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SECOND

AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

AND

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

FOR

KIERLAND GREENS CONDOMINIUMS

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**SECOND AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
AND
DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND EASEMENTS
FOR
KIERLAND GREENS**

THIS SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (hereinafter "Declaration") is dated Dec. 4th, 1997, and is made by Centex Homes, a Nevada general partnership (hereinafter "Declarant").

RECITALS

A. Declarant is the owner of the original Covered Property, all Units which have heretofore been annexed into the Covered Property and the Owner of other Annexable Property which may collectively be owned and developed under the name "Kierland Greens."

B. Declarant desires to restate and replace that certain Amended and Restated Declaration of Condominium and Declaration of Covenants, Conditions, Restrictions and Easements for Kierland Greens, recorded on September 17, 1997, at Instrument No. 97-0642733, Official Records of Maricopa County, Arizona (hereinafter "Declaration."), in accordance with Article XV thereof. This Second Amended and Restated Declaration shall supercede all previously recorded Declarations and therefore, all prior restrictions are null and void.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE I.

DECLARATION OF CONDOMINIUM

1.1 Description. Declarant is the owner of all of the real property in the City of Phoenix, Maricopa County, Arizona, known as Kierland Greens Condominiums Amended, of the City of Phoenix, Arizona, as recorded on April 4, 1997, at Book 438 of Maps, Page 9 thereof, and at Instrument No. 97-0221193, Records of Maricopa County, Arizona (hereinafter "Final Plat"). Declarant is the owner of Kierland Greens, shown on the Final Plat, some, all, or none of which may, from time to time, be annexed pursuant to

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this Declaration and become a part of the Covered Property. This Declaration is being imposed by Declarant upon the Initial Covered Property which is more particularly described as follows:

Buildings 9, 10, 11, 12, 13, 14, 17 and 19, including Units 1061, 1063, 1066, 1068, 1071, 1073, 1076, 1078, 1081, 1083, 1086, 1088, 1093, 1095, 1111, 1113, 1118, 1120, 1131, 1133, 1138 and 1140, inclusive, Units 2061 through 2095, inclusive, Units 2111 through 2120, inclusive, Units 2131 through 2140, according to the Plat recorded on April 4, 1997, in Book 438 of Maps, Page 9 thereof, and recorded at Instrument No. 97-0221193, Official Records of Maricopa County, Arizona (Covered Property), including sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seventy-seven (77) Units as shown on the Plat.

1.2 Declaration. Pursuant to Title 33, Chapter 9, Article I, Section 33-1201, et seq., Arizona Revised Statutes, Declarant does hereby submit said Covered Property, including the improvements to be constructed thereon, and all easements, rights and appurtenances belonging thereto, all of which may hereinafter be referred to as the "Property," "Covered Property," or "Condominium Property," to a Condominium and said Declarant does further hereby declare that 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. No property other than the Buildings identified in Section 1.1 are deemed subject to this Declaration unless and until specifically made subject thereto, as provided herein, except as otherwise provided for in Sections 6.4, 14.6 and 17.15 hereinbelow.

1.3 Cubic Content Space.

1.3.1 Description of the Space of the Building. Initially, there shall be eight (8) multi-unit Buildings comprising seventy-seven (77) Units in the Condominium, namely Buildings 9 through 14, inclusive, and Building 17 and 19, inclusive, as shown on the Plat, a copy of which is attached hereto and by this reference incorporated herein as Exhibit "A" The cubic content space of each Building with reference to its location on the land is as more fully set forth and described in the Final Plat.

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1.3.2 Description of Space of Dwelling. The Condominium initially shall be composed of seventy-seven (77) individual Dwelling Units. Each Dwelling in the Condominium shall be numbered as shown on the Plat. The floor plan of each Unit is designated on the Plat. The cubic content space of each Dwelling is as is more fully set forth and described in the Final Plat.

1.3.3 Description of General Common Elements. The General Common Elements shall include all of said Covered 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, recreation buildings, cabanas, landscaping, fences, trash collection bins, walkways, streets, private drives, parking spaces, utility meters, outdoor cooking facilities, dog run, 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 except for a Dwelling as herein defined, and except for the outlets of utilities when located within a Dwelling. Said ownership shall be evidenced by the deed of ownership for each of said Dwellings.

1.3.4 Description of Limited Common Elements. The Owners of second-story Dwellings in each Building shall share a common right to use the stairway of said Building to the exclusion of all other Owners.

1.3.5 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:

(a) Each Dwelling shall have exclusive use of the mailbox designated with the corresponding Dwelling number.

(b) Each Dwelling shall have exclusive use of garage space as assigned by the Declarant prior to relinquishing control of the Council of Co-Owners to the Owners. Assignments during the construction phases may be different from the permanent assignments. Unassigned parking spaces, if any, are for guest use and may not be used by Owners and residents of a Dwelling. Garage parking spaces shall be assigned to be as uniformly convenient to each Dwelling as is reasonably possible.

(c) 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 and appurtenant facilities, water heaters and appurtenant facilities, said areas to be as

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originally designed, designated and installed by Declarant or as subsequently approved by the Board.

(d) 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 Developer or as subsequently approved by the Board.

(e) Each Dwelling shall have exclusive use of each terrace, patio and deck available to that Dwelling, as shown on the Final Plat.

(f) Each Dwelling shall have exclusive use of that portion of the exterior entry serving each such Dwelling.

1.3.6 Fractional Interest. Until or unless changed, pursuant to the Article titled "Integrated Nature of the Covered Property," each Dwelling shall bear an undivided fractional interest in the Common Elements as set forth hereinafter: 1/210. In any adjustment in fractional interest necessitated by expansion or contraction of the number of Units, the fractional interest of each Unit shall be expressed by a fraction with "one" as the numerator and the total number of Units as the denominator. The sum of all such fractional interest shall be one.

1.4 Vertical Dimension. All reference to vertical dimensions made in this document or on the recorded plat referred to above, shall be based upon a bench mark being 64th Street and Greenway Parkway, A.D.O.T. aluminum cap stamped "64 Green" about one-half (1/2) feet back of curb in sidewalk, \pm 31.4 feet east of east end of southeast curb return. Elevation = 1459.79 City of Phoenix datum.

ARTICLE II

DEFINITIONS

2.1 "Annexable Property" shall mean all or any portion of the real property and any improvements located thereon, described in Article XVI hereof, which may be added to Kierland Greens, and made subject to this Declaration, in one or more additional phases.

2.2 "Annual Assessment" shall mean the charge levied and assessed each year against each Unit, Parcel and Owner pursuant to Paragraph 9.2 hereof.

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- 2.3 "Articles" shall mean the Articles of Incorporation of the Council of Co-Owners as amended from time to time.
- 2.4 "Assessable Property" shall mean any Unit in Kierland Greens covered by a recorded Declaration of Annexation.
- 2.5 "Assessment" or "Assessments" shall mean an Annual Assessment, Special Assessment, Parcel Assessment, Maintenance Charge, Special Use Fee, or any other fees, fines or charges assessed hereunder.
- 2.6 "Assessment Lien" shall mean the lien created and imposed by Article IX.
- 2.7 "Assessment Period" shall mean the term set forth in Paragraph 9.8.
- 2.8 "Board" shall mean the Board of Directors of the Council of Co-Owners.
- 2.9 "Bylaws" shall mean the Bylaws of the Council of Co-Owners as amended from time to time.
- 2.10 "Charges" shall mean any and all costs assessed pursuant to Paragraphs 10.2 and 10.3.
- 2.11 "Common Elements."
- 2.11.1 "General Common Elements" means all of the property not included in the Dwellings, as described in the preceding Article. The General Common Elements may sometimes hereinafter be referred to as "Common Elements."
- 2.11.2 "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.
- 2.11.3 "Areas of Exclusive Use" are the portions of the "Common Elements" assigned for the exclusive use of a Unit, such as garages, parking spaces, patio, balcony, mailbox, utility meter, and space for installation of heating and cooling units, water heaters and appurtenant facilities.
- 2.12 "Constituent Documents" shall mean and include the Declaration of Condominium and Declaration of Covenants, Conditions and Restrictions for Kierland Greens, the plat of record for Kierland Greens Condominium, the Articles and Bylaws of

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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.

2.13 "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.

2.14 "Co-Owner's Interest" means the fractional interest ascribed to each Dwelling by this Declaration.

2.15 "Council of Co-Owners" or "Council" shall mean the Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, and its successors and assigns. Declarant intends to name the Council of Co-Owners the "Kierland Greens Council of Co-Owners."

2.16 "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

2.17 "Covered Property" or "Initial Covered Property" shall mean that real property described hereinabove and such other property as may be brought within this Declaration pursuant to the Article entitled "Annexation."

2.18 "Declarant" shall mean CENTEX HOMES, a Nevada general partnership, and the successors and assigns of the Declarant's rights and powers hereunder. Any assignment of all or any portion of the Declarant's rights and powers shall be made by a recorded instrument executed by the assignor Declarant.

2.19 "Declaration" shall mean this SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM AND DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR KIERLAND GREENS CONDOMINIUMS, as amended or supplemented from time to time.

2.20 "Declaration of Annexation" shall mean a declaration recorded pursuant to Paragraph 16.1 of this Declaration.

2.21 "Design Guidelines" shall be established by the Kierland Greens Design Review Committee and shall include design standards for the appearance and development of property in Kierland Greens, as well as the review and approval procedures for such committee.

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2.22 "Dwelling" means a separate freehold estate consisting of an airspace defined as follows:

2.22.1 The lower vertical boundary is the top of the unfinished floor thereof.

2.22.2 The upper vertical boundary coincides with the elevation of the bottom of the unfinished ceiling or ceilings thereof.

2.22.3 The lateral boundaries are the unfinished interior surfaces of the 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.

2.22.4 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, water heaters and appurtenant facilities, alarm systems and other household appliances lying within said boundaries or appurtenant areas.

2.22.5 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, tubing for delivery of insecticide, chimneys, ducts, flues, air conditioning and heating units, conduits, wires and other utility and installation lines wherever 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 in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plat, plan or declaration, regardless of settling or lateral movement of the Building, and regardless of minor variances between the boundaries as shown on the plan or in the deed and Declaration and those of the Building.

2.23 "KDRC" means the Kierland Design Review Committee of the Kierland Master Association, Inc.

2.24 "Kierland Greens" shall mean the real property described on Page 1 of this Declaration and the development to be completed thereon, together with any real property hereafter annexed pursuant to the provisions of this Declaration.

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2.25 "Kierland Greens Design Review Committee" shall mean Design Review Committee of the Council of Co-Owners to be created pursuant to Article VI below.

2.26 "Kierland Greens Rules" shall mean the rules for Kierland Greens adopted by the Board pursuant to Paragraph 6.3.

2.27 "Member" shall mean any person holding a Membership in the Council of Co-Owners pursuant to this Declaration. Member is synonymous with "Co-Owner" and "Owner."

2.28 "Membership" shall mean a Membership in the Council of Co-Owners and the rights granted to the Owners and Declarant pursuant to Article VIII to participate in the Council of Co-Owners.

2.29 "Owner" (when so capitalized) shall mean the record holder of legal, beneficial or equitable title to the fee simple interest of any Unit, including, without limitation, one who is buying a Unit under a recorded contract, but excluding others who hold such title merely as security. Owner shall not include a lessee or tenant of a Unit. In the case of Units, the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 *et seq.*, legal title shall be deemed to be in the Trustor. In the case of Units, the fee simple title to which is vested in a trustee pursuant to a trust agreement in the beneficiary of any such trust entitled to possession shall be deemed to be the Owner. An Owner shall include any person who holds record title to a Unit in joint ownership with any other person or holds an undivided fee interest in any Unit.

2.30 "Owner's 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 Elements.

2.31 "Party Walls" shall mean a wall constructed on or immediately adjacent to the common boundary of Units, Common Elements or other areas in Kierland Greens.

2.32 "PHXAZ" shall mean PHXAZ Limited Partnership, a Texas limited partnership, and its successors and assigns who succeed to the rights and responsibilities of the Master Declarant as defined in the Site Development Standards.

2.33 "Plat" shall mean and refer to that certain plat for Kierland Greens Condominiums Amended, recorded on April 4, 1997, at Book 438 of Maps, Page 9 thereof, and at Instrument No. 97-0221193, Official Records of Maricopa County, Arizona.

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2.34 "Resident" shall mean:

2.34.1 Each buyer under a contract of sale covering any part of the Assessable Property, regardless of whether the contract is recorded, and each tenant or lessee actually residing on any part of the Assessable Property; and

2.34.2 Members of the immediate family of each Owner, lessee, tenant and of each buyer referred to in subparagraph (1) actually living in the same household with such Owner, lessee, tenant or buyer.

Subject to such rules and regulations as the Council of Co-Owners may hereafter specify (including the imposition of special non-resident fees for use of recreational amenities if the Council of Co-Owners shall so direct), the term "Resident" also shall include the on-site employees, guests or invitees of any such Owner, lessee, buyer or tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

2.35 "Site Development Standards" shall mean those Kierland Parcel 7A Design Guidelines dated December 16, 1996, as may be amended from time to time.

2.36 "Special Assessment" shall mean any assessment levied and assessed pursuant Paragraph 9.5.

2.37 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object, or any portion thereof, is or would be visible to a person six (6) feet tall standing on any portion of the adjoining Unit, adjoining Common Elements, surrounding public rights-of-way or the adjoining golf course and golf course parking lot, on the same plane as the object being viewed.

ARTICLE III

PROPERTY SUBJECT TO KIERLAND GREENS DECLARATION

3.1 General Declaration Creating Kierland Greens. Declarant hereby declares that all of Kierland Greens (except any property which is hereafter excluded or abandoned pursuant to the provisions of this Declaration) is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration as amended or modified from time to time. In addition, all of the real property within Kierland Greens shall be subject to recorded Declarations of Annexation as applicable and as amended from time to time. Declarant intends to develop Kierland Greens by subdivision into various Units and other

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areas and to sell and convey such Units. As portions of Kierland Greens are developed or sold to others for development, Declarant may record one or more Declarations of Annexation covering such property. This Declaration and all subsequent Declarations of Annexation are declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of Kierland Greens and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Kierland Greens and every part thereof. All of this Declaration and applicable Declarations of Annexation shall run with the land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Council of Co-Owners, all Owners and Residents and their successors in interest. This Declaration shall not be construed to prevent the Declarant from dedicating or conveying portions of Kierland Greens, including streets or roadways, for uses other than as a Unit or Common Elements, subject to the provisions of Paragraph 4.1(c).

3.2 Council of Co-Owners Bound. Upon approval by the Arizona Corporation Commission of Articles of Incorporation of the Council of Co-Owners, the Covenants shall be binding upon and shall benefit the Council of Co-Owners.

ARTICLE IV

EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON ELEMENTS

4.1 Easements of Enjoyment. Every Owner in Kierland Greens shall have a nonexclusive easement for the use and enjoyment in and to the Common Elements and the Limited Common Elements, which nonexclusive easement shall be appurtenant to and shall pass with the title to every Unit. All Residents, other than Owners, shall have a nonexclusive, nontransferable temporary easement to use and enjoy the Common Elements so long as they remain Residents. The foregoing grant and rights are subject, among other things, to the following limitations:

(a) The right of the Council of Co-Owners to charge reasonable admission and other Special Use Fees for the use of any recreational or other facility situated upon the Common Elements or for the operation maintenance, repair or replacement of recreational facilities within the Common Elements.

(b) The right of the Council of Co-Owners to suspend the voting rights and right to use Common Elements or Common Elements recreational facilities by any Member (i) for any period during which any Assessment against his Unit remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Declaration of Annexation, the Kierland Greens Rules or applicable

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Design Guidelines; and (iii) for successive 60-day periods if any such infraction is not corrected during any preceding 60-day suspension period. 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 Unit or parking spaces.

(c) The right of the Council of Co-Owners to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Council of Co-Owners. Unless otherwise required by zoning stipulations or agreements with the City of Phoenix effective prior to the date hereof or unless specified hereafter on a recorded subdivision plat or Declaration of Annexation, no such dedication or transfer shall be effective unless an instrument signed by the Owners of eighty percent (80%) of the votes in each class of Members agreeing to such dedication or transfer has been recorded, except that the Board shall have authority without Membership approval to transfer to such public agencies, authorities or utilities, easements and rights-of-way which are intended to benefit Kierland Greens and which do not have any substantial adverse affect on the enjoyment of the Common Elements by the Members.

(d) The right of the Council of Co-Owners to regulate the use of the Common Elements through the Kierland Greens Rules and to prohibit access to those Common Elements, such as landscaped areas, not intended for use by the Owners or residents.

(e) The right of the Council of Co-Owners to change the use of Common Elements and to change the size, shape or location of the Common Elements as provided in Paragraphs 14.4 and 14.5.

(f) The right of each Owner of Units (second floor) to have use of the stairway for that Owner's Building in common with the other Owners of second-story Units in that Building, to the exclusion of all other Owners.

(g) The right of each Owner to have exclusive use of spaces described in the subsection above titled "Description of Space of Exclusive Use," of the Section titled "Cubic Content Space," of the Article titled "Declaration of Condominium."

(h) 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 the Article titled "Restrictions on Use," Section titled "Easements."

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4.2 Delegation of Use. Any Owner may, in accordance with this Declaration, the Kierland Greens Rules and the limitations therein contained, delegate his right of enjoyment in the Common Elements and facilities to the members of his family, his tenants or lessees, his guests or invitees or to his tenant's family, guests or invitees.

4.3 Rights of Ingress and Egress. Every Owner shall have an unrestricted right of ingress and egress to his Unit(s) which right shall be perpetual and shall be appurtenant to and shall pass with the title to said Unit(s) over the following areas:

(a) for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Elements; and

(b) for pedestrian and vehicular traffic over, through and across the Common Elements streets and roadways, if any, which are designated and paved for such purpose.

Any Owner may, in accordance with this Declaration and the Kierland Greens Rules, delegate his right of ingress and egress to the members of his family, his guests, and his tenants (including his tenants' family and guests).

4.4 Limited Common Elements. Certain portions of the Common Elements may be designated as Limited Common Elements and reserved for the exclusive use or primary benefit of one or more, but less than all, of Owners, occupants and invitees of Kierland Greens. By way of illustration and not limitation, Limited Common Elements may include stairways, landings, patios, garage parking spaces, courtyards and other portions of the Common Elements within Kierland Greens. All costs associated with maintenance, repair, replacement and insurance of Limited Common Elements shall be borne by the Kierland Greens Owners, either by way of Special Use Fee or by way of assessment imposed upon the Units.

4.5 Use and Benefit Easement. There is hereby created a Use and Benefit Easement in favor of PHXAZ, its successors and assigns, as owner of the adjacent golf course, over that portion or portions of the Property which is outside of the view fence which separates the Property from the Golf Course. The purpose of the Use and Benefit Easement is to allow for consistent maintenance of any landscaping by the golf course owner located outside the view fence adjacent to the golf course.

4.6 Storm Water Flows from Storms Drains. There is hereby created an easement in favor of Parcel 7B, according to the plat recorded at Book 396 of Maps, Page 9, thereof, Official Records of Maricopa County, Arizona, over that portion of the Property which is located in the vicinity of the corner of Clubgate Drive and Parcel 7B, for the

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purpose of receiving storm waters which flow over, across, under and through the Property from the southeast corner of Parcel 7B to the storm drain located at the southern portion of the Property.

ARTICLE V

USE RESTRICTIONS

Except as otherwise expressly provided herein, the following Covenants and rights shall apply to all Units, Common Elements and other areas in Kierland Greens, and the Owners, Residents and tenants thereof:

5.1 Improvements and Alterations.

5.1.1 Exterior. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or a 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, addition or removal of 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 manufacturer 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. Nothing herein shall be deemed to permit exterior changes by an Owner. Any review or approval by the Board or committee shall be subject to the provisions of the Site Development Standards and the provisions of Section 6.4 hereinbelow.

5.1.2 Interior. 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, insecticide tubing, cable television wiring, alarm system including wiring and contact points, hot tubs and the like.

5.2 Animals. Except as otherwise expressly permitted in an applicable Declaration of Annexation, no animals, birds, fowl or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Unit or

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other area in Kierland Greens and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All pets must be kept in a Unit or on a leash at all times. No animal, bird, fowl, poultry or livestock shall be permitted on the golf course at any time. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance or an annoyance to other Owners. It shall be the responsibility of each Owner to remove immediately any droppings from pets. No structure for the care, housing or confinement of any animal, bird, fowl or livestock shall be maintained so as to be Visible From Neighboring Property, unless otherwise approved by the Design Review Committee. Upon the written request of any Member or Resident, the Kierland Greens Design Review Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Subsection, a particular animal or bird is a generally recognized house or yard pet, whether such pet is a problem or nuisance or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Kierland Greens Design Review Committee shall be enforceable in the same manner as other restrictions contained herein.

5.3 Temporary Occupancy and Temporary Buildings. No trailer, incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures may be used on any property for construction, repair or sales purposes, with the prior written approval of the Kierland Greens Design Review Committee and for the time period approved by the Kierland Greens Design Review Committee.

5.4 Chimney Cleaning 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 accomplish said cleaning, is hereby created in favor of every Owner.

5.5 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be placed or maintained in Kierland Greens unless they are not Visible From Neighboring Property.

5.6 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.

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5.7 Nuisances; Construction Activities. No weeds, dead trees or plants, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit or other area in Kierland Greens, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Unit or other area in Kierland Greens. The Kierland Greens Design Review Committee shall have the right to determine the existence of any nuisance. Without limiting the generality of any of the foregoing provisions and except as otherwise permitted herein or in any recorded Declaration of Annexation, no exterior speakers, interior speakers which are used in such a manner so that they can be heard beyond the walls of the Unit in which they are located, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Normal construction activities and parking in connection with the building of improvements in Kierland Greens shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved by the Kierland Greens Design Review Committee. An Owner shall be responsible for and shall promptly perform all on-site and construction cleanup occasioned by his contractors or subcontractors. In addition, any construction equipment and building materials stored or kept on any Unit during construction of improvements may be kept only in areas approved by the Kierland Greens Design Review Committee, which may also require screening of the storage areas. It is acknowledged that normal construction activities may be noisy and may require the use of exterior speakers.

5.8 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Unit or other area which shall induce, breed or harbor diseases or insects.

5.9 Repair of Units. No Unit in Kierland Greens shall be permitted to fall into disrepair and each such Unit shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Unit is damaged or destroyed, then, subject to the approvals required by Article XIII, such Unit shall be promptly repaired. In the event an Owner fails to comply with this provision, the Board may give notice to the offending Owner, and may then proceed to repair the Unit and charge the Owner therefore as permitted in Paragraph 12.2.

5.10 Exterior Accessories. No antenna, satellite receiving station or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any area in

Kierland Greens (whether attached to a building or structure or otherwise) so as to be Visible from Neighboring Property, unless approved by the Kierland Greens Design Review Committee, and as provided in Section 6.4 herein, by the KDRC. The Kierland Greens Design Review Committee may permit one or more aerial satellite dishes or satellite communication systems, and/or other apparatus and equipment for an antenna or cable system for the benefit of all or portions of Kierland Greens. No article which is draped, hung or attached to an exterior surface, patio enclosure, deck, porch or stairway shall be permitted so as to be Visible From Neighboring Property. Nor shall any mineral collection, cactus rib, bottle, license plate or other memorabilia be displayed so as to be Visible From Neighboring Property. 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, except to the extent it is Visible From Neighboring Property. The use of a Dwelling, parking space, or Common Element in a manner which will increase the rate of insurance upon the Property shall be prohibited. The use of any patio or deck plant material which encroaches on any other Unit or the General Common Elements shall be prohibited.

5.11 Mineral Exploration. No area in Kierland Greens shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

5.12 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Unit or other area in Kierland Greens except in covered containers of a type, size and style which are approved by the Kierland Greens Design Review Committee. Unless otherwise approved by the Kierland Greens Design Review Committee, such containers shall be maintained and stored so as to not be Visible From Neighboring Property except to make the same available for collection. All rubbish, trash and garbage shall be removed from the Units and other areas in Kierland Greens and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained in Kierland Greens.

5.13 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained in Kierland Greens except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of an approved building, appurtenant structures, or other improvements; or (ii) that which Declarant or the Council of Co-Owners may require for the operation and maintenance of Kierland Greens. Solar energy devised may not be Visible From Neighboring Property and must be approved by the Kierland Greens Design Review Committee prior to installation.

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5.14 Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained in Kierland Greens except signs required by legal proceedings.

5.15 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Owner shall convey a timeshare interest or other fractional portion of a Unit. No Unit shall be further subdivided or separated into smaller Units by any Owner, and no portion less than all of any such Unit, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Declarant, so long as Declarant has an interest in the Property or the Annexable Property, and the written approval of the Board and KDRC. This provision shall not, in any way, limit Declarant from subdividing or separating into Units any property at any time owned by Declarant. Unless otherwise approved by the Declarant, no buildings or other permanent structures shall be constructed on any area in Kierland Greens until a Declaration of Annexation has been recorded on such property. No subdivision plat, Declaration of Annexation or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any property in Kierland Greens unless the provisions thereof have first been approved in writing by the Declarant, so long as Declarant has an interest in the Property or the Annexable Property, and the written approval of the Board and KDRC, and any plan, Declaration of Annexation or other covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Unit, and no applications for variances or use permits shall be filed with any governmental authority unless the proposed use of the property has been approved by the Declarant, so long as Declarant has an interest in the Property or the Annexable Property, and the written approval of the Board and KDRC and the proposed use otherwise complies with this Declaration, any applicable Declaration of Annexation and the general plan of development for Kierland Greens.

5.16 Utility Easements. There is hereby created a blanket easement upon, across, over and under Kierland Greens, for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and other systems as such utilities are installed in connection with the initial development of Kierland Greens. Pursuant to this easement, a providing utility or service company may install or maintain facilities or equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the property. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any area in Kierland Greens except as initially programmed and approved by the Declarant or the Kierland Greens Design Review

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Committee, or, if installed after recordation of the Declaration of Annexation, as approved by the Owner and the Kierland Greens Design Review Committee.

5.17 Repair and Maintenance.

5.17.1 By Owner. Each Owner of a Unit shall maintain, repair, replace and restore at his own expense all Improvements and fixtures to the Dwelling, including all appliances contained within the Dwelling Unit, water heaters and appurtenant facilities, heating and air conditioning equipment, all automatic or manual garage door operating mechanisms, alarm systems, exterior shade screens and such maintenance, repair, replacement or restoration and shall be subject to review 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 Declarant or the Council without first obtaining the written consent of the Board and by KDRC as may be required pursuant to Section 6.4 or the Site Development Standards. Each Owner whose Dwelling is served by a patio, deck or storage space for which said Owner has a right to exclusive use, shall clean and keep said area in a neat and sanitary condition.

5.17.2 By the Council. The Council shall have full power to control, and it shall be its duty to maintain, repair and make necessary improvements to, all Common Elements and the Improvements thereon, 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.

5.17.3 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 a 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, reasonable requests for entry shall be made and such entry shall be at a time reasonably convenient to the Owner whose Dwelling is to be. 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.

5.17.4 Repair Necessitated by Owner. In the event that the Council determines that the Common Elements are in need of Improvement, repair, restoration or

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painting, that shade screens are in need of repair or replacement, that private patio landscaping is in need of maintenance, trimming or other care, or that the Common Elements 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" or the Owner's pets, then the Council 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 Council shall undertake to remedy such condition or violation 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 Council 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.

5.18 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 Kierland Greens unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, except for boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices. Notwithstanding the foregoing, no above ground electrical apparatus shall be installed without the approval of the Declarant or the Kierland Greens Design Review Committee. All lines for the transmission of water and sewage shall also be installed and maintained underground or concealed in, on or under structures approved by the Kierland Greens Design Review Committee. The installation and location of all utility lines and equipment must be approved in advance by the Declarant or the Kierland Greens Design Review Committee. Temporary above ground power or telephone structures and water lines incident to construction activities, shall be permitted with the prior written approval of the Kierland Greens Design Review Committee.

5.19 Overhead Encroachments. No tree, shrub or planting of any kind on any Unit or other area shall be allowed to overhang or otherwise to encroach upon any Dwelling or the Common Elements from ground level to a height of eight (8) feet without the prior written approval of the Kierland Greens Design Review Committee.

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5.20 Trucks, Trailers, Campers and Boats. No motor vehicle (classed by manufacturer rating as exceeding 1-ton), mobile home, motor home, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked or stored on any area in Kierland Greens so as to be Visible From Neighboring Property, Common Elements or street; provided, however, this provision shall not apply to (i) pickup trucks equal to or less than 1-ton of capacity with or without camper shells or commercial appliances or additions not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in Subsection 5.23 below and are used on a regular and recurring basis for basic transportation; or (ii) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Kierland Greens Design Review Committee.

5.21 Motor Vehicles. No motor vehicle of any kind shall be constructed, reconstructed or repaired upon any Unit, street or other area in Kierland Greens, and no inoperable vehicle may be stored or parked so as to be Visible From Neighboring Property or to be visible from Common Elements or streets; provided, however, that this provision shall not apply to (i) emergency vehicle repairs; (ii) the parking of motor vehicles in garages or other parking areas in Kierland Greens designated or approved by the Declarant or the Kierland Greens Design Review Committee so long as such vehicles are in good operating condition and appearance and are not under repair; and (iii) the storage of motor vehicles in an area designed for such purposed on a Declaration of Annexation or on a site plan approved by the Kierland Greens Design Review Committee.

5.22 Street Parking Prohibited. No Owner shall permit any vehicle, bicycle, basketball goal (either fixed or portable), motorized skateboards or scooters, go-carts or other object to be or remain parked on any private street or sidewalk or in any courtyard.

5.23 Visitor Parking. Vehicles of all employees, guests and invitees of Owners and Residents, are to be kept in garages, and other parking areas designated or approved by the Declarant or the Board; provided, however, this Paragraph shall not be construed to permit the parking or storing in the above described areas of any vehicle whose parking or storage in Kierland Greens is otherwise prohibited herein. The Kierland Greens Rules may permit temporary parking on streets or other Kierland Greens areas for public or private social events or other permitted activities. In no event, however, shall parking be permitted within any courtyard. 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

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restrictions. It shall further be the duty and obligation of the Board to observe and determine that parking restrictions are followed and enforced.

5.24 Overflow Parking for Guests Only. 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."

5.25 Garages; Resident Parking. The development plan provides two (2) garage 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. Vehicles of all Owners and Residents are to be kept in garages. No garage door shall remain open except when necessary for access to and from the garage. No courtyard, parking area or garage shall be used to store junk or other unsightly material. Garage space shall not be converted into any use (such as a recreational room or storage) which would prevent its use as a parking space for the number of vehicles it is designed to contain. Owners shall be responsible for keeping the interior of their assigned garage in good condition and repair and adequately painted or otherwise finished. Maintenance, repair or replacement of the automatic or manual garage door opening and closing mechanism and appurtenant facilities shall be the responsibility of the Owner to whom the garage is assigned.

5.26 Size Limitation for Parked Vehicles. 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.

5.27 Right to Tow. In addition to the other enforcement provisions contained within 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 City of Phoenix, 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.

5.28 Motorized Scooters Prohibited. No Owner shall permit any motorized skateboards or scooters, go-carts or other similar motorized object to be used on any private street or sidewalk or in any courtyard or any other part of the Covered Property.

5.29 Roofs. No solar panel, air conditioning unit, evaporative cooler or other apparatus, structure or object shall be placed on the roof of a Dwelling Unit without the prior written consent of the Kierland Greens Design Review Committee. Any solar panel

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approved by the Kierland Greens Design Review Committee and the KDRC for placement on a roof must be flush mounted if Visible From Neighboring Property.

5.30 Window Treatments. Within one hundred and twenty (120) days of occupancy, each Owner of a Dwelling shall install permanent draperies or suitable window treatments on all windows Visible From Neighboring Property. In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No interior or exterior reflective material shall be used as a window covering unless such material has been approved by the Kierland Greens Design Review Committee. Further, no metal or rigid plastic awnings of any nature whatsoever shall be permitted to be placed or installed on or attached to the outside of any building or elsewhere on a parcel, except as has been approved by the Kierland Greens Design Review Committee and KDRC.

5.31 Drainage. No Owner or Resident shall interfere with or obstruct the drainage pattern over his Unit from or to any other Unit as that pattern may be established or altered by the Declarant.

5.32 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Unit, any member of the Kierland Greens Design Review Committee, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Unit or other area, and the improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Dwelling Unit), to determine compliance with this Declaration, the Design Guidelines, or any approval stipulations issued by the Kierland Greens Design Review Committee or to perform repairs and maintenance as provided in Paragraph 12.3, and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Council of Co-Owners shall have an easement and right of entry upon any Unit or other area at any time or times without notice in order to perform emergency repairs.

5.33 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or by other developers or their duly authorized agents of structures, improvements or signs necessary or convenient to the development or sale of property within Kierland Greens if those structures, improvements or signs have been approved by the Declarant or the Kierland Greens Design Review Committee. Notwithstanding anything contained herein to the contrary, the Declarant shall be subject to the requirements of the Site Development Standards.

5.34 Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Kierland Greens Design Review Committee to be a nuisance

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or to adversely affect the health, safety or welfare of Owners or Residents, the Kierland Greens Design Review Committee may make rules restricting or regulating their presence in Kierland Greens as part of the Kierland Greens Design Review Guidelines.

5.35 Model Units. The provisions of this Declaration and of Declaration of Annexation which prohibit nonresidential use of Units and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes and sales offices and parking areas incidental thereto by persons engaged in the construction or marketing of Dwelling Units in Kierland Greens, provided that the location and the opening and closing hours of such model homes are approved by the Declarant or the Kierland Greens Design Review Committee, and provided that the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration and with the ordinances of the City of Phoenix. Anything contained herein notwithstanding, the Council of Co-Owners' right to approve the opening and closing hours of such model units shall not preclude the use of the model homes between 9:00 A.M. and 8:00 P.M. Any Units constructed as model homes shall cease to be used as model units at any time the Owner or builder thereof is not actively engaged in the construction and sale of Dwelling Units in Kierland Greens. No unit shall be used as a model unit for the sale of homes not located in Kierland Greens unless expressly permitted to do so in writing by the Declarant.

5.36 Leases; Rental Pools Prohibited. Any agreement for the lease of all or any portion of a Unit must be in writing and must be expressly subject to this Declaration, the Kierland Greens Rules, the Design Guidelines, the Articles and the Bylaws. Any violation of these documents shall be a default under the lease. An Owner shall notify the Council of Co-Owners regarding the existence of all leases. The Owner shall remain liable for compliance with the Declaration, Articles, Bylaws, Kierland Greens Rules and Design Guidelines and shall be responsible for any violations thereof by his tenant or his tenant's family and guests. All notices shall be sent to the Owner. Each Owner shall provide a copy of the Declaration, Articles, Bylaws and Rules to each tenant of his Unit. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws and the Rules, and recognizes and accepts the right and power of the Council of Co-Owners to evict a tenant for any violation by the tenant of the Declaration, Articles, Bylaws or Rules. Notwithstanding anything contained herein to the contrary, for so long as none of the individual dwelling units located on the real property described as Parcels 8A and 8B of Kierland, according to the plat recorded in Book 396 of Maps, Page 9, thereof, Official Records of Maricopa County, Arizona, have been both (i) converted to the condominium form of ownership and (ii) offered for sale to the public, the Property may be used only for residential dwelling units which are offered for sale and related amenities and facilities. Such uses may include, but shall not be limited to, condominium ownership. Rental apartments are expressly prohibited for that period. Developer-sponsored,

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manager-sponsored and Owner-sponsored rental pools are also expressly prohibited for that period. This restriction shall not prohibit or prevent individual Owners from renting or leasing the Dwelling Units owned by them so long as rental pools are not utilized. Any amendment of this Section shall also require the consent of the Owners of at least two-thirds (2/3) of the dwelling units on Parcels 8A and 8B.

5.37 Variations. The Board or Kierland Greens Design Review Committee may, at its option and in extenuating circumstances, grant variations from the restrictions set forth in Article V of this Declaration or in any Declaration of Annexation if the Board or Kierland Greens Design Review Committee determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner or (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (b) that the activity permitted under the variance will not have any substantial adverse affect on the Owners and Residents of Kierland Greens and is consistent with the high quality of life intended for Residents of Kierland Greens. The request for a variance must be made in writing and must be accompanied by adequate supporting documentation. Notwithstanding anything contained herein to the contrary, where a variance is requested relating to anything which is regulated in the Site Development Standards, then in that event, the granting of any such variance shall be subject to the prior approval of the KDRC.

ARTICLE VI

ORGANIZATION OF COUNCIL OF CO-OWNERS

6.1 Formation of Council of Co-Owners. The Council of Co-Owners shall be a non-profit Arizona corporation. Upon incorporation, the Council of Co-Owners shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Council of Co-Owners shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Council of Co-Owners. The Board may appoint Members to a Kierland Greens Design Review Committee; provided, however, in the event no such committee is appointed, then the Board shall carry out and perform all duties of the Kierland Greens Design Review

Committee. The Board shall determine the compensation to be paid to the Manager and any employees of the Council of Co-Owners. The Board's responsibilities shall include, but not be limited to, the following:

- (a) administration, including administrative support as required for the Kierland Greens Design Review Committee;
- (b) preparing and administering an operational budget;
- (c) establishing and administering an adequate reserve fund;
- (d) scheduling and conducting the annual meeting and other meetings of the Members;
- (e) adoption of and adherence to a schedule for maintenance of all Common Elements;
- (f) collecting and enforcing the assessments;
- (g) accounting functions and maintaining records;
- (h) promulgation and enforcement of the Kierland Greens Rules (but not the Design Guidelines);
- (i) maintenance of the General Common Elements; and
- (j) all the other duties imposed upon the Board pursuant to this Declaration, the Bylaws, the Articles and the Kierland Greens Rules.

6.3 The Kierland Greens Rules and Design Guidelines. By a majority vote of the Board, the Council of Co-Owners may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Kierland Greens Rules. The Kierland Greens Rules may restrict and govern the use of the Common Elements by any Member or Resident, by the family of such Member, or by any invitee, licensee or tenant of such Member; provided, however, that the Kierland Greens Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles and the Bylaws. In addition, from time to time and subject to the provisions of this Declaration, the Kierland Greens Design Review Committee shall have the right to adopt, amend and repeal Design Guidelines; provided, however, that such rules and guidelines shall be fair and reasonable and shall be consistent with the provisions of this Declaration, the Articles and Bylaws. In no event shall such Design

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Guidelines conflict with or waive any requirement or regulation contained in the Site Development Standards. The authority granted herein to develop rules and guidelines by the Kierland Greens Design Review Committee and the enforcement powers of the committee, are given for the purpose of insuring that Kierland Greens is developed and used according to the general descriptions and intent as evidenced by the Plat, as it may from time to time be amended, and this Declaration. Upon adoption, the Kierland Greens Rules and/or Design Guidelines shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if set forth in and a part of this Declaration. The Kierland Greens Design Review Committee is specifically responsible for the administration and enforcement of the provisions of Article XIII of this Declaration; the administration and enforcement of the guidelines promulgated by such Committee; and all other duties and obligations designated to such Committee by the Declaration, Articles, Bylaws and Kierland Greens Rules. Administrative support as required by the Kierland Greens Design Review Committee shall be provided by the Board. Upon adoption, the Kierland Greens Rules and the Design Guidelines shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any inconsistency between the rules and regulations adopted by the Board and the guidelines adopted by the Kierland Greens Design Review Committee, the guidelines adopted by the Kierland Greens Design Review Committee shall control. Copies of the Kierland Greens Rules and all Design Guidelines as adopted or amended shall be available for inspection at the office of the Council of Co-Owners during reasonable business hours.

6.4 Kierland Site Development Standards. In addition to this Declaration, the Kierland Greens Rules and Design Guidelines, there are architectural and landscaping guidelines, exterior maintenance requirements and site development standards for the Property. Those guidelines, requirements and standards are identified as the Kierland Parcel 7A Design Guidelines dated December 16, 1996 ("Site Development Standards"). The Site Development Standards shall apply to and be binding upon the Property and the Annexable Property. KDRC shall not unreasonably withhold, delay or condition its consent or approval, but an express decision shall be required and silence shall not be deemed to be consent or approval of any item. Amendments to the Site Development Standards shall require the written consent of KDRC, the Board of the Council of Co-Owners and the Declarant, if the Declarant is the Owner of any portion of the Property or the Annexable Property. Copies of the Site Development Standards, as adopted or amended, shall be available for inspection at the office of the Council of Co-Owners during reasonable business hours. Any amendment of this provision shall require the written consent of the KDRC. Any approval by KDRC shall be for the purpose of assuring compliance with the Site Development Standards and shall not be for the purpose of assuring compliance with any requirements of any applicable governmental authorities. In no event shall KDRC be liable to any Owner or Resident for any consent

or approval given, whether or not the matter approved complies with any such governmental requirements.

6.5 Personal Liability. No board member, committee member (including, but not limited to, the Kierland Greens Design Review Committee), officer or employee of the Council of Co-Owners shall be personally liable to any Member or to any other person or entity, including the Council of Co-Owners, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence; provided, however, the limitations set forth in this Paragraph 6.5 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct. The Council of Co-Owners shall indemnify its committee members, directors and officers when acting on behalf of the Council of Co-Owners, to the full extent permitted by law, except for willful misconduct and bad faith acts or omissions.

ARTICLE VII

GOLF COURSE

Portions of the Kierland Greens abut the area intended for use as a golf course (and golf-related facilities). By accepting a deed or other conveyance of fee title to all or any portion of the Property, each Owner acknowledges that the Property is subject to the sights, sounds, smells, and other impacts resulting from golf activities, including, but not limited to, the activities of golfers, golf maintenance equipment, irrigation and fertilization activities, and the risk of errant golf balls. By accepting a deed or other conveyance of fee title to all or any portion of the Property, each Owner accepts the risk of such activities and releases the owner and any operator of the golf course (and related facilities), and all golfers using such areas, from all claims, demands, damages, costs, liabilities and obligations (known and unknown) resulting from normal operation, maintenance and use of the golf course and related facilities, except those which may arise from gross negligence or willful or wanton misconduct. In the event there is damage to a Unit resulting from errant golf balls, the Owner of the Unit shall promptly repair such damage or breakage. In the event such repair is not undertaken within seventy-two (72) hours, the Council of Co-Owners may, but need not, repair or replace any damage, including glass or shade screen replacement, and may assess the Unit owner a Maintenance Charge as provided in Article IX.

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ARTICLE VIII

MEMBERSHIPS AND VOTING

8.1 Owners of Units. Every Owner of a Unit which is subject to assessment shall be a Member of the Council of Co-Owners. Each Member shall have one (1) Membership for each Unit owned.

8.2 Declarant. The Declarant shall be a Member of the Council of Co-Owners for so long as the Declarant owns any land in Kierland Greens.

8.3 Voting. The Council of Co-Owners shall have two (2) classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships attributable to the Owner of a Unit, including Declarant. An Owner (including Declarant) of a Unit shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the Owner's voting rights for violations of this Declaration as provided herein.

Class B. All of the Class B Memberships shall be held by the Declarant. For its Class B Memberships, Declarant shall have three (3) votes for every Unit owned by Declarant. The Class B Memberships shall cease on the happening of the first of the following events:

(a) Ninety (90) days after conveyance of seventy-five percent (75%) of the Units which may be created to Owners other than Declarant,

(b) Four (4) years after Declarant, or its successors, have ceased to offer Units for sale in the ordinary course of business, or

(c) When the Declarant notifies the Council of Co-Owners in writing that it relinquishes its Class B Membership.

8.4 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote of each such Membership must be cast as a unit; fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain

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Membership, it will thereafter be conclusively presumed that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made to the Board, in writing at or prior to the time the vote is cast. In the event more than one vote is cast for a particular Membership, all said votes shall be deemed void.

8.5 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles, Bylaws, Kierland Greens Rules, and Design Guidelines as the same may be amended from time to time.

8.6 Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Council of Co-Owners shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Unit and then only to the transferee thereof. A transfer of ownership of a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record or such other legal process as permitted by Arizona law. Any attempt to make a prohibited transfer shall be void. Any transfer or ownership of a Unit shall automatically transfer the Membership(s) appurtenant to said Unit to the new Owner. Upon the transfer of ownership of any Unit (excluding the initial sale by the Declarant), the Board, in its discretion, may assess a reasonable transfer fee to cover administrative costs associated with said transfer of ownership.

8.7 Control in Developer.

8.7.1 It is recognized that because of the sequential development of the Covered Property, management or control of the Council by the Declarant is likely to continue after one hundred percent (100%) of the Units in Phase One are sold.

8.7.2 In the event voting control of the Council passes to the Owners prior to annexation of additional property and such annexation restores voting control to the Declarant, all other Declarant rights herein shall be restored as though never discontinued and all Class B votes shall be restored to Units owned by Declarant.

ARTICLE IX

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

9.1 Creation of Lien and Personal Obligation for Assessments and Maintenance Charges. The Declarant, for all Assessable Property which is subject to a Declaration of

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Annexation, hereby covenants and agrees, and each Owner by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to accept and be subject to mandatory Membership in the Council of Co-Owners, and to pay to the Council of Co-Owners the following: (1) Annual Assessments, (2) Special Assessments, (3) Maintenance Charges, (4) Special Use Fees and (5) Remedial Assessments incurred by the Owner or any Resident occupying the Owner's Unit or any portion thereof. The Annual Assessments, Special Assessments, Maintenance Charge, Special Use Fees and other fees, fines and charges which are the obligation of an Owner hereunder, together with interest, costs, collection agency fees, and reasonable attorneys' fees of the Council of Co-Owners incurred in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Unit against which each such Annual, Special Assessment, Maintenance Charge or other charge is made and against the Unit of an Owner liable for a Special Use Fee or other charge and, in addition, shall be the personal obligation of the Owner of such Unit at the time when such payment becomes due and payable. The personal obligation for delinquent Assessments and other charges shall not pass to the successors in title of the Owner unless expressly assumed by them; however, the Unit shall remain subject to the lien of the delinquent Assessment except as provided in Paragraph 10.3 below. No Assessments may be charged against any Unit which is not covered by a Declaration of Annexation; however, Maintenance Charges may be assessed against any property initially covered by or annexed under this Declaration. No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, but not limited to, by nonuse of the Common Elements or abandonment of his Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution, abatement or set-off shall be allowed by reason of any action or failure to act of the Board or Council of Co-Owners.

9.2 Annual Assessments. In order to provide for the uses and purposes specified in Article XI hereof, including the establishment of replacement and maintenance reserves, in each year, commencing with the first Assessment Period, the Board shall prepare and adopt a budget and shall assess against all Units an Annual Assessment. Subject to the provisions of Paragraph 9.4 hereof, the amount of the Annual Assessment shall be in the sole discretion of the Board, but shall be determined with the objective of fulfilling the Council of Co-Owners's obligations under this Declaration and providing for the uses and purposes specified in Article XI.

9.3 Uniform Rate of Annual Assessment. No Annual or Special Assessments shall be levied on any property until a Declaration of Annexation has been recorded with respect to those Units. The amount of any Annual or Special Assessment against each Unit shall be fixed at an equal amount.

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9.4 Maximum Annual Assessment. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment," which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

(a) Until January 1, 1998, the Maximum Monthly Assessment against each Owner shall be One Hundred Forty and No/100 (\$140.00) per each Class A Membership.

(b) From and after January 1, 1998, the Maximum Annual Assessment shall be increased effective January 1 of each year without a vote of the Membership by a maximum of twenty-five percent (25%) of the Maximum Annual Assessment for the previous year.

(c) From and after January 1, 1998, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection (b) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

(d) Notwithstanding the foregoing limitations described in (a), (b) and (c) above, in the Board's discretion, the Maximum Annual Assessment may be increased as required by increased utility and water costs charged to the Council of Co-Owners.

9.5 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Council of Co-Owners may levy a Special Assessment 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 Limited Common Elements or General Common Elements, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose. The provisions of this Paragraph are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

9.6 Rate of Assessment. Subject to Section 9.4 hereof and this Section 9.6, the amount of the Annual Assessments and Special Assessments shall be fixed by the Board, in its sole discretion.

(a) Except as set forth hereinbelow, both annual and special assessments must be fixed at a uniform rate for all Units within the Covered Property and may be collected on a monthly basis.

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(b) Notwithstanding anything contained herein to the contrary, Declarant shall pay only twenty-five percent (25%) of the Annual Assessments for each Unit owned by the Declarant which is within the Covered until the earlier of:

- (i) the initial conveyance of a Unit thereon to a different Owner; or
- (ii) completion of dwelling unit as evidenced by the issuance of a certificate of occupancy therefor.

(c) Notwithstanding anything contained herein to the contrary, during any period when Declarant is paying reduced Assessments pursuant to this Section, Declarant shall contribute to the Council of Co-Owners such funds as may be required from time to time to meet any budget deficit which results from Declarant having paid such reduced Assessments pursuant to this Section. Declarant may contribute in-kind materials or services which have a value which is not less than any amount owed by the Declarant to the Council of Co-Owners in lieu of payments of its reduced Assessments or funding of any Council of Co-Owners budget deficit.

9.7 Notice and Quorum for any Action Authorized Under Paragraphs 9.4 and 9.5. Written notice of any meeting called for the purpose of taking any action authorized under Paragraphs 9.4 and 9.5 shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice 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 sixty (60) days following the preceding meeting.

9.8 Establishment of Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence (a) upon the recording of the first Declaration of Annexation; or (b) upon such later date as the Board shall determine and shall terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by recording with the County Recorder of Maricopa County, Arizona, an instrument specifying the new Assessment Period.

9.9 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments, provided that said procedures are not inconsistent with the provisions hereof. Annual Assessments and Special Use Fees may be collected on a monthly, quarterly or annual basis as

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determined by the Board and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Council of Co-Owners approving the Special Assessment. The failure of the Council of Co-Owners to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days' written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Council of Co-Owners, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. Each Member shall be obligated to inform the Council of Co-Owners in writing of any change of address. The Council of Co-Owners shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Units shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to Paragraph 9.3 during the Assessment Period, he shall notify the Council of Co-Owners, but his failure to notify the Council of Co-Owners shall not relieve him of the liability for such amounts. The amount of the Annual Assessments and Special Use Fees against Members who become such during an Assessment Period due to the recordation of a Declaration of Annexation shall be prorated and such new Member shall not be liable for any previously levied Special Assessments.

9.10 Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid within thirty (30) days from the date due shall be deemed delinquent and shall bear interest from the delinquent date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum, or (b) the rate set by the Board, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Council of Co-Owners in collecting the same. In addition, the Board may charge a late fee for all delinquent payments. The Board may also record a Notice of Delinquent Assessment against any Unit as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Council of Co-Owners for the Council of Co-Owners's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Council of Co-Owners secured by the Assessment Lien. The Council of Co-Owners shall not be obligated to release any notice recorded pursuant to this Paragraph until all Delinquent Assessments, interest and collection costs have been paid in full, whether of not all of such amounts are set forth in the Notice of Delinquent Assessment.

9.11 Evidence of Payment of Assessments. Upon receipt of a written request, and within a reasonable period of time thereafter, the Council of Co-Owners shall issue to the requesting party a written certificate stating (a) that all Annual and Special Assessments,

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Special Use Fees and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided in Paragraph 9.10 above) have been paid with respect to any specified Unit as of the date set forth in such certificate, or (b) if such have not been paid, the amounts due and payable as of such date. The Council of Co-Owners may make a reasonable charge for the issuance of such certificate. Any such certificate shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Unit in question.

9.12 Remedial Assessments. Pursuant to this Declaration, the Board may levy an assessment against any Unit to reimburse the Council of Co-Owners for costs incurred in bringing such Unit and its Owners into compliance with the provisions of this Declaration or the Council of Co-Owners Rules. Remedial Assessments shall be due ten (10) days after the Board gives written notice thereof to the Owner subject thereto. The provisions of the Section titled "Notice and Quorum for any Action Authorized Under Paragraphs 9.4 and 9.5" of this Article with respect to approval of Special Assessments shall not apply in the case of Remedial Assessments.

9.13 Capitalization of Council of Co-Owners. Upon acquisition of title to a Unit by the first Owner thereof, other than Declarant, a contribution shall be made by or on behalf of the Owner to the working capital of the Council of Co-Owners in an amount equal to two (2) months of Common Expense assessment for that year. This amount shall be in addition to, not in lieu of, the Annual Assessment and shall not be considered an advance payment of such Annual Assessment. This amount shall be deposited into the purchase and sale escrow and disbursed therefrom to the Council of Co-Owners for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

ARTICLE X

ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND ASSESSMENT LIEN

10.1 Council of Co-Owners as Enforcing Body. As provided in Paragraph 14.2, the Declarant, the Council of Co-Owners, the Kierland Greens Design Review Committee and the Members shall have the right to enforce the provisions of this Declaration.

10.2 Council of Co-Owners's Remedies to Enforce Payment of Assessments. If any Member fails to pay the Annual or Special Assessments, Remedial Assessments, Special Use Fees or Maintenance Charges when due, the Council of Co-Owners may enforce the payment thereof by taking either or both of the following actions,

concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Council of Co-Owners does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual, Special or Remedial Assessments, Special Use Fees or Maintenance Charges;

(b) Foreclose the Assessment Lien against the Unit in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Unit may be redeemed after foreclosure sale as provided by law. The Council of Co-Owners may bid on the subject property at such a foreclosure sale.

Notwithstanding subordination of an Assessment Lien as described in Paragraph 10.3, the delinquent Member shall remain personally liable for the Assessments and related costs after his Membership is terminated for foreclosure or deed in lieu of foreclosure or otherwise.

10.3 Subordination of Assessment Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has lent funds with the Unit as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Unit. Sale or transfer of any Unit shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or a deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Unit free of the Assessment Lien for all Annual, Special and Remedial Assessments and Maintenance Charges and Special Use Fees that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided, however, that such mortgage or deed of trust foreclosure sale purchaser or grantee shall take title subject to all Annual, Special and Remedial Assessments, Special Use Fees, Maintenance Charges and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

ARTICLE XI

USE OF FUNDS; BORROWING POWER

11.1 Purposes for Which Council of Co-Owners's Funds May Be Used. The Council of Co-Owners shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source for the common good and benefit of Kierland Greens and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any kind and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without Kierland Greens, which may be necessary, desirable or beneficial to the general common interests of Kierland Greens, the Members and the Residents. The following are some, but not all, of the areas in which the Council of Co-Owners may seek to aid, promote and provide for such common benefit; social interaction among Members and Residents, maintenance of landscaping on Common Elements and public rights-of-way, maintenance of equestrian trails, washes and drainage areas within and adjoining Kierland Greens, recreation, liability insurance, communications, ownership and operation of recreational and other facilities, vehicle storage areas, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Council of Co-Owners. Subject to this Declaration and the Articles and Bylaws, the Council of Co-Owners may expend its funds in any manner permitted under the laws of the State of Arizona.

11.2 Borrowing Power. The Council of Co-Owners may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate.

11.3 Council of Co-Owners's Rights in Spending Funds From Year to Year. The Council of Co-Owners shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any remaining balances. The Council of Co-Owners shall not be obligated to reduce the amount of an Annual Assessment or Special Use Fee in the succeeding year if a surplus exists from a prior year and the Council of Co-Owners may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Council of Co-Owners and the accomplishment of its purposes.

11.4 Eminent Domain. The term "taking" as used in this Paragraph shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a

threatened taking of all or any portion of the Limited Common Elements or the General Common Elements, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Council of Co-Owners. In the event of a total or partial taking, the Board may, in its sole discretion, retain any award in the general funds of the Council of Co-Owners or distribute pro rata all or a portion thereof to the Owners and all holders of liens and encumbrances, as their interest may appear of record, at a uniform rate per Membership.

11.5 Insurance.

11.5.1 Authority to Purchase. The Council of Co-Owners shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Elements or upon other areas maintained by the Council of Co-Owners, in the total amount of not less than One Million Dollars (\$1,000,000.00). If reasonably available, the Council of Co-Owners shall obtain officers and directors liability insurance in an amount deemed prudent by the Board. In addition, the Council of Co-Owners may carry any other insurance coverage which the Board in its discretion deems necessary or desirable. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance.

11.5.2 Master Hazard Insurance. The Council of Co-Owners shall obtain and continue in effect a master or blanket policy of multi-peril insurance on the Covered Property, providing at a minimum fire and extended coverage and all other coverage in the kinds and amounts required by FHLMC, FNMA, FHA or VA regulations, as amended from time to time, said coverage obtained on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of all improvements in the Covered Property. Such policy shall contain extended coverage and replacement cost endorsements, if available, and may also contain vandalism and malicious mischief coverage, stipulated amount clause and a determinable cash adjustment clause or a similar clause to permit cash settlement covering the full value of the improvements in the Covered Property in the event of destruction and a decision not to rebuild pursuant to this Declaration. It is the intent of this Section to generally set forth the insurance requirements for the Covered Property which are, at all times, to comply with FHLMC, FNMA, FHA or VA requirements, to the extent any of all of those agencies are involved in insuring any Mortgage Loan for any Unit within the Covered Property. Because the insurance requirements of such agencies are lengthy and subject to change from time to time, it is impractical to set forth all of those requirements

herein. Therefore, the Council of Co-Owners, Board and Owners shall at all times carry, maintain in good standing and pay for al hazard, liability, fidelity and other insurance policies, binders and bonds required by FHLMC, FNMA, FHA or VA regulations or guidelines, as such requirements change from time to time, and shall provide satisfactory evidence thereof promptly to any First Mortgagee or any insurer or guarantor of any First Mortgage which requests such evidence. All such policies, binders and bonds shall comply with and be consistent in form and substance with all such FHLMC, FNMA, FHA or VA requirements as they change from time to time, and shall include all mortgage clauses and endorsements of any kind or nature required by FHLMC, FNMA, FHA or VA or their regulations or guidelines as such requirements change from time to time.

11.5.3 Individual Responsibility. Unless otherwise provided in a recorded Declaration of Annexation or other declaration approved by the Declarant, it shall be the responsibility of each Owner and Resident or other person to provide for himself insurance on his property interests within Kierland Greens, including, but not limited to, his additions and improvements thereon, furnishings and personal property therein, his personal liability to the extent not covered by the property and public liability insurance obtained by the Council of Co-Owners, if any, and such other insurance as such person desires. No person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the casualty insurance maintained by the Council of Co-Owners in the event of damage to the improvements or fixtures on the Common Elements or Limited Common Elements. Neither the Council of Co-Owners nor any Board Member nor the Declarant shall be liable to any person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Council of Co-Owners or if the amount of insurance is not adequate.

11.5.4 Insurance Claims. The Council of Co-Owners is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Council of Co-Owners and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Council of Co-Owners in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Council of Co-Owners. All proceeds from insurance acquired by the Council of Co-Owners shall be payable to the Council of Co-Owners. Any proceeds resulting from damage to the Limited Common Elements or the General Common Elements shall be used to repair the damage, unless otherwise approved by a majority of the votes of each class of Members at a meeting called for such purpose. Any excess proceeds may be retained by the Council of Co-Owners as reserves or to reduce future assessments or, if distributed to Members, such

proceeds shall be distributed to Members and their mortgagees as their interests may appear of record at a uniform rate per Membership.

11.6 Fidelity Bonds. The Board, acting on behalf of the Council of Co-Owners, shall obtain and maintain at all times adequate fidelity bond coverage to protect against dishonest acts on the part of officers, directors and employees of the Council of Co-Owners and all others who handle, or are responsible for handling, funds held or administered by the Council of Co-Owners, whether or not such officers, directors, employees or others receive compensation for services they render to or on behalf of the Council of Co-Owners. Any independent management agent which handles funds for the Council shall also obtain (and pay for) such fidelity bond coverage with respect to its own activities (and those of its directors, officers and employees receiving compensation for services rendered.) Such fidelity bond: (a) shall name the Council as obligee; (b) shall be issued by one or more companies authorized to issue such bonds in the State of Arizona; and (c) shall be in an amount sufficient to cover the maximum total of funds reasonably expected by the Board to be in the custody of the Council or such agent at any time while such bond is in force, but in no event shall the amount of such fidelity bond coverage be less than the sum of three months' Annual Assessments on all Units, plus the total of dues held in the Council's reserves. Each such fidelity bond shall provide that the issuer thereof shall provide not less than ten (10) days' written notice to the Council and to each Eligible Mortgage Holder before such bond may be canceled or substantially modified for any reason.

11.7 Reserve Fund. From the Annual Assessments or Special Use Fees received by the Council of Co-Owners, the Board shall establish a reserve fund for the maintenance, repair and replacement of the Limited Common Elements or the General Common Elements.

ARTICLE XII

MAINTENANCE

12.1 Limited Common Elements, General Common Elements and Public Rights-of-Way.

12.1.1 Areas of Council of Co-Owners Responsibility. The Council of Co-Owners, or its duly delegated representative, shall maintain and otherwise manage all Limited Common Elements, General Common Elements, and the improvements thereon; provided, however, the Council of Co-Owners shall not be responsible for providing or maintaining the landscaping or structures on any Limited Common Elements which are

part of Units unless (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of Kierland Greens and (ii) the Council of Co-Owners assumes in writing the responsibility as set forth in a recorded instrument as hereinafter provided.

(a) The Council of Co-Owners shall maintain any landscaping and other improvements not located on Units which are within the boundaries of Kierland Greens and are identified herein as Common Elements intended for the general benefit of the Owners and Residents of Kierland Greens, except the Council of Co-Owners shall not be required to maintain (but may elect to maintain) areas which (i) the City of Phoenix, an improvement district or other government entity is maintaining, or are to be maintained by the Owners of a Unit pursuant to Paragraph 5.16.1 of this Declaration. Specific areas to be maintained by the Council of Co-Owners may be identified on recorded subdivision plats approved by the Declarant, in this Declaration and/or in deeds from the Declarant to the Council of Co-Owners or to a transferee of a Unit, but the failure to so identify such areas shall not affect the Council of Co-Owners's rights or responsibilities with respect to Limited Common Elements or the Council of Co-Owners's rights with respect to other areas intended for the general benefit of Kierland Greens. Notwithstanding anything to the contrary herein, the Board shall have discretion to enter into an agreement with the City of Phoenix to permit the Council of Co-Owners to upgrade and/or maintain landscaping on property owned by the City, or which is owned by the Council of Co-Owners, but is maintained by the City, whether or not such property is within Kierland Greens, if the Board determines such agreement benefits the Council of Co-Owners.

(b) Notwithstanding anything to the contrary herein, the Council of Co-Owners may assume responsibility for maintenance and management of certain retention or other common areas within Kierland Greens. Such maintenance and management responsibility shall not be effective unless (i) the Board assumes in writing the responsibility as set forth in a recorded instrument; and (ii) the additional maintenance area is dedicated to the Council of Co-Owners and such dedication is accepted in writing by the Council of Co-Owners. The costs and expenses for such maintenance and management shall be assessed against the Owners of Units within Kierland Greens.

(c) A portion of the Property which is located at the northeast corner of Greenway Parkway and Clubgate Drive is encumbered by an easement in favor of the public for purposes of installation, maintenance, repair and replacement of a public bicycle and pedestrian pathway which leads to a tunnel under Greenway Parkway. The Council of Co-Owners shall have responsibility for the maintenance and repair of the public pathway only, but shall have no responsibility for the design, installation, repair or maintenance of the tunnel.

12.1.2 Standard of Care. The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Elements and other properties maintained by the Council of Co-Owners; however, the Board shall be the sole judge as to the appropriate maintenance of all such areas, except that so long as Declarant owns any of the Covered Property or the Annexable Property, a vote by three-fourths (3/4) of the Board shall be required to reject, modify or defer any maintenance schedule or maintenance activity recommended to the Board by Declarant; provided, however, that KDRC shall have the right to enforce the terms of this Declaration in accordance with Section 17.15. The Common Elements, including, but not limited to, the swimming pools, recreational buildings, cabanas, trails, bike paths and any playground or other play areas or equipment furnished or maintained by the Council of Co-Owners shall be used at the risk of the user; and the Declarant and the Council of Co-Owners shall not be liable to any person or entity for any claim, damage, or injury occurring thereon or related to the use thereof.

12.1.3 Periodic Inspections. The Declarant shall have the right, but not the obligation, to conduct inspections and tests from time to time of all or any part of the Common Elements in order to ascertain the physical condition of the Improvements and determine whether maintenance, repair or replacement of any such Improvements are indicated. If the Declarant conducts such tests or inspections, it shall pay all costs of the tests or inspections, shall restore the affected portion of the Property to its condition immediately prior to the inspections and tests, and shall indemnify the Council of Co-Owners of any affected Dwelling Units from any damage resulting from such inspections or tests. The Council of Co-Owners may designate a representative to accompany the Declarant on such inspections. Declarant shall provide the Council of Co-Owners with copies of any written reports describing the results of any such inspections or tests. The Declarant shall have such rights of entry on, over, under, across and through the Property and the Common Elements as may be reasonably necessary to exercise the rights described in this Section 12.1.3.

12.1.4 Delegation of Responsibilities. In the event any subdivision plat, Declaration of Annexation, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Units will be responsible for maintenance of certain Limited Common Elements, General Common Elements or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of Kierland Greens for the Council of Co-Owners or for an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Council of Co-Owners to contract with others for the performance of the maintenance and other obligations of the Council of Co-Owners under this Article XII and, in order to promote uniformity and harmony of appearance, the

Board may also cause the Council of Co-Owners to contract to provide maintenance services to Owners of Units in exchange for the payment of such fees as the Council of Co-Owners and Owner may agree.

12.1.5 Inspection of Common Elements.

(a) Declarant may notify the Board when the Common Elements (including landscaping) for a particular Phase or some portion thereof have been completed. Within thirty (30) days after giving of such notice, Declarant and the Board (collectively referred to as "Parties") shall jointly request that a qualified engineer or architect (which term shall include "landscape architect," if the nature of the improvements warrants) employed by the City inspect the Common Elements Improvements as to which such notice has been given. If the City is unwilling or unable to provide an engineer or architect to make such inspection, the Parties shall jointly select an independent and qualified engineer or architect to perform the inspection. If the Parties are unable or fail to agree on the selection within thirty (30) days after the joint selection is requested, then each Party within the next thirty (30) days shall select a licensed engineer or architect and the persons so selected shall jointly select a third engineer or architect. If either of the Parties fail to select an engineer or architect within the time provided, then the failing Party shall be deemed to have irrevocably waived its right to select, and the inspection shall be performed by the engineer or architect selected by the other Party. If the engineers or architects selected by the Parties shall fail to select a third person within the time provided, then either Party may petition any court of competent jurisdiction for appointment of such a third person. The person(s) selected or appointed pursuant to this paragraph is referred to in this Section as the "Expert." Declarant shall pay the reasonable compensation of the Expert.

(b) Promptly upon the selection of the Expert as provided in Section 12.1.5(a), the Expert shall inspect the Common Element Improvements as to which notice has been given. The Parties may accompany the Expert during the inspection. The inspection shall be limited to a visual inspection, and Improvements shall not be uncovered. The Expert shall not be responsible for identifying latent defects. Promptly after the inspection is completed, the Expert shall submit a written report ("Report") to the Parties specifying the respects, if any, in which the Improvements do not conform to the plans and the specifications therefor. The Report shall constitute conclusive and binding evidence that, except as otherwise proved therein and except for latent defects, if any, the Improvements have been constructed in accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such Improvements, except to remedy any defects specified in the Report and except with respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.

(c) Declarant shall correct any defects in the Report, and the Expert shall reinspect such Improvements within thirty (30) days after request. Such reinspection shall be performed in the same manner as provided for the first inspection. Promptly after the reinspection is completed, the Expert shall submit another written report ("Reinspection Report") to the Parties specifying the defects specified in the Report which have not been corrected, if any, and if all such defects have been corrected the Reinspection Report shall state that the Improvements conform to the plans and specifications therefor. The Reinspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent defects, if any, the Improvements have been constructed in accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such Improvements, except to remedy any defects specified in the Reinspection Report, and except with respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.

(d) Additional inspections and Reinspection Reports shall be made, if necessary, all in accordance with and with the same effect as provided above.

(e) If the Improvements to be inspected are landscaping Improvements, then notwithstanding anything to the contrary contained herein, the Expert shall be a horticulturist or landscape architect. In all other respects, the provisions of this section shall apply to the inspection of landscaping Improvements.

(f) Within ten (10) days after all defects have been corrected, as evidenced by a Report or Reinspection Report, the Board shall accept the Improvements in writing; and if Declarant has posted a bond or other security ("Bond") to secure faithful performance to complete any of the Common Elements, and if the Council is the obligee under the Bond, the Board shall release in writing any and all rights under the Bond pertaining to the Improvements and shall execute any other documents as may be reasonably necessary to effect the release of the Bond.

12.2 Assessment of Certain Maintenance Costs. In the event that the need for maintenance or repair of Common Elements, structures and other property maintained by the Council of Co-Owners is caused through the willful or negligent act of any Owner, or that Owner's family, guests or tenants, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Unit is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Unit pursuant to Paragraph 12.1.3 in connection with a contract entered into by the Council of Co-Owners with an Owner for the performance of an Owner's maintenance responsibilities shall also become a party of such Assessment and shall be secured by the Assessment Lien as a Remedial Assessment.

12.3 Improper Maintenance and Use of Units. In the event any portion of any Unit or any Area of Exclusive Use is so maintained as to present a nuisance, or substantially detract from the appearance or quality of the surrounding Units, or other areas of Kierland Greens, or the adjoining golf course, golf course parking lot or public rights-of-way, which are substantially affected thereby or related thereto, or in the event any portion of a Unit or any Area of Exclusive Use is being used in a manner which violates this Declaration or any applicable Declaration of Annexation, or in the event the Owner of any Unit is failing to perform any of its obligations under this Declaration, any Declaration of Annexation, the Kierland Greens Rules or Design Guidelines, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto, give written notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Unit is subject and shall be secured by the Assessment Lien as a Remedial Assessment.

12.4 Easement for Maintenance Responsibilities. The Council of Co-Owners shall have an easement upon, across, over and under the Units and all other areas in Kierland Greens for the purpose of repairing, maintaining and replacing the Limited Common Elements, General Common Elements, Common Elements improvements, and other areas maintained by the Council of Co-Owners and for the purpose of performing all of the Council of Co-Owners's other rights, duties and obligations hereunder.

12.5 Damage, Destruction or Taking.

12.5.1 Restoration; Manner of Payment. In the event that any Buildings and/or other Improvements on the land are damaged or destroyed by fire or other casualty or disaster, or are taken by partial condemnation, 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, unless: (i) the condominium is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) eighty percent (80%) of the Unit Owners, including every Owner or a Unit or Limited Common Element which will not be rebuilt, vote not to rebuild. Such repairs, restoration or reconstruction shall be paid for out of any insurance or condemnation proceeds received on account of the damage, destruction or taking;

provided, however, that if the proceeds are not sufficient for such purpose, the deficiency shall be assessed as a Common Expense.

12.5.2 Plans for Restoration. Any such restoration or repair shall be performed substantially in accordance with the Declaration and the original plans and specification unless other action is approved by Eligible Mortgage Holders holding Mortgages on Units which have at least 51% of the votes of Units subject to Eligible Holder Mortgages.

12.6 Distribution of Proceeds Upon Termination. Upon termination and sale of the Property, proceeds shall be distributed in accordance with the fractional interests to the Owners and Mortgagees as their interest may appear.

12.7 Summary of Repair, Maintenance and Replacement Responsibility. A Summary of Repair, Maintenance and Replacement Responsibility is attached to this Declaration and marked Exhibit "B." The Summary is for the purpose of reference and convenience only and is not to be deemed to limit, modify or otherwise affect any of the provisions of the Declaration or to be used in determining the intent or content thereof.

ARTICLE XIII

DESIGN REVIEW COMMITTEE

13.1 Establishment. A Design Review Committee may, but need not be established and, if established, shall perform the functions set forth in this Declaration. The Committee shall adopt rules, regulations and guidelines for the performance of its duties, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration or any Declaration of Annexation. The Design Review Committee shall have sole and exclusive authority with respect to all approvals and use decisions regarding Units within Kierland Greens, subject only to any reviews or approvals by KDRC provided for in the Site Development Standards. The Design Review Committee, if established, shall consist of three regular members and not less than one alternate member. During the first five (5) years following the recordation of this document or until such time as the Declarant has relinquished its appointment rights, all members and alternates of the committee shall be appointed by the Declarant. Thereafter, the members of the Design Review Committee shall be appointed by a vote of a majority of the Board. Committee members shall be appointed to one (1) year terms (or until replaced). Design Review Committee appointments shall occur at the same time as the annual elections of the Board. In the event of a temporary or permanent vacancy on a Committee, an alternate member

selected by a majority vote of the Board shall serve as a replacement until the next appointment or until the regular Member is again available. Members of the Design Review Committee need not be architects, Owners or Residents and need not possess any special qualifications of any type. Committee members appointed by Declarant need not be Owners or Residents. The Declarant may voluntarily relinquish (either temporarily or permanently) its right to appoint all or some of the members of the Design Review Committee by recording an amendment to the Declaration executed by the Declarant alone. In the event no Design Review Committee is established as provided for herein, then the Board shall perform all functions of the Design Review Committee.

13.2 Meetings; Guidelines. The Design Review Committee shall keep a record of the minutes of all meetings. A quorum for any meeting shall consist of a majority of the regular members of the Committee and the concurrence of a majority of the regular Committee members shall be necessary for any decision of the Design Review Committee. Alternate member(s) may participate at any meeting in lieu of any absent regular member(s), may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Design Review Committee may promulgate Design Guidelines to be used in rendering decisions, including procedures for the preparation, submission and determination of applications for approval. The decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration, except as to matters which are subject to review by the KDRC pursuant to the Site Development Standards. Members of the Committee shall not be entitled to compensation for their services, unless otherwise approved by the Board.

The Design Guidelines shall interpret and implement procedures for the Design Review Committee's review of, and the standards for development within Kierland Greens, including, but not limited to, architectural design, placement of buildings, landscaping, plant selection, color schemes, exterior finishes and materials, signage, wall design and similar matters and shall have the same force and effect as the Council of Co-Owners Rules. The Guidelines may also include provisions requiring the establishment of landscaping on parcels pursuant to specific timetables.

13.3 Discretion of Committee. The Design Review Committee shall be under no duty or obligation to pass upon, approve or disapprove any structural stability matters or matters pertaining to the stability of footings or foundations or matters pertaining to geological conditions involved in any foundation or footings and may indicate on any plans or specifications or drawings or other materials or in any certificate that the Committee has not passed upon, approved or disapproved any such referred to matters. All actions of said Committee authorized under this Declaration, including without limitation, the approval or disapproval of plans, specifications, drawings, Unit plans,

grading plans and height, as well as other matters in which the Committee is authorized hereunder to act, shall be in the sole and complete discretion of said Committee. Neither the Design Review Committee nor any member thereof shall be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of

- (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective;
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (c) the development of any property within Kierland Greens;
- (d) the execution of any estoppel certificate, whether or not the facts therein are correct; or
- (e) the enforcement of this Declaration and the Committee's Design Guidelines;

provided, however, that with respect to the liability of a Committee member, such member has acted in good faith on the basis of such information as may be possessed by him. The approval by the Design Review Committee of any plans, specifications or other matter shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, specifications or other matter subsequently submitted for approval. Subject to Paragraph 13.1, the vote or written consent of a majority of its regular members, at a meeting or otherwise, shall constitute the act of the Design Review Committee.

13.4 Response Within Forty-five (45) Days. Any approval required under this Declaration by the Design Review Committee shall not be withheld unreasonably. Failure by such Committee to approve or disapprove a request within forty-five (45) days after such request is filed with the Committee (or within any shorter period of time set forth in the applicable Design Guidelines) shall waive the approval requirement. Notice of disapproval shall be written and it shall set forth the reason or reasons for the disapproval. Notwithstanding Paragraph 17.10, no request shall be deemed filed with the Committee until it is actually received by the Committee, and all submissions to the Committee shall be made by certified mail or personal delivery. In any event, after the expiration of one (1) year from the completion of construction of any structure, work, improvement or alteration, the said structure, work, improvement or alteration shall, in favor of purchasers or encumbrances in good faith and for value, be deemed to be in compliance with this Declaration and the applicable Design Guidelines, unless actual notice of non-compliance executed by the Design Review Committee shall appear of

record in the office of the County Recorder of Maricopa County, or a complaint has been filed to enforce compliance. Notwithstanding anything contained herein to the contrary, any review or approval by KDRC which may be required pursuant to the Site Development Standards, shall not be subject to this Section, but such reviews shall be subject to the provision of Section 6.4 herein.

13.5 Committee's Certificate. Any approval of any plans and specifications or other matter by the Design Review Committee given or made pursuant to the provisions of this Declaration which is evidenced by a certificate signed by at least a majority of the members of said Committee shall be irrevocable and not subject to change by such Committee. Any such certificate may be conclusively relied upon by all parties, including, but not limited to, any Owner, tenant or purchaser of any Unit or of any interest therein; by any lender taking any Unit as security; and by any title insurance company. Any such certificate may be recorded by said Committee in the office of the Maricopa County Recorder.

13.6 Fee. The Board may establish a reasonable processing fee to defer the costs of the Council of Co-Owners and the Design Review Committee in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

ARTICLE XIV

RIGHTS AND POWERS OF COUNCIL OF CO-OWNERS

14.1 Council of Co-Owners' Rights and Powers As Set Forth in Articles and Bylaws. In addition to the rights and powers of the Council of Co-Owners set forth in this Declaration, the Council of Co-Owners shall have such rights and powers as are set forth in its Articles and Bylaws, which shall include all rights and powers as may be reasonably necessary in order to effect the purposes of the Council of Co-Owners as set forth herein. After incorporation of the Council of Co-Owners, a copy of the Articles and Bylaws of the Council of Co-Owners shall be available for inspection by Members, prospective purchasers, mortgagees and other persons or entities with an interest in Kierland Greens at the office of the Council of Co-Owners during reasonable business hours.

14.2 Enforcement of Provisions of This and Other Instruments. The Council of Co-Owners, in the first instance, and the Design Review Committee, each as the agent and representative of the Owners or any Owner (including Declarant, so long as Declarant is an Owner), shall have the right (without obligation) to enforce, by any proceeding at

law or in equity, the Covenants set forth in this Declaration, the Articles, Bylaws, Kierland Greens Rules and Design Guidelines and any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Council of Co-Owners or by Declarant. The Council of Co-Owners is authorized to impose sanctions for violations without court approval. Such sanctions may include reasonable monetary fines and suspension of the right to vote or use any recreational facilities in the Common Elements as provided in Paragraph 4.1(b). In the event suit is brought or arbitration is instituted or an attorney is retained by the Council of Co-Owners or the Design Review Committee to enforce the terms of this Declaration or other document as described in this Paragraph 14.2 and the Council of Co-Owners or the Design Review Committee prevails, the Council of Co-Owners or Design Review Committee, as applicable, shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith, including, but not limited to, the Council of Co-Owners's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Unit. If the Council of Co-Owners and the Design Review Committee shall fail or refuse to enforce this Declaration or any provisions hereof for an unreasonable period of time after written request by a Member to do so, then any Member may enforce the provisions of the Declaration at his own expense by any appropriate action, whether in law or in equity, but regardless of the outcome, no expenses of the action shall be paid for by the Council of Co-Owners.

14.3 Contracts with Others for Performance of Council of Co-Owners's Duties. Subject to the restrictions and limitations contained herein, the Council of Co-Owners may enter into contracts and transactions with others, including the Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Council of Co-Owners or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer of committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested. Notwithstanding anything to the contrary contained herein,

during the period when the Declarant has a Class B vote, any professional management contract entered into by the Council of Co-Owners must be terminable with or without cause, upon no more than ninety (90) days written notice and without payment of any penalty.

14.4 Procedure for Change of Use of General Common Elements. Upon (a) adoption of a resolution by not less than three-fourths (3/4) of the Board stating that in the Board's opinion, the then present use of a designated part of the General Common Elements or of the Council of Co-Owner's interest in other Common Elements is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution of not less than eighty percent (80%) of the votes in each class of Members at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings structure and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the land.

14.5 Procedure for Alteration of Common Elements; Contracts Concerning the Common Elements. The Council of Co-Owners shall have the right to dedicate or transfer all or any part of the Common Elements to any public authority or utility as provided in Paragraph 4.1(c). In addition, the Council of Co-Owners shall have the right to change the size, shape or location of the Common Elements, to exchange the Common Elements for other property or interests which become Common Elements, and to abandon or otherwise transfer Common Elements (to a non-public authority) upon (i) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Elements is no longer in the best interests of the Owners and Residents and that the change desired shall be for their benefit and shall not substantially adversely affect them and (ii) the approval of such resolution by a majority of the votes of each class of Members, voting in person or by proxy, at a meeting called for such purpose. Alternatively, the Board, upon satisfaction of Subsection (i) above, may, in lieu of calling a meeting pursuant to Subsection (ii) above, notify in writing all Owners of the proposed transaction and of their right to object thereto and, if no more than ten percent (10%) of the Class A Members eligible to vote object in writing within thirty (30) days after receipt of such notice, the proposed transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

14.6 Enforcement by KDRC. Notwithstanding anything contained herein to the contrary, KDRC shall have the right, but not the obligation, to enforce the provisions of the Declaration; provided, however, the KDRC shall first give written notice of the violations to the Council of Co-Owners. The Council of Co-Owners shall have thirty (30)

days from the date it receives the notice to initiate enforcement action. If the Council of Co-Owners fails to enforce the provisions of this Declaration within the time specified, KDRC may enter the Property and cure the default without any liability for damages for wrongful entry, trespass or otherwise, or proceed at law or in equity against any person violating the provisions hereof. The Owner or the Council of Co-Owners shall be jointly and severally liable to KDRC for the cost of any such cure undertaken by KDRC and shall promptly reimburse KDRC in full within thirty (30) days of receipt of a statement for the work performed. No failure by KDRC to enforce this Declaration shall be deemed a waiver of the right to do so.

ARTICLE XV

TERM; AMENDMENTS; TERMINATIONS

15.1 Term; Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each. Subject to FHLMC, FNMA, FHA and/or VA approval as provided in Paragraph 17.11 below, this Declaration may be terminated at any time if seventy-five percent (75%) of the authorized votes of each class of Members shall be cast in favor of termination at an election duly called and held for such purpose and termination is approved in writing by KDRC. If the necessary votes are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Council of Co-Owners, with their signatures acknowledged. Thereupon, these Covenants shall have no further force and effect, and the Council of Co-Owners shall be dissolved pursuant to the terms set forth in its Articles. Any Council of Co-Owners funds remaining following such termination and dissolution shall be distributed to the Members and their mortgagees as their interest may appear at a uniform rate per Membership.

15.2 Amendments. Until the first sale of a Unit within the Property to an Owner for use and occupancy as a Dwelling Unit, this Declaration may be amended by recorded instrument duly executed by Declarant, without the necessity of calling a meeting of Owners or obtaining the consent of Owners. Thereafter, this Declaration may be amended either at any time during the initial twenty-year term or during any extension thereof, pursuant to Paragraph 15.1, by recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required, for a Certificate of Termination in Paragraph 15.1. The Certificate of

Amendment shall set forth in full the amendment adopted, and, except as provided hereafter, shall certify that at an election duly called and held for this purpose pursuant to the provisions of the Articles and Bylaws, the Members casting seventy-five percent (75%) of the votes cast at the election voted affirmatively for the adoption of the amendment. The Declaration may be amended with respect to all or any portion of the Units covered hereby. A Declaration of Annexation may be amended in the same manner as this Declaration, with the approval of seventy-five percent (75%) of the votes attributable to the Owners of all Units subject to the Declaration of Annexation. So long as there is a Class B Membership, any amendment or termination of this Declaration or any Declaration of Annexation shall require the approval of FHLMC, FNMA, FHA or VA, as applicable, if such agency has guaranteed or insured any loan on a Unit subject to the Declaration of Annexation. Within fifteen (15) years from the date of recording this Declaration and so long as the Declarant is the Owner of any Unit in Kierland Greens, this Declaration and any Declaration of Annexation may be amended or terminated only with the written approval of the Declarant. Thereafter, except as otherwise provided herein, any amendment to a Declaration of Annexation must be approved by the Board. This Declaration may not be amended to reduce or alter the rights of the Declarant without the approval of the Declarant. The Declarant alone may amend this Declaration at any time (a) to annex additional property hereunder as provided in Article XVI, (b) to exclude from Exhibit A any property not then covered by a recorded Declaration of Annexation, (c) to relinquish its right to appoint the members of the Design Review Committee as provided in Section 13.1, or (d) to amend as permitted in Section 15.3 hereafter. In addition, at any time, the Declarant alone shall have the right to amend the Declaration or any Declaration of Annexation to comply with applicable law or to correct any error or inconsistency in the Declaration or the Declaration of Annexation if the amendment does not adversely affect the rights of any Owner. Notwithstanding anything contained herein to the contrary, Sections 2.23, 2.32, 2.35, 2.37, 6.4, 14.6, 15.2 and 17.15 and Article XIII shall not be amended without the written consent of KDRC.

15.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or the Federal National Mortgage Corporation ("FNMA") and to further amend to the extent requested by any other federal, state or local government agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of the Amendment duly signed by or on behalf of the authorized agents of Declarant with their signatures

acknowledged, specifying the federal, state or local government agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all of the Kierland Greens and all persons having an interest therein.

ARTICLE XVI

ANNEXATION OF ADDITIONAL PROPERTY; WITHDRAWAL

16.1 Right of Annexation. Declarant hereby expressly reserves the right until seven (7) years from the date of recording of this Declaration to expand Kierland Greens, without the consent of any Owner, Mortgagee or any other party with an interest in Kierland Greens, by annexing all or any portion of the Annexable Property. The annexation of any or all of the Annexable Property shall be accomplished by the Declarant recording with the County Recorder of Maricopa County, Arizona, a Declaration of Annexation. Declarant shall not be obligated to annex all or any portion of the Annexable Property. The Declarant may annex non-contiguous property hereunder. A Declaration of Annexation annexing property as permitted hereunder may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration, In no event, however, shall any such document revoke, modify or add to the Covenants established by this Declaration and applicable to property previously covered by a Declaration of Annexation.

16.2 Description of the Annexation Property. The real property which is Annexable Property and which may be brought within the Covered Property is described as follows:

16.2.1 Phase One. Phase One shall be Building 9, inclusive, Units 1061 and 1063, inclusive, and Units 2061 through 2065, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one seventh (1/7).

16.2.2 Phase Two. Phase Two shall be Building 10, inclusive, Units 1066 and 1068, inclusive, and Units 2066 through 2070, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one fourteenth (1/14).

16.2.3 Phase Three. Phase Three shall be Building 17, inclusive, Units 1111, 1113, 1118 and 1120, inclusive, and Units 2111 through 2120, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one twenty-eighth (1/28).

16.2.4 Phase Four. Phase Four shall be Building 11, inclusive, Units 1071 and 1073, inclusive, and Units 2071 through 2075, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one thirty-fifth (1/35).

16.2.5 Phase Five. Phase Five shall be Building 19, inclusive, Units 1131, 1133, 1138 and 1140, inclusive, and Units 2131 through 2140, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one forty-ninth (1/49).

16.2.6 Phase Six. Phase Six shall be Building 12, inclusive, Units 1076 and 1078, inclusive, and Units 2076 through 2080, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7)Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one fifty-sixth (1/56).

16.2.7 Phase Seven. Phase Seven shall be Building 13, inclusive, Units 1081 and 1083, inclusive, and Units 2081 through 2085, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one sixty-third (1/63).

16.2.8 Phase Eight. Phase Eight shall be Building 16, inclusive, Units 1101, 1103, 1108 and 1110, inclusive, and Units 2101 through 2110, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one seventy-seventh (1/77).

16.2.9 Phase Nine. Phase Nine shall be Building 15, inclusive, Units 1096 and 1098, inclusive, and Units 2096 through 2100, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one eighty-fourth (1/84).

16.2.10 Phase Ten. Phase Ten shall be Building 14, inclusive, Units 1086, 1088, 1093 and 1095, inclusive, and Units 2086 through 2095, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one ninety-eighth (1/98).

16.2.11 Phase Eleven. Phase Eleven shall be Building 18, inclusive, Units 1121, 1123, 1128, 1130, inclusive, and Units 2121-2130, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-one hundred-twelfth (1/112).

16.2.12 Phase Twelve. Phase Twelve shall be Building 8, inclusive, Units 1056 and 1058, inclusive, and Units 2056 through 2060, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-one hundred-nineteenth (1/119).

16.2.13 Phase Thirteen. Phase Thirteen shall be Building 20, inclusive, Units 1141, 1143, 1148, and 1150, inclusive, and Units 2141 through 2150, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-one hundred-thirty-third (1/133).

16.2.14 Phase Fourteen. Phase Fourteen shall be Building 1, inclusive, Units 1001, 1003, 1008 and 1010, inclusive, and Units 2001 through 2010, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-one hundred-forty-seventh (1/147).

16.2.15 Phase Fifteen. Phase Fifteen shall be Building 7, inclusive, Units 1051 and 1053, inclusive, and Units 2051 through 2055, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-one hundred-fifty-fourth (1/154).

16.2.16 Phase Sixteen. Phase Sixteen shall be Building 2, inclusive, Units 1011, 1013, 1018 and 1020, inclusive, and Units 2011 through 2020, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-one hundred-sixty-eighth (1/168).

16.2.17 Phase Seventeen. Phase Seventeen shall be Building 6, inclusive, Units 1046 and 1048, inclusive, and Units 2046 through 2050, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-one hundred-seventy-fifth (1/175).

16.2.18 Phase Eighteen. Phase Eighteen shall be Building 3, inclusive, Units 1021, 1023, 1028 and 1030, inclusive, and Units 2021 through 2030, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-one hundred-eighty-ninth (1/189).

16.2.19 Phase Nineteen. Phase Nineteen shall be Building 5, inclusive, Units 1041 and 1043, inclusive, and Units 2041 through 2045, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately seven (7) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-one hundred-ninety-sixth (1/196).

16.2.20 Phase Twenty. Phase Twenty shall be Building 4, inclusive, Units 1031, 1033, 1038 and 1040, inclusive, and Units 2031 through 2040, inclusive, and shall include sufficient land, recreational amenities, garages, guest parking spaces, private drives, walkways, related facilities and use of public easements to serve adequately fourteen (14) Units, as shown on the Final Plat. When all of the proposed Buildings on the annexation property as shown on the Plat are constructed, the fractional interest attributed to each Unit shall be one-two hundred-tenth (1/210).

Notwithstanding anything contained herein to the contrary, Declarant may add or delete buildings from a phase or may otherwise modify the order of development of the Property without further amendment of this Declaration. Any such change shall be effective upon the recording of a Declaration of Annexation which identifies the Buildings and Units to be annexed and adjust the fractional interest of each Unit within the Covered Property.

16.2.21 Adjustment of Fractional Interest. In the event additional annexation property is brought within the Covered Property, the fractional interest of each Unit shall be adjusted as set forth in the subsection titled "Fractional Interest" of the

Section titled "Cubic Content Space" of the Article titled "Declaration of Condominium." The fractional interest shall be adjusted at the time a phase is annexed to the Covered Property.

16.2.22 Quality of Future Phases. All subsequent Buildings shall be consistent with Phase One in quality of construction.

16.2.23 Right and Duty in All Common Elements. Upon annexation, all Owners shall share equally in the right to use and duty to share the cost of all General Common Elements, including, but not limited to, swimming pools, spas and other recreation areas.

16.3 Annexation Procedures.

16.3.1 Declaration of Annexation. A Declaration of Annexation shall be a writing in recordable form which annexes this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall describe the land to be included, the Buildings to be erected or which are erected, shall describe the Units contained therein, shall publish and declare that such land and any Improvements thereon and the Owners and others having interest therein are brought within this Declaration and shall set forth the necessary adjustments in fractional interest of ownership of the Common Elements applicable to each Unit. Upon the recordation of such supplement to this Declaration in the Official Records of the County Recorder of Maricopa County, Arizona, any such subjection of Property therein to the provisions of this Declaration shall be effective automatically, as though originally included herein. A Declaration of Annexation may be designated as a Supplementary Declaration, or by another title.

16.3.2 Other Methods of Annexation. Notwithstanding the provisions of Subsection 16.3.1 of this Section, all or portions of the annexation property shall become Covered Property as to a particular phase upon the first event to occur of the following:

(a) The recordation of a deed of fee title to a Unit in such phase to an Owner by Declarant; or

(b) The recordation by the Declarant of a notice of substantial completion for the Units in such phase. The intent of the Declarant is that Phases Two through Twenty, inclusive, as set forth herein shall each become Covered Property and shall be subject to this Declaration upon satisfaction of either of the conditions set forth above, and that recordation of a declaration of annexation is not required. Upon annexation of the phase, however achieved, all obligations of the Owners, including, but

not limited to, the obligations to pay assessments, the date of commencement of assessments, and the Owners' right to vote, shall be governed in accordance with the terms of this Declaration. Notwithstanding the foregoing, any conveyance by Declarant to a grantee which includes an assignment of Declarant's rights under the Declaration shall not cause that phase in which the Unit is located to be submitted to the Declaration.

16.4 Annexation Without Approval and Pursuant to General Plan. All or any part of the annexation property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Council without the approval, assent or vote of the Council or its Members, provided that one of the annexation procedures covering the portion of the annexation property to be annexed, shall be completed; provided, however, no annexation procedure shall be effective pursuant to this Section more than ten (10) years subsequent to the recordation of this Declaration. The completion of one annexation procedure shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Council, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Units in said annexed real property shall be Members automatically. If a Mortgage on any Unit in Phase One is guaranteed or insured by the Veterans Administration, Federal Housing Administration, FHLMC or FNMA, then approval of that agency will be required for annexation.

16.5 Mergers, Consolidations or Affiliation. Upon a merger, consolidation or affiliation of the Council with another council, the Council's properties, rights and obligations may, by operation of law, be transferred to the surviving, consolidated or affiliated council, or, alternatively, the properties, rights and obligations of another council may, by operation of law, be added to the properties, rights and obligations of the Council. The surviving or consolidated Council may administer the covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants and restrictions established upon any other property as one plan. Management, maintenance and government of property not committed to a condominium may be affiliated with the management, maintenance and government of the Covered Property in order to achieve economies of scale. Such affiliation shall be approved by a majority of the Board. Any merger pursuant to this Section shall require prior approval of the Veterans Administration or Federal Housing Administration FHLMC, FNMA to the extent those agencies have guaranteed or insured any loan on the Covered Property.

16.6 Limitation Upon Annexation.

16.6.1 When Owner Approval Required. Notwithstanding the foregoing Sections of this Article, no annexation of additional real property to this Declaration, unless there has been approval thereof by a majority of the voting power of the Council, shall have the effect of either overburdening the common interests of the then existing Owners, except as set forth in this Declaration or of substantially increasing the Assessments of such Owners.

16.6.2 Substantial Completion Prior to Annexation. All Improvements to be constructed on any portion of the annexation property subsequently brought into the Covered Property will be substantially completed prior to the time such portion of the annexation property is irrevocably committed to the Condominium.

16.6.3 Declarant Responsibility. All taxes and other assessments relating to all or any portion of the annexation property brought into the Covered Property, covering any period prior to the time such portion of the annexation property is irrevocably committed to the Condominium shall be the responsibility of and shall be paid for by the Declarant.

16.7 Fidelity Bond Coverage. Upon annexation of additional property so that thirty (30) or more Units are within the Covered Property, the provisions of the Article titled "Use of Funds; Borrowing Power", Section titled "Insurance" and subsection titled "Fidelity Bonds" shall become effective.

16.8 Withdrawal. Notwithstanding any other provisions of this Declaration, Declarant reserves the right to amend this Declaration so long as it has the right to annex additional property pursuant to this Article, for the purpose of removing property then owned by the Declarant or its assignees from coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Property, provided such withdrawal is not unequivocally contrary to the overall scheme of development for the Property. Withdrawal of any portion of the Property or the Annexable Property from this Declaration shall not operate to withdraw such property from the Site Development Standards as herein defined without the written approval of the KDRC.

ARTICLE XVII

MISCELLANEOUS

17.1 Interpretation of the Covenants. Except for judicial construction, the Council of Co-Owners, by its Board and Design Review Committee, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Council of Co-Owners's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Covenants hereof.

17.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

17.3 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

17.4 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Council of Co-Owners (through its Board and Committee) shall have the right to adopt rules and regulations with respect to all other aspects of the Council of Co-Owners's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration or any applicable Design Guidelines.

17.5 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Maricopa County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presently envisioned or the complete development of Kierland Greens can or will be carried out, or that any land now owned or hereafter acquired by the Declarant is or will be subjected to this Declaration or any other declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is one used for a particular use, such use will continue in effect.

17.6 No Warranty of Enforceability. While Declarant has no reason to believe that any of the Covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such Covenants.

Any Owner acquiring a Unit in Kierland Greens in reliance on one or more of the Covenants shall assume all risks of the validity and enforceability thereof and by acquiring any Unit agrees that Declarant shall have no liability therefor.

17.7 References to the Covenants in Deeds. Deeds or any instruments affecting any part of Kierland Greens may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference to this Declaration is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

17.8 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and works in the plural shall include the singular.

17.9 Captions and Titles. All captions, titles or headings of the Articles and Paragraphs in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

17.10 Notices. If notice of any action or proposed action by the Board of or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City of Phoenix or Kierland Greens. This Paragraph shall not be construed to require that any notice be given if not otherwise required, and shall not prohibit satisfaction of any notice requirement in any other manner. If notice is made by mail, it shall be deemed to have been received twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Council of Co-Owners for the purpose of service of such notice, or to the address if the Unit owned by such person if no address has been given. Notice to the Board or to the Design Review Committee shall be delivered or sent certified mail to the office of the Council of Co-Owners.

17.11 Agency Approval. If this Declaration has been approved by FHLMC, FNMA, FHA or VA in connection with any loan programs made available by such agency, then as long as there is a Class B Membership, the dedication of Common Elements (except where such dedication is required by the City of Phoenix), the annexation of Annexable Property, and the termination or amendment of this Declaration

will require the prior approval of FHLMC, FNMA, FHA or VA, as applicable, unless the need for such approval has been waived by FHLMC, FNMA, FHA or VA.

17.12 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Council of Co-Owners unless approved by Members holding seventy-five (75%) percent of the outstanding votes. This Paragraph shall not apply, however, to (a) actions brought by the Council of Co-Owners to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided in Article X hereof, (c) proceedings involving challenges to taxation, or (d) counterclaims brought by the Council of Co-Owners in proceedings instituted against it. This Paragraph shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes necessary to institute proceedings as provided above.

17.13 Use of the Words "Kierland Greens" or "Kierland Greens Council of Co-Owners". No person shall use the words "Kierland Greens" or "Kierland Greens Council of Co-Owners" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the terms "Kierland Greens" or "Council of Co-Owners" in printed or promotional material where such term is used solely to specify the particular property is located within Kierland Greens.

17.14 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 assigned to each of them, as such Fractional Interest is defined in the subsection titled "Fractional Interest" of the Section titled "Cubic Content Space" of the Article titled "Declaration of Condominium." 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 or in any way affect the title to any other Dwelling.

17.15 Enforcement. The Council or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Council 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. The Kierland

Design Review Committee (KDRC) of the Kierland Master Association, Inc., an Arizona non-profit corporation, shall have the right (but no obligation) to enforce the provisions of this Declaration. No failure by the KDRC, Council or an Owner to enforce this Declaration (or any part thereof) shall be deemed a waiver of the right to do so thereafter.

17.16 Mortgagee Protection.

17.16.1 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) and Owners (other than the Declarant of the individual Units have given their prior written approval, the Council of Co-Owners shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the Condominium. Notwithstanding the foregoing, as long as Arizona statutes require a greater proportion of, or one hundred percent (100%) of, Owners' and mortgagees' approval, such greater proportion shall prevail.

(b) Change 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 of each Unit in the Common Elements.

(c) Partition or subdivide any Unit.

(d) 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.

(e) 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.

17.16.2 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.

17.16.3 Notice to Mortgagees. Upon written request of a first Mortgagee, the Council shall give written notice of:

- (a) Any proceeding in eminent domain;
- (b) Any substantial damage or destruction to the Common Elements;
- (c) 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.

17.16.4 Other Rights of Institutional Mortgagees. Any Institutional Mortgagee or its Mortgage servicing contractor, shall, upon written request to the Council be entitled to:

- (a) Inspect the books and records of the Council during normal business hours;
- (b) Receive the annual financial statement of the Council ninety (90) days following the end of the Council's fiscal year; and
- (c) Receive written notice of all annual and special meetings of the Members or of the Board and 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.

17.16.5 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.

17.17 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 Condominium shall be adjusted proportionately pursuant to the subsection titled "Fractional Interest" of the Section titled "Cubic Content Space" of the Article "Declaration of Condominium."

17.18 Notification Upon Sale of a Condominium. At least ten (10) days prior to the consummation of any sale or other transaction which will result in a change in the record ownership of the fee interest in a Unit, the transferring Owner or Owners shall provide the following information to the Board of the Council of Co-Owners in writing:


- (a) The name of each transferor and transferee;
- (b) The Unit number and street address of the Unit to be transferred;
- (c) The mailing address of each transferee;
- (d) The name and address of the escrow holder, if any, for such transfer and the escrow number; and
- (e) The date on which the transfer is scheduled to take place.

The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date on which such notice is received by the Board, notwithstanding the transfer of title.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first above written.

CENTEX HOMES, a Nevada general
partnership,

By: Centex Real Estate Corporation, a Nevada
corporation, Its General Partner

By: 
Michael Traylor
Its: Division President

STATE OF ARIZONA)
) ss.
County of Maricopa)

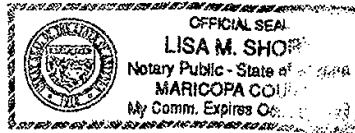
The foregoing instrument was acknowledged before me this 4 day of Dec., 1997 by MICHAEL TRAILOR, the President of the Phoenix Division of Centex Real Estate Corporation, a Nevada corporation, General Partner of Centex Homes, a Nevada general partnership, for and on behalf thereof.



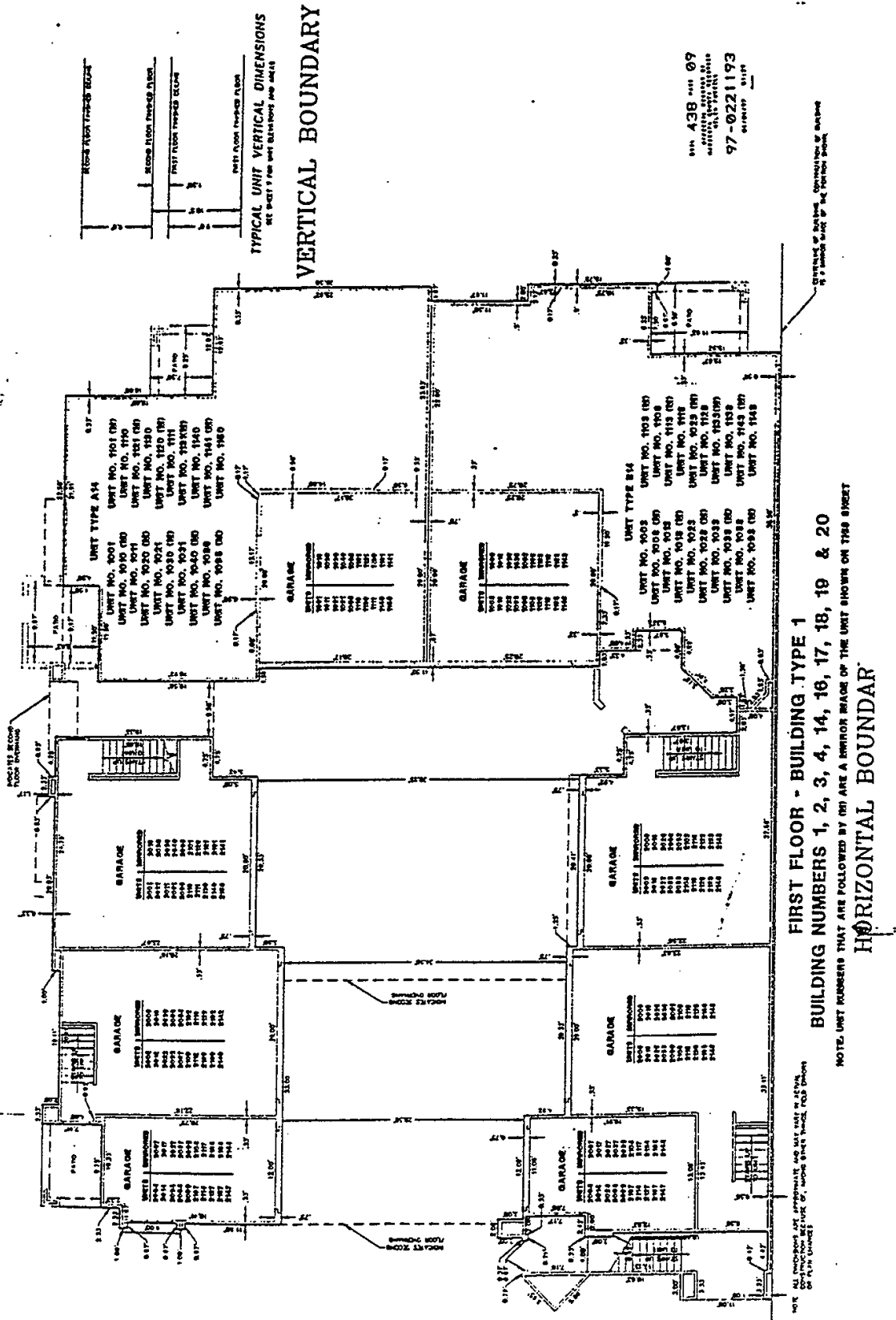
Lisa M. Short
NOTARY PUBLIC

My Commission Expires:

10-26-99

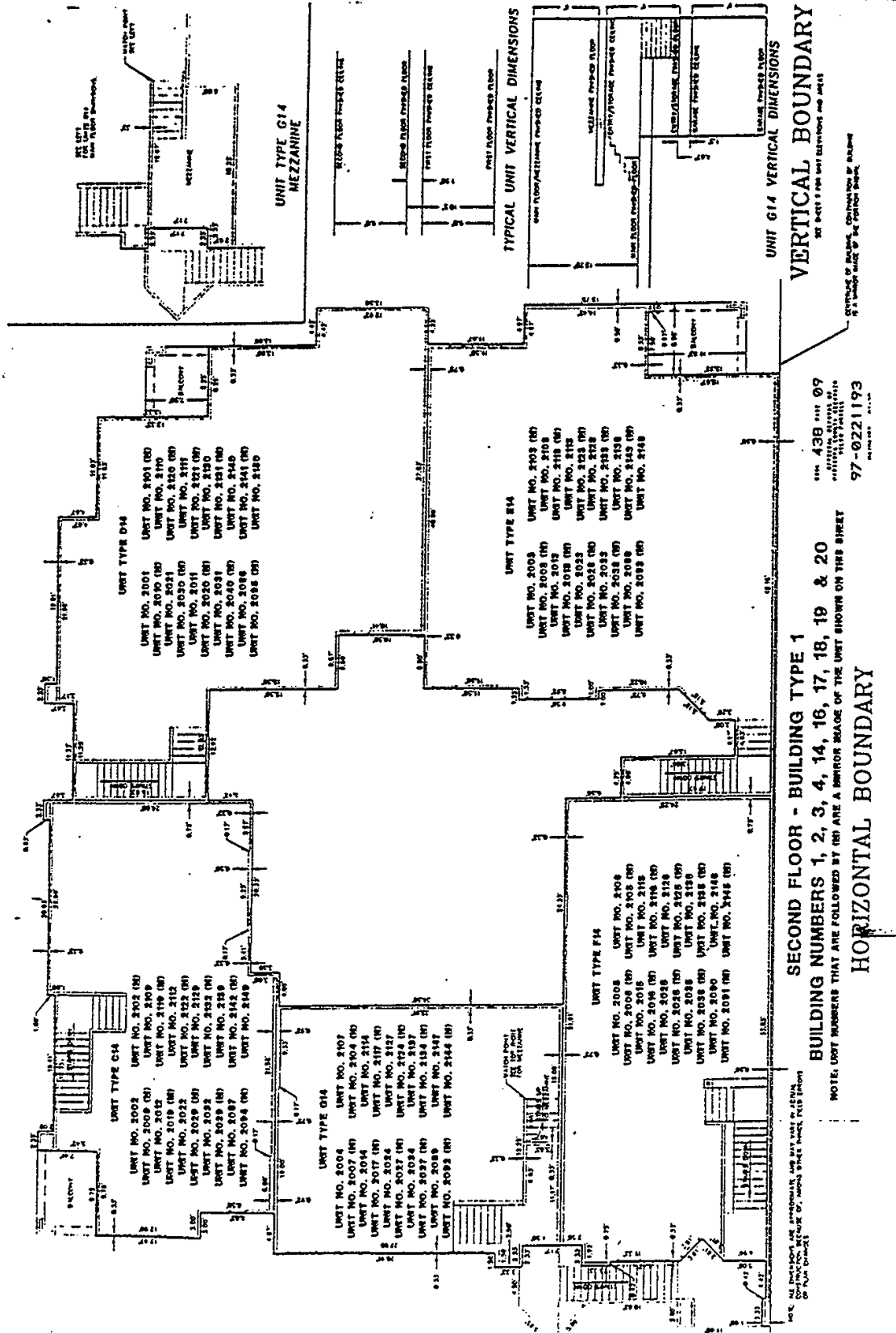


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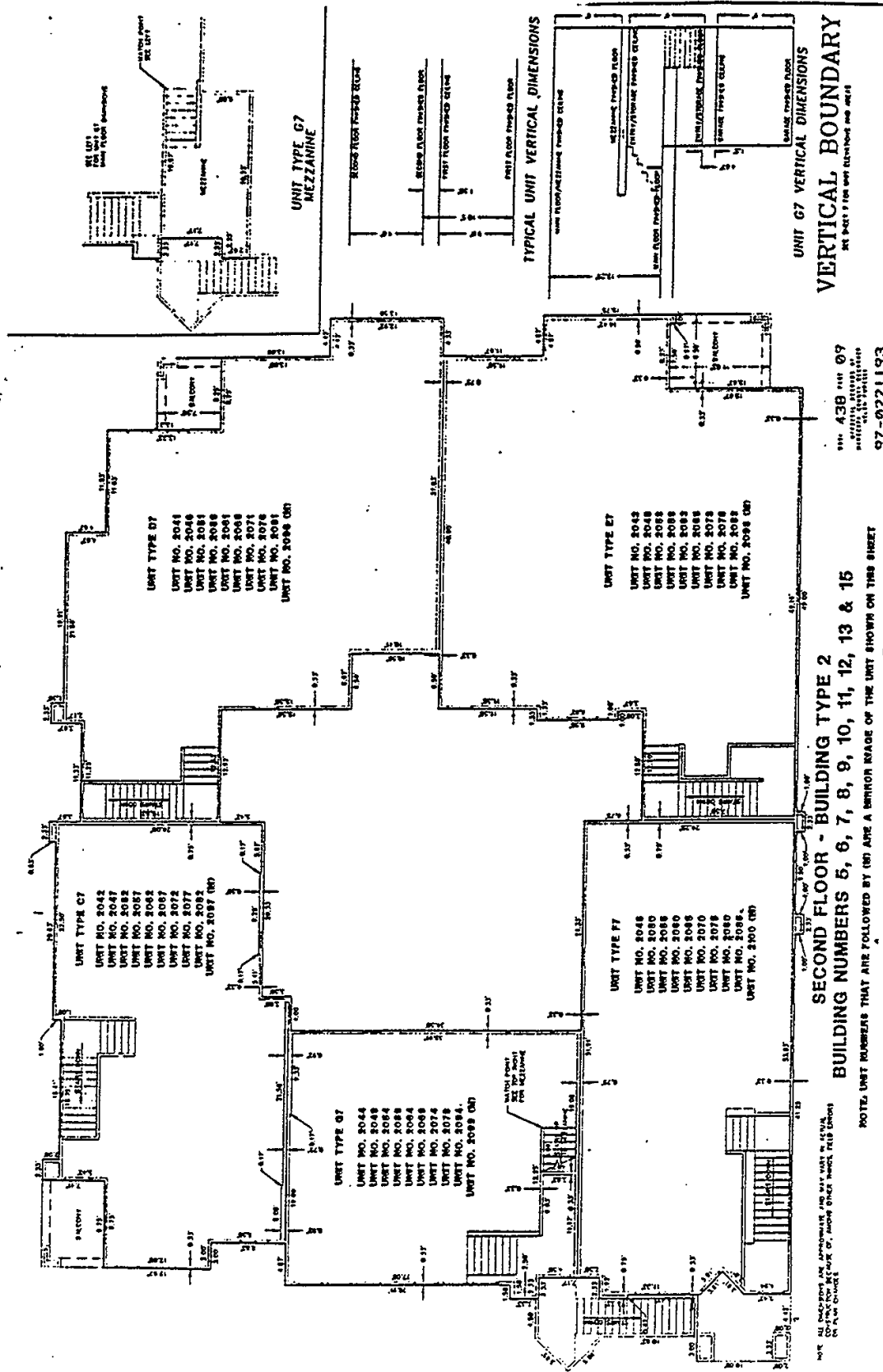


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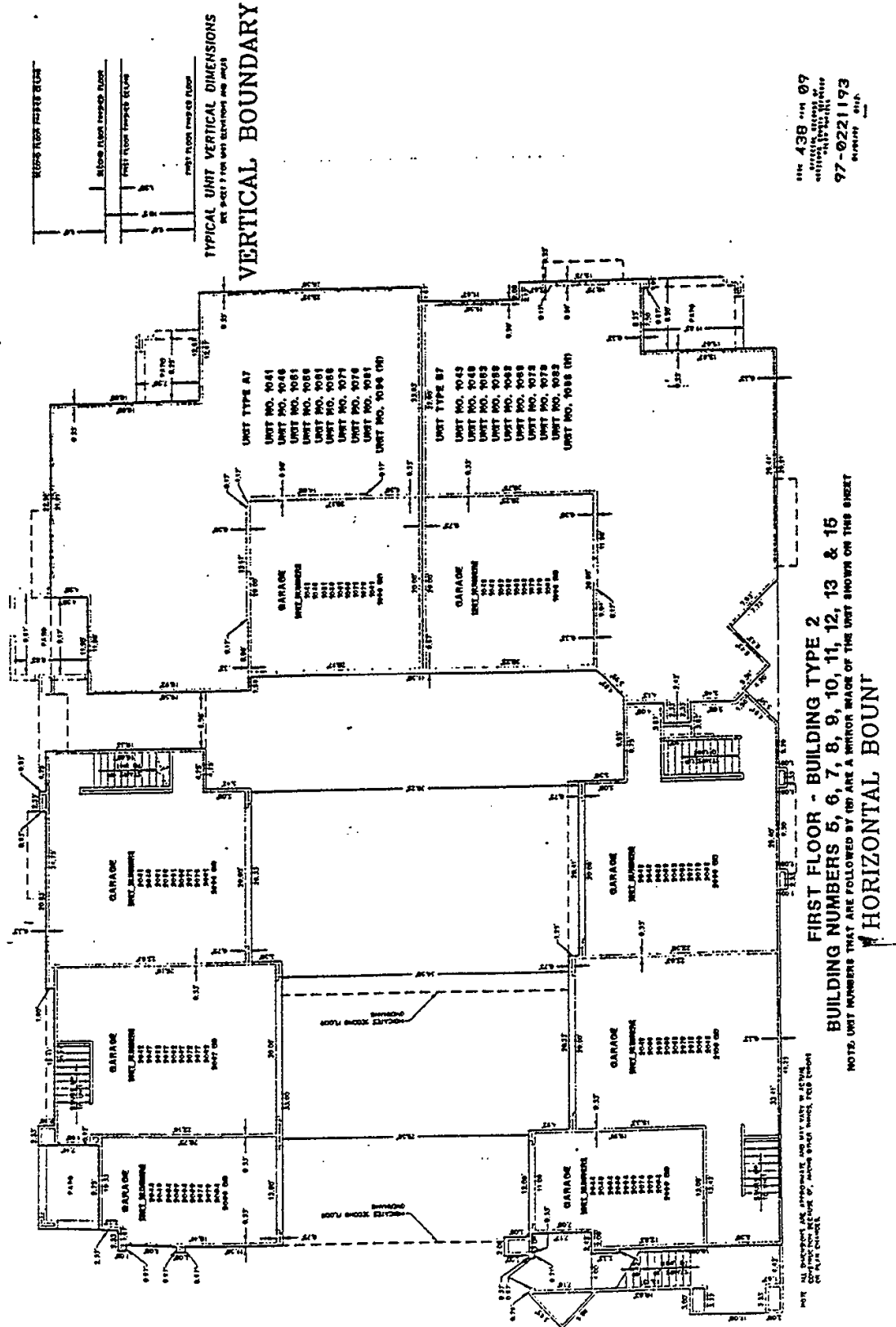
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SEE 438 FOR 07
 ADDRESS: 11111 N. 111TH AVENUE
 SUITE 100
 97-0221193
 SURVEY 01/11

EXHIBIT B**(Section 12.7)****SUMMARY OF REPAIR, MAINTENANCE
AND REPLACEMENT RESPONSIBILITY**

ITEM	COUNCIL OF CO-OWNERS' RESPONSIBILITY	UNIT OWNER'S RESPONSIBILITY
Plants and Landscaping	Maintain and replace all plants and landscaping on the Common Elements, whether General, Limited or Areas of Exclusive Use, except any plants owned by Unit Owners and located on courtyards, patios, landings or balconies, and except when made necessary by a Unit Owner's act.*	Maintain and replace plants owned by Unit Owners and located on courtyards, balconies and patios and, when made necessary by a Unit Owner's act*, maintain and replace plants and Landscaping on the General, Limited or Areas of Exclusive Use or, at Council's election, reimburse the cost thereof as a Remedial Assessment.
Components of Buildings containing Units, including roof, fireplace vents, exterior walls, foundations, pest control tubing or facilities	Maintain, repair and replace, except when made necessary by a Unit Owner's act and subject to cleaning requirements as set forth herein.	Maintain, repair and replace when made necessary by a Unit Owner's act or, at Council's election, reimburse the cost thereof as a Remedial Assessment.
Other buildings and Common Elements facilities and areas, including entryways, courtyards, flatwork, concrete, streets and trash container areas.	Maintain, repair and replace all, except when made necessary by a Unit Owner's act, and subject to cleaning requirements as set forth herein.	Maintain, repair and replace when made necessary by a Unit Owner's act or, at Council's election, reimburse the cost thereof as a Remedial Assessment.
Windows and shade screens which are not a part of a Unit and not part of a Unit's boundary (for example Windows in recreational facilities).	Maintain, repair and replace all, except when made necessary by a Unit Owner's act	Maintain, repair and replace when made necessary by a Unit Owner's act or, at Council's election, reimburse the cost thereof as a Remedial Assessment.

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ITEM	COUNCIL OF CO-OWNERS' RESPONSIBILITY	UNIT OWNER'S RESPONSIBILITY
Windows and shade screens which form part of a Unit's boundaries.	None.	Clean surfaces and replace when necessary, subject to Council's right to repair or replace if damage is not repaired by Owner within 72 hours of damage, and to reimbursement the cost thereof as a Remedial Assessment.
Damage from Errant Golf Balls	Repair and replace damage to exterior building walls and roofs caused by errant golf balls.	Repair and replace exterior shade screens and windows damaged by errant golf balls, subject to Council's right to repair or replace if damage is not repaired by Owner within 72 hours of damage, and to Council's right to reimbursement of the costs thereof as a Remedial Assessment. Repair and replace all damage to interior of a Unit caused by errant golf balls.
Air Conditioning Condenser System	Same as "Plants and Landscaping" until system is installed. Thereafter, treated as part of Unit and Unit Owner solely responsible.	Maintain, repair and replace when necessary.
Entry doors to Units and doors to Balconies	Maintain and repair surface and appurtenances (except locks and hardware) exposed to Unit exterior, except when made necessary by a Unit Owner's act.	Maintain and repair surface and appurtenances exposed to Unit interior and locks and hardware. Replace entire door as necessary.

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ITEM	COUNCIL OF CO-OWNERS' RESPONSIBILITY	UNIT OWNER'S RESPONSIBILITY
Balconies	Repair and replace, except when made necessary by a Unit Owner's act.	Maintain free of trash and debris in broom clean condition. Repair and replace when made necessary by a Unit Owner's act or, at Council's election, reimburse the cost thereof as a Remedial Assessment.
Patios and garages	Repair and replace structural elements, except when made necessary by a Unit Owner's act.	Maintain in a neat and attractive condition and otherwise in accordance with Article V of the Declaration. Maintain, repair and replace garage door opening and closing mechanism. Repair and replace when made necessary by a Unit Owner's act or, at Council's election, reimburse the cost thereof as a Remedial Assessment.

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ITEM	COUNCIL OF CO-OWNERS' RESPONSIBILITY	UNIT OWNER'S RESPONSIBILITY
<p>Plumbing system and plumbing components, fixtures and appurtenances</p>	<p>Maintain, repair and replace when located in the General, or Limited Common Elements or Areas of Exclusive Use. Maintain, repair and replace within a Unit when a malfunction has originated outside the Unit.</p>	<p>Maintain, repair and replace when located within a Unit, including sinks, disposals, toilets, tubs, and related fixtures and appurtenances on the air conditioning system or if installed by Unit Owner on a balcony or pad, except when made necessary by another unit Owner's act and except when a malfunction has originated outside the Unit. Maintain, repair and replace when located in Common Area (such as in recreational facilities) when made necessary by a Unit Owner's act or, at Council's election, reimburse the cost thereof as a Remedial Assessment.</p>
<p>Electrical system and electrical components, fixtures and appurtenances</p>	<p>Maintain, repair and replace when located in the General or Limited Common Elements or Areas of Exclusive Use, except on the air conditioning system, or with respect to fixtures installed by the Unit Owner in any patio or balcony and except when made necessary by a Unit Owner's Act. Maintain, repair and replace within a Unit when a malfunction has originated outside the Unit.</p>	<p>Maintain, repair and replace when located within a Unit, including switches, circuit breakers, appliances, light fixtures and lights and wall sockets. Maintain, repair and replace when located in the Common Elements when made necessary by a Unit Owner's act or, at Council's election, reimburse the cost thereof as a Remedial Assessment.</p>

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* As used in this Exhibit B, the phrases “except when made necessary by a Unit Owner’s act” and “when made necessary by a Unit Owner’s act” shall not be interpreted to relieve the Council of Co-Owners of its maintenance, repair or replacement responsibility, as the case may be, or to impose such responsibility on a Unit Owner. Rather, such phrases shall indicate that the Board shall have the right to exercise its right to levy a special assessment to reimburse the Council of Co-Owners for costs of maintenance, repair and replacement when the need therefor is caused by an Owner’s act, as provided in this Declaration. As used herein, Owner shall include any member of the Owner’s family household, any of its guests or invitees, and any tenant of its Unit. For purposes hereof, the phrase “Unit Owner’s act” includes plantings and landscaping in Limited Common Elements or Areas of Exclusive Use made with the consent of the Board pursuant to Article VI.