FIRST AMENDED AND RESTATED DECLARATION OF

HORIZONTAL PROPERTY REGIME TOGETHER WITH

COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOUR SEASONS NORTH

The First Amended and Restated Declaration of Horizontal Property Regime together with Covenants, Conditions and Restrictions for Four Seasons North is made as of the 13th day of July, 2004, and executed by not less than seventy-five percent (75%) Of the unit owners as evidenced by the signatures set forth below.

RECITALS:

1. On or about May 19, 1983, The Declaration Of Horizontal Property Regime together with Covenants, Conditions and Restrictions for Four Seasons North Phase I was executed by FHAY-PAYSON LIMITED PARTNERSHIP and recorded on May 20, 1983, in Docket 586, page 485, records of Gila County, Arizona, as subsequently modified and amended by (i) that certain First Declaration Of Annexation To Horizontal Property Regime together with Covenants, Conditions and Restrictions for Four Seasons North tract B and tract C Phase II dated October 17, 1983, and recorded in Gila County, Arizona, on October 19, 1983, in Docket 598, page 16; (ii) that certain amendment to Declaration Of Horizontal Property Regime together with Covenants, Conditions and Restrictions for Four Seasons North Phase I dated January 24th, 1984, and recorded on January 25, 1984, in Gila County, Arizona, at Docket 604, page 707; (iii) that certain Second Amendment to Declaration Of Horizontal Property Regime together with Covenants, Conditions, and Restrictions for Four Seasons North Phase I dated April 16th 1984, and recorded on April 24, 1984, in Gila County, Arizona, at Docket 611, page 23; (iv) that certain Second Declaration of Annexation to Horizontal Property Regime together with Covenants, Conditions and Restrictions for Four Seasons North Tracts E and E-1, Phase III dated May 26, 1984, and recorded on June 1, 1984, in Gila County, Arizona, at Docket 613, page 805; (v) that certain Third Declaration of Annexation to Horizontal Property Regime together with Covenants, Conditions and Restrictions for Four Seasons North Tract F, Phase IV dated May 9, 1985 and recorded on May 10, 1985, in Gila County, Arizona, at Docket 644, page 854; and (vi) that certain Amendment to Declaration of Horizontal Property Regime together with Covenants, Conditions and Restrictions for Four Seasons North Phase III dated July 19, 1985, and recorded on July 22, 1985, in Gila County, Arizona, at Docket 649, page 949 (the “Original Declaration”).
2. The Unit Owners wish to amend and restate the Original Declaration by completely restating, as provided herein, the entire contents of the original declaration.

ARTICLE 1

DECLARATION OF HORIZONTAL PROPERTY REGIME

Section 1. DESCRIPTION. Four Seasons North, a horizontal property regime of the City of Payson, Arizona, the plat of which was recorded on July 1, 1983 at Map 599 and 599A, as amended by a recording on June 19, 1985, in Book of Maps, Number 613 and 613A records of Gila County Recorder, herein after “Final Plat,” and is more particularly described as attached Exhibit A (the “Property”).

Section 2. DECLARATION. Pursuant to Chapter 4.1, Article 1, Sections 33-551 to 33-561, inclusive, Arizona Revised Statutes, 1962, said Property, including the improvements to be constructed thereon, and all easements, rights and appurtenances, belonging thereto, is submitted to a Horizontal Property Regime and all of such property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are declared to be in furtherance of a plan for the improvement, development and sale of said Property and are established for the purpose of enhancing and perfecting the value and desirability of said property and every part thereof.

Section 3. CUBIC CONTENT SPACE.

1. DESCRIPTION OF THE SPACE OF THE BUILDING. There are seven (7) multi-unit buildings of six (6) units each in the Horizontal Property Regime, namely Buildings 1, 2, 3, 4, 5, 6, and 7, as shown on the recorded Final Plat. The cubic content space of each building with reference to its location on the land is as more fully set forth and described in said recorded Final Plat.
2. DESCRIPTION OF SPACE OF DWELLING. The Horizontal Property Regime is composed of forty-two (42) individual Dwelling Units. Each Dwelling in the Horizontal Property Regime shall be numbered as shown in the recorded Final Plat. The floor plan of each Unit is designated and illustrated on the Final Plat. The cubic content space of each Dwelling is as is more fully set forth and described in the Final Plat.
3. DESCRIPTION OF GENERAL COMMON ELEMENTS. The General Common Elements shall include all of said Property, including the land upon which the Dwellings are located, the Buildings, all bearing walls, stairways, columns, vertical supports, roofs, floors, foundations, slabs, all waste, water and gas pipes, ducts, flues, chimneys, conduits, wires, swimming pool and pool equipment, if any, tennis court, if any, landscaping, fences, trash collection bins, walkways, streets, private drives, parking spaces, utility meters, outdoor cooking facilities, if any, dog run, if any, and all other devices and premises designed for common use or enjoyment by more than one Owner or Owners of a single Dwelling, all as is more fully set forth and described herein and in the recorded Final Plat and Horizontal Property Regime as referred to in Section 1 above, and excluding all Dwellings, as defined herein, and the contents thereof (including, without limitation, windows, doors, flooring, carpet, appliances, drapes, blinds, personality, wallpaper and cabinets), and further excluding the outlets of utilities when located within a Dwelling. Said ownership shall be evidenced by the deed of ownership for each of said Dwellings.
4. DESCRIPTION OF LIMITED COMMON ELEMENTS. The Owners of second and third story Dwellings in each building shall share a common right to use the stairway of said building to the exclusion of all other Owners.
5. DESCRIPTION OF SPACE OF EXCLUSIVE USE. There shall be additional areas constituting a portion of the limited common elements which are hereby set aside and located for the exclusive use of the Dwellings as follows:
6. Each Dwelling shall have exclusive use of the mailbox designated with the corresponding dwelling number.
7. Each Dwelling shall have exclusive use of one uncovered parking space which has been assigned permanently by the previous developer. An Owner may rent up to one (1) additional parking space, if available. Unassigned parking spaces, if any, are for guest use and may not be used by Owners and residents of a Dwelling. Parking spaces shall be assigned to be as uniformly convenient to each dwelling as is reasonably possible. A typical parking space shall be 9 feet wide, 19 feet long and 8 feet from the ground to the top of the airspace of exclusive use.
8. Each Dwelling shall have the exclusive use of a space of a size and location adequate to install, operate and maintain refrigeration and heating units, set areas to be as originally designed, designated and installed by Developer or as subsequently approved by the Board.
9. Each dwelling shall have exclusive use of an area of a size and location adequate to install, operate and maintain utility meters, said areas to be as originally designed, designated and installed by the initial developer of the Property or as subsequently approved by the Board.
10. Each dwelling shall have exclusive use of each terrace, patio and deck available to that Dwelling, as shown on the Final Plat.
11. Each dwelling shall have exclusive use of that portion of the exterior entry serving each Dwelling.
12. FRACTIONAL INTEREST. Each Dwelling shall bear an undivided fractional interest in the Common Elements as set forth herein after. 1/42.

Section 4. VERTICAL DIMENSION. All reference to vertical dimensions made in this document or on the recorded plat referred to above, shall be based upon a benchmark being a chiseled X on the top of curb at the curb ending on the east side of state highway 87, town of Payson, elevation 4992.77 feet.

ARTICLE II

DEFINITIONS

Section 1. “Articles” means the articles of incorporation of The Four Seasons North Council of Co-owners, Inc., which are filed with the office of the Corporation Commission of the state of Arizona, or its successor, as said Articles may be amended from time to time.

Section 2. “Board” means the Board of Directors of the Four Seasons North Council of Co-owners, Inc.

Section 3. “Building” means and refers to the structures designated as buildings on the Final Plat in accordance with Arizona Revised Statute 33–551(2) (1962).

Section 4. “Bylaws” means the Bylaws of the Four Seasons North Council of Co-owners, as such bylaws may be amended from time to time.

Section 5. “Common elements”

1. “General Common Elements” means all of the property not included in the Dwellings, as described in the preceding article and in A.R.S. Section 33 minus 551(6) (1962). The General Common Elements may sometimes hear and after be referred to as “Common Elements.”
2. “Limited Common Elements” are the portions of the General Common Elements designed for the use of Owners of more than one but less than all of the Dwellings.

Section 6. “Constituent Documents” shall mean and include the Declaration Of Horizontal Property Regime, together with Covenants, Conditions, and Restrictions for Four Seasons North, the plat of record of Four Seasons North Horizontal Property Regime, the Articles and Bylaws of the Council, and any other documents used to create and govern the project as all constituent documents are presently constituted or may hereafter be amended.

Section 7. “Consumer Price Index” shall mean the “all items” Consumer Price Index for the Urban Wage Earners and Clerical Workers in the Phoenix metropolitan area. In the event said Consumer Price Index is discontinued, the board shall select a standard comparable to the Consumer Price Index.

Section 8. “Co-owner” means a person, corporation, partnership or other legal entity capable of holding or owning an interest in real property who owns all or an interest in a Unit as described herein (sometimes referred to herein as “Owner”), and shall enjoy all the privileges thereof.

Section 9. “Co-owners Interest” means the fractional interest ascribed to each Dwelling by this declaration.

Section 10. “Council” means all of the Owners of the Units, pursuant to A.R.S. § 33–551(5) and refers to the Four Seasons North Council of Co-owners, Inc., an Arizona nonprofit corporation, through which the Owners shall act as a council of Co-owners, in accordance with Arizona laws permitting Horizontal Property Regimes and the organization and management thereof.

Section 11. “Declaration” means this document, as same may be amended and supplemented from time to time.

Section 12. “Dwelling” means a separate freehold estate consisting of an airspace defined as follows:

1. The lower vertical boundary is the top of the unfinished floor thereof.
2. The upper vertical boundary coincides with the elevation of the bottom of the unfinished and unpainted ceiling or ceilings thereof.
3. The lateral boundaries are the unfinished and unpainted interior surfaces and unpainted (?) perimeter walls, windows and doors thereof and vertical planes coincidental with the unfinished interior surfaces of the perimeter walls thereof, extended upwards to intersect the upper horizontal boundary.
4. Each such Dwelling includes the surfaces so described, and the airspace contained within said boundaries. Each such dwelling shall also include the range, garbage disposal units, and other household appliances lying within said boundaries or appurtenant areas.
5. Unless otherwise indicated, all airspace boundary lines intersect at right angles.

The following are not part of a Dwelling: structural parts of the building, bearing walls, columns, vertical supports, roofs, floors, foundations, slabs, all waste, water and gas pipes, chimneys, ducts, flues, air conditioning and heating units, conduit, wires and other utility and installation lines were ever located, except the outlets and traps thereof when located within the dwelling. In interpreting deeds, plats, declarations, and plans, the existing physical boundaries of a dwelling or a dwelling reconstructed is substantial accordance with the original plan thereof and shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plat, plan or declaration, regardless of settling or lateral movement of the Building, and regardless of minor variations between the boundaries as shown on the plan or in the deed and declaration and those of the Building.

Section 13. “Eligible insurer or Guarantor” an insurer or governmental grantor of the first mortgage who has requested notice of certain matters in accordance with the article entitled “Right of Eligible Mortgage Holders and Eligible Insurers or Guarantor.”

Section 14. “Eligible mortgage holder” a holder of a first mortgage on a Unit estate who has requested notice of certain matters from the association in accordance with the article entitled “Rights of Eligible Mortgage Holders and Eligible Insurers or Guarantors”

Section 15. “Improvement” means all physical structures including, but not limited to, the Buildings, private drives, parking areas, fences and walls, swimming pool, if any, other recreational facilities, if any, and all landscaping, including but not limited to, hedges, plantings, trees and shrubs of every type and kind.

Section 16. “Lease” means and refers to any agreement for the leasing or rental of the Unit whether written or oral and includes any agreement written or oral for the exchange or use of a Unit by one other than the owner whether payment of rental is a provision or not.

Section 17. “Member” means any person, corporation, partnership, joint venture or other legal entity which is a member of the Four Seasons North Council of Co-owners, Inc. and is synonymous with “Co-owner” and “Owner”.

Section 18. “Mortgage” shall mean and refer to any instrument establishing a security interest, including a deed of trust.

Section 19. “Mortgagee” shall mean shall mean and refer to a holder of a security interest and may include a trustee or beneficiary under a deed of trust. This reference is for convenience only, and does not purport to authorize an individual trustee to be a beneficiary of the trust, contrary to A.R.S. § 33–803(B).

Section 20. “Mortgagor” shall mean and refer to the pledger or creator of a security interest and includes the trustee under a deed of trust.

Section 21. “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 same has merged) of any Unit, by excluding those having such interest merely for the performance of an obligation.

Section 22. “Owners Interest” shall mean and refer to a fee simple interest in one Unit as shown on the plat of record together with a fractional undivided fee interest in and to the Common Areas.

Section 23. “Property” means and refers to the land, the property described in Exhibit A hereto, the Buildings, all other improvements located thereon, and all easements, rights and appurtenances belonging thereto.

Section 24. “Recreation vehicle” means a camper, motorhome, fifth wheeler, or trailer for sleeping purposes, with or without cooking and bathroom facilities, boat, and trailer for transporting any of the foregoing. The Board may change or supplement this definition without amending this declaration.

Section 25. “Unit” means a dwelling with the appurtenant easements, plus a Co-owners Interest.

ARTICLE III

[RESERVED]

ARTICLE IV

PROPERTY RIGHTS

Section 1. OWNERS RIGHT OF ENJOYMENT. Each Owner shall have the right to use the Common Elements in common with all other Owners within the property as may be required for purposes of access and ingress and egress to and use and occupancy and enjoyment of the respective Unit owned by such Owner, and for such other related purposes as from time to time may be prescribed by the Board. Such right to use the Common Elements shall extend to each Owner and the agents, servants, tenants, family members and invitees of each Owner. Such rights to use and possess the common elements shall be subject to all of the easements, covenants, conditions, restrictions and other provisions of record, shall be governed by this Declaration, the Articles and Bylaws and the rules and regulations promulgated by the Board and shall be subject to the following:

1. The right of the Council to limit the number of guests of owners.
2. The right of the Council to establish reasonable rules, regulations and fees for use of Common Elements including, but not limited to, recreational facilities.
3. The right of each Owner to have exclusive use of spaces provided in Article I above.
4. The right of each Owner of Units 3-6, 9-12, 15-18, 21-24, 27-30, 33-36, 39-42 and 45-48 to have use of the stairway for that Owner’s Building in common with the other Owners of second and third story Units in that Building, to the exclusion of all other Owners.
5. The right of the Council to suspend the right of an Owner to use the recreational facilities or any portion thereof designated by the Board during anytime in which any assessment against his Unit remains unpaid and delinquent or for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Council, provided that any suspension of such right to use such recreational facilities, except for failure to pay assessments, shall be made only by the Council or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Council shall not have the right hereunder to suspend any Owner’s right to use any portion of the Common Elements necessary for such Owner to gain access to his Dwelling or parking spaces.
6. The right of the Council to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility, pursuant to Article VIII, Section 14.

Section 2. DELEGATION OF USE. Any Owner may delegate his right of enjoyment to the Common Elements to the members of his family or his tenants who reside in his Dwelling, or to a reasonable number of guests, subject to the provisions of this Declaration, the Articles, Bylaws and rules and regulations adopted by the Council.

ARTICLE V

COUNCIL OF CO-OWNERS

Section 1. PURPOSE. It is desirable for the efficient management of the property and the preservation of the value, desirability and attractiveness of the property to create a corporation to which should be delegated and assigned the powers of managing the Common Elements of the property, maintaining and administering the Common Elements and administering and enforcing these covenants, conditions and restrictions and collecting and dispersing funds pursuant it to the assessment and charges hereinafter created and referred to and to perform such other acts as shall generally benefit the Property.

Section 2. FORMATION. In furtherance of the purposes set forth in Article I, Four Seasons North Council of Co-owners, Inc., an Arizona nonprofit corporation is formed as an entity pursuant to Arizona law, to be incorporated, through which the Owners shall act as a Council of Co-owners in accordance with Arizona statutes permitting Horizontal Property Regimes and the organization and management thereof.

1. The Board shall be empowered to determine and decide all questions regarding enforcement of these restrictions and assessments or charges necessary for maintenance of Common Elements, for the use and benefit of all Owners, except as provided in the Bylaws, and shall be empowered to make rules for the use of Common Elements. Any rule, a copy of which is delivered or mailed to an Owner at his last known address or which is posted on a central bulletin board, shall be enforceable to the extent and in the same manner as this Declaration fifteen (15) days following such delivery, mailing or posting. Email?
2. The Board shall have the right to contract for services or to transfer to any other corporation, person or partnership, all of its rights and obligations hereunder, but upon such transfer and the assumption of such obligations by the transferee, the enforcement of covenants shall remain the sole responsibility of the Council.
3. Except as otherwise provided herein, any action which may be taken by the Council as set forth in this Declaration, may not be taken by the Board.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. PERSONAL OBLIGATION OF ASSESSMENTS. Each Owner of any Dwelling, by acceptance of a deed therefor, except as provided for in this Article, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Council annual assessments for commonly metered utilities, insurance, maintenance, repairs and replacement of Common Elements which must be replaced on a periodic basis, management, and other general expenses for capital improvements, such assessments to be established and collected as provided herein. The annual and special assessments, late payment penalties, if any, together with interest, costs, and reasonable attorney fees shall be a lien upon the Unit as created herein or by the Articles or Bylaws. Each such assessment, together with interest, costs, and reasonable attorney’s fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time the assessment was levied. The personal obligation for a delinquent assessment shall not pass to successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Council shall be used exclusively to promote the recreation, health, safety, and welfare of all Owners, for the improvement and maintenance of the common elements, and for all purposes set forth in the articles including, but not limited to, management fees, insurance premiums, expenses for maintenance, repairs and replacements of Common Elements, reserves for contingencies, charges for all commonly metered utilities for the Property and other utilities for the Common Elements, and enforcement of this Declaration, the Articles, Bylaws and rules. The Council shall establish and maintain a reserve fund for replacements by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such funds shall be deposited in an FDIC bank. The reserve fund is for the purpose of effecting replacement or repair because of damage, depreciation or obsolescence of Common Elements.

Section 3. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all units, (So does this mean we cannot charge an assessment based on low income people?) and except as provided in Section 4 of this Article, shall be determined by the fractional interest specified in Section 3(f) of Article I, assessments may be collected on a monthly, quarterly or annual basis.

Section 4. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessment shall commence as to all Units on the first day of the month following the occupancy of the first Dwelling or the close of escrow of the first Unit to an Owner, whichever occurs earlier. It is provided, further, that in the event the amount budgeted to meet common expenses for the then current year proves to be excessive in light of the actual common expenses, the Board in its discretion may either reduce the amount of the annual assessment or may abate collection of assessments as it deems appropriate. In no event shall a reduction in the amount or the abatement in the collection of regular assessments pursuant to this section result in a quantity or quality of services diminished from those upon which the budget for the year in question is based.

Section 5. MAXIMUM ASSESSMENT.

1. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessments may be increased each year above the maximum assessment from the previous year without a vote of the membership in an amount no more than the percentage of increase in the Consumer Price Index, or five percent (5%) of the maximum assessment for the previous year, whichever is greater.
2. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above such amount by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.
3. The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 6. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Council 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 of a capital improvement upon the common area, including fixtures and personal properly related thereto, provided that any such assessment shall have the assent of two-third (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 5 AND 6. Written (email?) notice of any meeting called for the purpose of taking any action authorized under sections 5 or 6 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the member 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 subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 8. CERTIFICATE OF PAYMENT. The Council shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer or authorized agent of the Council, setting forth whether the assessment on a specified Unit have been paid, and the amount of delinquency, if any. A reasonable charge not to exceed twenty-five percent (25%) of the monthly maintenance assessment may be collected by the Board for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Article VII

MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP NON-SEVERABLE. Every owner of the Dwelling which is subject to assessments shall be a member of the council. Membership shall be appurtenant to and may not be separated from ownership of a Dwelling which is subject to assessment. The rights and obligations of an Owner and membership in the Council shall not be assigned, transferred, pledged, conveyed, or alienated in any way except by transfer of ownership to such Dwelling, whether by purchase, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as in now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Dwelling shall operate to transfer said membership to the new Owner thereof.

Section 2. VOTING MEMBERSHIP. Members shall be entitled to one vote for each Dwelling owned. When more than one person holds an interest in any Dwelling all such persons shall be members. The vote for such Dwelling shall be exercised as the Owners determine among themselves, but in no event shall more than one vote be cast with respect to any Dwelling and fractional votes shall not be allowed. In the event more than one vote is cast for a particular dwelling, none of the votes for such dwelling shall be counted and said votes shall be deemed void, unless Arizona statutes require otherwise.

ARTICLE VIII

RESTRICTIONS ON USE

Section 1. RESIDENTIAL USE. A Dwelling shall be used, improved and devoted exclusively to residential use. No gainful occupation, profession, trade, church, sheltered care facility, school, or other non-residential use shall be conducted on any such property. Nothing herein shall be deemed to prevent any of the following:

1. Lease of a Dwelling or portion thereof from time to time by the Owner subject to all the provisions of this declaration.
2. Use of one or more Dwellings as offices by a broker, manager or other agent of the Council of Co-owners.

Section 2. SINGLE FAMILY DWELLING. No Dwelling designed for occupancy by single family shall be occupied by more than one family or by more than three (3) persons not related by blood, marriage or adoption.

Section 3. ANIMALS. No animals, birds, foul, poultry or livestock, other than a reasonable number of small domestic dogs, cats, fish, and birds in cages shall be maintained in any Dwelling and then only if they are kept therein solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, nor to become a nuisance. No animal shall be chained or tied outdoors or on an exterior deck, patio or stairwell. No structure for the care, housing or confinement of any animal or bird should be maintained so as to be visible from a neighboring Dwelling or street, except that the Board may provide and maintain a dog run. Upon the written request of any owner, the board shall conclusively determine whether, for the purpose of this paragraph, a particular animal or bird is a generally recognized household pet, or nuisance, or whether the number of animals or birds on any such property is reasonable or whether a dog is a “small” dog. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. The Board shall have the right to prohibit maintenance of any animal or bird which constitutes, in the opinion of the Board, a nuisance to any other owner. As used in this declaration, the term “reasonable number” shall be deemed to limit the number of dogs, cats, and birds to two of any combination of the above animals. A “small” dog shall be deemed to weigh less than 25 lbs. Dogs and animals must be kept on a leash when not confined in the owner's dwelling, except one within the dog run. No owner shall permit its dog or animals to create unsanitary conditions anywhere on the common elements. When such conditions are created the owner will be assessed by the Board, in an amount not less than $25.00 per incident for cleanup expenses, and the Board or any Owner may seek other satisfaction as permitted by law and this declaration. The amount of assessment may be changed by the Board without amending this declaration.

Section 4. CLOTHES DRYING. There shall be no outdoor clothes drying on the property including but not limited to, towels and bathing suits.

Section 5. TRASH CONTAINERS AND COLLECTION. Garbage, trash or other waste shall be placed or kept in covered containers of a type, size and style which are approved by the Board. In no event shall individual trash containers be maintained so as to be visible from other Dwellings, the Common Elements or public property.

Section 6. CHIMNEY CLEANING.

1. The Board, by appropriate action, shall ensure that all chimneys are kept clean by the Owners of the Units using said chimneys and an easement of access upon the Common Elements, as necessary to establish said cleaning, is hereby created in favor of the Board and every Owner.
2. By change in the bylaws, the Council may undertake the annual cleaning of all chimneys as a common expense.
3. In such event, each Owner hereby covenants to make said Owners Dwelling available for such cleaning during daylight hours upon notice of forty-eight (48) hours.
4. Failure to make a Dwelling available for chimney cleaning will not relieve the Owner of any obligation to have the chimney cleaned nor to pay assessments.

Section 7. PICNICKING. Preparation and consumption of food and drink on the common area shall be limited to the BBQ areas provided for that purpose. The Board may establish rules, schedules and priorities for use of such facilities.

Section 8. SIGNS. No signs whatsoever (including, but not limited to, commercial, sale or rental and similar signs) shall be erected or maintained on any Property whether in a window or otherwise, except:

1. Such signs as may be required by legal proceedings;
2. One residential identification sign is designated by the Board; and
3. Such signs, the nature, number, and location of which have been approved by the Board in advance.

Section 9. ANTENNAS. Except to the extent federal or state law or regulations apply, no antenna or other device for the transmission or reception of television or radio signals of any other form of electromagnetic radiation shall be erected, used or maintained, outdoors of any property whether attached to a building or structure or otherwise, unless approved by the Board or a committee appointed for that purpose.

Section 10. UTILITY SERVICE. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals shall be erected, placed or maintained anywhere in or upon any Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, and are approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power telephone structures incidental to the construction of buildings or structures approved by the Board, nor abrogate any rights granted by the Article herein titled “Easements.”

Section 11. IMPROVEMENTS IN ALTERATIONS.

1. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or committee appointed by the Board. By way of illustration, but not of limitation, the following are considered exterior changes. Painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work which in any way alters the exterior appearance of any property. The Board or appointed committee may designate design, style, model and manufacture of any exterior improvement or alteration which is acceptable to the board or committee. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.
2. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or committee. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding or altering walls, doorways, plumbing fixtures, permanently installed safes, waste or water pipes, hot tubs and the like.

Section 12. REPAIR AND MAINTENANCE.

1. BY OWNER. Each Owner of a Unit shall maintain, repair, replace and restore at his own expense all improvements and fixtures within the boundary of the Dwelling, including, without limitation, all windows, doors, flooring, carpet, drapes, blinds, cabinets, appliances, and personal property. Each Owner shall further maintain, repair and replace at his own expense the heating and cooling equipment relating to the unit, and such maintenance, repair, replacement or restoration shall be subject to control and approval of the Council. No Owner shall remove, alter, injure, or interfere with any shrubs, trees, grass or plantings placed or preserved upon any property by the Council without first obtaining the written consent of the Board. Each owner of a ground floor unit shall be responsible for installation and maintenance of the patio landscaping in such a manner as not to interfere with the use and enjoyment of any other Owner of any of the Property, including the Common Elements. Each Owner whose Unit is served by an entry, stairway, patio, deck or storage space for which said Owner has the right to exclusive use, shall clean and keep set area in a neat and sanitary condition.
2. BY THE COUNCIL. The Council shall have full power to control, and it shall be its duty to maintain, repair and make necessary improvements too, all Common Elements, with the exception of outlets of all utility installations of the building when located in the Dwellings. The Council shall further be empowered with the right and duty to periodically inspect all Common Elements in order that minimum standards of repair, design, color and landscaping shall be maintained for beauty, harmony and conservation of values within the entire project.
3. RIGHT OF ENTRY FOR MAINTENANCE. The Council shall have a limited right of entry in and upon all Common Elements and the exterior of all Dwellings for the purpose of taking whatever corrective action may be deemed necessary or proper by the Council. When so required to enter Dwelling for the purpose of performing installation, alterations or repairs to the mechanical or electrical services, including water, sewer, and other utility services, and chimney sweeping, if provided by the Council, reasonable requests for entry shall be made in such entry shall be made at a time reasonably convenient to the owner whose Dwelling is to be entered. Nothing in this Article shall in any manner limit the right of the Owner to exclusive control over the interior of his Dwelling; provided, however, that an Owner shall grant the right of entry therein to the Council or any other Owner, or their authorized representatives, or any other person, in case of any emergency originating in or threatening his Dwelling, whether the Owner is present or not.
4. REPAIR NECESSITATED BY OWNER. In the event that the Board determines that the Common Elements are in need of improvement, repair, restoration or painting, that private patio landscaping is in need of maintenance, terming or other care, or that the common area landscaping is in need of installation, repair, or restoration which has been caused by an Owner, or any person designated by the Owner under the provisions of the Article titled “Property Rights” and section titled “Delegation of Use” above, or the Owner's pets, then the Board shall give written notice to the Owner of the conditions complained of. Unless the Board has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such reasonable period of time as may be determined by the Board after said written notice is first given, and such corrective work so approved is not completed thereafter within the time allotted by the Board, the Board shall undertake to remedy such conditions or violations complained of. The cost thereof, to the extent not covered by insurance, shall be deemed to be an assessment to such owner and his Unit and subject to levy, enforcement and collection provided for herein or in the articles or bylaws. The Board shall have the same right of entry in and upon all Common Elements and a Dwelling as defined in the subsection titled “Right of Entry for Maintenance” above. The Board shall have the sole right to determine whether any such costs expended by the Council are related to general maintenance or are repairs necessitated by an owner; However, the liability of the Owner shall not exceed that for which the Owner would be legally responsible under Arizona law.

Section 13. RESTRICTION ON FURTHER SUBDIVISION. No Owner shall convey a timeshare interest or other fractional portion of a Unit. An Owner in possession may lease, for a period of no more than one (1) year, one (1) parking space, to another Owner or resident, provided that no vehicle of a resident is parked illegally or in violation of this declaration as a result of the lease. Any such lease shall terminate upon sale or lease of either unit.

Section 14. EASEMENTS.

1. UTILITY EASEMENTS ON THE COMMON ELEMENTS. There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing and maintaining of all utilities, including, but not limited to, water, sewer, gas, telephone, electricity and cable television. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the property and to afix and maintain electrical, gas and/or telephone lines, wires, conduits and circuits on, above, across and under the common elements, including the buildings. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, gas lines, water lines, cables, or other utilities may be installed or relocated on the property except as approved by the board. This easement shall in no way affect any other recorded easement on the Property.
2. RECIPROCAL UTILITY EASEMENTS. There are hereby created perpetual easements in favor of all the Property upon, across, over and under the public utility easements on the property as shown on the plat of Horizontal Property Regime for reasonable ingress, egress, installation., replacing, and maintaining of all utilities, including, but not limited to, water, sewer, gas, telephone, electricity and cable television. By virtue of this reciprocal easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the public utility easement and to affix and maintain electrical, gas, telephone lines, wires, conduits, and circuits on, above, across and under the public utility easements.
3. EASEMENTS RESULTING FROM ENCROACHMENT. Each Dwelling and the Common Elements shall be subject to an easement for encroachment, including, but not limited to, encroachments 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 plat and the actual construction. If any portion of the Common Elements shall actually encroach any Unit, or if any Unit shall actually encroach upon any portion of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and the Units are shown by the plat, a valid easement for any of said encroachments and for the maintenance thereof, so long as they stand, shell and does exist. In the event that any Unit or structure is repaired, altered or reconstructed the Owners of the Units agree that similar encroachments shall be permitted and that a valid easement for said encroachments and for the maintenance thereof shall exist. Owners and any other parties acquiring any interest in the Property shall acquiesce and agree to the existence of such easements by accepting a deed from any seller or by acquiring any interest whatsoever in the property.

Section 15. COMMON WALLS. The Owners of contiguous Dwellings who share a common wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. There shall be no impairment of the structural integrity of any portion of any common wall, building, or other Common Element without the prior consent of the Board.

Section 16. TEMPORARY OCCUPANCY. No temporary buildings, tents, vehicles, including, but not limited to, recreational vehicles, or structure of any kind shall be used at any time for a residence on the property. By way of illustration, but not limitation, no recreation vehicle may be used for overnight accommodation on the Property.

Section 17. VEHICLES: RIGHT TO TOW. The development plan provides two parking spaces for every Unit. Parking shall be provided and assigned to the Units on a uniform basis and no Unit shall be entitled to more spaces than any other Unit. So that the community may function in an orderly manner, it shall be the duty and obligation of every Owner on behalf of himself, his family, tenants, servants, guests and invitees to observe and enforce the parking restrictions. It shall further be the duty and obligation of the Board to observe and determine that parking restrictions are followed and enforced.

1. No owner shall permit any vehicle, bicycle or other object to be or remain parked on any private street;
2. No guest parking space, if any, shall be used by a resident at any time. The Board shall, upon request, determine whether the owner of a vehicle is a “resident.”
3. Any vehicle which is parked on the property must be of a size which will fit entirely within one parking space, allowing reasonable access to the vehicle and adjacently parked vehicles.
4. In addition to the other enforcement provisions contained in this Declaration, the Board or the Property Manager may have any vehicle upon the property, which is parked in violation of this Declaration or of fire or safety ordinances of the Town of Payson, or in the parking space of another Owner, towed from the Property to a commercial storage lot after notice to the owner, if reasonably possible, or after posting the car for six (6) hours, if it is safe to do so, with notice that the car will be towed if it is not brought into compliance. The recording of this Declaration shall be deemed to put every Owner on notice of this provision as though the property was posted in accordance with state and local laws.

Section 18. NUISANCES. No nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other Unit in the vicinity thereof or to its occupants. Without limiting the generality of the foregoing, the following shall be presumed to be a nuisance:

1. rubbish, debris, building material or personal property of any kind which is placed or permitted to accumulate upon or adjacent to any Unit or any odors which arise therefrom, so as to render any such Unit or any portion thereof unsanitary, unsightly, offensive or detrimental to any other unit in the vicinity thereof or to its occupants;
2. any exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes;
3. any article which is draped, hung or attached to an exterior surface, patio enclosure, deck, porch or stairway so as to be visible from outside the Dwelling;
4. any mineral collection, cactus rib, bottle, license plate or other memorabilia displayed so as to be visible outside the Dwelling. This provision shall be interpreted to preserve the dignity and aesthetic appearance of the Property and not to control the interior decoration of any Dwelling.
5. any use of aluminum foil in windows;
6. any use of a Dwelling or use of the Common Elements which will increase the rate of insurance upon the property;
7. any patio or deck plant material which encroaches on any other unit or the general Common Elements;
8. any use of Property which is in violation of any statute or ordinance;
9. washing or cleaning cars and other vehicles any place on the property, except in the area specifically designed by the board for such use, if any;
10. any recreational vehicle, except one pickup camper unit used as a family automobile and which fits entirely within one parking space, inoperable automobile, boat, trailer, truck, or other vehicle which is kept, placed, maintained, constructed, reconstructed, or repaired on the Common Elements or private streets;
11. any use of bicycle, skateboard, roller skates, moped or other device for locomotion on the Property;
12. any encroachment into the general Common Elements or another Unit by an Owner’s firewood or any other personal property of any type or kind.

The Board at its sole discretion shall have the right to determine the existence of any nuisance, shall give notice to the Owner, and if the nuisance is not removed within the reasonable time stated in the notice, shall have the nuisance removed and the cost thereof shall be a lien upon the Unit.

ARTICLE IX

GENERAL PROVISIONS

Section 1. INSURANCE.

1. The Board, or its duly authorized agent, shall have the authority to, and shall obtain insurance for, all the Property except for improvements, fixtures, personal property or other contents within the boundary of individual Dwellings, in an amount sufficient to cover the full replacement cost of any repair or reconstruction work, in the event of damage or destruction from all reasonable hazards. Without limiting the generality of the foregoing, the Board shall not obtain insurance and shall have no obligation to obtain insurance that covers the Dwellings or contents thereof, including, without limitation, the windows, doors, flooring, carpet, appliances, drapes, blinds, cabinets and personality. The Board, or its duly authorized agent, shall also obtain a broad form public liability policy covering all Common Elements, and all damage or injury caused by the negligence of the Board or any of its agents and shall obtain and maintain fidelity bond coverage equal to one-half times the annual budget. Said insurance may include coverage against vandalism. All such insurance coverage obtained by the Board shall be written in the name of the Council for the benefit of the Council and the Owners and their Mortgagees as their interests may appear. The Board shall hold all insurance proceeds collected by it in trust for the purposes stated in this Declaration, including, but not limited to, rebuilding the damaged Common Elements, building or buildings, and for the benefit of the Owners and their Mortgagees. The Board shall have exclusive authority to negotiate with the insurance carrier and to adjust losses, make settlements, and give releases to the insurance carrier and to collect monies from the insurance carrier. The Board is irrevocably appointed agent for each Owner subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Council in this regard. It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, personal liability, theft and other insurance covering personal property damage and loss, and all other insurance he deems advisable. The broad form public liability insurance shall be provided in the amount of one million dollars ($1,000,000.00) or more. The Board shall have included within the blanket insurance policy, coverage for full replacement cost for all fixtures, equipment, and other property owned by the Council or included within the Common Elements.
2. FIDELITY BONDS. The Council shall maintain blanket fidelity bonds for all officers, directors, trustees, employees of the Council and all other persons handling or responsible for funds of or administered by the Council. In the event the Council delegates responsibility for handling such funds to a management agent, such management agent shall be required to maintain such bonds for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Council. Such bonds shall be in an amount no less than:
3. The estimated maximum, including reserve funds, in the custody of the Council or the management agent at any given time during the term of the bond, or
4. An amount equal to three (3) months aggregate assessments on all Units plus reserve funds.

Such fidelity bonds shall name the Council as an obligee. Such bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees” for similar terms. Such bonds shall provide that they may not be canceled or substantially modified (including cancellation or nonpayment of premium) without at least ten (10) days prior written notice to the Council.

Section 2. ENFORCEMENT. The Board or any Owner shall have the right to enforce, by any proceeding at law or inequity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. SEVERABILITY. Should any covenant or restriction herein or any portion thereof, be held invalid or void, such invalidity shall not affect the rest of this instrument or any valid provision contained herein.

Section 4. DURATION, AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be extended automatically for successive periods of ten (10) years. This Declaration may be amended at any time by an instrument signed by not less than seventy-five percent (75%) of the Unit owners.

Section 5. VIOLATIONS AND NUISANCE. Every act or omission whereby any provision of this Declaration is violated may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Council or any owner or Owners of Units.

Section 6. VIOLATION OF LAW. Any violation of any state, municipal, or local law, ordinance, or regulation, pertaining to the ownership, occupation or use of any unit is hereby declared to be a violation of this declaration and subject to any or all of the enforcement procedures set forth herein.

Section 7. BINDING EFFECT. By acceptance of a deed or by acquiring any ownership interest in any of the Property included in this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, agrees to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this declaration and any amendments thereof. In addition, each such person by doing so thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby and thereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained or authorized herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 8. LEASING. Every lease, by its terms, shall require the lessee to abide by all requirements of the Declaration, Articles, Bylaws, and rules of the Council of Co-Owners, as they may be amended from time to time, and shall provide that noncompliance by the lessee shall terminate the lease. This provision shall be deemed to be a part of every lease, whether oral or written. No lease shall be granted for a term of less than thirty (30) days.

Section 9. EXEMPTION OF OWNER. No Owner of a Unit may exempt himself from liability for his assessed contribution towards the common expenses by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Dwelling.

Section 10. OWNER’S RESPONSIBILITY. Each Owner shall be responsible for compliance by said Owner’s agent, tenant, guest, invitee, lessee, licensee, their respective servants and employees with the provisions of this Declaration, Articles, Bylaws and Council rules as they may be amended from time to time. The Owner’s failure to so ensure compliance by such persons shall be grounds for the same action available to the Council by reason of said Owner’s own noncompliance.

Section 11. AD VALOREM TAXATION. Each Dwelling shall be assessed separately for all taxes, assessments and other charges of or imposed by the State of Arizona, any political subdivision, special improvement or assessment district, or of any other taxing or assessing authority. For the purpose of such assessment, the valuation of the general Common Elements shall be apportioned among the Owners based upon the Fractional Interest (as defined in Article I, Section 3(i) above) assigned to each of them. The Board shall furnish to the County Assessor or other responsible official of any such taxing or assessing authority all necessary information with respect to the apportionment of such assessments and shall request that each Dwelling be carried on the tax records as a separate and distinct parcel of property. No forfeiture or sale of any Dwelling for delinquent taxes, assessments or other governmental charges shall divest in any way affect the title to any other Dwelling.

Section 12. DAMAGE OR DESTRUCTION; SALE.

1. In the event that any Building and/or other Improvements on the land are damaged or destroyed by fire or other casualty or disaster, such Buildings and/or other Improvements shall be promptly repaired, restored or reconstructed to the extent required to restore them to substantially the same condition in which they existed prior to the occurrence of the damage or destruction, with each Dwelling and the Common Elements having the same vertical and horizontal boundaries. Such repairs, restoration or reconstruction shall be paid out of any insurance proceeds received on account of the damage or destruction; provided, however, that if the insurance proceeds are not sufficient for such purpose, the deficiency shall be assessed as a common expense.
2. Any such restoration or repair shall be performed substantially in accordance with the Declaration and the original plans and specifications unless other action is approved by Eligible Mortgage Holders holding mortgages of Units which have at least fifty-one percent (51%) of the votes of units subject to Eligible Mortgage Holders.

Section 13. CONDEMNATION.

1. In the event of a taking by eminent domain of part or all of the common elements, or for the sale made under threat thereof, the award made for such taking shall be payable to the Council for the use and benefit of the Owners and mortgagees, as their interests may appear. The Board on behalf of the Council shall arrange for the repair and restoration of such Common Elements and the Board shall disburse proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments.
2. The Council shall represent the Owners in any condemnation proceedings or in negotiation settlements and agreements with the condemning authority for acquisition of the Common Elements or any part thereof. Each Owner here by appoints the Council as attorney-in-fact for such purposes.

Section 14. Reduction in number of units. If any dwelling is taken by eminent domain proceedings or is destroyed and not rebuilt, so that a Co ownership ceases to exist, the undivided fractional interest of each co-owner in the entire horizontal property regime shall be adjusted proportionately pursuant to the subsection titled “fractional interest” or the section titled “cubic content space” of the article “declaration of horizontal property regime.”

Section 15. MORTGAGEE PROTECTION.

1. LIMITATIONS ON AMENDMENT. Notwithstanding any other provisions of this Declaration, unless at least two-thirds (2/3) of the Mortgagees (based upon one (1) vote for each Mortgage owned) or Owners of the individual Units have given their prior written approval, the Council shall not be entitled to:
2. By act or omission, seek to abandon or terminate the Horizontal Property Regime. Notwithstanding the foregoing, as long as Arizona statutes require a greater proportion of, or 100% of, Owners’ and Mortgagees’ approval, such greater proportion shall prevail.
3. Change to the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance, proceeds or condemnation awards, or (ii) determining the pro rata share of ownership in each Unit in the Common Elements;
4. Partition or subdivision of any Unit;
5. By act or omission, abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Elements, provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements shall not require such approval.
6. Use hazard insurance proceeds for losses to any property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Property, except as may hereafter be provided by statute in case of substantial loss to the Units or Common Elements or both of the Property.
7. SUBORDINATION OF ASSESSMENTS. No breach of any provision herein contained nor the enforcement of any Assessment lien as provided herein shall defeat or render invalid the lien of any first Mortgage encumbering any Unit but all of the provisions hereof shall be binding upon and shall be effective against any Owner whose title is derived through judicial foreclosure or trustee’s sale or otherwise; however, any first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Unit’s unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee.
8. NOTICE TO MORTGAGEES. Upon written request of a first Mortgagee, the Council shall give written notice of:
9. Any proceedings in eminent domain;
10. Any substantial damage or destruction to the Common Elements;
11. The default of the corresponding Mortgagor in the performance of any obligation pursuant to this Declaration, the Articles or Bylaws which is not cured within sixty (60) days;
12. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Council; and
13. Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders.

To obtain the foregoing information, the Mortgage Holder, insurer or guarantee or shall send a written request to the Council, stating its name, address and Unit number or address of the Unit on which it has a Mortgage.

1. OTHER RIGHTS OF INSTITUTIONAL MORTGAGEES. Any Institutional Mortgagee or its Mortgage servicing contractor, shall, upon written request to the Council be entitled to:
2. Inspect the books and records of the Council during normal business hours;
3. Receive the annual financial statement of the Council ninety (90) days following the end of the council's fiscal year; and
4. Receive written notice of all annual and special meetings of the members or of the Board; and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Council; provided, however, nothing contained in this section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the members for any purpose or to vote at any such meeting.
5. RIGHT OF FIRST REFUSAL. In the event this Declaration is amended to provide for any right of first refusal to purchase or lease a Condominium in the property, a Mortgagee who comes into possession of a Condominium pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee’s sale shall be exempt therefrom. In addition, conveyances to and from third party foreclosure purchasers and Mortgage insurers and guarantors shall also be exempt.
6. FURTHER LIMITATIONS ON MATERIAL AMENDMENTS. In addition to the limitations set forth in subparagraph (a) above, amendments of a material nature must be agreed to by Unit Owners representing at least seventy-five (75%) of the total allocated votes in the Council. In addition, approval must be obtained from Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of the Units that are subject to Mortgages held by Eligible Mortgage Holders. A change to any of the following shall be considered material: (1) voting rights; (2) Assessments, assessment liens or subordination of easement liens; (3) reserves for maintenance, repair and replacement of Common Elements; (4) responsibility for maintenance and repairs; (5) reallocation of interests in the general or limited Common Elements or rights to their users; (6) boundaries of any Dwelling; (7) convertibility of Dwellings into Common Elements or Common Elements into Dwellings, expansion or contraction of the project, or the addition, annexation or withdrawal of Property to or from the project; (8) insurance or fidelity bonds; (9) leasing of Units; (10) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her unit; (11) a decision by the Council to establish self-management when professional management has been required previously by an Eligible Mortgage Holder; (12) restoration and repair of the property following hazard damage or partial condemnation in a manner other than specified; (13) any action to terminate the Horizontal Property Regime after substantial destruction or condemnations; (14) any provisions which expressly benefit Mortgage Holders, insurers or guarantors.

Any non-material change shall be deemed approved by the Eligible Mortgage Holders when the Eligible Mortgage Holder fails to submit a written response to a written request to sign an amendment within thirty (30) days after said request is made.

Section 16. INTERPRETATION.

1. DESCRIPTIVE HEADINGS. The descriptive headings of the several sections of this instrument are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.
2. CAPITALIZATION. Capitalization of a common noun indicates the noun is used as defined in the Article titled “Definitions,” unless the context requires otherwise.
3. GOVERNING LAW. This instrument and the rights and obligations of the parties hereunder shall be construed in accordance with and shall be governed by the law of the State of Arizona.
4. CONFLICTS. In the event of conflicts among this Declaration, the Articles and Bylaws shall prevail, in that order.

Section 17. DISTRIBUTION OF PROCEEDS UPON TERMINATION. Upon termination and sale of the Property, proceeds shall be distributed in accordance with the fractional interest to the Owners and Mortgagees, as their interest may appear.

Section 18. COUNTERPARTS. This Declaration may be signed, notarized and recorded in any number of counterparts. Each executed counterpart shall for all purposes be deemed and original, but all of which together shall constitute in the aggregate one and the same instrument. The signature pages and acknowledgement pages from one or more counterparts may be removed therefrom and attached to one or more duplicate Declarations containing all original signatures.

In witness whereof, this Declaration is executed as of the date set forth above.

FOUR SEASONS NORTH COUNCIL

OF CO-OWNERS, INC.  
 An Arizona nonprofit corporation

I certify that there are 75% of the unit owners acknowledging this agreement.

Duane Newton