TICOR TITLE INSURANCE COMPANY

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WHEN RECORDED, MAIL TO: TICOR TITLE INSURANCE 3033 North Central Avenue Phoenix, Arizona 85012 BUILDER SERVICES DEPT:

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DECLARATION OF HORIZONTAL PROPERTY REGIME

THIS DECLARATION made as of the Oxl. day of write.

1983, by PIONEER TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee under its Trust No. 20,398 (hereinafter called "the Trustee"), and UNIVERSAL DEVELOPMENT CORPORATION, a Maryland Corporation (hereinafter called "the Developer"), the sole beneunder the trust, and under the trust agreement, where under the Trustee has received and accepted legal title to the real property hereinafter described, subject to certain protective covenants, conditions, restrictions and reservations hereinafter set forth or set forth in that certain Declaration dated September 5, 1975, between UNIVERSAL DEVELOPMENT CORPORATION and CONTINENTAL SERVICE CORPORATION, which was recorded on September 8, 1975, in Docket 11322, pages 127-132, in the office of the Maricopa County, Arizona Recorder.

The Trustee and the Developer hereby declare as follows:

1. PURPOSE.

The purpose of this Declaration is to submit the real property described in this instrument and the buildings and there improvements hereinafter described to be constructed thereon to a horizontal property regime as authorized and provided for in Chapter 4.1 of Title 33 of the Arizona Revised the manner and for the uses hereinafter called "the Act"), in (with the consent of the Developer) does hereby so submit said property and Developer agrees to and shall be bound by the provisions hereof.

2. NAME.

The name by which this horizontal property regime is to be identified is Third Phase Parcel 10, CONDOMINIUMS, according to the plat (hereinafter called "the Plat") recorded in Book 255 of Maps, page 45 in the office of the Maricopa County, Arizona Recorder, a copy of which is attached hereto as Exhibit "A."

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA

AUG 1 8 1983 -2 00 BILL HENRY, COUNTY FECORDER

3. PROPERTY.

The real property (hereinafter called "the Propproperty regime form of ownership is located in Maricopa County, and more particularly described as:

That portion of the Northwest quarter of Section 29, Township 1 North, Range 7 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the North quarter corner of said Section 29;

Thence S14°00'50"W a distance of 1535.75 feet to the TRUE POINT OF BEGINNING;

Thence S05'44'15"W a distance of 63.00 feet;
Thence East a distance of 50.00 feet;
Thence S04'41'31"W a distance of 132.76 feet;
Thence S48'37'09"W a distance of 129.00 feet;
Thence S53'18'09"W a distance of 342.60 feet;
Thence S22'52'34"W a distance of 250.37 feet;
Thence S11'30'33"E a distance of 93.96 feet;
Thence N65'24'21"W a distance of 515.02 feet;
Thence N02'13'08"W a distance of 451.58 feet;
Thence N34'07'54"E a distance of 111.57 feet;
Thence N87'17'17"E a distance of 841.74 feet to the
TRUE POINT OF BEGINNING;

Containing 11.09 Acres.

4. <u>DEFINITIONS</u>.

Exhibits, and in all amendments thereto, shall have the definitions given such terms by the Act, if defined thereby, or by the other provisions of this Declaration, if defined thereby; otherwise, such terms shall have the following definitions:

- 4.1. Assessment means the amount required by the Board of Directors ("the Board") of the Association to be paid by Surplus.
- 4.2. Association means Third Phase Parcel 10, Condominiums Association, an Arizona non-profit corporation, its successors and assigns, which shall discharge the functions of the council of co-owners as contemplated by the Act, this Declaration and its Articles and Bylaws.

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4.3. Common Elements means general common elements as defined by the Act.

4.4. Common Expenses include:

- (a) Expenses of administration; expenses of maintenance, operation, repair or replacement of the Common Elements, and of the portions of the Units to be maintained by the Association.
- (b) Expenses declared Common Expenses by provisions of this Declaration or the Bylaws of the Association, and all expenses of the Association in discharging any duties imposed upon it by law, this Declaration or its Articles or Bylaws.
- (c) Any valid charge against the Condominium Property as a whole.
- (d) Payments or contributions made to third parties for services and construction and maintenance of improvements and facilities available to or for the benefit of the members of the Association, whether or not pertaining to the Common Elements or the Condominium Property.
- 4.5. Common Surplus means the excess of all receipts of the Association over the Common Expenses.
- 4.6. Condominium means the horizontal property regime form of ownership of property created by this Declaration.
- 4.7. Condominium Property means and includes the Property, all improvements thereon, the Common Elements, and all easements and rights appurtenant thereto.
- 4.8. Member means one who holds membership in the Association as reflected upon the books and records of the Association.
 - 4.9. Owner means co-owner as defined by the Act.
- 4.10. Singular, Plural Gender. Whenever the context hereof so permits, the use of plural will include the singular, the singular the plural and the use of any gender will be deemed to include all genders. The plural of any defined term shall have the pluralized definition given the singular of such term herein.
- 4.11. Unit shall be synonymous with townhouse and means "Apartment" as defined in the Act.

5. DEVELOPMENT PLAN.

The Condominium is described and established as

follows:

copy of the Plat, being a plat and drawing prepared by Collar, Survey. Attached hereto as Exhibit "A" is a Williams & White Engineering, Inc., and the certification of Ted Frank Poole, Registered Land Surveyor, showing the Condominium Property, including each Unit separately numbered with an arabic numeral. The Plat sets forth the floor dimensions and locations of each Unit and a schedule of floor and ceiling elevations for all Units from which the cubic content of each Unit may be precisely determined. Floor plans for each type of unit (9, 9R, 10, 10R, 11, 11R, 12, 12R, 13 and 13R) are depicted on Sheet 2 of Exhibit "A" and the type of each numbered Unit is set forth thereon. As noted on Sheet 2 of Exhibit "A," the original purchasers of certain of the Units designated on Exhibit "A" as having either floor plan 11 or floor plan 11R will have the option of selecting an optional bay window feature to be incorporated in the original construction of such Units; in the case of each such Unit with respect to which such option is selected, the cubic content space of such Unit will be increased as noted on Sheet 2 of Exhibit "A" from that for a standard 11 or 11R floor plan. No purchaser's selecting (or failing to select) the aforedescribed optional feature shall affect the percentage ownership interest in Common Elements appurtenant to each Unit, as set forth on Sheet 2 of Exhibit "A."

Amendment of Plans.

- (a) Alterations of Unit Plans. There is hereby reserved to the Developer the right to alter the boundaries of Units and the boundaries between Units, so long as, at the time of alteration, the Developer (or the Trustee, for the benefit of the Developer) owns the Units so altered, and so long as such alteration does not affect the location, boundary dimension or size of any Units owned by anyone other than the Developer (or the Trustee, for the benefit of the Devel-If the Developer shall make any changes in the boundaries of Units or between Units, and if more than one Unit is concerned, the Developer will reapportion between the Units concerned the shares in the Common Elements appurtenant to the Units concerned.
- (b) Amendment of Declaration. An amendment of this Declaration reflecting such authorized alteration of Units by the Developer need be signed and

acknowledged only by the Developer and the Trustee and need not be approved by the Association or by owners, lienors or mortgagees of Units or of the Condominium Property, whether or not elsewhere required for an amendment.

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- Easements. The power to grant easements is hereby reserved by the Association through such portions of the Common Elements as the Association (by direction of the Board) may from time to time designate and grant by written instrument of record; easements are hereby reserved through each Unit across that space actually used for electrical wiring, water, telephone and sewer lines as originally constructed and all space reasonably necessary for maintenance and repair of such wiring and lines. Further, non-exclusive easements for ingress and egress have previously been granted in favor of Owners and other individuals residing on the Property and their guests and invitees in that certain Declaration recorded on October 6, 1980 in Docket 14740, pages 721-791 in the office of the Maricopa County, Arizona Recorder, over and across that portion of Palo Verde Way platted as a private street in that certain plat for First Phase Parcel 10, Condominiums, recorded in Book 226 of Maps, page 39, in the office of the Maricopa County, Arizona Recorder.
- Utility Easements. There is hereby reserved to the Developer and there is hereby also reserved to the Association (by direction of the Board) the right to grant to any public utility an easement or easements upon, across, over and under any portion of the Condominium Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephone, electricity, television cable or communication lines and systems. Any such grant by the Developer shall create the same right, title or interest as an easement duly granted by all parties holding a right, title or interest in any part of the Condominium Property as of the date of such grant. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Condominium Property except as initially designed and approved by the Developer or thereafter approved by the Developer or the Board. This easement shall in no way affect any other recorded easement on the Condominium Property.
- 5.5. Unit Encroachments. The Common Elements and the Units shall be subject to an easement for encroachments caused by the manner in which the portion of the Common Elements immediately adjacent to the Units are designed or constructed by the Developer (and, in the event improvements on the Property are partially or totally destroyed and then rebuilt, as the improvements are redesigned or reconstructed). A valid easement shall

and does exist for said encroachments and for the maintenance thereof, so long as said encroachments shall exist.

- 5.6. Common Element Encroachments. If any improvement on the Common Elements (other than a portion of the Building [as that term is defined in the Act] constructed thereon; encroaches upon any of the Units, an easement for the encroachment and for the maintenance of same shall and does exist.
- 5.7. Unit Boundaries. Each Unit consists of the space within the following boundaries:
 - (a) <u>Upper and Lower Boundaries</u>. The upper and lower boundaries of the Units will be the following boundaries, extended to an intersection with the perimetrical boundaries:
 - (1) Upper Boundary The horizontal plane of the Unit side of the ceiling (exclusive of the paint or other finishing material on said ceiling).
 - plane of the upper surface of the concrete floor slab.
 - (b) Perimetrical Boundaries. The perimetrical boundaries of the Units will be the following boundaries, extended to an intersection with the upper and lower boundaries: The vertical planes of the Unit side of the walls bounding the Unit (exclusive of the paint or other finishing material on said walls) extended to the points of joinder with other perimetrical boundaries.

6. OWNERSHIP OF COMMON ELEMENTS.

Each Owner shall also own, as appurtenant to such Unit, an undivided interest in the Common Elements; the percentage of such undivided interest appurtenant to each Unit shall be as reflected on the Plat.

The Common Elements will be subject to the dominion and control of the Association and available to serve each Unit and the Owners. The Association shall have no right or power to deprive any Owner, any resident of a Unit or any guest or invitee of any such Owner or resident of the reasonable use of the Common a Unit and such parking and recreational utilities services to prohibited by reasonable rules and regulations which the Boa: I may from time to time adopt. Anything purporting to restrict or

prohibit such reasonable use, whether by amendment hereto, contract or conveyance, shall be null and void, provided, however, that nothing herein shall be deemed to prohibit or prevent the Association, acting through the Board, from adopting and imposing reasonable penalties (including, but not limited to, fines and temporary suspensions of the use of recreational facilities) for the breach of or failure to comply with, on the part of any Owner or resident of a Unit or of such Owner's or resident's guests or invitees, any provision hereof or of the Articles of Bylaws of the Association or the rules and regulations of the Board.

7. COMMON EXPENSES.

The assessments to pay the Common Expenses and generate the Common Surplus of the Condominium will be allocated to each Owner from time to time by the Board. Such allocations shall bear a reasonable relationship to each Owner's percentage ownership interest in the Common Elements.

8. MAINTENANCE, ALTERATION AND IMPROVEMENT.

Responsibility for the maintenance of the Condominium Property, and restrictions upon its alteration and improvement, will be as follows:

8.1. Units.

(a) By the Association. The Association. or its duly delegated representatives, will maintain, repair and replace all portions of the Units contributing to the support of the Building, including, but not limited to, all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services, and will paint and otherwise maintain and repair the exterior of the Units (except fixtures, glass and exterior doors, which shall be the responsibility of the Owner of each Unit). The Association shall be responsible for termite control. Heating and air conditioning units which are specifically designated for individual Units will not be the responsibility of the Association, provided that the Owner of any Unit having such specifically designated heating and air conditioning units shall have an easement over the Common Elements to repair same. Abnormal wear or damage to portions of the Units (or portions of the Common Elements immediately adjacent to the Units) contributing to the support of the Building negligently or intentionally caused by any Owner, any resident of a Unit or any guest or invitee or employee or agent of any such Owner or resident shall be repaired by the Association at the expense of such Owner. The cost of

such maintenance or repairs may be added to and become a part of the assessment to which such Unit is subject. All incidental damage caused to Units by such work will be promptly repaired by the Association, at the expense of the party responsible for the damage

(b) By the Owners. Each Owner shall, at his, her or its expense, maintain, repair and replace all portions of such Owner's Unit except the portions thereof to be maintained, repaired and replaced by the Association, and shall promptly report to the Association any defect or need for repairs for which the Association is responsible. In addition, the Owner shall, at his, her or its expense, maintain, repair and replace the fixtures, exterior doors and glass in the walls bordering such Owner's Unit, together with the applicable heating and air conditioning unit described in paragraph 8.1(a) and the applicable hot water heater. All fixtures and equipment installed within a Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems exit the interior walls of a Unit, shall be maintained and kept in repair by the Owner thereof. An Owner shall not do any act or allow any work that will impair, the structural soundness or integrity of the Building or impair any easement or hereditament, or do any act or allow any condition to exist which will adversely affect the

No Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of the Building or the surfaces of interior building walls, except in accordance with the rules and regulations which the Board may from time to time adopt.

- (c) <u>Insurance Proceeds</u>. The liability of the Association and Owners for maintenance, repair and replacement, as aforesaid, will be reduced to the extent by which such expenses are met by the proceeds of insurance carried by the Association.
- (d) Alteration and Improvement. Except as elsewhere reserved to the Developer, no structural alterations will be made in the portions of any Unit to be maintained by the Association, without the prior written approval of the Owners of Units in which such for all such work will be filed with the Board prior to the start of such work.

8.2. Common Elements.

- (a) By the Association. Except as is provided in paragraph 8.1(b), the maintenance, repair, replacement and operation of the Common Elements, including, but not limited to, drainage easements as shown on the Plat, will be the responsibility of the Association and a Common Expense. Nothing herein shall be deemed to prevent the Association from discharging any part of such responsibility by the application of any insurance proceeds, directly or indirectly, to defray the expense thereof.
- herein reserved to the Developer, there will be no major alterations or additions to the improvements on the Property (except within Units and except for construction of improvements on the Common Elements by the Developer which are paid for by the Developer) without prior approval in writing by the Owners of all of the Units; provided, however, that any such alteration or addition to the Common Elements having the approval in writing of the Owners of at least 75% of the Units and which does not interfere with the rights of any non-consenting Owners in the use of their Units may be done so long as the initial cost is borne by the consenting Owners in relationship to their ownership of the Common Elements.

9. ASSESSMENTS.

The making and collection of assessments against Owners for the Common Expenses will be pursuant to the Bylaws of the Association and the rules and regulations adopted from time to time by the Board, subject to the following provisions:

- 9.1. Share of Common Expense. Each Owner will be liable and assessed for a share of the Common Expenses as provided for in Article 7 of this Declaration.
- 9.2. Interest; Application of Payments. Assessments which are paid within 15 days of the date when due shall not bear interest; all assessments which are not so paid shall, in the discretion of the Board, bear interest from the date due at the rate of up to eighteen percent (18%) per annum (but in no event greater than the maximum rate of interest allowed by law in the State of Arizona at the time such interest accrues), and shall be due and payable together with such interest and costs incurred by the Association in collecting same, including, but not limited to, attorneys' fees, upon demand. All payments on account shall be applied first to interest and costs of collection and then to

graph 9.7 below, assessments shall be doemed "paid" when actually the association of the managing agent

- 9.3. Lien for Assessments. The Association will have a lien upon each Unit for any unpaid assessments, together with interest and costs of collection, except that such liens will be subordinate to all other bona fide liens recorded in the public records of Maricopa County, Arizona (or other appropriate governmental office), prior to the recording therein of notices or claims of liens for such unpaid assessments. Reasonable attorneys' fees incurred by the Association incident to the collection of such assessments or to the enforcement of such liens, together with all sums advanced and paid by the Association for taxes and payments on account of superior liens or encumbrances which may be required to be advanced by the Association in order to precount to the Association and secured by such liens.
- Collections and Foreclosure. The Board may take such action as it deems necessary to collect assessments by personal action, or by enforcing and foreclosing said liens, and it may settle and compromise the same. The Association will be entitled to bid at any sale held pursuant to a suit to foreclose any lien; and at any sale held pursuant to a suit to foreclose an assessment lien it may apply as a cash credit against its bid all sums due the Association covered by the lien enforced. case of the foreclosure of an assessment lien, the Owner remaining in possession will be required to pay a reasonable rental for the Unit from the date of the judgment in foreclosure until expiration of the redemption period. Such foreclosures may be conducted in the manner prescribed by law for the foreclosure of mortgages and the periods and procedures for redemption after mortgage foreclosure under applicable law shall likewise apply, and the Association in such foreclosure will be entitled to the appointment of a receiver to collect the fair rental value of the Unit from the Owner and/or occupant.
- Purchaser for Assessments. Where the mortgagee of record is an institutional lender (including the Developer) and acquires title to a Unit as a result of the foreclosure of the mortgage, or closure, such acquirer of title, his heirs, personal and other legal representatives, successors and assigns will not be liable to such Unit or chargeable to the former owner of such Unit which of the assessments by the Association pertaining became due prior to such acquisition of title. Such unpaid share tible from all of the Owners, including such acquirer of title, his heirs, executors, legal representatives, successors and assigns will not be liable to such Unit or chargeable to the former owner of such Unit which of the assessments will be deemed to be Common Expenses, collectible from all of the Owners, including such acquirer of title, assigns.

All persons other than such institutional lenders and their heirs, personal and other legal representatives, successors and assigns acquiring an interest in a Unit, including without limitation persons acquiring title by operation of law, will not be entitled to occupancy of the Unit or enjoyment of any of the Common Elements, until such time as all unpaid assessments due and owing by the former Owner have been paid.

As used herein, the term "mortgage" shall include deed of trust and agreement for sale; the term "foreclosure" shall be construed to include a forfeiture under an agreement for sale and a sale pursuant to a power of sale under a deed of trust; and the term "mortgagee" shall include the beneficiary under a deed of trust and a vendee under an agreement for sale.

9.6. Assignment of Claim and Lien Rights. The Association, acting through the Board, will have the right to assign its claim and lien rights for the recovery of any unpaid assessments to the Developer, or to any Owner or group of Owners, or to any third party.

10. ASSOCIATION.

The operation of the Condominium will be by the Association, which will fulfill its functions pursuant to the following provisions:

- 10.1. Articles and Bylaws. The Articles of Incorporation and Bylaws of the Association shall be substantially similar to those attached hereto as Exhibits "B" and "C" respectively.
- 10.2. Amendment of Articles or Bylaws. The Articles of Incorporation and Bylaws may be amended in the manner provided for therein or by applicable law, but no such amendment may be adopted which would affect or impair the validity or priority of any lien of record.
- 10.3. Limitation upon Liability of the Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association will not be liable to Owners for injury or damage, other than the cost of maintenance and repair, caused by any condition of the property to be maintained and repaired by the Association, or caused by natural occurrences or Owners or other persons except to the extent the Association is insured against such liability.
- 10.4. Restraint upon Assignment of Shares in Assets. No Owner shall, or shall be permitted to, sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Elements or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Unit, and only appurtenant to such Unit.

decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision will be expressed by the same person who would cast the vote of such Owner in a meeting of the members of the Association.

11. () INSURANCE.

- Il.1. Extended Coverage and Public Liability Insurance.
 The Board, or its duly authorized agent, shall have the authority to obtain, and shall be responsible for obtaining, insurance with respect to the Common Elements, including all improvements constructed thereon, against loss or damage by fire or other hazards, casualties and risks embraced within the coverage of the standard "extended coverage" policy available from time to time in the State of Arizona in an amount equal to at least 90% of the full insurable value thereof and shall also obtain a comprehensive public liability policy covering the Common Elements, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be Common Expenses. All such insurance coverage obtained by the Board shall be written in the name of the Board (or of the Association) as trustee for each of the Owners. Except as is otherwise provided in this Article 11, in the event of damage or destruction by fire or other peril to any property covered by the insurance written in the name of the Board, the Board shall, upon receipt of the insurance proceeds and to the extent of the insurance proceeds, use the insurance proceeds to rebuild or repair such damaged or destroyed portions of the Condominium Property to as good condition as formerly.
- responsibility of each Owner to provide, as such Owner sees fit and at such Owner's sole expense, fire, liability, theft and any Contents Insurance. It shall be the individual other insurance covering all fixtures in the Owner's Unit and personal property therein. In addition, each Owner shall obtain, at such Owner's sole expense, a comprehensive public liability policy against any loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of such Owner's Unit and shall deliver evidence of such policy to the Association.
- Reconstruction of Improvements. All insurance proceeds received as a result of damage to Condominium Property shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board, or by an agent duly authorized by the Board. The Board shall contract only with a licensed contractor (if contractors in the State of

Arizona are generally required to be licensed), and may require said contractor to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. However, the Board, at the request of an Owner of a Unit and with the concurrence of 75% of all of the Owners, may decide not to repair, reconstruct or rebuild the improvements bounding the Owner's Unit and the Board, with the concurrence of 75% of all of the Owners, may decide not to repair, reconstruct or rebuild any part or all of the improvements on the Property other than improvements bounding Units.

Allocation of Insurance Proceeds. The Board shall allocate any applicable insurance proceeds ("AIP") between a fund for repairing, reconstructing and/or rebuilding improvements bounding Units and for compensating Owners of Units in respect to which the improvements bounding the Units are not repaired, reconstructed or rebuilt ("Units Fund") and a fund generally for repairing, reconstructing and/or rebuilding all improvements on the Property other than improvements bounding Units ("Common Amenities Reconstruction Fund") in accordance with the following There shall be allocated to the Units Fund the followformulae: ing amount: (AIP)x([URC+CUU]/[URC+CUU+CARC]). There shall be allocated to the Common Amenities Reconstruction Fund the following amount: (AIP)x ([CARC]/[URC+CUU+CARC]). The terms "Units Reconstruction Costs" or "URC" as used herein shall mean the actual cost of repairing, reconstructing and/or rebuilding improvements bounding Units. The term "CUU" as used herein shall mean the estimated cost of repairing, reconstructing and/or rebuilding improvements bounding Units which, pursuant to the last sentence of paragraph 11.3 hereof, are not repaired, reconstructed or rebuilt. The term "CARC" as used herein shall mean the actual cost (and/or, in the event and to the extent all or any part of the improvements on the Property other than improvements bounding Units, pursuant to the last sentence of paragraph 11.3 hereof, are not rebuilt, the estimated cost) of repairing, reconstructing and/or rebuilding all improvements on the Property other than improvements bounding Units. The Board shall allocate the Units Fund between a fund for repairing, reconstructing and/or rebuilding improvements bounding Units ("Units Reconstruction Fund") and a fund for compensating Owners of Units in respect to which improvements bounding the Units are not repaired, reconstructed or rebuilt ("Fund for Owners of Unreconstructed Units") in accordance with the following formulae: There shall be allocated to the Units Reconstruction Fund the following amount: (Units Fund)x([URC]/[URC+CUU]). There shall be allocated to the Fund for Owners of Unreconstructed Units the following amount: (Units Fund)x ([CUU]/[URC+CUU]). In determining the estimated cost of repairing, reconstructing and/or rebuilding improvements bounding Units which, pursuant to the last sentence of paragraph 11.3 hereof, are not repaired, reconstructed or rebuilt, no account shall be taken for the estimated cost of reconstructing walls (exclusive of the estimated cost of

the drywall or similar materials which would be used to finish the walls, if reconstructed) to the extent the walls would border (if the walls would be reconstructed) on walls which are actually repaired, reconstructed and/or rebuilt pursuant to the terms of this Article 11, said cost of reconstructing yalls to be included within the Units Reconstruction Cost.

- Units Reconstruction Fund. The Units Reconstruction Fund shall be used to pay the URC. In the event the amount in the Units Reconstruction Fund exceeds the URC, the excess shall be paid to each of the Owners (or his mortgagee, as their interests may appear) of Units ("Reconstructed Units") in respect to which the improvements bounding same are repaired, reconstructed and/or rebuilt in accordance with this Article 11 in the same ratio as the cost of the repairing, reconstructing and/or rebuilding of his Reconstructed Unit bears to the URC. In the event the amount in the Units Reconstruction Fund is less than the URC, the Board shall levy a special assessment against each Owner of a Reconstructed Unit, which special assessments shall be in the aggregate amount of the difference between the URC and the amount in the Units Reconstruction Fund and which assessments shall be allocated to each Owner of a Reconstructed Unit in the ratio the cost of repairing, reconstructing and/or rebuilding his Reconstructed Unit bears to the URC.
- amount in the Fund for Owners of Unreconstructed Units. The first be used to pay the costs of removing all improvements bounding Unreconstructed Units. The remaining amount in the Fund of an Unreconstructed Units shall be paid to each Owner may appear) in the same ratio as the estimated cost of repairing, reconstructing, and/or rebuilding his Unit bears to the CUU.
- Common Amenities Reconstruction Fund. Amenities Reconstruction Fund shall be used to pay the cost for all repairing, reconstructing and/or rebuilding of improvements on the Property, which the Board undertakes pursuant to this Article 11, except for improvements bounding Units. In the event the amount in the Common Amenities Reconstruction Fund exceeds said cost, the excess shall be paid to each of the Owners (or his mortgagee, as their interests may appear) in relation to the Owner's interest in the Common Elements. In the event the amount in the Common Amenities Reconstruction Fund is less than said cost, the Board shall levy special assessments against all Owners, which special assessments shall be in the aggregate amount of the difference between said cost and the amount in the Common Amenities Reconstruction Fund and which assessments shall be allocated between all of the Owners in relation to each Owner's interest in the Common Elements.

12. USE_RESTRICTIONS.

The use of the Condominium Property will be in accordance with the following provisions, as long as the Condominium exists, and the Building exists in useful condition upon the Property.

12.1. Units. Each of the Units is intended to be occupied as a single family dwelling. Except as reserved by paragraph 12.8 to the Developer, Units may not be used in any other manner. No Unit may be divided or subdivided into a smaller Unit except pursuant to a duly adopted amendment to this Declaration recorded (together with an amended plat, if appropriate) in the office of the Maricopa County, Arizona Recorder (or other appropriate governmental office), which amendment (and amended plat, if appropriate) shall set forth the changes in the Units to be affected.

No animals or pets of any kind may be kept in any Unit or on any portion of the Condominium Property except as provided in the rules and regulations adopted by the Board; in no event may animals be kept, bred or maintained for any commercial purpose. Any animal causing or creating a nuisance or disturbance shall be permanently removed from the Condominium Property upon three (3) days written notice from the Board.

No Owner shall cause anything to be hung, displayed or placed on the walls, doors or windows bounding his Unit, except on the side of the walls or doors facing such Owner's Unit and will not otherwise change the appearance of any portion of the walls, doors or windows bounding such Owner's Unit (except on the side of the walls or doors facing such Owner's Unit and then only in accordance with the rules and regulations adopted by the Board). No clothes lines or similar devices and no signs will be allowed on the Condominium Property without the written consent of the Board.

Automobiles shall be parked within the garage which is a part of each Unit (as shown on Sheet 2 of Exhibit "A" hereto) or in the parking areas of the Condominium Property adjacent to or near the Units in accordance with rules and regulations adopted from time to time by the Board. No other vehicles or objects, including, but not limited to, trucks, motorcycles, trailers and boats, may be parked or placed upon any of the Condominium Property unless permitted by the Board.

12.2. Common Elements. The Common Elements will be used only for the purposes for which they are intended, and shall at all times be subject to such reasonable rules and regulations as the Board may adopt from time to time.

- Condominium Property. No act, use or practice shall be made, taken, conducted or permitted which is the source of annoyance which interferes with the peaceful possession and profer use of Condominium Property by its residents. All parts of the condominium Property will be kept in a clean and sanitary accumulate, nor shall any fire hazard be allowed to exist.
- 12.4. Lawful Use. No immoral, improper, offensive or unlawful use will be made of the Condominium Property or any part thereof. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction will be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property will be the same as the responsibility for the maintenance and repair of the property concerned.
- 12.5. Leasing. Entire Units may be rented, provided the occupancy is only by the lessee, members of the Lessee's family, and the Lessee's social guests.
- 12.6. Rules and Regulations. Reasonable rules and regulations concerning the use of the Condominium Property may be adopted and amended from time to time by the Board. Copies of such rules and regulations and amendments will be furnished to all Owners and residents of the Condominium upon request.
- 12.7. Age Restrictions. No individual under the age of eighteen (18) may reside in any Unit for a period of more than ninety (90) days during any twelve (12) month period.
- 12.8. Proviso. Until the Developer has completed all of the contemplated improvements and closed the sales of all of the Units and units of additional condominiums or other residential units which relate to all or any part of the development commonly known as Fountain of the Sun, neither the Owners nor the Associwith the completion of the Condominium Property shall interfere of such units. The Developer may make such use of the unsold and sale, including, but not limited to, maintenance of a sales signs.

13. COMPLIANCE AND DEFAULT.

Each Owner will be governed by and will comply with the terms and provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations adopted pursuant to those documents, as they may be

amended from time to time. Failure of an Owner to comply with such documents and regulations will entitle the Association or other owners to the following relief in addition to the remedies provided by the Act or otherwise:

- 13.1. Increase in Insurance Premiums. An Owner shall pay the Association the amount of any increase in its insurance premiums occasioned by use, misuse, occupancy or abandonment of a Unit, or of the Common Elements, by such Owner.
- 13.2. Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of an Owner or the Association to comply with the terms of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations adopted pursuant to those documents, as they may be amended from time to time, the prevailing party will be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.
- 13.3. No Waiver of Rights. The failure of the Association or any Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Articles of Incorporation or Bylaws of the Association or the rules and regulations adopted pursuant to those documents will not constitute a waiver of the right to do so thereafter.

14. AMENDMENTS.

Except as elsewhere provided otherwise, this Declaration may be only amended in the following manner:

- 14.1. Notice. Notice of the subject matter of a proposed amendment will be included in the notice of any meeting of members of the Association at which a proposed amendment is considered.
- 14.2. Approval. A resolution for the adoption of a proposed amendment may be proposed by either the Board or by 2/5 of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may vote by ballot provided such vote is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approval of a proposed amendment must be by:
 - (a) 80% of the members of the Association as defined in the Articles of Incorporation of the Association; and
 - (b) The Developer, so long as the Developer owns at least 20% of the Units.

Notwithstanding the foregoing, the boundaries of a Unit may not be changed without the consent of the Owner of the Unit and the holder of any lien of record thereon.

hereof, no amendment will discriminate against any Owner nor Proviso. Except as is provided in paragraph 5.2 against any Unit or class or group of Units, unless the Owners so affected shall consent to the amendment, nor shall any amendment will change any Owner's percentage ownership interest in the Common Elements nor otherwise increase the Owner's share of the Common Expenses, unless the Owner of the Unit concerned and the record owners of the mortgages on such Unit shall join in the execution of the amendment. No amendment shall affect or impair the validity or priority of any mortgage or lien of record covering any Unit unless the affected mortgagee or lien holder shall join in the execution of the amendment. No amendment shall make any change in the section hereof entitled "Insurance" or any other provisions dealing with the rights of mortgagees, unless the record holders of the mortgages shall give their

TERMINATION.

the manner provided in the Act at any time. In addition thereto, if it is determined as permitted hereunder that the Condominium Property will not be reconstructed because of major damage, the

SEVERABILITY.

or restriction, or any section, subsection, sentence, clause, The invalidity in whole or in part of any covenant phrase or word, or other provision of this Declaration, the Articles of Incorporation or Bylaws of the Association or the rules and regulations of the Association will not affect the validity of the remaining portions.

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

UNIVERSAL DEVELOPMENT CORPORATION, a Mary and corporation

PIONEER TRUST COMPANY OF ARIZONA 518 an Arizona corporation, as Trustee of its Trust No. 20,398 and not personally

By Bunt Officer Junt

STATE OF ARIZONA)

County of Maricopa)

ss.

1,

On this day of cly 1983, before, me, who acknowledged himself to be a limit further UNIVERSAL authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself.

IN WITNESS WHEREOF, I hereunto set my hand and off sial seal.

Notary Public

My Commission Expires: May 19, 1984

STATE OF ARIZONA)
County of Maricopa) ss.

On this 511 day of Carifice 1 1983, before me, who acknowledged himself to be a Trust Officer of PIONEER, TRUST rized so to do, executed the foregoing instrument for the purass Trustee, by himself as such officer.

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

Notary Public

My Commission Expires

OFFICIAL SEAL

GRACE BIRD

MIARICUPA COUNTY

My Comm. Expires June 27, 1905