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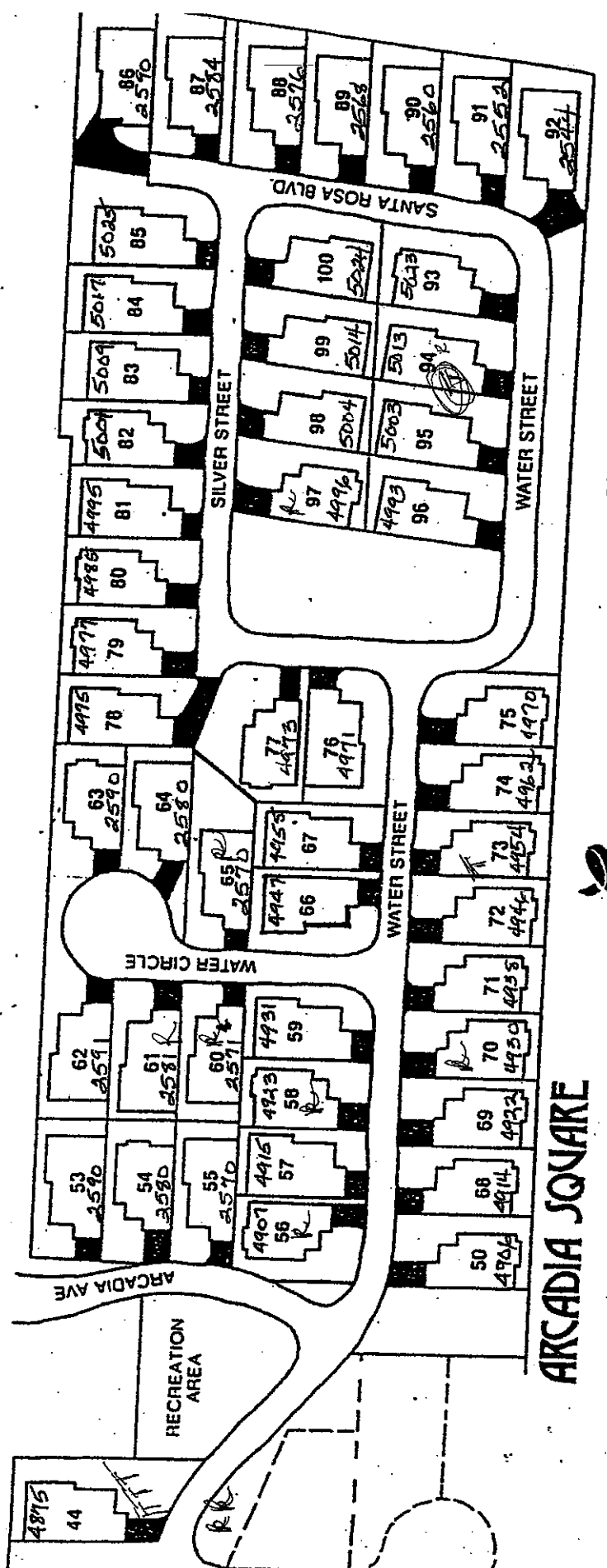
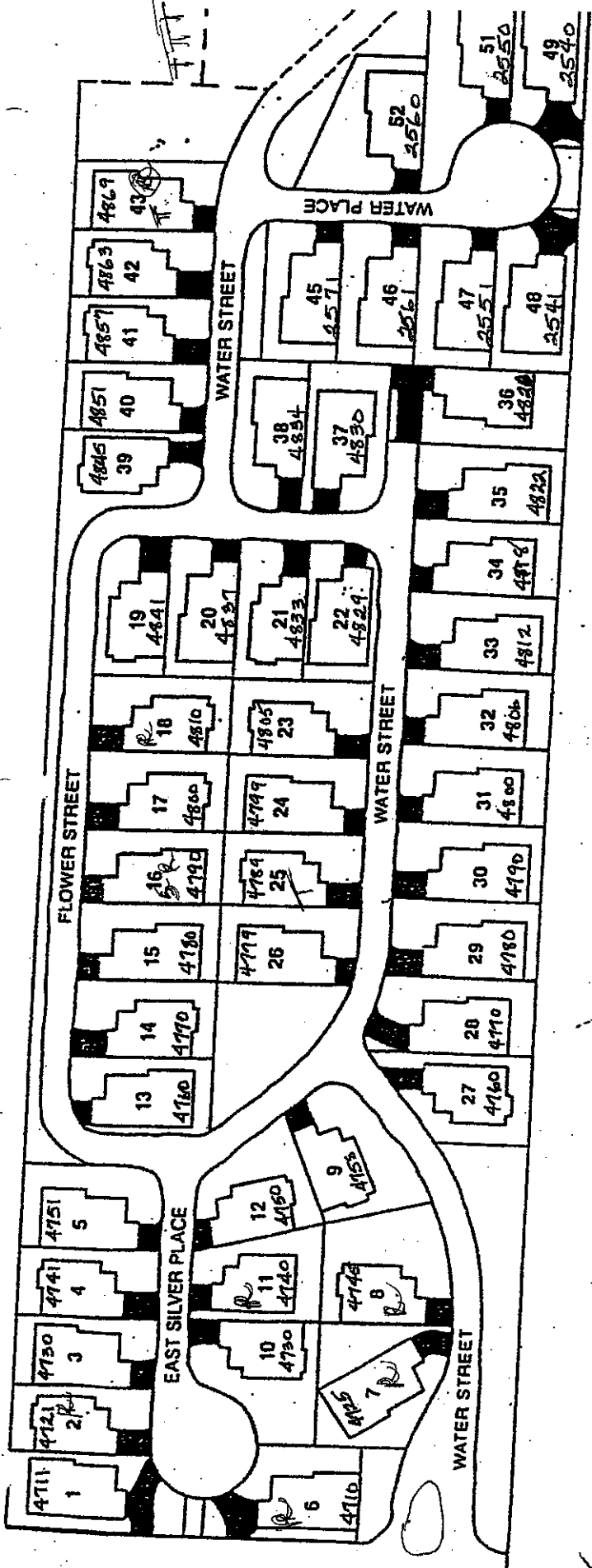
SECOND AMENDMENT AND RESTATEMENT OF
THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF ~~ARCADIA~~ SQUARE

Dated: JANUARY 27, 1983
Tucson, Pima County, Arizona

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ARCADIA SQUARE



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SECOND AMENDMENT AND RESTATEMENT OF
THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF ARCADIA SQUARE

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SECOND AMENDMENT AND RESTATEMENT OF THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
ARCADIA SQUARE

THIS SECOND AMENDMENT AND RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ARCADIA SQUARE, which Declaration of Covenants and Restrictions (the "Declaration") was originally recorded in Docket 6245, Pages 830-880, inclusive, records of Pima County, Arizona, is made this 27 day of JANUARY, 1983.

WHEREAS, the Homeowners desire to reestablish a general plan to govern ARCADIA SQUARE, Lots 1 through 100 inclusive, and common areas; and

WHEREAS, Section 7.02 of the Declaration recorded in Docket 6245, Pages 830-880, provides that the Declaration may be amended by an instrument in writing signed and acknowledged by the President and Secretary of ARCADIA SQUARE HOMEOWNERS ASSOCIATION, INC., certifying that such Amendment has been "approved by the vote or written consent of the then owners of not less than seventy-five percent (75%) of the dwelling units".

NOW, THEREFORE, the undersigned President and Secretary of ARCADIA SQUARE HOMEOWNERS ASSOCIATION, INC., hereby acknowledge and certify that this Second Amendment and Restatement of the Declaration of Covenants, Conditions and Restrictions of ARCADIA

SQUARE has been approved by the vote or written consent of the owners of not less than seventy-five percent (75%) of the dwelling units, and therefore declare that the Declaration recorded in Docket 6245, Pages 830-880, inclusive, and the First Amendment to the Declaration recorded in Docket 6266, Pages 57-66, inclusive, records of Pima County, Arizona, are hereby amended by revoking same in their entirety, and that this Second Amendment and Restatement of the Declaration of Covenants, Conditions and Restrictions of ARCADIA SQUARE is substituted therefor, and further declare that the "property" as hereafter defined, is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. The covenants, conditions, restrictions, uses, limitations, obligations, easements and equitable servitudes, charges and liens set forth herein shall run with the property; shall be binding upon all persons having or acquiring any interests in the property or any part thereof; shall inure to the benefit of every portion of the property and any interest therein; and shall inure to the benefit of and be binding upon the Homeowners, their successors in interest, each owner and his respective successors in interest, and may be enforced by the Board, by any owner or his successors in interest or by any entity having an interest in their enforcement.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned.

Section 1.01. "Articles" shall mean the Articles of Incorporation of the Association and amendments thereto which are filed in the Office of the Arizona Corporation Commission.

Section 1.02. "Association" shall mean and refer to ARCADIA SQUARE HOMEOWNERS ASSOCIATION, INC., an Arizona non-profit corporation.

Section 1.03. "Board" shall mean the Board of Directors of the Association.

Section 1.04. "By-Laws" shall mean the By-Laws of the Association, together with any amendments thereto.

Section 1.05. "Common Area(s) or Common Property" shall mean all real property designated as common areas on the plat by the Letter "A" and "B", recorded in Docket 32 at page 34 in the office of the Pima County Recorder, Pima County, Arizona (less any easements or property falling within the provisions of 3.01 and 3.02 hereof), whether improved or unimproved, owned by the Association for the common use and enjoyment of the owners. Common property shall also include any real or personal property now or hereinafter owned by or leased by the Association.

Section 1.06. "Declaration" or "Restrictions" shall mean this instrument and any amendments thereto.

Section 1.07. "Developer" shall mean CIENEGA CORPORATION, an Arizona corporation, its successors or assigns.

Section 1.08. "Dwelling Unit" shall mean the real property outlined on the plat and encompassed within the boundary lines surrounding the numbered designation for that dwelling unit as shown on the plat together with any improvements placed within the confines of said boundary.

Section 1.09. "Lot" shall mean and refer to any numbered parcel of real property shown on the plat.

Section 1.10. "Member" shall mean and refer to every person and/or entity who holds membership in the Association.

Section 1.11. "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a dwelling unit or any part thereof is encumbered and the term "first mortgagee" shall mean the holder of any mortgage under which the interest of any Owner of a dwelling unit is encumbered and which mortgage has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments.

Section 1.12. "Owner(s)" or "Homeowner" shall mean and refer to (1) the record Owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same has merged) of any dwelling unit or as the case may be (2)

the purchaser of a dwelling unit under a recorded executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any dwelling unit merely as security for the performance of an obligation, or a lessee or tenant of an Owner as defined above, or a purchaser or vendee under an executory contract of sale which has not "closed" and/or been recorded in the office of the County Recorder of Pima County, Arizona.

Section 1.13. "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 1.14. "Plat" shall mean the subdivision plat covering the Property which has been filed of record in Book 32 of Maps and Plats, at page 34, in the office of the Pima County Recorder, Pima County, Arizona.

Section 1.15. "The Rules" shall mean the rules adopted by the Board pursuant to the By-Laws.

Section 1.16. "The Property" or "The subdivision" shall mean all that real property identified in the plat.

ARTICLE II

USES AND RESTRICTIONS

¶ All property within the subdivision shall be held, used and enjoyed, subject to the following limitations and restrictions:

*Section 2.01. Private Residential Purposes. Dwelling units shall be occupied and used by the respective owners solely for private residential use for the homeowner, his/her family, tenants and social guests and for no other purpose. No gainful occupation, professional, trade or other non-residential use shall be conducted on any such property.

* Section 2.02. Renting. Owner shall have the right to lease or rent his/her dwelling unit; provided, however, that any lease agreement, including any agreement to lease the unit on a month to month basis, must be in writing and must provide that the failure of any lessee or tenant to comply with the Rules, By-Laws, Articles and provisions of this Declaration shall be a default under the lease.

* Section 2.03. Antennas and (Exterior Additions.) No exterior antennas or other devices for the transmission or reception of radio and television signals shall be erected or maintained without prior written authorization of the Board. The Board shall determine standards and height limitations for exterior television antennas. Further, no exterior devices or additions other than initially installed by Developer shall be constructed on the exterior of a dwelling unit (including the roof) without the written authorization of the Board.

Section 2.04. Insurance Rates. Nothing shall be done or kept on any dwelling unit or common areas which will increase the

rate of insurance on such property nor shall anything be done or kept on any dwelling unit or common areas which will result in the cancellation of insurance on any such property or which would be in violation of any law.

Section 2.05. Signs. No signs of any kind shall be displayed which are visible from neighboring property without the approval of the Board except:

A. Such signs as may be required by legal proceedings; and,

B. Such signs as may be approved by the Board indicating a dwelling unit is for sale or lease.

Where the Board's approval is required, it shall approve the nature, composition, number, size and location of all signs, unless excepted hereunder.

X Section 2.06. Animals. No animals of any kind shall be raised, bred, or kept, except that a reasonable number of generally recognized house or yard pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. No animal shall be allowed to become a nuisance and a "reasonable number" as used in this Section shall ordinarily mean no more than two pets per household.

✓ X Section 2.07. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any property within the subdivision, and no odors shall be permitted to arise

therefrom so as to render any such property or any portion thereof
unsanitary, unsightly, offensive or detrimental to any other
property in the vicinity thereof or to its occupants. No noise or
other nuisance shall be permitted to exist or operate upon such
property so as to be offensive or detrimental to any other pro-
perty in the vicinity thereof or to its occupants. Without limit-
ing the generality of any of the foregoing provisions, no exterior
speakers, horns, whistles, bells or other sound devices, except
security devices used exclusively for security purposes, shall be
located, used or placed on any such property without the prior
written approval of the Board.

Section 2.08. Native Growth and Planting. The native growth
and planting on all common areas shall not be removed or destroyed
unless written permission is first obtained from the Board. Own-
ers must obtain the Board's written approval before planting in
the common areas.

✓ Section 2.09. Violation of Rules. If any Owner, his/her
family or any licensee, tenant or lessee or invitee violates the
Board's rules and regulations, the Board may, in addition to any
other enforcement provisions contained herein, suspend the right
of such person to use the Recreational Facilities located in the
common areas, under such conditions as the Board may specify, for
a period not to exceed sixty (60) days for each violation. Before

invoking any such suspension, the Board shall give such person notice and hearing.

Section 2.10. Drainage. There shall be no interference with the established drainage pattern over any property, within the subdivision unless adequate provision is made for proper drainage conforming to all applicable rules, regulations, ordinances and drainage criteria and is approved by the applicable governing body or its duly appointed representative. For purposes hereof, "established drainage" is defined as the drainage which existed at the time the overall grading of the Property was completed, or which is shown on any plans conforming to applicable rules, regulations, ordinances and drainage criteria approved by the applicable governing body or its duly appointed representative.

X Section 2.11. Unsightly Articles. No unsightly articles shall be permitted to remain so as to be visible from adjoining dwelling units or from the street or public way. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories. Any and all items stored in a carport or garage area shall be stored so as to conceal the same from view from adjoining property or from the streets or public way. Grass, shrub or tree clippings and all machinery, storage piles, wood piles, garbage or trash containers shall be kept within an enclosed structure or

appropriately screened from view of adjoining property or from streets or public way except when necessary to effect such collection. The Board shall have sole discretion in determining if any activity by an Owner is in violation of this Section 2.11.

X Section 2.12. Trash Containers. No garbage or trash shall be placed or kept on any property within the subdivision except in covered containers of a type, size and style which have been approved by the Board. All rubbish, trash or garbage shall be removed from the dwelling units and shall not be allowed to accumulate thereon. No incinerators shall be allowed.

X Section 2.13. Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of any of them shall have the right upon reasonable notice to the owner of a dwelling unit to enter upon and inspect any property within the subdivision (except the interior of dwelling units), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 2.14. Mail Boxes. The Board shall determine the location, color, size, design, lettering and all other particulars of all mail and paper delivery boxes, and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

Section 2.15. Vehicles. The use of all vehicles, including but not limited to trucks, automobiles, bicycles and motorcycles shall be subject to the Rules, which may prohibit or limit the use thereof, provide parking regulations or generally regulate the same.

X Section 2.16. Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any improvement in ARCADIA SQUARE, including rocks, stones, gravel or earth without the prior approval of the Board. No fences, hedges, clotheslines, or walls shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of buildings located thereon or as approved by the Board.

Section 2.17. Diseases and Insects. No Owner shall permit anything or any condition to exist upon any property within the subdivision which shall induce, breed or harbor infectious plant diseases or noxious insects.

ARTICLE III

EASEMENTS AND ARCHITECTURAL CONTROL

Section 3.01. X Easement for Encroachments. Each dwelling unit and the common area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer, including footings and walls thereon. A valid easement for said encroachments and for

the maintenance of same, so long as it stands, shall and does exist. In the event dwelling units are partially or totally destroyed, and then rebuilt, the owners agree that minor encroachments on parts of the adjacent dwelling units or common area due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

✓ Section 3.02. Easement for Perimeter Walls and Other Improvements. Developer may construct perimeter walls and other improvements, including but not limited to, driveways, walkways, exterior lighting (metered to a particular dwelling unit), drainage structures, etc., as a part of, or for the use of, a particular dwelling unit which may encroach upon or encompass portions of the common area or adjacent lots. Wherever such encroachments on the common area or adjacent lots should occur, the Owner of the dwelling unit involved shall have, subject to the conditions hereinafter set forth, a perpetual permanent right for such perimeter wall to encompass portions of the common area or adjacent lots and for such other improvements to encroach upon portions of the common area or adjacent lots. In consideration thereof, such owners agree to maintain all common areas within the confines of such perimeter walls and further agree to maintain and keep in repair any improvements encroaching upon the common area or adjacent lots which were construed for the use of their unit, unless such maintenance and repairs are the responsibility of the Association as

set forth in Section 4.04(B), of the Declaration. In the event any such owners should make demand upon the Association to maintain any common area within the confines of such perimeter wall, or to maintain and keep in repair any improvements encroaching upon the common area or adjacent lots which is the responsibility of the Owner to repair as set forth in Section 4.04(A) of the Declaration, then the Association or adjacent lot Owner, as the case may be, shall have the absolute right, and may cause the Owner making such demand to remove at his/her expense, any improvement, including the perimeter wall, encroaching upon the common area or adjacent lot, and to replace and rebuild such improvement or perimeter wall as to be within such Owner's lot. Declarant hereby acknowledges that the right granted owners under this Section 3.02 is a property right of the Owner, and such property right may not be revoked or rescinded by Declarant, its successors or assigns, or by the Association, once such right has vested in an Owner, except upon an Owner's breach of the conditions set forth in the preceding sentence.

Section 3.03. Utility Easements. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communications lines and systems, etc. By virtue of

this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of dwelling units. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Property except as initially designed and installed by Developer or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Property. In no event shall any portion of the above mentioned easements for utilities be constructed to authorize the placing or installing of sewers, electrical lines, waterlines or other utilities under any permanent building structure constructed on the Property. This easement shall be limited to improvements as originally constructed. There shall be an access easement for the delivery and collection of the U.S. mail.

Section 3.04. Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, except existing overhead lines.

✓ Section 3.05. Architectural Control. Subsequent to the initial closing of sale of a dwelling unit to an Owner, no building, fence, wall, or other structure, shall be commenced, erected

or maintained upon said Owner's lot, nor shall any exterior addition to or change in or alteration of said Owner's dwelling unit or the exterior color scheme thereof be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony or external design and location in relation to surrounding structures and topography by the Board of Directors, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Section will be deemed to have been fully complied with. Notwithstanding anything contained to the contrary in this Section, no additions or modifications to any improvement or structure shall be made by an Owner subsequent to the closing of a sale of a dwelling unit to an Owner unless such addition or modification has been first reviewed and approved by the applicable governing body Zoning Inspector.

X Section 3.06. Common Walls. The rights and duties of owners with respect to common walls shall be as follows:

A. Each wall, including patio walls, which is constructed as a part of the original construction of the dwelling unit, any part of which is placed on the dividing line between separate

dwelling units, shall constitute a common wall. With respect to any such wall, each of the adjoining dwelling unit owners shall assume the burden and be entitled to the benefits recited in this Section 3.06 and to the extent not inconsistent herewith, the general rules of law regarding common walls shall be applied thereto.

B. The owners of contiguous dwelling units who have a common wall shall have reciprocal easements for support and an equal 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.

C. Unless other provisions of this Section 3.06 are applicable, the costs of reasonable repair and maintenance of a common wall shall be shared by the owners who make use of the common walls in proportion to such use.

D. In the event any common wall is damaged or destroyed through the act of one adjoining owner, or any of his/her guests or agents or members of his/her family (whether or not such act is negligent or otherwise culpable) so as to deprive the other owner of the full use and enjoyment of such wall, then the first of such owners, if required by Local law, shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the other owner.

E. In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his/her agents, guests or family (including ordinary wear and tear and deterioration from lapse of time) then in such event, both such adjoining owners shall, if required by Local law, proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

F. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall without the prior consent of the Board. In addition to meeting the other requirements of these Restrictions and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to or rebuild his/her dwelling unit in any manner which requires the extension or other alteration of any common wall shall first obtain the written consent of the Board which shall determine the adjoining owner's preferences concerning the proposed modification, extension or alteration of the common wall prior to giving any written consent thereto.

G. In the event of a dispute between owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of cost thereof, then upon written request of one of such owners delivered to the Association, the matter shall be heard and determined by the Board.

ARTICLE IV

THE ASSOCIATION, MEMBERSHIP, MAINTENANCE, INSURANCE

Section 4.01. Organization.

A. Association. The Association is an Arizona non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-Laws and this Declaration.

B. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and By-Laws, as same may be amended from time to time. The composition of the Board shall be defined in the By-Laws.

Section 4.02. Membership.

A. Qualifications. Each Owner of a dwelling unit, by virtue of being such an Owner and for so long as he/she is such an Owner, shall be deemed a member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a dwelling unit merely as security for the performance of an obligation, or a lessee or tenant of an Owner, or a purchaser or vendee under an executory contract of sale which has not "closed" and/or been recorded in the office of the County Recorder of Pima County, Arizona. No Owner shall have more than one membership for each dwelling unit owned.

B. Transfer of Membership. Membership of each Owner in the Association shall be appurtenant to the dwelling unit owned and shall not be transferred, pledged, or alienated in any way except upon the transfer of ownership to said dwelling unit, and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a dwelling unit shall operate automatically to transfer said membership to the new Owner thereof.

Section 4.03. Voting Rights. All owners shall be entitled to one (1) vote for each dwelling unit owned. When more than one person holds an interest in any dwelling unit, all such persons shall be members. The vote for such dwelling unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any dwelling unit.

Section 4.04. Exterior Maintenance, Repair, Up-Keep and Repainting.

✓ ^{XX} A. Maintenance, repair, upkeep and repainting of dwelling units, including perimeter yard walls and any other improvements on a lot, including but not limited to landscaping, shall be the sole responsibility of each owner. In this regard, each owner shall maintain, repair and repaint their dwelling unit, including both sides of perimeter walls, and other improvements on a lot in a manner and with such frequency, in order to keep each owner's dwelling unit in an attractive, well-kept and maintained condition

in conformity with all other dwelling units in the subdivision. In the event any owner fails to maintain his lot or the exterior of his dwelling unit in a manner in keeping with the general neighborhood of ARCADIA SQUARE, then the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon the subject property, and to repair, maintain and restore the lot and the exterior of the dwelling unit, and any other improvements erected on said lot. The cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject. The Board in its sole discretion shall have the right to determine whether or not a lot or the exterior of a dwelling unit is in need of maintenance, repair and upkeep, in order to conform to the standards of the general neighborhood of ARCADIA SQUARE, and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the dwelling units as a whole will reflect a high pride of ownership. Each owner or his/her authorized agent or the Association, as the case may be, in order to maintain, repair or repaint perimeter yard walls or exteriors of dwelling units, shall have the right of entry at reasonable times upon lots adjacent to such owner's lot, provided reasonable notice of such entry is first given by such owner to the owner of the involved adjacent lot.

B. The Association shall be responsible for maintenance, repair and upkeep of any improvements including, but not limited to, streets, recreation facilities and pools constructed on the common areas. Further, the Association shall be responsible for maintenance, repair and upkeep of the private pedestrian and drainage easements as shown on the Plat.

C. Each owner shall be responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures located within the owner's lot, or in the common area, provided such lighting in the common area is metered to the owner's dwelling unit.

Section 4.05. Insurance Requirements.

A. Each owner shall be responsible and obligated to purchase fire and other hazard insurance covering his/her dwelling unit and to maintain such insurance in full force and effect at all times. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the owner's dwelling unit, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona on a replacement cost basis, in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost.) Each such policy must contain or have attached thereto a standard mortgagee or beneficiary clause which provides that all proceeds paid there-

under shall be paid to the Owner for the use and benefit of all mortgagees under mortgages or beneficiaries under deeds of trust, encumbering any dwelling units, as their interest may appear, and such policy or policies must further provide that the insurance carrier shall notify each first mortgagee or beneficiary named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy. Such policy or policies shall further provide that the interest of each mortgagee holding a mortgage or beneficiary under a deed of trust on any dwelling unit in insurance proceeds shall not be invalidated by any action, neglect or inaction of the Board of Directors of the Association, Owners of dwelling units or their tenants or agents. Such policy or policies shall further provide for waiver by the insurer of any policy provisions which would render the mortgagee or beneficiary clause invalid by reason of the failure of such mortgagee or beneficiary to notify the insurer of any hazardous use of any dwelling unit and any policy requirement that the mortgagee or beneficiary pay the premium thereon. Each hazard insurance policy obtained by an Owner pursuant to the foregoing shall comply with those same requirements applicable to the Association as set forth in Section 4.05(F) hereof.

The Board shall have the authority to and shall obtain the following insurance as set forth in this Section 4.05(B) through H.

B. Comprehensive General Liability and Property Insurance. Comprehensive general liability and property damage insurance covering all common areas and all other areas under the jurisdiction or control of the Association shall be purchased by the Association and shall be maintained in full force and effect at all times. Such insurance policy or policies shall contain, if available, a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a dwelling unit Owner because of negligent acts of the Association or of any other dwelling unit owners. The scope of coverage of such policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use as ARCADIA SQUARE. Coverage shall be for at least one million dollars (\$1,000,000.00) per occurrence for personal injury and/or property damage.

C. Fire Hazard Insurance. Fire and other hazard insurance covering improvements constructed on the common areas, including but not limited to ramadas or recreation buildings shall be purchased by the Association and shall thereafter be maintained in full force and effect at all times. (The Association shall not be responsible or obligated to provide fire and other hazard insurance covering dwelling units, which shall be the sole responsibility and obligation of Owners of dwelling units.) Such policy

or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders in Tucson, Arizona, on a replacement cost basis, in an amount of not less than one hundred percent (100%) of the insurable value (based upon the replacement cost).

In the event any improvement constructed on the common area is the subject of a mortgage or deed of trust, then each policy must contain or have attached thereto a standard mortgagee or beneficiary clause which provides that all proceeds paid thereunder shall be paid to the Association for the use and benefit of all mortgagees under mortgages or beneficiaries under deeds of trust, encumbering any such improvements, as their interest may appear, and such policy or policies must further provide that the insurance carrier shall notify each first mortgagee or beneficiary named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy. Such policy or policies shall further provide that the interest of each mortgagee holding a mortgage or beneficiary under a deed of trust on any such improvements in insurance proceeds shall not be invalidated by any action, neglect or inaction of the Board of Directors of the Association, owners of dwelling units or their tenants or agents. Such policy or policies shall further provide for waiver

by the insurer of any policy provisions which would render the mortgagee or beneficiary clause invalid by reason of the failure of such mortgagee or beneficiary to notify the insurer of any hazardous use of such improvements and any policy requirement that the mortgagee or beneficiary pay the premium thereon.

D. Workmen's Compensation Insurance. Workmen's Compensation insurance to the extent necessary to comply with any applicable laws.

E. Other Insurance. The Association shall purchase and maintain in force, if reasonably available, fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is, in no event, less than 1-1/2 times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

F. Minimum Financial Rating Carrier. Each hazard insurance policy obtained by the Association pursuant to the foregoing shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or bet-

ter. Hazard insurance policies shall also be acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided that such insurance carrier has a general policyholder's rating of at least A. Each such carrier shall be specifically licensed or authorized by law to transact insurance business in the State of Arizona.

Policies shall be unacceptable where:

(1) Under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against a dwelling unit Owner or the designee of the Federal Housing Administration or the Veterans Administration; or

(2) By the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or

(3) The Policy includes any limiting clauses (other than insurance conditions) which could prevent the Federal Housing Administration or the Veterans Administration or any dwelling unit Owner from collecting insurance proceeds.

G. In General. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Developer and the Board, and such other persons or entities affiliated with the Association such as a manager and their representatives, members and employees and a provision, if available, preventing any cancellation or

modification thereof except upon at least ten (10) days' written notice to the insureds and their mortgagees. In addition, every policy of insurance obtained by the Association shall provide, if available, for the payment of assessments which the insured property is obligated for under this Declaration until the insured property is repaired and made habitable. The liability insurance hereinabove specified shall name as separately protected insureds, the Association, the Board, and such other persons or entities affiliated with the Association such as a manager and their representatives, members and employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property. As to each such policy, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, and such other persons or entities named in said insurance, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

H. Insurance Premiums. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of dwelling units and all such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the owners. In addition

to the aforesaid insurance required to be carried by the Association, any Owner may, if he/she wishes, at his/her own expense, carry any and all other insurance he/she deems advisable; however, if available, said policy or policies shall provide that there shall be no contribution or offset between policies of the Association and policies an individual Owner may have in effect. It shall be the individual responsibility of each Owner at his/her own expense, to provide as he/she sees fit, Owner's liability insurance, theft and other insurance covering personal property damage and loss.

Section 4.06. Conveyance of Common Area. Upon the conveyance of the common area to the Association, the Association succeeded to all rights, duties and powers with respect to the common area as prescribed by law, and set forth in the Articles, By-Laws and this Declaration.

Section 4.07. By-Laws. The By-Laws shall among other things, establish the procedure for electing members of the Board and officers of the Association, the duties of the Association, the procedure for regular and special meetings, the disposition of hazard insurance proceeds and amendments to the By-Laws.

ARTICLE V

OWNERSHIP, USE AND MANAGEMENT OF THE COMMON PROPERTY

Section 5.01. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the common

property which shall be appurtenant to and shall pass with title to every dwelling unit subject to Section 5.02.

Section 5.02. Conditional Use of Common Property. Each Owner, his/her family, licensees, invitees and tenants or lessees, or contract purchasers who reside in a dwelling unit, shall be entitled to use the common property subject to:

A. The provisions of the Articles, By-Laws, these Restrictions, and the Rules. Each Owner agrees that in using the common property he/she will comply with the provisions of such Articles, By-Laws and these Restrictions, including the Rules.

B. The right of the Association to charge a reasonable security deposit and clean-up fee for the use of any recreational facility situated upon the common property.

C. The right of the Association to suspend the right of an Owner to use the recreational facilities located on the common property for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

Section 5.03. Delegation of Use. Any member may delegate, his/her right of enjoyment in the common areas and facilities to the members of his/her family, his/her tenants or lessees or contract purchasers who reside in the dwelling unit, subject to such rules, regulations and limitations as the Association may, from time to time, establish. Such delegation shall not relieve said

member of his/her obligations and responsibilities as a member under the By-Laws, Rules and this Declaration.

Section 5.04. Management. The Board shall control, maintain, manage and improve the common property as provided in this Declaration, the Articles and By-Laws. Such right and power of control and management shall be exclusive. In managing the common property, the Association hereby accepts all responsibility for the control, maintenance, safety and liability of such common property including but not limited to collecting and paying taxes on common areas, which shall be approved by the County Assessor.

Section 5.05. Damages. Each Owner shall be liable to the Association to the extent applicable under local law for any the negligence or willful misconduct of said Owner or of his/her family and guests, both minor and adult. In the case of joint ownership of a dwelling unit, the liability of such owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint owners to the contrary. The amount of such damage shall be an assessment against the dwelling unit and may be collected as provided for herein and in the By-Laws for the collection of other assessments.

Section 5.06. Restriction on Conveyance of Common Areas and Facilities. The common areas and facilities, owned directly or indirectly by the Association, may not, by act or omission, be

abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior written approval of seventy-five percent (75%) of the first mortgagees and at least two-thirds (2/3) vote of the members, except that the Association shall at all times have the right to grant and convey to any person or entity easements, or rights of way, in, on, over, or under any common area for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (1) roads, streets, walks, pathways, and driveways; (2) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone, cable T.V., and other purposes; (3) sewers, storm drains and pipes, drainage easements, water systems, water, heating and gas lines or pipes; (4) such improvements as may be permitted under Section 3.01 and 3.02 of this Declaration.

ARTICLE VI

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 6.01. Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any dwelling unit, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assess-

ments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the dwelling unit and shall be a continuing lien upon the property against which each assessment is made. Delinquent assessments, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such dwelling unit at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to his/her successors in title unless expressly assumed by them.

Section 6.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the members and their guests, for the improvement and maintenance of the common areas and for all purposes set forth in the Articles, By-Laws and this Declaration. The Board of Directors of the Association shall provide that Association dues, charges or assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the common areas and common property owned by the Association that must be replaced on a periodic basis. All such dues, charges and assessments imposed by the Association shall be paid on periodic basis in regular installments rather than by special assessments.

Section 6.03. Maximum Annual Assessment.

(a) Within (30) days prior to the end of each calendar

year (January 1 through December 31) and subject to the provisions of Section 6.03(b) hereof, the Board of Directors shall estimate the total charges to be paid during the forthcoming year to determine the annual assessment (including a reasonable reserve for contingencies and less any expected surplus from the prior year).

(b) Subject to Section 6.03(c) hereof, the Board of Directors shall not increase the annual assessment by an amount greater than either (i) five percent (5%) of the amount of the preceding annual assessment; or (ii) the percentage increase in the cost of living as reflected by the column entitled "all items" in the Consumer Price Index on a national basis published by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter called the "Cost of Living Index Number"). In the event that the Bureau of Labor Statistics shall fail to publish a comparable Cost of Living Index Number during any such years, but a comparable Cost of Living Index Number shall be published by any governmental agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the annual assessment under the provisions of this Section 6.03 with the same force and effect as the Cost of Living Index Number of the Bureau of Labor Statistics.

(c) Any increase by the Board of Directors in the Annual Assessment which is greater than the amount permitted under

Section 6.03(b) hereof must be first approved by two-thirds (2/3) vote of the members who are voting in person or by proxy at a meeting duly called for this purpose before such increase may be placed in effect and bind the members of the Association.

Section 6.04. Special Assessment for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) vote of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6.05. Notice and Quorum for an Action Authorized

Under Section 6.04. Written notice of any meeting called for the purpose of taking action authorized under Section 6.04 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of the vote of the membership shall constitute a quorum, and shall be required in order to levy a special assessment for capital improvements as authorized under Section 6.04.

Section 6.06. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all dwelling units and may be collected on a monthly basis. However, and subject to the limitations set forth in Section 6.03(b) hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating cost of the Association.

Section 6.07. Due Dates. The due dates of annual assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified dwelling unit have been paid. A properly executed certificate of the Association as to the status of assessments on a dwelling unit is binding upon the Association as of the date of its issuance.

Section 6.08. Effect of Non-Payment of Assessments; Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association the assessment provided for herein, and agrees to the enforcement of the assessment in the manner herein specified. All delinquent assessments shall bear interest at an interest rate not to exceed twelve percent (12%) per annum, and late payments shall first be credited toward interest due, then towards assessments first due. In the event the Association employs an attorney for collection of any assessments, whether by

suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in the manner provided by law or in equity, or without any limitation to the foregoing, by either or both of the following procedures.

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon from the date of delinquency until paid, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner or member.

X. B. Enforcement by Lien. There is hereby created a right of claim of lien, with power of sale, on each and every dwelling unit to secure payment to the Association of any and all assessments levied against any and all Owners together with inter-

est thereon from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time within one hundred twenty (120) days after occurrence of any default in the payment of any such assessment, the Association, or any authorized representative shall make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may elect to file such claim of lien on behalf of the Association against the dwelling unit of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information.

- (1) The name of the delinquent Owner;
- (2) The legal description of the dwelling unit against which claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);

(4) That the claim of lien is made by the Association pursuant to this Declaration; and

(5) That a lien is claimed against said dwelling unit in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the dwelling unit. Such a lien shall have priority over all claims of liens created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any dwelling unit, assessments on any dwelling unit in favor of any municipal or other governmental assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any dwelling unit. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted

by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 6.09. No Exemption of Owner. No Owner is exempt from liability for payment of assessments by waiver of the use of enjoyment of the common areas, or by abandonment of his/her dwelling unit.

Section 6.10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any dwelling unit shall not affect the assessment lien. However, the sale or transfer of any dwelling unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such dwelling unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 6.11. Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or By-Laws, or the Rules, the following provisions shall apply to and benefit each holder of a first mortgage upon a dwelling unit (called the first mortgagee):

A. The first mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge,

nor for the observance or performance of any covenant, restriction, regulation, Rule, Article or By-Law, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as hereinafter provided.

B. During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the first mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged dwelling unit, including but not limited to the right to vote as a member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

C. At such time as the first mortgagee shall become record Owner of a dwelling unit, said first mortgagee shall be subject to all of the terms and conditions of these Restrictions, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.

D. The first mortgagee, or any other party acquiring title to a mortgaged dwelling unit through foreclosure suit or through any equivalent proceeding arising from said first mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged dwelling unit free and clear of any lien authorized by or arising out of any of

the provisions of this Declaration or By-Laws which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.

Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the respective dwelling unit to the Association, and the Board shall use reasonable efforts to collect the same from the Owner even after he/she is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquired title to a mortgaged unit by foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration or the By-Laws which accrue and are assessed after the date the acquirer has acquired title to the dwelling unit free and clear of any right of redemption.

ARTICLE VII

GENERAL PROVISIONS

Section 7.01. Term. The covenants, conditions and restrictions of this Declaration shall remain in full force and effect for a period of twenty (20) years from the date this SECOND AMENDMENT AND RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ARCADIA SQUARE (Declaration) is recorded. Thereafter, they shall be deemed to have been renewed

and automatically extended for successive periods of ten (10) years each.

Section 7.02. Amendments. This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent (with or without an Association meeting) of the then owners of not less than seventy-five percent (75%) of the dwelling units, and such amendment shall be effective upon its recordation with the Pima County Recorder.

Section 7.03. Enforcement and Non-Waiver.

A. Enforcement. Except as otherwise provided herein, the Association, or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by provision of this Declaration.

X B. Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the subdivision is hereby declared to be a violation of these Restrictions and

subject to any or all of the enforcement procedures set forth herein or in the By-Laws.

C. Remedies Cumulative. Each remedy provided by these Restrictions is cumulative and not exclusive.

D. Non-Waiver. Failure by the Board, the Association or by any Owner to enforce any of the provisions of these Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any of such provisions or any other provisions of these Restrictions.

Section 7.04. Mortgage Protection. Notwithstanding any other provisions of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid the rights of a mortgagee or a beneficiary under a Deed of Trust upon a dwelling unit made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such Deed of Trust or mortgage such dwelling unit shall remain subject to this Declaration, as amended.

Section 7.05. Construction.

A. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the subdivision. This Declaration shall be construed and governed by the laws of the State of Arizona. If there is any conflict among or between this Declaration, the Articles of Incorporation of the

Association, the By-Laws, or the Rules and Regulations, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to such Articles of Incorporation, then to such By-Laws, and then to such Rules and Regulations.

B. Restrictions Severable. Notwithstanding the provisions of the foregoing Paragraph A, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

C. Rule Against Perpetuities. In the event the provisions hereunder are declared void by a Court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event said periods of time shall be reduced to a period of time which shall not violate the rules against perpetuities as set forth in the laws of the State of Arizona.

D. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

E. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference pur-

poses only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

Section 7.06. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid addressed as follows: If to the Association 2575 Arcadia, Tucson, Arizona 85712, and if to an Owner to the address of the Owner within the subdivision; provided, however, that any such address may be changed at any time by the party concerned by delivering written notice of change of address to the Association. Each Owner of a dwelling unit shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 7.07. Project Name. For purposes of this Declaration and the By-Laws, the project has been named "ARCADIA SQUARE".

Section 7.08 Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for himself/herself, or itself, his/her heirs, personal representatives, successors, transferees and assigns, binds himself/herself, his/her heirs, personal representatives, successors, transferees and

assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Property and hereby evidences his/her interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

IN WITNESS WHEREOF, the undersigned, being the President and Secretary of ARCADIA SQUARE HOMEOWNERS ASSOCIATION, INC., have executed this SECOND AMENDMENT AND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ARCADIA SQUARE, the day, month and year first above written.

ARCADIA SQUARE HOMEOWNERS ASSOCIATION,
INC., an Arizona non-profit
corporation

By *Thad Bleckley*
President

By *Richard W Swain 1-22-83*
Secretary

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