwithstanding, until such time as deeds to all of the Units in all Buildings shall have been delivered by Declarant to purchasers thereof, Declarant reserves the right to amend this Declaration, including the description of the Buildings, the Units and the Common Elements; provided, however, that no such amendment shall have the effect of changing the cubic content space of any Unit not owned by Declarant (except as minor changes may be necessary in order to more accurately describe the

boundaries of the Unit) or of increasing the undivided interest which any Unit not owned by Declarant holds in the Common Elements; and provided further, that all First Mortgagees, including without limitation the beneficiaries under all first deeds of trust, shall have consented to each such material amendment, which consent shall not be unreasonably withheld.

Any such change, modification or rescission accomplished under any of the provisions of this paragraph 25 shall be effective upon recording of the instrument providing therefor signed and acknowledged as hereinabove provided.

26. Notices. Notices provided for in the Act, this Declaration, or the Bylaws shall be in writing and shall be mailed postage prepaid if to the Association or the Board addressed to the address to which payments of assessments are then sent and if to the Owner addressed to his Unit. The Association or the Board may designate a different address or addresses for notices to them respectively from time to time by giving written notice of such change of address to all Owners. Any Owner may also designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above provided shall be deemed delivered when deposited properly addressed in the United States mail, postage prepaid, by registered or certified mail or when delivered in person.

Upon written request to the Board, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners of such Unit.

27. Severability. If any provision of this Declaration, the Articles or the Bylaws or the rules and regulations, or any section, clause, sentence, phrase or word, or the

application thereof in any circumstance, is held invalid by a Court of competent jurisdiction, the validity of the remainder of this Declaration, the Articles and Bylaws, or the rules and regulations, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby, and the remainder of this Declaration, the Articles or Bylaws, or the rules and regulations, shall remain in full force and effect as if such invalid part were never included therein, and such invalid part shall be promptly amended as herein provided or reformed by such Court so as to implement the intent thereof to the maximum extent permitted by law.

28. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants, interests or rights created by this Declaration would otherwise be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States, James Carter, or the Governor of Arizona, Wesley Bolin.

29. Rights and Obligations. Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and equitable servitudes and shall be binding upon and shall inure to the benefit of any

grantee, purchaser or any person having at any time any interest or estate in said land in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument of transfer, and each such grantee shall be entitled to bring, and shall be subject to, an action for the recovery of damages, or for injunctive relief, or both, resulting from any breach of any such provisions.

30. Performance or Relief. After the date hereof, any person who acquires any interest or estate in all or any part of the Property, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including a pledge or assignment by Declarant to any lender as security), agrees and shall agree by virtue of and upon the acquisition of such interest or estate that said acquiring person shall not look to Declarant but shall look only to the other property Owners or other persons hereafter acquiring an interest or estate in said Property for any performance or enforcement of or relief from any violation of any of the covenants, conditions and restrictions contained herein.

31. Utility Easements. Notwithstanding any other provisions hereof, there is hereby created a blanket easement upon, across, over and under the Parcel and Common Elements for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including without limitation water, sewer, gas, telephone, electricity, television cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Property

and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of the Buildings; provided, that no such utility and service line or system may be installed or relocated on said Property except as initially programmed and approved by Declarant or as thereafter approved by Declarant or by the Board of Directors of the Association. This easement shall in no way affect any other recorded easements on the Property.

32. First Mortgagee Protections. Unless all First Mortgagees of any Units have given their prior written approval, ~~the Association shall not be entitled to:~~

- a. Change the pro rata interest or obligations of any Unit for the purpose of levying assessments and charges and determining shares of the Common Elements and proceeds to be distributed among the Owners, except as expressly provided in Exhibit R hereto upon the completion of Building 5-B in accordance with the Plats;
- b. Partition or subdivide any Unit or the Common Elements;
- c. By act or omission seek to rescind or terminate the declaration of horizontal property regime contained herein, except as provided by law in the case of substantial loss to the Units and Common Elements or of a taking by condemnation or eminent domain; or

d. ~~Terminate professional management and assume self-management of the Association.~~

~~Any First Mortgagee shall be entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of any of such Mortgagor's obligations under this Declaration which is not cured within 30 days. All First Mortgagees shall be entitled to written~~



notification by the Association upon the commencement of any condemnation proceedings against all or any part of the Property or of substantial damage to or destruction of any part of the Property. Upon written request, all First Mortgagees shall have the right (i) to examine all books and records of the Association during normal business hours; and (ii) to receive annual reports of the Association as soon as available and in any event within ninety (90) days following the end of any fiscal year of the Association; and (iii) to receive written notice of all meetings of the Unit Owners and to designate a representative to attend all such meetings.

33. Professional Management Agreement. Any Agreement for professional management of the horizontal property regime or any contract providing for services to be performed by the Declarant for the Association shall provide for termination by either party with or without cause and without payment of a termination fee on thirty (30) days written notice, and no such contract or agreement shall be of a duration in excess of one (1) year, renewable by agreement of the parties for successive one (1) year periods.

34. No Obligation of Declarant Respecting Construction of Building 5-B. Notwithstanding any other provision of this Declaration or of the Articles or By-Laws of the Association or of any rule or regulation of the Board of Directors to the contrary, Declarant shall have no obligation to commence or to complete construction of Building 5-B. Declarant shall be free at any time without obligation or liability to any person to refrain from commencing or to commence and abandon or to commence and complete construction of such Building 5-B in accordance with the Plats and descriptions hereinabove contained or hereto attached or with such alterations and changes, including without limitation changes

in design, location and number of Units, Parking Spaces or areas or in any other manner, all as Declarant may in its sole discretion determine; provided, however, that any such change shall be reasonably consistent with the overall design, character and use of the Property as a whole; and further provided that Declarant's right to construct an additional Building or Buildings in the horizontal property regime hereby created shall expire upon the later of January 1, 1990 or the final completion of all further development in the Scottsdale Shadows development, including all of the horizontal property regimes created or to be created on any of the real property described on the Plat attached hereto as Exhibit Q. In the event any such alteration should change the ratio which the individual air space unit of any Unit would have to the total volume of the air space units of all Units in both Buildings if Building 5-B were completed in accordance with the Plats, the undivided interest in the Common Elements appurtenant to such Unit shall automatically be decreased or increased in the same proportion, and any such decrease or increase shall be distributed among or deducted from the undivided interests in the Common Elements which would have been appurtenant to all such other Units in Building 5-A or Building 5-B if Building 5-B had been completed in accordance with such Plats. In connection with the foregoing, Declarant shall have the absolute right, but not the obligation, at any time from and after the date of this Declaration to amend this Declaration, by executing and recording appropriate instruments of amendment, to revise the Plats of Building 5-B and Units therein and Parking Spaces or areas and to restate the undivided interests in the Common Elements appurtenant to the Units in Building 5-A and Building 5-B in accordance with the formula set

forth above and to take such other actions related to the foregoing as Declarant may in its sole discretion determine. There is hereby reserved unto Declarant a power of attorney, and each initial or any subsequent Owner of any Unit shall by virtue of becoming such Owner and without further act or deed grant unto Declarant a power of attorney to approve, execute, record and effectuate all such instruments and amendments. Such powers of attorney are coupled with an interest and shall be irrevocable and shall survive the incapacity or death of any Owner and any transfer or other disposition of any Unit by operation of law or otherwise. Each initial and any subsequent Owner shall be deemed to and does hereby agree and covenant to execute any consent, power of attorney, amendment or other instrument if and as requested by Declarant to accomplish any of the foregoing. Any deed for any Unit may, but need not, be delivered subject to the express condition that the undivided interest in the Common Elements appurtenant to such Unit may be reallocated upon the completion of Building 5-B in accordance with the Plats attached hereto as Exhibits A and J through P, or with such amendments to such Plats or in such other manner as Declarant may in its sole discretion determine.

The terms Building, Common Element, Restricted Parking Space, Guest Parking Space, Plat, Property, and Unit, and any other terms herein descriptive of the horizontal property regime or any part thereof or improvement thereon shall be deemed to mean and include such regime, part or improvement as actually completed, whether or not in accordance with the Plats attached hereto or as amended.

35. Plan of Development. The horizontal property regime hereby declared and created is one of seven (7) separate horizontal property regimes created or planned to

be created on the real property described in the Plat attached hereto as Exhibit Q. All of such horizontal property regimes contain or are planned to contain in total approximately 880 apartment units. However, neither Declarant nor any other person has any obligation to submit any of the remainder of such real property to any horizontal property regime or to develop such property in accordance with such plan or otherwise.

35.1 Easements. Declarant hereby reserves a blanket easement upon, across, over and under the Property (other than inside the Buildings and the Units) for the purpose of ingress to and egress from the remainder of the real property described in the Plat attached hereto as Exhibit Q which has not heretofore and is not hereby submitted to a horizontal property regime, for the purpose of development and construction of such remaining real property and for the purpose of providing to such remaining real property all utilities referred to in paragraph 31 of this Declaration and performing all functions related thereto as described in such paragraph 31. Declarant shall exercise or use such easement in such a manner as to reasonably minimize damage to the Owners of Units in the horizontal property regime hereby created and shall replace, repair or restore at its sole cost and expense any damage caused by the manner of such exercise, including, without limitation, damage to streets and sidewalks caused thereby.

35.2 Easement of Recreational Center, Inc. There has been deeded to Recreational Center, Inc. all of the private roadways and portions of the real property described in the Plat attached hereto as Exhibit Q for the purpose of providing recreational facilities for the Association and for the councils of co-owners of the other horizontal property regimes created or planned to be created on such real property,

including without limitation a recreational building, golf course, swimming pools, and tennis courts. Recreational Center, Inc. is to own, develop, operate and manage all such facilities and areas for the Association and the councils of co-owners of each and all such other horizontal property regimes. Recreational Center, Inc. is hereby granted an easement over and on top of the location shown for underground garages on the Plat attached hereto as Exhibit A for the purpose of installing, maintaining, operating and managing such recreational facilities.

35.3 Rights and Duties of Association in Recreational Center, Inc. The council of co-owners of each horizontal property regime at any time created on the real property described in the Plat attached hereto as Exhibit Q, including the Association, will upon becoming a member of Recreational Center, Inc., hold a percentage interest in Recreational Center, Inc. equal to the proportion and ratio which the square footage of all apartment units in such horizontal property regime bears to the square footage of all apartment units in all of the horizontal property regimes then created on such real property, which are then members of Recreational Center, Inc., subject to adjustment on account of any other horizontal property regime thereafter created on such real property which becomes a member of Recreational Center, Inc. The council of co-owners of each such horizontal property regime which is a member of Recreational Center, Inc., including the Association, will also be assessed by Recreational Center, Inc., and will pay, in the same proportion as the percentage interest of such horizontal property regime in Recreational Center, Inc., for all costs and expenses incurred by Recreational Center, Inc. from and after the date such membership commences. Such proportionate share of the costs

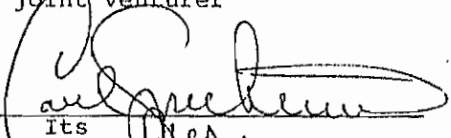
and expenses of Recreational Center, Inc. shall be assessed to the Owners by the Association as Common Expenses, as provided in paragraph 7. The obligation of each Unit in the Association to pay its share of such costs and expenses to Recreational Center, Inc., in the event the Association shall fail to do so when due, shall be direct and primary, and Recreational Center, Inc. shall have the right to assert and enforce a lien against each Unit in the Association therefor; provided, however, that Recreational Center, Inc. shall not have or be entitled to enforce a lien against any Unit the Owner of which shall have paid his proportionate share of such costs and expenses of Recreational Center, Inc. to the Association or to Recreational Center, Inc. Such lien or liens shall be effective only upon recordation of a notice thereof in the office of the County Recorder of Maricopa County. A copy of such notice shall be posted on each Unit subject thereto within three (3) days after such recordation. Any action brought to foreclose such lien shall be commenced within one (1) year after the date of such recordation and shall be foreclosed in any manner provided or permitted by the laws of the State of Arizona for the foreclosure of real property mortgages or deeds of trust. The lien herein provided shall be subordinate to the lien of any prior recorded First Mortgage acquired in good faith and for value on the applicable Unit.

36. Waiver. Any right or remedy provided for in this Declaration shall not be deemed to have been waived by any act or omission, including without limitation any acceptance of payment or partial performance or any forbearance, except by an instrument in writing specifying such right or remedy and executed by the person against whom enforcement of such waiver is sought.

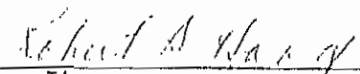
IN WITNESS WHEREOF, KENMAN PROPERTIES, a joint venture,  
has executed this instrument by each of The Environmental  
Group, Inc. and Rostland Arizona, Inc., both Arizona corpora-  
tions, as joint venturers, as of this 3<sup>rd</sup> day of April,  
1978.

KENMAN PROPERTIES,  
a joint venture

BY THE ENVIRONMENTAL GROUP, INC.,  
as joint venturer

By   
Its Pres.

BY ROSTLAND ARIZONA, INC.,  
as joint venturer

By   
Its Pres.

STATE OF ARIZONA )  
 ) ss:  
County of Maricopa )

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On this, the 3<sup>rd</sup> day of APRIL, 1978, before me, the undersigned Notary Public, personally appeared CARL SPIKERMAN, who acknowledged himself to be the PRESIDENT of THE ENVIRONMENTAL GROUP, INC., an Arizona corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer, for such corporation for itself and as a joint venturer in KENMAN PROPERTIES.

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

Jane Hayden  
Notary Public

My Commission Expires:

6-21-78

STATE OF ARIZONA )  
 ) ss:  
County of Maricopa )

On this, the 3<sup>rd</sup> day of APRIL, 1978, before me, the undersigned Notary Public, personally appeared ROBERT S. HAAG, who acknowledged himself to be the VICE PRESIDENT of ROSTLAND ARIZONA, INC., an Arizona corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer, for such corporation for itself and as a joint venturer in KENMAN PROPERTIES.

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

Jane Hayden  
Notary Public

My Commission Expires:

6-21-78