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CASA BONITA CONDOMINIUMS
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**AFFIDAVIT OF SCRIVENER'S ERROR and
RESTATEMENT OF DECLARATION OF
HORIZONTAL PROPERTY REGIME AND DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR CASA BONITA CONDOMINIUMS**

STATE OF ARIZONA)
) ss.
County of Pima)

THIS AFFIDAVIT OF SCRIVENER'S ERROR AND RESTATEMENT OF DECLARATION OF HORIZONTAL PROPERTY REGIME AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CASA BONITA CONDOMINIUMS is made by the President of Casa Bonita Condominiums Association of Tucson, Inc.

1. The Unit Owners of Casa Bonita Condominiums adopted the *Amendment and Restatement of Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions, and Restrictions for Casa Bonita Condominiums, Amended August 17, 1989*, which was recorded on October 6, 1989, in Docket 8638 at page 1474 *et seq.*, office of the Pima County Recorder; and
2. The Unit Owners of Casa Bonita Condominiums subsequently adopted the *Amendment and Restatement of Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions, and Restrictions for Casa Bonita Condominiums, Amended April 12, 1993* (the "1993 Declaration").
3. The 1993 Declaration was intended to supercede and replace any prior Declarations and amendments affecting Casa Bonita Condominiums; and
4. When the 1993 Declaration was recorded in the office of the Pima County Recorder on June 30, 1993, only 7 pages of the 27-page document were included; and
5. The purpose of this Affidavit and Restatement is to rectify the error that was made with respect to the recording of the 1993 Declaration.
6. The *Amendment and Restatement of Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions, and Restrictions for Casa Bonita Condominiums*,

Amended April 12, 1993 attached hereto as Exhibit "A" is a true, correct and complete copy of the 1993 Declaration, which affects and covers the Casa Bonita Condominiums, according to the plat recorded in Book 35 at page 67 of Maps and Plats, office of the Pima County Recorder.

The 1993 Declaration restates, supersedes and completely replaces all previous Declarations for Casa Bonita Condominiums, and remains in full force and effect.

DATED this 2nd day of July, 2014.

CASA BONITA CONDOMINIUMS ASSOCIATION OF
TUCSON, INC., an Arizona non-profit corporation

Jennifer L. Dorn
President

ATTEST:

Dean F. Miller
Secretary

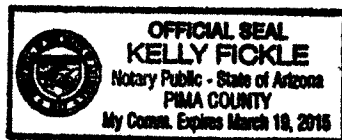
SUBSCRIBED, SWORN AND ACKNOWLEDGED before me this 2nd day of July, 2014, by Jennifer L. Dorn as President of Casa Bonita Condominiums Association of Tucson, Inc., an Arizona non-profit corporation.



Kelly Fickle
Notary Public

STATE OF ARIZONA)
) ss.
County of Pima)

SUBSCRIBED, SWORN AND ACKNOWLEDGED before me this 2nd day of July, 2014, by Don Finkle
as Secretary of Casa Bonita Condominiums Association of Tucson, Inc., an Arizona non-profit corporation.



Kelly Finkle
Notary Public

CC&RS

AMENDMENT AND RESTATEMENT OF DECLARATION
OF HORIZONTAL PROPERTY REGIME AND
DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR CASA BONITA CONDOMINIUMS
TO REPLACE DOCUMENTS FILED APRIL 1993

This Amendment and Restatement is made on the date hereafter set forth by the Casa Bonita Condominiums Unit Owners, as set forth in the Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions for Casa Bonita Condominiums.

W I T N E S S E T H :

WHEREAS, the predecessor in interest of the owners hereunder has previously recorded the Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions, and Restrictions for Casa Bonita Condominiums ("Declaration") in the office of the Pima County Recorder, Pima County, Arizona, in Book 6879 beginning at page 612;

WHEREAS, pursuant to Paragraph 20 of the Declaration, the Declaration may be changed, modified or amended, with the consent of first mortgagees and beneficiaries under first trust deeds, by an acknowledged written instrument setting forth such change, modification or amendment, approved by the Owners owning not less than thirty percent (30%) of the total ownership of the Common Elements then entitled to vote for directors of Casa Bonita Condominium Association, of Tucson, Inc.

NOW, THEREFORE, the Declaration is hereby amended and restated by the majority of the Owners as follows:

ARTICLE I DEFINITIONS

1.1 **"Act"** shall mean the Horizontal Property Regimes Act, Title 33, Chapter 4.1, Article I, Sections 33-551 to 33-561, inclusive, Arizona Revised Statutes, and the Arizona Condominium Act, Title 33, Chapter 9, Sections 33-120 to 33-127, inclusive, Arizona Revised Statutes, as the same may from time to time be amended.

1.2 **"Articles"** shall mean the Articles of Incorporation of the Association as defined in Article 1.3 and amendments thereto which are or shall be filed in the office of the Arizona Corporation Commission.

1.3 **"Association"** shall mean and refer to the Casa Bonita Condominium Association of Tucson, Inc., an Arizona nonprofit corporation, its successors and assigns shall be construed to be the "Council of Co-Owners" as described in former A.R.S. Section 33-551, and shall also mean and include its Board of Directors, Officers, and other agents authorized to act on behalf of and bind the Association.

1.4 **"Board"** shall mean the Board of Directors or governing body of the Casa Bonita Condominium Association of Tucson, Inc.

1.5 **"Building"** shall mean each of the four buildings designated one hundred (100) through four hundred (400) located on the real property described in Exhibit "A" and as defined on the Casa Bonita Condominiums Plat recorded in Book 35 at page 67 of maps and plats, Recorder's Office, Pima County, Arizona, attached hereto as Exhibit "B" and incorporated herein by reference (hereinafter referred to as "Casa Bonita Condominiums Plat"). Buildings will contain apartment units as defined in Paragraph 1.23 and facilities within the recreation areas. Building No. 100 contains Units 1 through 10, inclusive. Building No. 200 contains Units 11 through 18, inclusive. Building No. 300 contains Units 19 through 26. Building No. 400 contains Units 27 through 36, inclusive.

1.6 **"By-laws"** shall mean the By-laws of the Association, together with any amendments thereto of record or to be recorded.

1.7 **"Common Elements"** or **"Common Area"** means the "general common elements" as defined in A.R.S. Sections 33-551 and as defined on the Casa Bonita Condominiums Plat and as defined by this Horizontal Property Regime. "Common Elements" shall include parking spaces, drives, recreation buildings and facilities, sidewalks, drain systems, walls, landscaping, trash enclosures, utilities (water, sewer, gas, t.v., telephone, and electric) maintained as private lines by the Casa Bonita Condominium Association of Tucson, Inc., and all parts of the Parcel, Buildings, improvements, and items not being contained within the apartment unit cubic content space as defined in Paragraph 3.2 below and the Casa Bonita Condominiums Plat, but Common Elements shall include the exclusive easements assigned to be appurtenant to each Unit. Common Elements are more particularly described in Paragraph 3.3 below.

1.8 "Declaration" shall mean this instrument by which the Property is submitted to a horizontal property regime and a condominium project is created, and these covenants, conditions, and restrictions, as from time to time amended.

1.9 "Exclusive Easement" shall mean a portion of the "Common Elements" to be used as a patio or balcony or parking space as described in Paragraphs 3.2 and 6.1 by and for the exclusive benefit of a particular Unit Owner or his invitees and assigns.

1.10 "Institutional Holder" shall mean a Mortgagee which is a bank or savings and loan association, insurance company, an established or recognized mortgage company, or mortgage broker, an insurance company, or other entity chartered under Federal or State laws, or any Federal or State agency which owns an obligation, the repayment of which is in whole or in part, secured by a Mortgage (as defined in Paragraph 1.15 below) recorded against the Property or any part thereof. For purposes of Article XV hereof, "Institutional Holder" shall mean only those Institutional Holders who have sent written notice to the Association informing the Association of such Institutional Holder's address and requesting notification of and the right to participate in (if applicable) any action to be taken by the Association pursuant to Article XV hereof.

1.11 "Casa Bonita Condominiums" as used herein shall be an inclusive term referring to the condominium horizontal property regime project described in this Declaration in general and the Unit Owners, their invitees and assigns, as more particularly defined to include the parcel as defined in Exhibit "A" herein and the Property as defined on Casa Bonita Condominiums Plat as referred to in Article I, 1.5 herein, and the Association as defined in Article I, 1.3 herein.

1.12 "Casa Bonita Condominiums Plat" shall mean the recorded Plat for the Casa Bonita Condominiums as referred to in Article I, 1.5 herein (Exhibit "B").

1.13 "Lease" shall mean any Agreement for the leasing or rental of a Unit as defined in Paragraph 1.23 and the interest in the Common Elements appurtenant to such Units, or any portion thereof.

1.14 "Majority" or "Majority of Owners" shall mean the Owners as defined in Paragraph 1.17 of Units to whom 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 shall mean the Owners of Units to whom that fraction or percentage of undivided ownership of the Common Elements is appurtenant. Votes called for by the Association shall be counted on the basis of one vote for each Unit Owner unless a written request is made within ten days for evaluation of a Majority or specified fraction as defined herein.

1.15 "Mortgage" shall mean 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, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest under the Uniform Commercial Code.

"Mortgagee" shall mean any person or persons secured by a Mortgage, including a trustee and a beneficiary under a deed of trust; and

"Mortgagor" shall mean the party executing a Mortgage.

"First Mortgagee" shall mean a first lien deed of trust, as well as a first mortgage, on a unit held by an "Institutional Holder." "First Mortgagee" means the holder of a first mortgage, as well as a beneficiary or trustee under a first deed of trust, so long as such First Mortgage is held by an "Institutional Holder."

1.16 "Occupant" shall mean person or persons, owner or others, in rightful possession, of a unit.

1.17 "Owner" or "Co-Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if the same has merged), whose estate(s) or interest individually or collectively aggregate fee simple title of any Unit. "Owner" shall include a purchaser of a Unit pursuant to an agreement for sale within the meaning of Arizona Revised Statutes Section 33-741. "Owner" does not include persons or entities who hold an interest in a Unit merely as security for the performance of an obligation.

1.18 "**Parcel**" shall mean the parcel of real property described on Exhibit "A" attached hereto, which is hereby submitted to a Horizontal Property Regime and the creation of a condominium project.

1.19 "**Person**" shall mean a natural individual, corporation, partnership, trustee or other entity capable of holding title to real property.

1.20 "**Property**" or "**The Property**" shall mean all that real property identified in Casa Bonita Condominiums Plat, Exhibit "A" and improvements thereon.

1.21 "**Proxy**" shall mean one who is authorized in writing by an Owner to vote, in any vote called for by the Association, except with respect to the election of Directors of the Association, in the same manner as could the owner if present in person. All proxies shall be filed with the secretary of the Association.

1.22 "**Record**" or "**Recording**" shall mean the Record or the act of recording in the office of the County Recorder, Pima County, Arizona.

1.23 "**Unit**" shall be any part of the Property so designated on the Casa Bonita Condominiums Plat as referred to in Paragraph 1.5 and intended for individual use as a dwelling Unit. A Unit is an "apartment" within the meaning of the Arizona Revised Statutes, Section 33-551(1) and is also a "unit" within the meaning of Arizona Revised Statutes, Section 1202(22), and includes an undivided interest in the Common Elements as set forth herein in Paragraph 3.4.

ARTICLE II

SUBMISSION OF PROPERTY

2.1 The Unit Owners hereby submit and subject the Property to a Horizontal Property Regime pursuant to Title 33, Chapter 4.1 of the Arizona Revised Statutes and the Arizona Condominium Act pursuant to Title 33, Chapter 9 of the Arizona Revised Statutes to the extent that the provisions of the Arizona Condominium Act do not conflict with a Horizontal Property Regime Act, to be hereafter known as Casa Bonita Condominiums.

ARTICLE III

DESCRIPTION OF THE BUILDINGS, UNITS, AND COMMON ELEMENTS

The entire Horizontal Property Regime and Condominium Project shall consist of the Common Elements and the Units.

3.1 **Buildings:** There are four (4) Buildings included in the Horizontal Property Regime containing apartment units known as Buildings 100, 200, 300 and 400. A description of the cubic content space contained in, or planned for, each of the Buildings and its location, or planned location, on the Parcel is provided in the Casa Bonita Condominiums Plat.

3.2 **Unit:** There are a total of thirty-six (36) Units in the Buildings. A description of the cubic content space of each Unit and its location within the Buildings is provided on Exhibit "C" hereto and hereby incorporated by reference and on the Casa Bonita Condominiums Plat. The specified maximum number of units which will give each Unit Owner a minimum percentage of interest in the Common Elements is 36 Units. 75% of the Units must be owner occupied (27) as required by the Federal National Mortgage Association.

Each unit shall include the space enclosed and bounded by the interior unfinished surfaces of the ceiling, floor, walls, and windows or any extensions thereof, including adjacent storage areas, together with any plumbing fixtures, air conditioning equipment and ducts or duct work, and electrical equipment 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, 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. Appurtenant to each Unit there shall be an exclusive easement over and across the portion of the Common Elements consisting of patio or balcony immediately adjacent to such Unit for purposes of the use, occupancy, and enjoyment of such patio or balcony by each Occupant and the agents, servants, tenants, family members, and the invitees of the Owner of the Unit immediately adjacent to such patio or balcony. Each patio and balcony shall be

maintained in a clean, neat, and orderly condition by the Owner of the Unit benefited by the easement over such patio or balcony. The use of the easement hereby granted shall be subject to such limitations, restrictions, rules and regulations 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 Bylaws.

3.3 Common Elements: The Common Elements are described as including and comprising parts of each Building as described in Paragraph 3.1 hereof, together with the description of the land provided on Exhibit "A" hereof, less the descriptions of the Units referred to in Paragraph 3.2 hereof. Common Elements shall include:

- (a) Common Elements shall include Buildings 100, 200, 300 and 400 and a swimming pool and spa, and the improvements and items appurtenant thereto, as depicted on the Casa Bonita Condominiums Plat. The Common Elements and improvements thereon shall include by way of illustration, and not limitation, all utilities, water, sewer, parking, drives, trash facilities, buildings, landscaping, and ground improvements, and any and all other improvements shown on the Casa Bonita Condominiums Plat.

A description of the other Common Elements is as set forth in the definition of Common Elements in Article I, 1.7.

3.4 Interest in the Common Elements: The percentage interest which each Unit bears to all phases, when completed, of the Horizontal Property Regime, which percentage interest shall constitute an undivided interest in the Common Elements, shall be as provided on Exhibit "C". The maximum possible percentage and the minimum possible percentage of undivided interest in the Common Elements for each type of Unit is set forth in Exhibit "C". The interests are calculated by dividing the total cubic feet in all units by the number of units.

ARTICLE IV

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1 The Association has been formed to constitute the "Council of Co-Owners" as that term is defined in Arizona Revised Statutes Section 33-551(5). The Association shall serve as 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 Common Elements, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds received by the Association, and other matters as provided in the Act, in this Declaration, in the Articles of Incorporation of the Association, and in the By-laws of 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 By-laws. Each Owner shall be a Member of the Association as soon and so long as he or she 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. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of the Unit to which it is appurtenant (and then only to such purchaser) or by intestate succession, testamentary disposition, foreclosure or 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). Any attempt to make a prohibited transfer of membership will be 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 or her name upon the sale of his or her Unit 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.

4.2 Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, incurred by or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having been a director or officer of the Association, in accordance with the provisions or the Articles of

Incorporation or By-laws. No director or officer of the Association shall have any monetary liability for a failure of the Association or the Board to act in accordance with the terms of this Declaration unless such failure was due to the willful, wanton and intentional acts of such director or officer. Notwithstanding any duty of the Association to maintain and repair parts of the Property, neither the Association nor any Member thereof, nor any member of the Board, nor any agent, or any officer of the Association shall be liable for injuries or damages to persons or property resulting from the breach of such duties (except as may be covered by insurance).

4.3 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 By-laws, the determination thereof by the Board shall be final and binding on each and all of such Owners. If a decision cannot be reached by the Board, it shall be determined by the Owners of the Association. Any dispute as to any action or decision required to be taken or made by the Owners which cannot be made or resolved by a vote of the Owners shall be submitted and settled in accordance with the rules and regulations then obtaining of the American Arbitration Association in Pima County, Arizona, and any decision made or rendered thereby shall be final and binding upon all of the Owners and the Council of Co-Owners.

4.4 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 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 By-laws and rules and regulations for the Horizontal Property Regime created hereby.

4.5 The Articles and By-laws may contain any provision not inconsistent with law or the Casa Bonita Condominiums Plat 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.

ARTICLE V

USE OF COMMON ELEMENTS

5.1 There shall be appurtenant to each Unit in Casa Bonita Condominiums, a non-exclusive right and easement to use the Common Elements of the Project in common with all other persons entitled to use the Common Elements as may be required for the purposes of access, ingress and egress to and from, and the use occupancy, and enjoyment of the Units and the Common Elements for their intended purposes as provided herein. Such right and easement shall extend to each Occupant and the agents, servants, tenants, family members, and invitees of each Owner in Casa Bonita Condominiums. Such right and easement shall be subject to such limitations, restrictions, rules and regulations 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 By-laws. The Board shall have authority to lease or convey easements or grant concessions consistent with the overall character and use of the Property with respect to part of the Common Elements to change the character, description, and use thereof, subject to the provisions of this Declaration, the Articles and the By-laws. Any funds received 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.

ARTICLE VI

PARKING SPACES

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

6.1 Restricted Parking Spaces: Restricted Parking Spaces shall constitute part of the Common Elements. The Board shall assign one Restricted Parking Space to each Unit, together with an exclusive easement over and across the assigned Restricted Parking Space or Spaces appurtenant to the particular Unit or Units for parking purposes, which easement shall be subject to the rights granted herein to the Association to manage, operate, maintain, repair, and restore the Common Elements. No easement for the use of a Restricted Parking Space shall be sold, leased, mortgaged, assigned or otherwise transferred separate from the particular Unit to which it is appurtenant; provided, however, that two or more Owners may, with the

prior written consent of the Board and the Mortgagees of the Unit affected, agree to exchange parking easements appurtenant to their Units; provided, further, that any such exchange agreement shall result in all Units affected having an easement over at least one of the Restricted Parking Spaces. A complete list of the names and addresses of the Persons entitled to use the Restricted Parking Spaces shall be maintained by the Association at all times, and the Person who is not so listed.

6.2 Nonrestricted Parking Spaces: Nonrestricted Parking Spaces shall be part of the Common Elements and the Board shall have full authority to establish, operate, and manage the Nonrestricted Parking Spaces for and on behalf of all Owners, and the use thereof shall be subject to such rules and regulations as may be imposed by the Board.

6.3 Head-in Parking: Only head-in parking is allowed in the complex except when loading or unloading, for a reasonable period.

6.4 No Parking Area: No transportation vehicle, motorcycle, moped, bicycle or any other conveyance may be parked in any location other than in a restricted or non-restricted parking space.

ARTICLE VII

POOL AND SPA

7.1 Hours: 8:00 a.m. to 10:30 p.m. No unnecessary noise is permitted at any time.

7.2 Use: The pool and spa are for the use of the residents of the complex only. All other persons are considered guests and must be accompanied by a resident while using the pool or spa. No one under 14 years of age is allowed in the pool area unattended, at any time. Out of town guests may be allowed to use the pool and spa unescorted if approved by the Board of Directors. All pool parties must be approved by the Board of Directors. No pets are allowed in the pool area.

7.3 Keys: Each owner is issued a pool key which cannot be duplicated. A duplicate key if one is lost or stolen will be issued for \$10.00. Landlord owners must pass the key along to their tenants and the tenants must surrender the key when they leave.

7.4 Food or Drink: No glass containers are allowed in the pool area at any time. No food is allowed to be consumed in the pool area at any time.

7.5 Life Saving Equipment: Life saving equipment is for that purpose only and not to be used in any other way. All posted rules in the pool area must be adhered to.

ARTICLE VIII

COVENANT FOR MAINTENANCE ASSESSMENTS

8.1 Common Elements Maintenance Expenses and Reserve: As provided herein, each Owner shall pay his proportionate share of the expenses of the maintenance, administration, and operation of the Common Elements of Casa Bonita Condominiums, including the exclusive easements, and any other expenses incurred in conformance with this Declaration, the Articles, and the Bylaws, including, by way of illustration, but not of limitation, all items within a Unit and balcony (except interior surfaces) which contribute to the structural support of the Building such as outside walls of the Unit, floor and ceiling slabs, load bearing columns and walls; all conduits, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions of a Unit maintained by the Association, and all facilities contained within a Unit which service part or parts of the Property other than the Unit within which such facilities are contained; premiums for insurance; trash collection costs; water costs; sewer user fees and other utility costs for Common Elements; the cost of maintenance and repair of the Common Elements to include the recreation facilities; parking areas, drives; and sewers and any and all replacements or other proper purposes. Responsibility for portions of the Unit may be delegated to (or required of) that Unit Owner in the reasonable discretion of the board. The Association shall maintain a reserve fund, which reserve fund shall be adequate to meet the costs and expenses of maintenance, repairs and replacement of the Common Elements which must be maintained, repaired and replaced on a periodic basis. Notwithstanding the foregoing, Unit Owners shall maintain, repair and replace all damages to doors and windows except in the case of damage for which insurance proceeds are paid under policy purchased by the Association. Each Owner shall promptly report to the Association any defect or need for repairs, the responsibility for remedying of which is that of the Association.

8.2 Creation of the Lien and Personal Obligation of Assessment or Fines: Each Unit owned within Casa Bonita Condominiums hereby covenants, and each Owner of any Unit, for himself, his heirs, successors, grantees and assigns, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) regular assessments or charges, (2) special assessment for capital improvements, and (3) fines for violations of the By-laws of C.C. & R's, such assessments or fines to be established and collected as hereinafter provided. The regular/special assessments and fines, together with interest, administrative costs, and all attorneys' fees, shall be a charge on the land and shall be a continuing lien upon that portion of the Property against which each such assessment is made. Each such assessment, together with interest, administrative costs, and all attorneys' fees, shall also be the personal obligations of the Owner of such property at the time when the assessment or fine fell due. The personal obligation for delinquent assessments or fines shall not pass to such Owner's succession in title unless expressly assumed by them. The Association, through its Board of Directors, shall each have the right to place of record a one page "Notice of Deed Restriction Violation" with respect to any Unit on which a violation of these covenants, conditions and restrictions exists and has not been rectified in order that any prospective buyer of a Unit will be advised of such violation and to prevent an Owner from creating, or allowing to be created, a deed restriction violation prior to sale without correction thereof.

8.3 Purpose of Assessments: The assessment levied by the Association shall be used exclusively for administration of the Project (including, but not limited to, legal, accounting and management fees) so as to promote the recreation, health, safety, and welfare of the residents in Casa Bonita Condominiums and for the improvement, maintenance, repair and replacement of the Common Elements (including, but not limited to, painting, landscaping, alterations, additions, reconstruction, services, supplies, labor, materials, equipment and related items); and for payment of service charges for all Units in common such as water, refuse collection, sewer user fees, insurance, et cetera, and any valid charges against the Project as a whole as determined by the Board of Directors (including, but not limited to, all costs of enforcing compliance of this Declaration, deficiencies due to nonpayment by Unit Owners and such costs as are deemed necessary to meet the purposes of the Association). The Board of Directors, at all times, shall keep or cause to be kept true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners and the lenders and the holders, insurers and guarantors of the first Mortgagee of any Unit, at reasonable times, such books, records and financial statements which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise. Current copies of the Declaration, By-laws, rules and regulations, and most recent audited financial statement, if one is prepared, shall be made available at reasonable times to prospective Unit purchasers.

8.4 Maximum Regular Assessment: Beginning July 1, 1993 the maximum regular assessment shall be: seventy-five dollars (\$75.00) per month per Unit.

- (a) The maximum regular assessment may be increased each year without the vote of the membership by not more than 8% or the increase as shown in the Consumer Price Index, whichever is greater. The assessment shall be an even dollar amount.
- (b) The maximum regular assessment may be increased each year in excess of 8% or the Consumer Price Index, by a vote of 51% of Members who are voting in person or by proxy at a meeting duly called for this purpose. The assessment shall be an even dollar amount.
- (c) The Board of Directors may fix the regular assessment at an amount not in excess of the maximum.

8.5 Special Assessments for Capital Improvements: In addition to the regular assessment, authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of fifty-one percent (51%) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

8.6 Notice and Quorum for Any Action Authorized Under Article VIII, 8.4 and 8.5: Written notice of any meeting called for the purpose of taking any action authorized under Article VIII, 8.4 and 8.5 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.7 Rate of Assessment: The monthly assessment shall be seventy-five dollars (\$75.00) per month plus the proportionate share of Common Area expenses payable by each Owner, but not more than permitted by Paragraph 8.4, and shall be in the same proportion that interest in the Common Elements appurtenant to the particular Unit as provided in Article III, 3.4 hereof bears to the interest in the Common Elements appurtenant to all of the Unit.

Special assessments as provided for in Article VIII, 8.5 herein shall be assessed to the Unit Owners in the proportion that interest in the Common Elements appurtenant to that particular Unit as provided in Article III, 3.4 hereof bears to the interest in the Common Elements appurtenant to all Units.

8.8 Date of Commencement of Regular Assessments; Due Dates: The regular assessments provided for herein shall commence as to all Units on the first day of each January. The Board of Directors shall fix the amount of the regular assessment against each Unit at least thirty (30) days in advance of each regular assessment period. Written notice of the regular assessment shall be sent to each Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. This certificate will be conclusive and binding upon the Association regarding the amount of assessment as to the date of execution.

8.9 Effect of Nonpayment of Assessments; Remedies of the Association: Any assessment not received by the management company or collection agency, as designated in the assessment notice, on or before the fifteenth (15th) day following the due date of the assessment shall be delinquent. A charge for late payment of twenty percent (20%) of the delinquent assessment shall be imposed unless the Board shall otherwise determine by resolution. All other cost outlined in Article VIII 8.2 apply. All payments on account shall be first applied to late charges, if any, and then to the assessment payment first due. The Association may bring, if authorized by the Board, an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. These rights are in addition to all the rights and remedies which the Association and Board may have in accordance with the provisions of this Declaration or otherwise. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Elements or abandonment of his or her Unit.

8.10 Mortgages: Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages on 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 to the extent of his Unit, the interest in the Common Elements appurtenant to such Unit, the interest in any Restricted Parking Space assigned to such Unit and such Owner's interest in the Association.

8.11 Subordination of the Lien to Mortgages: All taxes, assessments and charges which may become liens prior to a First Mortgage under local law shall relate only to the individual Unit and not to the Project as a whole. The lien of the assessment provided herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien for such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

8.12 Real Estate Taxes: Real estate taxes must be assessed and lienable only against the individual Units, together with their undivided interests in the Common Elements, and not against the multi-family structure or Common Elements in their entirety.

8.13 Improvement District Membership: The Association shall participate in any improvement

district formed by the City of Tucson for the purpose of making improvements to Speedway Boulevard. The Owners of all dwelling Units hereby assign to the Association an irrevocable proxy to vote on their behalf all votes to which the Property is entitled in any improvement district formed. Notwithstanding the provisions of Article VII, 8.3 and 8.5 to the contrary, any assessment made by the City of Tucson to the Association as a member of such improvement district shall be a common expense payable through equal assessments to all dwelling Units contained within the Property, such assessments to be characterized as special assessments for capital improvements.

ARTICLE IX

INSURANCE REQUIREMENTS

9.1 Units: The Board shall have the authority to and shall obtain insurance for all Units against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement value exclusive of the cost of excavation, foundations or footings, in the event of damage or destruction from all reasonable hazards and, if available, contribution with or offset against policies that any individual Owner may have in effect. The Board shall not have the obligation to maintain insurance for any individually owned personal or real property within a Unit. Premiums for such insurance shall be a common expense payable through assessments of Units.

All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners. In addition to the aforesaid insurance required to be carried by the Association, any Owner may, if he wishes, at his own expense, carry any and all other insurance he deems advisable. It shall be the individual responsibility of each Owner at his own expense to provide as he sees fit, owner's liability insurance, theft and other insurance covering personal property damage and loss.

9.2 Insurance Requirements:

- (a) ***Comprehensive General Liability and Property Liability Insurance:*** Comprehensive general liability and property liability insurance covering all Common Areas and all other areas under the jurisdiction or control of the Association shall be purchased by the Association and shall be maintained in full force and effect at all times. If available, such insurance policy or policies shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association or of other Unit Owners. The scope of coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use as Casa Bonita Condominiums, including but not limited to vandalism and malicious mischief. Coverage shall be for at least one million dollars (\$1,000,000.00) per occurrence for personal injury and for property damage, coverage shall not be for less than eighty percent (80%) of the actual cash value of the property. To the maximum extent feasible, such property liability policy or policies shall include Agreed Amount of Endorsement and Inflation Guard Supplement.
- (b) ***Fire Hazard Insurance:*** Fire and other hazard insurance covering the entire subdivision, including all common areas, shall be purchased by the Association and shall thereafter be maintained in full force and effect at a minimum, of a multi-peril type policy covering the entire subdivision, provided, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona, on a replacement cost basis, if available, in an amount not less than one hundred percent (100%) of the insurance value (based upon replacement cost).

Each such policy must contain or have attached thereto a standard mortgagee clause which provide that all proceeds paid thereunder shall be paid to the Association for the use and benefit of all mortgagees under mortgages encumbering any Units, as their interest may appear, and such policy or policies must further provide that the insurance carrier shall notify each first mortgagee named, at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy. Such policy or policies shall further provide that the interest of each mortgagee holding a mortgage on any Unit in insurance proceeds shall not be invalidated by any action, neglect or inaction of the Board of Directors of the Association, Owners of dwelling Units or their tenants or agents. If available, such policy or policies shall further provide for

waiver by the insurer of any policy provisions which would render the mortgagee clause invalid by reason of the failure of such mortgagee to notify the insurer of any hazardous use of vacancy in the Unit and any policy requirement that the mortgagee pay the premium thereon.

- (c) **Other Insurance:** The Association shall purchase and maintain in force fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is, in no event, less than 1-1/2 times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.
- (d) **Minimum Financial Rating Carrier:** Each hazard insurance policy obtained by the Association pursuant to the foregoing shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports which is the equivalent of Class X or better as of the date of recordation of this Declaration or if such rating be discontinued, by a successor thereto or a similar such rating service. Each such carrier shall be specifically licensed or authorized by law to transact insurance business in the State of Arizona.
- (e) **Blanket Policies:** Said fire and liability insurance policies may be blanket policies covering the Units and Common Property, which may include Units and any of the Common Property owned by the Declarant.
- (f) **Unacceptable Terms:** Policies shall be unacceptable where:
 - (i) Under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against a Unit Owner or the First Mortgagee or any entity or person purchasing or guaranteeing any First Mortgage; or
 - (ii) By the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or
 - (iii) The policy includes any limiting clauses (other than insurance conditions) which could prevent the First Mortgagee, its successors or assigns or any Unit Owner from collecting insurance proceeds.
- (g) **Worker's Compensation Insurance:** Worker's Compensation Insurance shall be maintained to the extent necessary to comply with any applicable laws.
- (h) **Additional Insurance:** Such other insurance, including indemnity, fidelity and other bonds as the Board shall deem necessary or expedient to carry out the Association's functions as set forth in this Declaration, the Articles and By-laws.
- (i) **Mandatory Insurance Coverage:** The Association shall not be empowered or entitled to fail to maintain fire and extended coverage insurance on the Common Areas and common property with all improvements and betterments, whether made by Unit Owners or the Association, on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement costs), and use hazard insurance proceeds for losses to any Common Areas or common property for other than the repair, replacement or reconstruction of such common property.
- (j) **Priority of First Mortgagee:** Nothing in this Declaration shall in any manner be deemed to give a Unit Owner, or any other party, priority of any rights of a First Mortgagee or a Unit pursuant to the terms of such First Mortgagee's mortgage in the case of a distribution to a Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas or other common property maintained by the Association.

9.3 In General: Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against The Board, Unit Owners and members of their households and their families and employees, and such other persons or entities affiliated with the Association such as a manager and their representatives, members and employees and a provision, if

available, preventing any cancellation or modification thereof except upon at least thirty (30) days written notice to the insureds and their mortgagees. As to each such policy, which will not be voided or impaired thereby, the Board and such other persons or entities named in said insurance, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss. The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or First Mortgagees.

ARTICLE X

DESTRUCTION, CONDEMNATION, AND RESTORATION OR SALE OF PROPERTY

10.1 Condemnation: Upon receipt of notice of intention or notice of proceeding whereby all or any part of the Common Elements or any Unit is to be taken by exercise of the power of eminent domain, all Owners and First Mortgagees shall be immediately notified by the Association. If a portion of the Common Elements should be taken by exercise of the power of eminent domain, or should be transferred and conveyed to a condemning authority in anticipation of such exercise, the entire award made as compensation for such taking, including but without limitation, any amount awarded as severance damages, or the entire amount received and paid in anticipation of such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but without limitation, attorneys' fees, appraiser's fees and court costs (which net amount is hereinafter in this Article X referred to as the "Award") shall be paid to the Board, as trustee for all Owners and First Mortgagees. If the portion of the Common Elements taken or conveyed shall not be comprised of, or include, all or any part of a Building, as soon as practicable, the Board shall cause the Award to be utilized for the purpose of repairing and restoring the Property, including, if the Board deems it necessary or desirable, the replacement of any improvements so taken or conveyed; provided, however, all First Mortgagees then of record with reference to Units, shall be notified, in writing, and if a majority object to such repairing or restoring within ten (10) days after written notice, then the Board may act only with the approval of such a majority. If, the portion of the Common Elements taken or conveyed is comprised of, or includes, all, or any part, of a Building, the Board shall call a special meeting of the members of the Association, with notice to all First Mortgagees then of record with reference to Units, to convene within thirty (30) days after its receipt of the Award to determine whether and, if so, in what manner, the applicable building shall be restored, reconstituted or replaced. If two-thirds of the Owners and two-thirds of the First Mortgagees determine, at such special meeting, not to restore, reconstitute or replace the applicable buildings and related improvement, the Board shall utilize the Award to effect such minimum repairs thereto as shall be necessary to comply with all applicable requirements of law and shall divide the remainder of the Award in as many shares as there are Units, such shares to be in the same proportion as the Owners' respective undivided percentage interests in the Common Elements, and such shares shall be distributed to the Owners and First Mortgagees, as their interests appear. If the Award should exceed the cost of repair and restoration, any excess shall, as soon as practicable following the completion thereof, be divided into shares and distributed in the same manner as provided in the immediately preceding sentence. If the cost of repair and assessment shall be levied against the Owners to the extent necessary to make up such deficiency, such assessment to be levied against the Owners in the same proportion as their percentage interests in the Common Elements. The special assessment provided for herein shall be secured by the lien provided for in Article VIII of this Declaration. Nothing herein contained shall be deemed to impair or affect the propriety of any First Mortgage in or to any proceeds, as set forth in Article XV, below.

Notwithstanding anything in the foregoing to the contrary, if a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the condemnation award must compensate the Owner for his Unit and its interest in the Common Elements, regardless of whether any common elements are acquired. If only a part of a Unit is acquired by eminent domain the award must compensate the Owner for the reduction in value of the Unit and the interest in the common elements, regardless of whether any Common Elements are acquired.

10.2 Damage and Repair. If all or any part of the Condominium Property or any property in which the

Association owns an interest is damaged or destroyed by fire or other hazard, whether or not it shall be repaired or reconstructed, shall be determined in the following manner:

- (a) **Common Elements.** If the damaged property is part of the Common Elements or any property in which the Association owns an interest, it shall be repaired or reconstructed, unless it is determined in the manner hereinafter provided that the Condominium shall be terminated.
- (b) **Units.** If the damaged property is a Building or Buildings containing Units, the damage shall be repaired and reconstructed if the Board finds that twenty-four (24) or more of all of the Units are tenantable and the First Mortgagees decide not to terminate the condominium. If the damaged property is a Building or Buildings containing Units, the damage shall not be repaired or reconstructed if the Board finds that only twenty-three (23) or fewer of the Units are tenantable, and in such case the Condominium will be terminated as hereinafter provided, unless within ninety (90) days of the loss or damage the Owners of Units to which twenty-one percent (21%) of the votes in the Association are allocated, and two-thirds (2/3) or more of all of the First Mortgagees (based on one vote per First Mortgagee) agree, in writing, to such repair or reconstruction.

10.3 Construction.

- (a) Any repair or reconstruction must be substantially in accordance with the plans and specifications for the original improvements; or if not, then according to plans and specifications approved by the Board, a Majority of the Owners and a majority of the First Mortgagees.
- (b) If the loss or damage is only to those parts of a Unit or Units for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for repair and reconstruction; provided, however, to the extent any insurance proceeds collected are attributable to the Units (and not the Common Elements) the share of the proceeds attributable to the Units shall be used for repairs and reconstruction of the Units.
- (c) Immediately after a determination is made to repair or reconstruct damage to property for which the Association has the responsibility for repair and reconstruction, the Association shall obtain reliable and detailed estimate of the cost of the repair or reconstruction.
- (d) If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, assessments shall be made against the Unit Owners in the case of damage to Common Elements in sufficient amounts to provide funds to pay the estimated costs. Additional assessments may be made at any time during or following the completion of construction. Such assessments against Unit Owners for damage to Units shall be in proportion to the Owner's ownership in the Common Elements.

10.4 Receipt and Application of Insurance Proceeds:

- (a) Except for loss or damage which is less than one percent (1%) of the value of the Condominium Project, all insurance proceeds payable on account of damage or loss to the Condominium Project shall be paid to any bank in Arizona which is selected as trustee by the Board, which bank is herein referred to as the "Insurance Trustee." The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of policies, or for the failure to collect any insurance proceeds. Insurance proceeds payable on account of loss or damage which equals less than one percent (1%) of the value of the Condominium Project shall be payable to and be used by the Association to repair such loss or damage.
- (b) The duty of the Insurance Trustee shall be to receive the insurance proceeds that are paid, and to hold them in trust for the benefit of the Condominium Unit Owners and the First Mortgagees as follows: An undivided share of such proceeds on account of damage to Common Elements shall be allocated to the Condominium Unit Owners according to their shares in the Common Elements set forth in Article 3 above. Proceeds, if any, on account of damage to Units shall be held for the Owners of damaged Units in proportion to the cost of repairing the damage

suffered by each Unit Owner, which costs shall be determined by the Association. In the event a mortgagee endorsement has been issued as to a Condominium Unit, the share of the Condominium Unit Owner shall be held in trust for the First Mortgagee and the Condominium Unit Owner as their interest may appear.

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

- (a) That portion of the insurance proceeds, if any, representing damage, the reconstruction and repair of which is the responsibility of the Unit Owner, shall be paid by the Insurance Trustee to the Unit Owner or, if there is a mortgagee endorsement, then to the Unit Owner and the First Mortgagee jointly, who may use such proceeds as they may determine; provided, however, to the extent that any damage to any Unit affects in any way the Common Elements or any other Owner's Unit, the proceeds must be used for reconstruction and repair of such damage.
- (b) The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of the Association, shall be disbursed in payment of the costs of such repair and reconstruction in the manner required by the Board and upon approval of an architect qualified to practice in Arizona and employed by the Association to supervise the work.
- (c) The Insurance Trustee shall not be required to determine whether a disbursement is to be made, the identity of the payee, or the amount to be paid, but may rely upon a certificate of the Board acting for and on behalf of the Association stating such information.

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

10.7 Termination. If it is determined in the manner above provided that the Building or Buildings containing Units shall not be repaired or reconstructed because of damage or destruction, then and in such event, this Condominium Project shall be terminated and all of the Owners and all of the mortgagees and lienholders of record of all of the Condominium Units hereby constitute and appoint the Board, and each of the members of the Board, as their attorney-in-fact for the purpose of executing, acknowledging and recording a declaration withdrawing the Property from this Horizontal Property Regime, which power is irrevocable and coupled with an interest. The termination declaration shall specify a date after which the agreement to terminate will be void unless it is recorded before that date. This Condominium Project also shall be terminated if all of the Units of the condominium are acquired by eminent domain.

ARTICLE XI

OWNERS RIGHTS AND RESPONSIBILITIES

11.1 Maintenance, Repairs and Replacements; Right of Access: Each Owner shall furnish and be responsible for, at his or her own expense, all of the maintenance, repairs, and laundry, water heater, interior fixtures such as electrical and plumbing fixtures, floor covering except floor slab, all interior surfaces, and of any portion of the air conditioning and heating system which exclusively serves his or her Unit; and each Owner shall keep the assigned exclusive parking easement, and the patio, balcony, and storage areas, if any, adjacent or appurtenant to this or her Unit in a neat, clean, and attractive condition, such work to be done without disturbing the rights of other Unit Owners. If, due to the willful or negligent act of an Owner or a member of his or her family, household pet, guest or other occupant, visitor or invitee of such Owner, or other person for whom such Owner may be responsible, 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 upon receipt of a statement from the Board shall pay for such damage and for such maintenance, repairs or replacements as may be determined by the Board, to the extent not covered by the Association insurance. The amount payable for such maintenance, repairs or replacements, together with interest at the rate of twelve percent (12%) from the date such amount is due, costs and attorneys' fees, shall be secured by a lien against the Unit of such Owner as provided in Article VIII, 8.2. 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 access at any time 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.

11.2 Alterations, Additions or Improvements: No alterations of any Common Elements or any additions or improvements to the balconies or patios associated with any Unit shall be made by any Owner without the prior written approval of the Board. Owners are encouraged to landscape patio areas. Any owner may make nonstructural alterations, additions or improvements within the interior of his or her 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 any other Units, the Common Elements, or the Property which may result from such alteration, addition or improvement. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit, whether structural or not, shall be made without the prior written approval of the Board, if said addition, alteration or improvement is reasonably visible from other portions of the Property or from the surrounding neighborhood, and prior to granting such approval, the Board must affirmatively find that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding improvements and the Property. 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 fifty-one percent (51%) of the Owners given in person or by proxy 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 levied and collected from each Owner in proportion to such Owner's undivided interests in the Common Elements. Such special assessment together with interest at the rate of twelve percent (12%) from the date such special assessment became due and costs and reasonable attorneys' fees, shall be secured by a lien against each Unit as provided in Article VIII, 8.2 hereof.

11.3 Decorating: Each Owner, at his or her own expense, shall furnish and be responsible for all of the decoration within his or her own Unit (but any furnishing or decoration of any patio or balcony shall be subject to the provisions of Article XIV, 14.1 hereof) from time to time, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other furniture and interior decoration. Each Owner shall be entitled to the exclusive use of the interior unfinished surface of the walls, floors and ceilings within his or her Unit, and each Owner shall have the right to decorate such surfaces from time to time as he or she may see fit at his or her sole expense. However, each Owner shall maintain such surfaces in good conditions, and all such use, maintenance and decorating shall be subject to regulation by the Board. Decoration and maintenance of the Common Elements and any redecorating of Units to the extent made necessary by any damage caused by maintenance, repair or restoration work by the Association on the Common Elements shall be furnished by the Association and paid for as part of the Common Expenses. The interior and exterior surface of all windows and glass doors (if any) forming part of a perimeter wall of a Unit shall be cleaned or washed at the expense of each Unit Owner unless the Board determines otherwise. No Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of a Building without the prior written approval of the Board pursuant to Article 11.2.

11.4 Encroachments. Each Unit and the Common Elements shall be subject to an easement for encroachment, including but not limited to encroachment of walls, ceilings, ledges, floors and roofs created by construction, settling and overhangs as originally designed or constructed, or as created by discrepancies between the Casa Bonita Condominiums Plat and the actual construction. If any portion 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 Casa Bonita Condominiums Plat, as referred to in Article I, 1.5, 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 any alteration, addition or improvement made by any Owner, without the prior written approval of the Board. The Association shall at all times have the right to maintain any Common Elements now existing or hereafter constructed, regardless of any encroachment now or hereafter existing of any such Common Elements on any Unit.

ARTICLE XII

PURCHASE OF UNIT BY ASSOCIATION

12.1 Upon the consent or approval of fifty-one percent (51%) of the total Owners voting in present or by proxy at a general or 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 shall have the power and authority to bid for and purchase any Unit at a sale pursuant to a mortgage foreclosure, trustee'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 the 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. The Association shall have the further power to hold, lease, mortgage and convey the Unit so purchased.

ARTICLE XIII

USE AND OCCUPANCY RESTRICTIONS

13.1 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 now or hereafter existing in the Horizontal Property Regime created hereby in accordance with phasing requirements as set forth in Article XVI herein. Without limiting the foregoing, no Owner shall permit his or her Unit to be used for transient or hotel purposes or shall enter into any Lease for less than the entire Unit. Any Lease for any Unit shall be in writing, shall be for at least 31 days, shall in all respects be subject to and in compliance with the provisions of this Declaration, the Articles and Bylaws and shall expressly provide that a violation of any such provision shall be a default under such Lease. Each such Lease shall evidence the delivery of the By-laws and the rules and regulations of the Association to the lessee and shall obligate the lessee to read the Declaration, Articles, By-laws and rules and regulations of the Association. Copy of all leases must be given to the Board of Directors. 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 the Declaration and for no other purposes. Each one-bedroom Unit may be occupied by no more than two persons and each two-bedroom Unit may be occupied by no more than four persons; infants shall be regarded as "persons" for the purpose of this provision. That part of the Common Elements separating 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. The foregoing restrictions shall prohibit the conduct in any Unit or on any portion of the Property any business activity but shall not, however, be construed in any manner as to prohibit an Owner from maintaining his or her personal and/or a reasonable professional library therein, keeping his or her personal business records therein, and handling his or her personal business communication or correspondence therefrom.

13.2 The Common Elements shall be used only for access, ingress, and egress to and from the respective Units by the Owners thereof, their agents, servants, tenants, family members, licensees, and invitees 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. The Association, acting by and through the Board, shall have the right from time to time, to grant additional easements for utilities, ingress and egress, and for pedestrian and vehicular traffic above, over, across and through the Common Elements.

13.3 No nuisance shall be allowed upon the Property, nor any use of practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property. Any wall which separates one Unit from another shall not be used by an Owner of the Unit for the purpose of placing against or attaching anything to said wall which is recreational or which produces noise or sound, nor shall an Owner be permitted to penetrate any common wall. No Owner shall keep or maintain anything or shall suffer any condition to exist in his Unit or cause any other condition on the Property or the Common Elements which materially impairs any easements or rights of any other Owner or otherwise materially impairs or interferes with the use and enjoyment by other Owners of their Units and the Common Elements.

No Owner shall keep or permit any pets to be kept in a Unit other than tropical fish except as herein provided. No animals of any kind shall be raised, bred, or kept, except that a reasonable number of generally recognized house pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The maximum height of any pet shall be fifteen (15) inches from the front shoulder in the standing position to the ground. All dogs must be kept under leash or controlled at all times so that they will not interfere with any Member's use and enjoyment of the Common Areas, and it shall be the responsibility of each pet owner to clean up after his or her pets. No pets are allowed in the pool and recreation areas, and at night all pets must be kept in an enclosed area. No animal shall be allowed to become a nuisance. The Board shall have the right to order the removal from any Unit of any animals which the Board deems to be objectionable to any Owner, and the owner of said animal(s) shall remove such animal(s) from the subject Unit within ten (10) days after the notice given in writing by the Board. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per household; provided, however, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this Section, a particular animal is a generally recognized house pet or a nuisance, or whether the number of animals is reasonable. Unit owners must remove or clean up all pet feces from the common areas and patios immediately after being deposited by said pet.

13.4 If the Board determines that any motor vehicle is creating loud or annoying noises by virtue of its operations within the Property, or that the parking or storage of any vehicle on the Property is unsightly or detracts from the overall character of the Property or causes damage to the common areas, such determination shall be conclusive and final that the operation or storage of such vehicle is a nuisance, and said operation, parking or storage, upon notice by the Board to the Owner or operator thereof, shall be prohibited within the Property. No commercial vehicles, trailers, RV vehicles or boats may be parked on the property except for loading or unloading, for a reasonable period of time.

13.5 No structure of a temporary character shall be permitted on the Property or the Common Elements, and no tent, shack, barn or trailer shall be permitted on the Property or Common Elements either temporarily or permanently, unless it is located thereon by or with prior written consent of the Board.

13.6 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 or the Common Elements. No "For Sale" or "For Rent" signs of any nature whatsoever shall be permitted on any part of the Property or Common Elements, and no other sign 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. A 6" by 24" "For Rent" or "For Sale" sign may be placed under the master I.D. sign in front of the complex with a telephone number to call for information.

13.7 Except as originally installed by the builder, no spotlights, 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 Common Elements or any part thereof.

13.8 No waterbed shall be kept in any Unit other than a ground floor Unit.

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

13.10 All draperies which are visible from the exterior of any building shall be lined with an opaque white material and no individual window treatments which are visible from the exterior of any building, including without limitation, shutters, shade screens, mirrors, and stained glass, shall be permitted without the prior written consent of the Board.

13.11 Enclosures, screens or other items affecting the exterior appearance of any patio or balcony shall not be permitted without the prior written consent of the Board of Directors and shall be subject to at all times the rules and regulations of the board and to the provisions of Article XIV, 14.1 hereof.

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

13.13 No clotheslines shall be installed on a balcony or patio and no Owner shall permit any personal

property to be stored on any patio or balcony which is visible from the exterior of any Building.

13.14 Without limiting the foregoing, each Owner shall maintain and keep his Unit at all times in a safe, sound and sanitary condition and shall repair and 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. Each Owner shall not place or permit any personal property, garbage, debris or refuse to be placed or to accumulate on the sidewalks, or Common Elements adjacent to any Unit.

13.15 If a Unit Owner fails to perform maintenance, repairs and replacements which are his obligation, then after written notice from the Board to perform such maintenance, repairs or replacements within a reasonable time limit as may be set by the Board, the Board may perform such needed maintenance, repairs and replacements, and shall levy an assessment against such Unit Owner thereof equal to the amount so expended. All costs incurred in the enforcement of the provisions of this Declaration against any Unit Owner, including, but not limited to, attorneys' fees and court costs shall be assessed to the Unit and the Owner against whom enforcement is sought. Pursuant to the right of entry provided for in Article XV, 15.1 hereof, the Board 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 Fifty Dollars (\$50.00) per day for each such violation during the continuance thereof. Such expenses and fines together with interest at twelve percent (12%) per annum from the date such expenses were incurred or the date such fine was levied, and costs and reasonable attorneys' fees shall be secured by a lien against such Unit as provided in Article VIII, 8.2 hereof.

13.16 The Association may modify the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Common Elements by reasonable rules and regulations of general application adopted by the Board from time to time. Reasonable rules and regulations concerning the use of the Property and all portions thereof and imposing reasonable restrictions upon the Owners, Occupants, and use of the Units (including but not limited to the decoration or landscaping of patios and balconies) may be made and amended from time to time by the Board. If fifty-one percent (51%) of the Owners object in writing to any rule(s) or regulation(s) promulgated by the Board, a special meeting of the Association shall be held and the rule(s) or regulation(s) shall be ratified or rescinded upon a majority vote of the total Owners present or voting by proxy. Copies of current rules, regulations and amendments thereto shall be furnished by the Association to all Unit Owners and Occupants of the Property upon request and a reasonable charge may be made therefor.

ARTICLE XIV

ARCHITECTURAL CONTROL

14.1 No building, fence, wall, antenna, tower, awning, sign or other structure of any kind or character shall be constructed, erected, placed or maintained upon the Property, by the Association or any Owner, nor shall 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, by the Association or any Owner until plans and specifications showing the nature, kind, color, shape, height, materials, location, and other physical 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 or by an architectural committee appointed by the Board. In the event the Board, or such committee, if one has been appointed, fails to approve or disapprove such proposal at its next regular meeting occurring more than thirty (30) days after proper plans and specifications have been received by it, such approval will not be required, and this paragraph will be deemed to have been fully complied with.

ARTICLE XV

GENERAL PROVISIONS

15.1 Entry by Board or its Agent: The Board or its authorized agents may enter any Unit at any time, with or without notice, when any three (3) members of the Board 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 or its

authorized agents may enter any Unit at any time when any member of the Board or its authorized agent believes in his or her 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, the Association, its directors, officers, and agents shall not be liable to 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 reasonable measures are taken to secure the Unit until either the Occupant or Owner shall be notified that the Unit has been entered. Each Occupant or Owner shall leave a key with another occupant or Owner and inform the Board in writing of the name of the Occupant or Owner with whom such key has been left.

15.2 Roof Leaks and Repairs: The Association shall repair promptly all leaks or other damage to the roofs of any of the Buildings of which the Association has notice in writing, provided, however, that the cost of repairing leaks or damage due to the willful or negligent act of an Owner or a member of his family or guest or other occupant or visitor of such Owner or other person for whom such Owner may be responsible shall be the obligation of such Owner as provided in Article XI, 11.1 hereof.

15.3 Public Dedication: Nothing contained in this Declaration shall be deemed to constitute a dedication for public use or to create any rights in the general public. Nothing contained in this Declaration shall be construed as creating an obligation on the part of the City of Tucson or any other governmental authority having jurisdiction over the Property and the Common Elements to maintain, repair or replace any portion of the Property, the Common Elements or the appurtenance thereto.

15.4 Copy of Declaration to New Members: The Board shall give each new Owner of a Unit a copy of this Declaration and any and all amendments hereto within sixty (60) days notice of the conveyance of a Unit to such new Owner. 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 or their agents.

15.5 Remedies: In the event that any Owner shall fail to comply with the provisions of the Act, this Declaration, the Articles, the By-laws, 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 By-laws 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 provided, or any combination of such remedies or any other and further relief which may be available at law or in equity, all without regard to the value of such Unit or the solvency of such Owner. In any such foreclosure proceeding, the Owner shall be required to pay a reasonable rental for the Unit, commencing as of the date the foreclosure proceedings are filed. The proceeds of any rental or sale shall first be applied to discharge court costs, other litigation costs, including without limitation, reasonable attorneys' 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 be held by the Association for the payment of any future assessments or other charges. Upon the confirmation of the sale, the purchaser of such Unit shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for an appropriate order for the purpose of acquiring such possession. The purchaser 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 all attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of twelve percent (12%) per annum from the date incurred, and the costs and reasonable attorneys' fees, until paid, shall be secured by a lien upon the Unit of such defaulting Owner as provided in Article VIII, 8.2. 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 together with interest at the rate of twelve percent (12%) per annum and reasonable attorneys' fees shall be charged to and assessed against such defaulting Owner, and such assessment shall constitute a lien upon the Unit of such Owner as provided in Article VIII, 8.2. The liens provided for in this part shall be and

are junior and subordinate to the First Mortgagee and shall be foreclosed in the same manner as a realty mortgage and/or a mechanic's lien in the State of Arizona. If any Owner (either by his conduct or by the conduct of any Occupancy of his Unit) shall violate any of the provisions of this Declaration, or the provisions of the other Condominium Constituent Documents, as then in effect, and such violation remains uncured fifteen (15) days after notice in writing, or shall occur repeatedly during any fifteen-day period after written notice or request to cure such violation, then the Association, acting through the Board, or any authorized agents, or any other Owner, or an encumbrance holder, shall have the power to file an action against the defaulting Owner for a judgment or injunction against the Owner or Occupant requiring the defaulting Owner to comply with the provisions of this Declaration, the Articles, or the By-laws or the rules and regulations, and granting other appropriate relief including money damages, all attorneys' fees, and court costs. Anything to the contrary herein notwithstanding, any breach of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration shall not defeat or adversely affect the lien of any First Mortgagee upon any Unit, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Condominium Unit whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

All Owners agree that any matter arising from this Declaration may be finally adjudged or determined in any court or courts of the State of Arizona or of the United States of America having jurisdiction in the State of Arizona, and such Owners hereby submit generally and unconditionally to the jurisdiction of such courts and of any of them in respect to any such matter; provided, however, as to those matters to be submitted to arbitration pursuant to any provision hereof, such arbitration provisions shall be controlling and prevail. For the purposes of instituting or defending any action with respect to the Common Elements, or with respect to any matter affecting the Owners with regard to the Common Elements, and further in connection with enforcing this Declaration, the Articles, the By-laws and any rules and regulations adopted pursuant to this Declaration, the Articles or the By-laws, or in any other instance where the Board or the members of the Association deem it necessary for the best interests of the Condominium as a whole, the Association, acting by and through its Board, shall be deemed the Real Party in Interest and is hereby authorized to commence and prosecute any such proceedings or to defend any such action. Nothing contained in Article 15.5 shall be deemed or construed to impose upon the Association, its members or the Board, any liabilities or obligations nor grant to any third party or parties any rights that any of said above-named parties would not otherwise have if this Article 15.5 were not contained herein. This instrument and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the State of Arizona.

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 reentry by reason thereof, shall not defeat or adversely affect the lien and/or rights of any Mortgagee 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 under any Lease or against any foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

Subject to the provisions contained herein, this instrument shall be binding upon and inure to the benefit of successors, assigns, purchasers, mortgagees, trustees and beneficiaries of deeds of trust, grantees, donees and lienors.

15.6 Amendment: The provisions of this Declaration may be changed, modified or amended by an instrument in writing setting forth such change, modification or amendment, signed by Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. In all events, the amendment when adopted shall have the signature of the president and secretary of the Association certifying that the required number of Owners have approved the amendment and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording of the amendment to Declaration in the Office of the Pima County Recorder, Arizona.

Notwithstanding the provisions of the foregoing paragraph, if the Act, this Declaration, the Articles or the By-laws require the consent or agreement of all of the Owners of Units and/or any other person having any interest in the Property for any such amendment or for any action specified in the Act of this

Declaration, then any instrument so amending this Declaration or any provision hereof or not less than such specified percentage. Any such change, modification or amendment accomplished under any of the provisions of Article XV, 15.6 shall be effective upon recording of the instrument providing therefor signed and acknowledged as provided herein.

15.7 Notices: Notices provided for in the Act, this Declaration, the Articles or the By-laws shall be in writing and shall be mailed postage prepaid or hand delivered if to the Association or the Board addressed to the address to which payments of assessments are then sent and if to an Owner addressed to his Unit. The Association or the Board may designate a different address or addresses to which notices shall be sent from time to time by giving written notice of such change of address to all Owners. Any Owner may also designate address or addresses to which notices shall be sent by giving written notice of his change of address to the Association. Notices shall be deemed delivered five (5) days after being 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, which written request specifies an address to which notices may be sent, 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 the Unit subject to the Mortgage held by such Mortgagee.

15.8 Severability: If any provision of this Declaration, the Articles, the By-laws or the rules and regulations of the Association, 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, the By-laws or the rules and regulations of the Association, 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, the By-laws 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.

15.9 Perpetuities and Restraints on Alienation: If any of the easements, 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 provisions 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, George Bush, or the Governor of Arizona, Rose Mofford.

15.10 Rights and Obligations: By the acceptance of a deed of conveyance, each purchaser under any agreement of sale within the meaning of A.R.S. Section 33-741, by execution of such agreement for sale and each Mortgagee by the acceptance of any instrument conveying any interest in the Property as security for the performance of any obligation, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers 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 interest or estate in the Property or the Common Elements 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.

15.11 Performance or Relief: After the date hereof, any person who acquires any interest or estate in all or any part of the Property agrees by virtue of and upon the acquisition of such interest or estate that said acquiring person 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.

15.12 Utility Easements: Notwithstanding any other provisions hereof, there is hereby created a blanket non-exclusive easement upon, across, over and under the Common Elements for ingress, egress, installation, replacing, repairing, and maintaining all utility and service lines and systems, including by way of illustration, but not of 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 planned and approved in writing by Declarant or as thereafter approved in writing by Declarant or as thereafter approved in writing by Declarant or by the Board. This easement shall in no way affect any other previously recorded easements on the Property.

15.13 Protection for Institutional Holders: Unless seventy-five percent (75%) of all Institutional Holders 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;
- (b) Partition or subdivide any Unit which it owns or the Common Elements;
- (c) By act or omission seek to rescind or terminate the Horizontal Property Regime created hereby, except as provided by law or if substantial loss to the Units and the Common Elements or of a taking by condemnation or eminent domain or in the case of substantial obsolescence; or
- (d) Terminate professional management and assume self-management of the Association; or
- (e) Amend the By-laws of this Declaration.

Any Institutional Holder who has notified the Association in writing of an address to which notices may be sent in the manner provided in Article XV, 15.7 hereof, 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 thirty (30) days. All Institutional Holders who have notified the Association of an address to which notices may be sent in the manner provided in Article XV, 15.7 hereof, shall be entitled to written notification by the Association upon the commencement of any eminent domain or condemnation proceeding 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; (ii) to receive an audited financial statement 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.

15.14 Professional Management Agreement: Each Unit Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association acting through the Board. A copy of all management agreements shall be available to each Unit Owner. Any Agreement for professional management of the Property and the Common Elements 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.

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

- (a) Any "right of first refusal" that may be contained in the Condominium of Constituent Documents shall not impair or affect the rights of a First Mortgagee to foreclose or take title to a Condominium Unit pursuant to the remedies provided in the First Mortgage, to accept a deed (or assignment) in lieu of foreclosure in the even of default by a mortgagor, or interfere with a subsequent sale or lease of a Unit so acquired by the First Mortgagee.
- (b) Any First Mortgagee or third party purchaser at a foreclosure sale or trustee's sale under a deed of trust who obtains title to a Condominium Unit pursuant to the remedies provided in the First Mortgage for foreclosure of the mortgage will not be liable for such Condominium Unit's

unpaid dues, charges or assessments which may accrue prior to the acquisition (including the expiration of any period of redemption) of title to such Condominium Unit by the First Mortgagee.

- (c) Unless all of the First Mortgagees (based upon one vote for each First Mortgage owned), and the Owners of Condominium Units having two-thirds (2/3) of the ownership of the Common Elements, or such higher percentage as required in this Declaration, or by applicable law, have given their prior written approval, neither the Association nor the Owners shall be entitled to:
 - (i) By act or omission, seek to abandon or terminate this Declaration or the Condominium Project hereby established (except as set forth in Article 10 above).
 - (ii) Change the pro rata interest or obligation of any individual Condominium Unit for the purpose of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (b) determining the pro rata share of ownership of each Condominium Unit in the Common Elements
 - (iii) Partition or subdivide any Unit or Units owned by the Association or the Unit Owner respectively.
 - (iv) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium Project shall not be deemed a transfer within the meaning of this clause.)
 - (v) Use hazard insurance proceeds payable or paid due to losses to any Condominium Property or portion thereof (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium Property, except as provided herein or by statute. First Mortgagees shall have the right to participate in the adjustment and settlement of any claim under any insurance maintained by the Association.
- (d) All taxes, assessments and charges which may become liens prior to a First Mortgage under local law shall relate only to the individual Condominium Unit and not the the Condominium Project as a whole.
- (e) No provision of the Condominium Constituent Documents shall give a Condominium Unit Owner, or any other party, priority over any rights of the First Mortgagee of the Condominium Units pursuant to its First Mortgage in the case of a distribution to such Condominium Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or Common Elements.
- (f) All amenities pertaining to the Condominium Project and located on the Property (such as parking, recreation and service areas) are a part of the Condominium Project and shall be covered by and subject to a mortgage on a Condominium Unit to the same extent as are the Common Elements.
- (g) A First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by the Condominium Unit mortgagor, on such First Mortgagee's mortgage, under the Condominium Constituent Documents which is not cured within thirty (30) days.
- (h) First Mortgagees shall have the right upon reasonable request to examine the books and records of the Association or the Condominium Project at reasonable times.
- (i) A First Mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor the observance or performance of any covenant, restriction, regulation, rule, Association Articles of Incorporation or By-laws, or management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as provided in this article 15.15 (i).
- (j) An action to abate the breach of any of these covenants, restrictions, reservations and

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

- (k) During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default of a Condominium Unit including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner.
- (l) At such time as the First Mortgagee shall become record Owner of a Condominium Unit and entitled to possession, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all assessments and charges accruing thereafter, in the same manner as any other Condominium Unit Owner.
- (m) The First Mortgagee, or any other party acquiring title to a mortgaged Condominium Unit through foreclosure of the First Mortgage or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure or acquiring title at a trustee's sale under a first deed of trust, shall acquire title free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secure the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure or equivalent proceedings, including the expiration day of any period of redemption. Any such unpaid assessment against the Unit foreclosed shall be deemed to be a Common Expense charged proratably against all of the Units. Nevertheless, in the event the Condominium Unit Owner against whom the original assessment was made is the purchaser or redemptionor, the lien shall continue in effect and the said lien may be enforced by the Association, or by the Board for the Association, for the respective Condominium Unit's assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further any such unpaid assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Condominium Unit to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a member of the Association.
- (n) The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Condominium Unit, provided that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure.
- (o) Notwithstanding any provision in the Condominium Constituent Documents to the contrary, no provision of this Declaration or the Condominium Constituent Documents related to costs, use, setback, aesthetic or similar matters shall provide for reversion or foreclosure of title to a Unit in the event of violation thereof. No breach or any violation of any provision of the Condominium Constituent Documents shall affect, impair, defeat or render invalid the interest or lien of any First Mortgagee.
- (p) Notwithstanding and prevailing over all other provisions hereof, no amendment to this Declaration shall be made or become effective which in any way affects, diminishes or impairs any of the rights, privileges, or powers granted to any First Mortgagee or which is in any way inconsistent with the customary rules, regulations or requirements of First Mortgagees without the prior written consent of all First Mortgagees. First Mortgagees shall have the right to enforce against condominium Unit Owners, the Association and all others, any and all provisions of this Declaration including, without limitation, this part 15.6. Enforcement by First Mortgagees may be by injunction, mandatory or prohibitory, or any other lawful procedure. This Declaration shall be interpreted in conformity with all rules, regulations and requirements of First

Mortgagees in effect as of this date or as hereafter amended, and any provisions hereof which is inconsistent therewith shall be deemed modified to conform thereto. The Articles, By-laws, and all rules and regulations of the Association shall be governed by this Declaration and all provisions thereof which are inconsistent herewith shall be void.

ARTICLE XVI
WAIVER

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

IN WITNESS WHEREOF, the undersigned Board of Directors who are the representatives of the Owners of Units of one hundred percent (100%) of the total ownership of the Common Elements and Units, as defined in the Declaration, have approved the foregoing instrument on the dates affixed below. Amendment approved by the members on April 12, 1993.

BOARD OF DIRECTORS:

<u>Jenifer L. Dorn</u> <u>Kelly Fickle</u> <u>Dean J. Miller</u>	<u>Judee Barison</u> <u>May 7, 2014</u> <small>Date</small>
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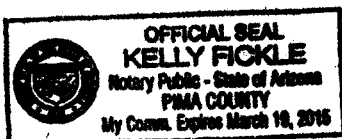
STATE OF ARIZONA)

County of Pima)

The foregoing instrument was acknowledged before me this 7th day of May, 2014, by Jenifer L. Dorn, Dean J. Miller, Judee Barison.

3/19/15
My Commission expires:

Kelly Fickle
Notary Public



STATE OF ARIZONA

County of Pima

)
) ss.
)

The foregoing instrument was acknowledged before me this 7th day of May,
2014, by Kelly Fickle

11/1/2017
My Commission expires:

Jenifer L. Dorn
Notary Public



EXHIBIT "A"

Units 1 through 36 inclusive of **CASA BONITA CONDOMINIUMS**, a subdivision of Pima County, Arizona, according to the map of record in the Pima County Recorder's Office in Book 35 of Maps and Plats at page 67.

Each Unit together with an undivided interest in the Common Elements as set forth in the Amendment and Restatement of Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions, and Restrictions for Casa Bonita Condominiums recorded October 4, 1982, in Docket 6879 at page 612, records of Pima County, Arizona.

Description of the cubic content of each apartment and the percentage interest which each apartment owner owns of the Common Elements.

EXHIBIT "C"

Contents in cubic feet Unit Numbers:	% Interest Phase 1 (includes storage area)	% Interest Total (prior to construction of Phase II)	(Both Phases completed)
1,2,11,12,17,18 19,20,25 & 26	5,981	5.5556	3.3334
7,8,9,10,13,14, 15,16,21,22,23, 24,31,32,33 & 34	7,367	5.5556	3.3334
3,4,5,27,28 29,30,35 & 36	8,553	5.5556	3.3334