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DECLARATION OF HORIZONTAL PROPERTY REGIME  
AND DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR THE COMMONS ON LEMON

THIS DECLARATION, made as of the date hereinafter set forth by The Commons On Lemon, a California general partnership (hereinafter referred to as "Declarant").

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CITY OF TEMPE  
PLANNING DEPT

W I T N E S S E T H:

WHEREAS, Declarant is the sole owner of that certain real property situated in the City of Tempe, County of Maricopa, State of Arizona, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Parcel");

WHEREAS, Declarant desires to submit and subject the Parcel to a horizontal property regime pursuant to Title 33, Chapter 4.1 of the Arizona Revised Statutes; and

WHEREAS, Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Property (as hereinafter defined), or any part thereof, certain easements and rights in, over and upon said Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant desires and intends that the unit owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, and all of which are declared to be in furtherance of a plan to promote and protect the cooperative use, conduct and maintenance of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness thereof;

NOW, THEREFORE, Declarant, for the purposes hereinafter set forth, declares as follows:

1. Definitions. As used herein, unless the context otherwise requires, the following terms shall have the following definitions.

1.1 "Act" means Title 33, Chapter 4.1 of the Arizona Revised Statutes.

1.2 "Association" means The Commons On Lemon, Inc., an Arizona nonprofit corporation, its successors and assigns, formed or to be formed by the Declarant, and unless otherwise provided, shall mean and include its board of directors, officers and other authorized agents.

1.3 "Board" shall mean the board of directors of the Association.

1.4 "Building" means each building located or planned to be located on the Property which constitutes or is to constitute a part of the Property. Two (2) Buildings are currently planned by Declarant, as shown on the Plat attached hereto as Exhibit "B" and incorporated herein by reference, known as Buildings 1 and 2, which Buildings have or are planned to have three (3) structural stories above the ground floor, containing or which are planned to contain 17 Units in Building 1 and 12 Units in Building 2, and various mechanical and equipment rooms.

1.5 "Common Elements" mean the "general common elements", as that term is defined in Arizona Revised Statutes § 33-551(6), including without limitation the land on which the Buildings are constructed, the roofs and bearing walls of the Buildings, storage rooms, mechanical rooms, central air conditioning and heating systems (excluding any portion of such system which exclusively serves one particular unit), parking areas, driveways, landscaped areas, swimming pools, recreational areas and all other portions of the Property, except the Units.

1.6 "Declarant" means The Commons On Lemon, a California general partnership, its successors and assigns in the ownership of the Property for the purpose of the original development and sale thereof.

1.7 "Declaration" means this instrument by which the Property is submitted to a horizontal property regime, as from time to time amended.

1.8 "Eligible Mortgage Holder" means the Holder of a First Mortgage on a Unit who has in writing informed the Association of such Holder's address and requested notification of and the right to participate in (if applicable) any action to be taken by the Association pursuant to paragraphs 10.2, 25 or 32 hereof.

1.9 "Eligible Insurer or Guarantor" means an Insurer or Governmental Guarantor of a First Mortgage on a Unit who has in writing informed the Association of such Insurer or Guarantor's address and requested notification of and the right to participate in (if applicable) any action to be taken by the Association pursuant to paragraphs 10.2, 25 or 32 hereof.

1.10 "Lease" means any agreement for the leasing or rental of a Unit and the interest in the Common Elements appurtenant to such Unit, or any portion thereof.

1.11 "Majority" or "Majority of Owners" means the Owners of Units to which more than fifty percent (50%) of the undivided ownership of the Common Elements is appurtenant. Any specified fraction or percentage of the Owners means the Owners of Units to which that fraction or percentage of undivided ownership of the Common Elements is appurtenant.

1.12 "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, including without limitation a deed of trust, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means a person secured by a Mortgage, including a trustee and beneficiary under a deed of trust; and "Mortgagor" means the party executing a

Mortgage. "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.13 "Occupant" means a person or persons, other than an Owner, in rightful possession of a Unit.

1.14 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title, whether or not subject to any Mortgage, to any Unit which is a part of the Property (including any real property subsequently annexed to the Property pursuant to paragraph 34 hereof), including a purchaser under an agreement for sale within the meaning of A.R.S. § 33-741, but does not mean those having such interest merely as security for the performance of an obligation. In the case of Units the legal title to which is vested of record in a trustee pursuant to Arizona Revised Statutes §33-801 et seq., the trustor shall be deemed to be the owner thereof.

1.15 "Parcel" means the parcel of real property described on Exhibit "A" attached hereto, which is hereby submitted to a horizontal property regime.

1.16 "Parking Space" means each of the separate parking spaces shown on the Plat attached hereto as Exhibit "B".

1.17 "Person" means a natural individual, corporation, partnership, trustee or other entity capable of holding title to real property.

1.18 "Plat" means the plat of survey of the Property, as hereinbefore and hereinafter more fully described and identified which is attached hereto as Exhibit "B", which Plat was recorded in Book 289 of Maps at page 19 of the records of the County Recorder of Maricopa County, Arizona.

1.19 "Property" means (a) the Parcel, (b) the Buildings, (c) the Units comprising the horizontal property regime hereby created, and (d) ~~all buildings, improvements~~ and other permanent fixtures of whatsoever kind situated on the Parcel and all rights, privileges and appurtenances thereto, intended for the mutual use, benefit and enjoyment

of the Owners; and such term shall in general have the same meaning as set forth in Arizona Revised Statutes § 33-551(9), as it relates to the horizontal property regime hereby created.

1.20 "Record" or "Recording" refers to the record or the act of recording, in the office of the County Recorder of Maricopa County, Arizona.

1.21 "Unit" means each of the 29 portions of the Property contained or planned to be contained in the Buildings which consist or are planned to consist of one or more rooms designed or intended for independent use as a dwelling unit, as shown on Exhibit "B" attached hereto, and as more fully described in paragraph 3.2 hereof. A Unit is an "Apartment" within the meaning of Arizona Revised Statutes § 33-551(1). There shall be appurtenant to each Unit an undivided interest in the Common Elements as set forth in paragraph 3 hereof.

2. Submission of Property. Declarant hereby submits and subjects the Property to a horizontal property regime pursuant to Title 33, Chapter 4.1 of the Arizona Revised Statutes, to be hereafter known as The Commons On Lemon and does hereby declare that all of the Units shall be owned, leased, sold, conveyed and encumbered or otherwise held or disposed of subject to the terms, conditions and other provisions of this Declaration.

3. Description of the Buildings, the Units and the Common Elements. The entire horizontal property regime shall consist of the Common Elements, and the Units.

3.1 Buildings. There are or are planned to be two (2) Buildings in the horizontal property regime known as Buildings 1 and 2. Reference is hereby made to the Plat attached hereto as Exhibit "B" for a description of the cubic content space contained in or planned for each of the Buildings and its location or planned location on the Parcel.

3.2 Units. There are or are planned to be a total of 29 Units in the Buildings. Reference is hereby made to the Plat attached hereto as Exhibit "B" for a description of the cubic content space of each Unit and its location or planned location within the Buildings. Each Unit shall include the space enclosed and bounded by the interior unfinished surfaces of the ceiling, floor, walls, doors and windows or any extensions thereof, the interior unfinished surfaces of the storage area, patio or balcony floors, walls and fences, and any extensions thereof, together with any plumbing fixtures or lines and electrical or refrigeration equipment or lines which exclusively serve such Unit; provided, however, that no portion of the roof, bearing walls or other structural components of the Building in which each Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility, water or sewer lines situated within such Unit and forming part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of a Unit.

3.3 Common Elements. A description of the Common Elements included in and comprising parts of each Building is the description referred to in paragraph 3.1 hereof less the descriptions of the Units referred to in paragraph 3.2 hereof. A description of the other Common Elements is as set forth in paragraph 1.5 hereof.

3.4 Interest in the Common Elements. The interest which each Unit bears to the entire horizontal property regime, which interest shall constitute an undivided interest in the Common Elements appurtenant to each such Unit, shall be one twenty ninth (1/29th) of the whole.

4. Association. The Association has been, or will be formed, to constitute the "Council of Co-Owners", as that term is defined in Arizona Revised Statutes § 33-551(5). The Association shall serve as the governing body for all of

the Owners for the protection, improvement, alteration, expansion, augmentation, disposal, divestment, redescription, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of hazard insurance proceeds received by the Association, and other matters as provided in the Act, in this Declaration, in the Articles of Incorporation of the Association (hereinafter referred to as the "Articles") and in the Bylaws of the Association (hereinafter referred to as the "Bylaws"). The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws. Each Owner shall be a Member of the Association as soon and so long as he shall be an Owner. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner, and the new Owner shall likewise automatically succeed to such membership in the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant (and then only to the purchaser involved in such sale) or by intestate succession, testamentary disposition, foreclosure of a Mortgage of record or other legal process transferring fee simple title to such Unit (and then only to the Person to whom such fee simple title is transferred). Any attempt to make a prohibited transfer of a membership will be void and will not be recognized by or reflected upon the books and records of the Association. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name upon the sale of such Owner's Unit to the purchaser of such Owner's Unit, the Association shall have the right to enter a transfer upon the books of the Association and issue a new membership to the purchaser, and thereupon the old



membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

4.1 Classes of Membership; Voting Rights of Classes.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners in Phase I of The Commons On Lemon and Phase II, if The Commons On Lemon is expanded to include such Phase in accordance with the annexation provisions of paragraph 24 hereof, with the exception of the Declarant, and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The voting for such Unit shall be exercised as such persons among themselves determine, or, in the absence of such determination, as determined by the Board, but in no event shall more than one vote be cast with respect to any Class A Unit. If any Owner or Owners cast a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Owner or Owners were acting with the authority and consent of all other Owners of the same Unit.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Unit owned in Phase I of The Commons On Lemon and Phase II if The Commons On Lemon is expanded to include such Phase. The total votes which the Declarant shall be entitled to cast may be cast in such proportion on any matter as Declarant may determine. Each Class B membership shall cease and be converted to Class A membership, without further act or deed, upon the happening of any of the following events:

- (a) Upon the conveyance by Declarant of any particular Unit to an

Owner, other than in connection with an assignment by Declarant of all or substantially all of its rights under this Declaration (including a pledge or assignment by Declarant to any lender as security), with respect to the particular Unit or Units so sold or otherwise disposed of; or

(b) With respect to all remaining Class B memberships, upon the first to occur of the following:

(i) Upon the expiration of One Hundred Twenty (120) days following the first date when the total votes entitled to be cast by the Class A membership equal or exceed the total votes entitled to be cast by the Class B membership, or

(ii) Five (5) years after the conveyance of the first Unit to an Owner other than Declarant.

If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration succeeds to the interest of Declarant by virtue of said assignment, the Class B memberships shall not be terminated thereby, and such lender shall hold the Class B memberships on the same terms as such were held by Declarant pursuant hereto. Pursuant to the terms of this paragraph and paragraph 34 hereof, the relative voting strength of the Declarant and the other Owners may change, and control, even though vested in the other Owners, may nevertheless revert to the Declarant, by virtue of the provisions of such paragraphs upon annexation of Phase II to

the horizontal property regime in accordance with paragraph 34.

4.2 Qualifications of Directors. Each director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of such Owner). If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director, and his place on the Board shall be deemed vacant. The requirements of this subparagraph shall not apply to directors elected as a result of any of the votes cast by the Class B member.

4.3 Board's Determination Binding. Subject to the right of any Owner to institute an action at law or in equity pursuant to the provisions of paragraph 24 hereof, in the event of any dispute or disagreement between any Owners relating to the Property, or any question of interpretation or application of the provisions of this Declaration, the Articles or the Bylaws, the determination thereof by the Board shall be final and binding on each and all of such Owners.

4.4 Action by Owners. To the extent permitted by the Act, all actions required to be taken by the Owners, acting as a Council of Co-Owners for the Property, shall be taken by the Association acting as such Council of Co-Owners, by and through its directors and officers, such actions to include, without limitation, adoption or ratification of the Bylaws and rules and regulations for the horizontal property regime created hereby.

4.5 Additional Provisions in Articles of Incorporation and Bylaws of the Association. The Articles and Bylaws may contain any provision not inconsistent with law or with this Declaration relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members.

5. Use of Common Elements. There shall be appurtenant to each Unit in Phase I of The Commons On Lemon and

each Unit in Phase II if The Commons On Lemon is expanded to include such Phase, a non-exclusive and perpetual right and easement to use the Common Elements in common with all other persons entitled to use the Common Elements as may be required for the purposes of access, ingress and egress to and from, and the use, occupancy and enjoyment of the Units and the Common Elements for their intended purposes as provided herein. Such right and easement shall extend to each Occupant and the agents, servants, family members and invitees of the Owner of each Unit in Phase I of The Commons On Lemon and each Unit in Phase II if The Commons On Lemon is expanded to include such Phase. Such right and easement shall be subject to such limitations, restrictions, rules and regulations as may from time to time be promulgated by the Board including, but not limited to, the right of the Board to suspend the right of any Unit Owner or Occupant and the agents, servants, tenants, family members and invitees of any Unit Owner to use the recreational facilities which are a part of the Common Elements and/or the right of any Unit Owner to vote pursuant to the provisions of paragraph 4.1 hereof for any period during which the Common Expenses attributable to such Owner's Unit as provided in paragraph 7 hereof remain unpaid or for a period not to exceed sixty (60) days for any violation of regulations adopted and published by the Board, and shall be subject to and governed by the provisions of this Declaration, the Articles and Bylaws. The Board shall have authority to lease, convey easements or grant concessions consistent with the overall character and use of the Property with respect to parts of the Common Elements and to change the character, description and use thereof, subject to the provisions of this Declaration, the Articles and the Bylaws. Any funds received by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

Notwithstanding anything contained herein to the contrary, Declarant shall be entitled to exclusive access to and occupancy of all or any portion of any Unit until such time as the construction thereof has been completed and the particular Unit has been conveyed to an Owner by Declarant, and Declarant shall be entitled to nonexclusive access to and occupancy of all or any portion of the Common Elements until such time as all Units have been conveyed to Owners by Declarant including all Units in Phase II if The Commons On Lemon is expanded to include such Phase. Notwithstanding anything contained herein to the contrary, there shall be no restriction upon any Owner's right of ingress and egress to or from such Owner's Unit, which right shall be perpetual and appurtenant to the ownership of such Owner's Unit.

6. Parking Spaces. Guest Parking Spaces shall be part of the Common Elements as shown on the Plat attached hereto as Exhibit "B" and the Board shall have full authority to establish, operate, and manage the Guest Parking Spaces for and on behalf of all Owners, and the use thereof shall be subject to such rules and regulations as may be imposed by the Board. There shall be a maximum of two parking spaces per Unit, including the Owner's space.

7. Common Element Maintenance Expenses and Reserve. As provided herein, each Owner shall pay his proportionate share of the expenses of the administration and operation of the Common Elements of Phase I of The Commons On Lemon and Phase II if The Commons On Lemon is expanded to include such Phase and any other expenses incurred in conformance with this Declaration, the Articles and the Bylaws including by way of illustration, but not of limitation, premiums for insurance, the cost of maintenance and repair of the Common Elements and any and all replacements and additions thereto, and reasonable reserves for contingencies, replacements or other proper purposes (hereinafter referred to as the "Common Expenses"). The Association shall maintain an adequate reserve for replacement of the Common Elements.

The proportionate share of such Common Expenses payable by each Owner shall be equal to the proportionate interest in the Common Elements appurtenant to such Owner's Unit as provided in paragraph 3.4 hereof.

7.1 Payment of Common Expenses. Payment of the Common Expenses shall be payable monthly in such amounts and in such manner as may be provided in the Articles and Bylaws or as determined by the Board. Notwithstanding anything contained herein or in the Articles or Bylaws to the contrary, assessments for the Common Expenses attributable to unoccupied Units of which Declarant is the Owner, shall commence within thirty (30) days after conveyance of the first Unit to a Unit Owner other than Declarant. With respect to all other Units, assessments for the Common Expenses shall commence upon the first day of the first month immediately following the conveyance of such Unit to a Unit Owner other than Declarant. Payment of each Owner's share of the Common Expenses, together with interest at the rate of twelve percent (12%) per annum from the due date of such payment, a reasonable late charge not exceeding twenty five percent (25%) of the amount of such payment as determined by the Board, costs, and reasonable attorneys' fees, shall constitute the personal obligation of the person who was the Owner of such Unit at the time such payment became due. The personal obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by him, provided, however, that the personal obligation shall survive any voluntary or involuntary transfer of a Unit with respect to the Owner of the Unit at the time such payment became due.

7.2 Lien for Unpaid Common Expenses. If any Owner shall fail or refuse to make any payment for Common Expenses within thirty (30) days of the due date, the amount thereof, together with interest thereon at the rate of twelve percent (12%) per annum from the due date of such payment, the late charge provided for in paragraph 7.1 hereof, costs and

reasonable attorneys' fees, shall constitute a lien on such Owner's Unit and on any rents and proceeds therefrom; provided, however, that such lien shall be subordinate to the lien of a recorded First Mortgage on the applicable Unit, acquired in good faith and for value, except for the amount of the unpaid assessments and other charges which accrue from and after the date on which the First Mortgagee acquires title to or comes into possession of the applicable Unit, and any lien for unpaid assessments and other charges prior to such date shall upon such date automatically terminate and be extinguished and such First Mortgagee shall not be liable for such unpaid assessments and other charges, provided, however, that the extinguishment of such lien shall not in any way affect the personal obligation of the Owner of the Unit at the time the payment giving rise to such lien became due. Any person acquiring an interest in any Unit shall upon giving written notice to the Board be entitled to a statement from the Association setting forth the amount of unpaid assessments and other charges, if any, and such person shall not be liable for, nor shall any lien attach to such Unit in excess of, the amount set forth in such statement, except for assessments and other charges which accrue or become due after the date thereof. The lien provided for in this paragraph may be foreclosed by the Association in any manner provided or permitted for the foreclosure of real property mortgages or deeds of trust in the State of Arizona. Until commencement of the first fiscal year of the Association immediately following the conveyance of the first Unit to an Owner, the maximum monthly payment for such Common Expenses payable by each Owner shall be Eighty Dollars (\$80.00) per Unit. Upon the commencement of the first fiscal year immediately following the conveyance of the first Unit to an Owner and at the commencement of each and every fiscal year thereafter, the Board shall ascertain an index number for the U.S. Cities All Items Average (1967 = 100) set forth in the Consumer

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Price Index for All Urban Consumers of the Bureau of Labor Statistics, United States Department of Labor, for the most recent month for which such Index has been published (represented by the letter "C" in the formula hereinafter set forth) and the maximum monthly payment for such Common Expenses assessed for such fiscal year (represented by the letter "R" in the formula hereinafter set forth) may be increased to an amount equal to the then current index number ("C") divided by the U.S. Cities - All Items Average (1967 = 100) set forth in said Consumer Price Index for All Urban Consumers for June, 1985 (represented by the letter "M" in the formula hereinafter set forth) and multiplied by the maximum monthly payment hereinbefore set forth for the period prior to the commencement of the first fiscal year (represented by the letter "X" in the formula hereinafter set forth):

*C = US Cities All Items Avg*

$$(R = \frac{C}{M} X)$$

If the Consumer Price Index for All Urban Consumers shall no longer be published, then another index published by the Bureau of Labor Statistics or any other federal agency shall be substituted by the Board. Notwithstanding anything contained herein to the contrary, from and after the commencement of the first fiscal year immediately following the conveyance of the first Unit to an Owner, the maximum monthly assessment may be increased above that established by said Consumer Price Index formula provided that such increase shall have the assent of sixty seven percent (67%) of each Class of Members who are voting in person or by proxy at a meeting called for such purpose.

7.3 Special Assessments 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 comprising a part of the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty seven percent (67%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for such purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.4 Initial Working Capital Fund. Declarant shall establish an initial working capital fund for the Association equal to at least two (2) months estimated assessments for Common Expenses with respect to each Unit. In connection with the close of escrow relative to the sale of a Unit to an Owner other than Declarant, such Owner shall pay to Declarant an amount equal to two (2) months estimated assessments with respect to such Unit which amount shall be immediately transferred to the Association if Declarant has not previously contributed a similar amount with respect to such Unit to the working capital fund of the Association. Within sixty (60) days after the close of escrow relative to the sale of a Unit to an Owner other than Declarant, Declarant shall pay to the Association a lump sum amount equal to two (2) months estimated assessments with respect to all Units which are then owned by Declarant for such

working capital fund and subsequent to such payment, Declarant shall be entitled to retain any amounts paid to Declarant relative to the working capital fund in connection with the sale of Units to Owners other than Declarant to reimburse Declarant for such lump sum payment. All amounts received by the Association relative to the initial working capital fund shall be deposited by the Association in a segregated fund. Under no circumstances shall any amounts contributed to the Association for the initial working capital fund be deemed to be advance payments of assessments or otherwise creditable or reimbursable to any Owner but shall be used by the Association as the Association, in its prudent discretion, may determine.

8. Mortgages. Each Owner shall have the right, subject to the provisions hereof, to encumber such Owner's Unit with a Mortgage. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, other lien or security interest, which encumbers or purports to encumber any portion of the Property other than such Owner's Unit, and the interest in the Common Elements appurtenant to such Unit.

9. Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained from responsible companies duly authorized to transact insurance business in the State of Arizona with a rating in Best's Insurance Guide (or any comparable publication) of at least A-AAA (or any comparable rating). All such insurance shall name the Association or its authorized representative or trustee as the insured, in its individual capacity for the benefit of the Owners and also either as attorney-in-fact or trustee for all Owners. The Board shall review all such insurance at least annually and shall increase the amounts thereof as it deems necessary or appropriate. All such insurance shall:

(1) Contain a special condominium endorsement providing for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents and against each Owner and each Owner's employees, agents and invitees, and against each Mortgagee of all or any part of the Property or of any Unit, and any other person for whom the Association, any Owner or Mortgagee may be responsible and shall provide for recognition of any authorized representative or trustee of the Association, if applicable;

(2) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee of all or any part of the Property or any Unit and that the insurance policy shall not be brought into contribution with insurance maintained by the Owner or Mortgagee of all or any part of the Property or any Unit;

(3) Contain a standard without contribution mortgage clause endorsement in favor of the Mortgagee, its successors and assigns, of any Unit or all or any part of the Property;

(4) Contain an "agreed amount" and "inflation guard" endorsement, if available;

(5) Provide that the policy of insurance shall not be terminated, cancelled or reduced in coverage without at least thirty (30) days prior written notice to the Association and to each Owner and to each Mortgagee covered by any standard mortgage clause endorsement;

(6) Provide that the insurer shall not have the option to restore the premises if condominium ownership of the Units and Property is to be terminated or the Units and Property are to be

sold as an entirety in accordance with paragraph 10 of this Declaration; and

(7) Contain a "severability of interest endorsement" which shall preclude the insurer from denying the claim of any Unit Owner or the Association due to the negligent acts of the Association or any Owner(s).

Under no circumstances shall any policies of insurance be obtained where (i) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, any Unit Owner or any Mortgagee; or (ii) under the terms of the insurance carrier's charter, bylaws or policy, loss payments are contingent upon action by the insurance carrier's board of directors, policy holders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent any Unit Owner or any Mortgagee from collecting insurance proceeds.

Such public liability and property damage insurance may provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice.

Certificates of insurance coverage or copies of insurance policies shall be issued to and at the expense of each Owner and each Mortgagee who makes or on whose behalf written request is made to the Association for any such certificate or copy.

The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or improvements made to a Unit by an Owner or other insurance obtained at the request of and specifically benefiting any particular Owner, shall be a Common Expense.

9.1 Casualty Insurance. The Association shall obtain and maintain a master policy or policies of casualty insurance covering the Common Elements and each Unit exclusive of the personal property contained therein, but including all wall and floor coverings, cupboards, cabinets, fixtures and built-in appliances installed in each Unit and all fixtures and building service equipment to the extent such is a part of the Common Elements insuring against loss or damage by fire and such other hazards as are covered under standard extended coverage policies, for not less than one hundred percent (100%) of the replacement cost of the Common Elements and each Unit (exclusive of the land, foundations, excavations and other items normally excluded from coverage), as determined on an annual basis by an appraisal made in accordance with the rules and regulations of the Board of Underwriters or like board or body recognized and accepted by the insurance company or companies issuing such insurance and a National Flood Insurance Association Standard Flood Insurance Policy, unless such insurance is not available or the Association determines that the Property is not located within a flood hazard area. Such master policy or policies of casualty insurance shall, to the extent available, contain a standard all risk endorsement and shall insure against all other perils which are customarily covered with respect to condominium projects which are similar in construction, location and use.

9.2 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering liability for bodily injury, including death, and liability for property damage occurring in, upon or about the Common Elements. Each Owner and the Association shall be insured with respect to such liability arising out of the ownership, maintenance, repair or operation of the Property and the Common Elements. The limits of liability for such coverage

shall not be less than \$1,000,000.00 for each occurrence with respect to bodily injury, death or property damage. The Association shall also obtain and maintain steam boiler explosion insurance with limits of liability of not less than \$100,000.00 per occurrence in the event there is a steam boiler in operation on the Property.

9.3 Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable law.

9.4 Fidelity Bonds. The Association shall obtain and maintain bonds covering all persons or entities which handle funds of the Association, including without limitation any professional manager employed by the Association and any of such professional manager's employees, in amounts not less than the maximum funds that will at any time be in the possession of the Association or any professional manager employed by the Association but, in no event less than the total of (i) assessments for a three (3) month period with respect to all Units and (ii) all reserve funds maintained by the Association. With the exception of a fidelity bond obtained by a professional manager covering such professional manager's employees, all fidelity bonds shall name the Association as an obligee. In addition, all such bonds shall provide that the same shall not be terminated, cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and all First Mortgagees.

9.5 Insurance by Owners. Each Owner shall be free to obtain such additional or other insurance as he deems desirable, including insurance covering his furnishings and personal property, including by way of illustration, but not of limitation, any additions, alterations and improvements he may have made to his Unit, and covering personal liability of himself and his employees, agents and invitees and any other persons for whom such Owner may be

responsible. Any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and must, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and their employees, agents and invitees and against any Mortgagee of all or any part of the Property or any Unit or other person for which the Association or any such Owner or Mortgagee may be responsible.

9.6 Receipt and Application of Insurance Proceeds.

Except in a case where a Mortgagee or any other person shall have the legal right to receive insurance proceeds directly, all insurance proceeds and recoveries under policies maintained by the Association shall be paid to and received by an independent financial institution or title company selected by the Association authorized to act as escrow agent for the benefit of the Association, the Declarant, all Owners and all Mortgagees of any Unit or all or any part of the Property as their respective interests may appear. Subject to the rights of any Mortgagee, the Association shall have the right, acting alone, to adjust or settle any claim by it under any insurance maintained by it. Such funds shall be disbursed by said escrow agent in accordance with the following priorities, subject to such evidence of application as such escrow agent shall require, and shall be applied by the Association as follows: first, as expressly provided in paragraph 11 hereof; second, to the Owners or persons whom the Association determines are legally or equitably entitled thereto; and third, the balance, if any, to the Owners in proportion to their respective interest in the Common Elements. Notwithstanding any provision contained herein to the contrary, the rights of and lien priority of any First Mortgagee shall not be affected by any loss, damage or destruction and shall continue in any

insurance proceeds payable with respect to the Unit subject to such Mortgage in accordance with the provisions of such Mortgage.

9.7 Insurance by the Declarant. So long as Declarant remains the owner of more than one (1) Unit or so long as may be required under the Veterans Administration Rule ("VAR") 4360(A)(5), Declarant shall maintain one or more policies of liability insurance which in all respects comply with the requirements of VAR 4360(A)(5).

9.8 Other Insurance by the Association. The Association shall also have the power and authority to obtain and maintain other and additional insurance coverage, including but not limited to casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association. Notwithstanding any other provisions of this Declaration, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association or Government National Mortgage Association, so long as either is a Mortgagee or Owner of a Unit, except to the extent that such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

10. Destruction, Condemnation, Obsolescence, and Restoration or Sale of Property.

10.1 Definition. As used herein, the following terms shall have the following definitions:

(1) "Substantial Destruction" shall exist whenever the Board determines that, as a result of any casualty, damage to or destruction of the Property or any part thereof, the excess of estimated costs of Restoration (as herein defined) over Available Funds (as herein defined) is fifty percent



(50%) or more of the estimated Restored Value of the Property (as herein defined). "Partial Destruction" shall mean any other casualty, damage to or destruction of the Property or any part thereof.

(2) "Substantial Condemnation" shall exist whenever the Board determines that a complete taking of the Property has occurred or that a taking of part of the Property by condemnation or eminent domain or by grant or conveyance in lieu of condemnation or eminent domain has occurred, and that the excess of the estimated costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Property. "Partial Condemnation" shall mean any other such taking by eminent domain or by grant or conveyance in lieu of eminent domain.

(3) "Substantial Obsolescence" shall exist whenever the Owners of Units to which seventy-five percent (75%) of the undivided interest in the Common Elements is appurtenant determine by vote that the Property or any part thereof has reached an undesirable state of obsolescence or disrepair. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(4) "Restoration", in the case of any casualty, damage or destruction, shall mean restoration of the Property to a condition the same or substantially the same as the condition in which the Property existed prior to the casualty, damage or destruction; in the case of condemnation, shall mean restoration of the remaining portion of the Property to an attractive, sound and desirable condition; and, in the case of obsolescence, shall mean restoration of the Property to an attractive, sound and desirable condition.

(5) "Restored Value of the Property" shall mean the value of the Property after restoration as determined by the Board.

(6) "Available Funds" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation received by the Association and any uncommitted reserves of the Association other than amounts derived through assessments or special assessments. Available Funds shall not include that portion of insurance proceeds or condemnation awards or payments in lieu of condemnation legally required to be paid to any party other than the Association, including a Mortgagee of all or any part of the Property or of any Unit, or that portion of any condemnation award or payment in lieu of condemnation paid to the Owner of a Unit for the condemnation or taking of that Owner's individual air space.

10.2 Restoration of the Property. Restoration of the Property shall be undertaken by the Association without a vote of the Owners in the event of Partial Destruction, Partial Condemnation or Partial Obsolescence and shall be undertaken in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence unless the Owners of Units to which one hundred percent (100%) of the undivided interest in the Common Elements is appurtenant and Eligible Mortgage Holders holding Mortgages on Units to which one hundred percent (100%) of the undivided interest in the Common Elements is appurtenant consent to terminate the horizontal property regime established pursuant to this Declaration. Such restoration shall be performed substantially in accordance with this Declaration and the original plans and specifications for the Buildings, the Common Elements and the Units.

10.3 Sale of the Property. In the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence and the Owners of Units to which one hundred percent (100%) of the undivided interest in the Common Elements is appurtenant and Eligible Mortgage Holders holding Mortgages on Units to which one hundred percent (100%) of the undivided interest in the Common Elements is

appurtenant consent to terminate the horizontal property regime created pursuant to this Declaration, the property shall be sold. In the event of such sale, condominium ownership under this Declaration shall terminate and the proceeds of sale and any insurance proceeds, condemnation awards or payments in lieu of condemnation shall be distributed by the Association pro rata to each Owner according to the ratio that the cubic content space of such Owner's Unit bears to the total cubic content space of all Units in the horizontal property regime created pursuant to this Declaration. Such payment shall be made to Owners or, as to Units which are subject to a Mortgage of record at the time of such payment jointly to such Owner and such Mortgagee as their interests may appear.

10.4 Special Assessments for Restoration. Whenever Restoration is to be undertaken, the Association may levy and collect assessments from each Owner in proportion to such Owner's undivided interest in the Common Elements, payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by the Available Funds. Such special assessments together with interest at the rate of twelve percent (12%) per annum from the date such special assessment became due, costs and reasonable attorneys' fees, shall be secured by a lien on the Unit of each such Owner in the same manner as the lien provided for in paragraph 7 hereof.

10.5 Receipt and Application of Condemnation Funds. Except in a case where a Mortgagee or any other person shall have the legal right to receive condemnation awards or payments in lieu of condemnation or eminent domain directly, all compensation, damages or other proceeds constituting awards for condemnation or eminent domain or payments in lieu of condemnation or eminent domain shall be paid, or if received by the Association shall be turned over promptly in the identical form received, without commingling with any asset or property of the Association, to an independent

financial institution or title company selected by the Association authorized to act as escrow agent for the benefit of the Association, the Declarant, all Owners and all Mortgagees of any Unit or all or any part of the Property as their respective interests may appear. The Association shall have the right, acting alone, to adjust or settle any condemnation award or payment in lieu of condemnation or eminent domain payable to it. Such funds shall be disbursed by said escrow agent in accordance with the following priorities, subject to such evidence of application as such escrow agent shall require. The amount thereof equitably allocable as compensation for the taking of or injury to the individual air space of a particular Unit or to improvements of an Owner therein shall be apportioned and paid to the Owner of such Unit or, as to Units which are subject to a Mortgage of record at the time of such payment, jointly to such Owner and such Mortgagee as their interests may appear. The balance of such funds shall be applied to costs and expenses of Restoration, if undertaken, and, to the extent not so applied, shall be allocated as follows: first, any portion of such funds allocable to the taking of or injury to the Common Elements shall be apportioned among all Owners of the Common Elements according to the ratio that the cubic content space of each Owner's Unit bears to the total cubic content space of all Units in the horizontal property regime created pursuant to this Declaration; secondly, any portion of such funds received or awarded for severance damages shall be apportioned among Owners of Units whose individual air space was not taken or injured according to the foregoing ratio; thirdly, any portion of such funds received or awarded for consequential damages or for other purposes shall be apportioned as the Association determines to be equitable under the circumstances. The lien priority of any First Mortgagee shall not be disturbed by any condemnation proceeding and shall continue in the proceeds of any

condemnation award attributable to the mortgaged Unit in accordance with the provisions of this paragraph.

10.6 Reorganization in the Event of Condemnation. Subject to the provisions of A.R.S. § 33-556, in the event all of the individual air space within a Unit is taken by condemnation or eminent domain, such Unit shall, upon payment of compensation as hereinabove provided, cease to be a part of the Property, the Owner thereof shall cease to be a member of the Association, and the undivided interest in Common Elements appurtenant to that Unit shall automatically become vested in the Owner of each remaining Unit whose undivided interest in and to the Common Elements shall be equal to a fraction with a numerator of one and a denominator equal to the total number of Units then a part of the Horizontal Property Regime.

11. Rights of Owners in any Distributions. In the event that any Owner or Mortgagee is entitled to receive any distribution of money, property or other things from the Association for any reason, including without limitation the sale or other disposition of all or any part of the Common Elements or the cessation or termination for any reason of the horizontal property regime created hereby, such distribution shall be according to the ratio that the cubic content space of such Owner's or Mortgagee's Unit bears to the total cubic content space of all Units in the horizontal property regime created pursuant to this Declaration, except as specifically provided to the contrary in paragraphs 9 or 10 hereof.

12. Maintenance, Repairs and Replacements; Right of Access. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit and any portion of the air conditioning, electrical, plumbing and heating systems and lines which exclusively serve his Unit; and each Owner shall keep the patio and balcony areas, if any, adjacent to his Unit in a neat, clean and attractive condition. If, due to

the willful or negligent act of an Owner or a member of his family or guest or other occupant or visitor of such Owner, or other person for whom such Owner may be responsible, damage shall be caused to the Common Elements or to a Unit or Units owned by others or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner, if liable for such damage under local law, upon receipt of a statement from the Board shall pay for such damage and for such maintenance, repairs or replacements as may be determined by the Board. The amount payable for such maintenance, repairs or replacements, together with interest at the rate of twelve percent (12%) per annum from the date such amount is due, costs and attorneys' fees, shall be secured by a lien against the Unit of such Owner as provided in paragraph 7 hereof. An authorized representative of the Board, or of the manager or managing agent of the Property, and all contractors and repairmen employed or engaged by the Board or such manager or managing agent, shall be entitled to access at any time to each of the Units as may be required in connection with maintenance, repairs or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units or the Common Elements.

13. Alterations, Additions or Improvements. Notwithstanding anything contained in paragraph 12 hereof to the contrary, no alterations of any Common Elements or any additions or improvements thereto or any alterations, additions or improvements to the patios or balconies associated with any Unit shall be made by any Owner, except Declarant, without the prior written approval of the Board. Any Owner may make non-structural alterations, additions or improvements within the interior of his Unit (but excluding for purposes of the authority herein granted any patio or balcony) without the prior written approval of the Board, but such Owner shall be responsible for any damage to any

other Units, the Common Elements or the Property which may result from such alteration, addition or improvement. In addition to the required approval of the Board, there shall be no structural alterations or additions to any Building without the prior approval of a majority of the Owners given at a regular or special meeting of the members of the Association and the prior approval of all First Mortgagees. Unless otherwise determined at any such meeting, the cost of such alterations or additions shall be paid by means of a special assessment levied and collected from each Owner in proportion to such Owner's undivided interests in the Common Elements. Such special assessment together with interest at the rate of twelve percent (12%) per annum from the date such special assessment became due, a reasonable late charge not to exceed twenty five percent (25%) of the amount of such assessment as determined by the Board, costs and reasonable attorneys' fees, shall be secured by a lien against each Unit as provided in paragraph 7 hereof.

14. Decorating. Each Owner, at his own expense, shall furnish and be responsible for all of the decorating within his own Unit (but any furnishing or decorating of any patio or balcony shall be subject to the provisions of paragraph 18 hereof) from time to time, including painting, wallpapering, paneling, floor coverings, draperies, window shades, curtains, lamps and other furniture and interior decorating. All window coverings visible from the exterior of the Buildings shall be of a color conforming to that originally provided by Declarant. Each Owner shall be entitled to the exclusive use of the interior unfinished surfaces of the walls, floors and ceilings within his Unit, and each Owner shall have the right to decorate such surfaces from time to time as he may see fit at his sole expense. Decorating and maintenance of the Common Elements and any redecorating of Units to the extent made necessary by any damage caused by maintenance, repair or restoration work by the Association

in the Common Elements shall be furnished by the Association and paid for as part of the Common Expenses.

15. Encroachments. If any portion of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portion of the Common Elements, or if any Unit or entryway providing ingress and egress thereto or therefrom shall actually encroach upon another Unit or entryway, as the Common Elements and the Units are shown on the Plat attached hereto as Exhibit "B" whether such encroachment results from the initial construction or from subsequent repair, reconstruction, settlement or shifting, there shall be deemed to be mutual easements in favor of the Owners of the Common Elements and the respective Owners involved to the extent of such encroachment so long as the same shall exist, provided, however, that no such easement shall result from any alteration, addition or improvement made by an Owner, except Declarant, without the prior written approval of the Board. The Association shall at all times have the right to maintain any Common Elements now existing or hereafter constructed, regardless of any encroachment now or hereafter existing of any such Common Elements upon any Unit.

16. Purchase of Unit by Association. Upon the consent or approval of a majority of Owners present and voting at a general or special meeting of the members of the Association or in such other manner as may be deemed by the Board to be necessary or expedient, the Board shall have the power and authority to bid for and purchase any Unit at a sale pursuant to a mortgage foreclosure, trustee's sale under a trust deed, or a foreclosure of any lien for assessments or other charges provided for in this Declaration, or at a sale pursuant to an order or direction of a court, or other involuntary sale, and the Board shall have the power and authority to finance such purchase of a Unit by Mortgage, special assessment or any other financing arrangement that the Board may deem necessary or expedient.



17. Use and Occupancy Restrictions. No part of the Property shall be used other than as a dwelling and the related common purposes for which the Property was designed, except that Declarant shall have the right to maintain sales and any other offices, model units, and signs on the Property, together with rights of ingress and egress therefrom, and to do such other acts and maintain such other facilities as are incidental to the development and sale of the Units now or hereafter existing in the horizontal property regime created hereby or in Phase II if The Commons On Lemon is expanded to include such Phase. No Owner shall permit his Unit to be used for transient or hotel purposes or shall enter into any Lease for less than the entire Unit or for a term of less than thirty (30) days. Any Lease for any Unit shall be in writing, shall in all respects be subject to and in compliance with the provisions of this Declaration, the Articles and Bylaws and shall expressly provide that a violation of any such provisions shall be a default under such Lease, and a copy of any such Lease shall be delivered to the Association prior to the commencement of the term of such Lease. Each Unit shall be used as a residence or for such other purposes as are permitted by this Declaration and for no other purpose. The foregoing restrictions shall not, however, be construed in any manner as to prohibit an Owner from maintaining his personal and/or a reasonable professional library therein and keeping his personal business records therein.

The Common Elements shall be used only for access, ingress and egress to and from the respective Units by the Owners thereof, their agents, servants, tenants, family members, licensees and invitees and for such other purposes as are incidental to the residential use of the Units. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Owner.

No Owner shall keep or maintain any thing or shall suffer any condition to exist in his Unit or cause any other condition on the Property or the Common Elements which impairs any easement or right of any other Owner or otherwise impairs or interferes with the use and enjoyment by other Owners of their Units and the Common Elements. Pets shall be prohibited and no pets of any kind shall be bred or allowed loose or unsupervised on any part of the Property or the Common Elements.

If the Board determines that any motor vehicle is creating loud or annoying noises by virtue of its operation within the Property, or that the parking of any vehicle on the Property is unsightly or detracts from the overall character of the Property, such determination shall be conclusive and final that the operation or parking of such vehicle is a nuisance, and said operation or parking, upon notice by the Board to the owner or operator thereof, shall be prohibited within the Property. No recreational vehicle, trailer or boat shall be parked on the Property at any time, and no vehicle of any kind may be stored on the Property at any time.

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

No sign of any nature whatsoever, other than those originally provided by Declarant, shall be displayed or placed on any Unit, in any window or on any part of the Property or the Common Elements. No "For Sale" or "For Rent" signs of any nature whatsoever shall be permitted on any part of the Property, and no other signs or graphics shall be permitted on any patio or balcony or on any of the Common Elements. A master "For Sale" sign may be placed on the Property by the Board of Directors with a telephone

number to call for information. The provisions of this paragraph relating to signs shall not apply to the Declarant until the last Unit owned by Declarant in Phase I of The Commons On Lemon has been sold or if Phase II is subsequently annexed to the horizontal property regime in accordance with paragraph 34 hereof, until the last Unit owned by Declarant in Phase II has been sold.

Except as initially installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any building, structure, patio or balcony which in any manner will allow light to be directed or reflected on the Common Elements or any part thereof without the prior written consent of the Board.

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

Enclosures, shades, screens or other items affecting the exterior appearance of any patio or balcony shall not be permitted without the prior written consent of the Board of Directors and shall be subject at all times to the rules and regulations of the Board and to the provisions of paragraph 18 hereof. Only commonly used patio furniture, plants and barbeques shall be kept on any patio or balcony and no portion of such patio or balcony shall be used for storage. All window coverings visible from the exterior of the Buildings shall be of a color conforming to that originally provided by Declarant.

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

No clotheslines shall be installed on any patio or balcony and no Owner shall permit any personal property to be stored on any patio or balcony which is visible from the exterior of any Building.

Without limiting the foregoing, each Owner shall maintain and keep his Unit at all times in a safe, sound and

sanitary condition and shall repair and correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Units or of the Common Elements. No Owner shall place or permit any personal property, garbage, debris or refuse to be placed or to accumulate on any portion of the Common Elements adjacent to any Unit.

Pursuant to the right of entry provided for in paragraph 30 hereof, the Board or its authorized agents may enter any Unit in which a violation of these restrictions exists upon giving reasonable notice to the Owner of such Unit and may correct such violation at the expense of the Owner of such Unit. Such expense shall be secured by a lien against such Unit in the same manner and with the same interest rate as the lien provided for in paragraph 7 hereof.

The Association may modify the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Common Elements by reasonable rules and regulations of general application adopted by the Board from time to time.

18. Architectural Control. No building, fence, wall, antenna, tower, awning, sign or other structure of any kind or character shall be constructed, erected, placed or maintained upon the Property, nor shall any exterior addition, change or alteration be made thereto or therein, including without limitation to any exterior wall, patio or balcony, whether or not part of any Unit, which is visible from the exterior of the Building, and no additions to, changes in, or alterations of landscaping, grade or drainage shall be made, until plans and specifications showing the nature, kind, color, shape, height, materials, location and other physical attributes of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or by an architectural committee appointed by the Board. In the

event the Board, or such committee, if one has been appointed, fails to approve or disapprove such proposal at its next regular meeting occurring more than thirty (30) days after proper plans and specifications have been received by it, such approval will not be required, and this paragraph will be deemed to have been fully complied with. The restrictions contained in this paragraph shall not apply to the Declarant in any way.

Any addition, change or alteration to any improvement or landscaping within the Property, except the interiors of the Units, shall also be subject to the approval of the City of Tempe.

19. Exemption of Declarant from Restrictions. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents, and subcontractors, or parties designated by it in connection with any construction, completion, sale or leasing of any portion of the Property.

20. Entry by Board or its Agent. The Board or its authorized agents may enter any Unit at any time when any two (2) members of the Board deem it necessary or advisable for the enforcement of any restriction hereinabove set forth, to effect emergency or other necessary repairs or otherwise for the protection and preservation of that Unit or other Units provided, however, that except in the event of an emergency, the Board shall give the Owner of such Unit reasonable notice prior to such entry. In addition, the Board or its authorized agents may enter any Unit at any time when any member of the Board or its authorized agent believes in his discretion that an emergency exists and that such entry is necessary in order to protect any person or property in such Unit or adjoining Units or for other good cause. If it becomes necessary to break into a Unit because no key or means of access was provided by the Occupant or

Owner, the Association, its directors, officers and agents shall not be liable for any damage done to the Unit as a result of the exercise of this right of entry. The party exercising this right of entry shall see that reasonable measures are taken to secure the Unit until either the Occupant or Owner shall be notified that the Unit has been entered.

21. Roof Leaks and Repairs. The Association shall repair promptly all leaks or other damage to the roofs of any of the Buildings of which the Association has notice in writing, provided, however, that the cost of repairing leaks or damage due to the willful or negligent act of an Owner or a member of his family or guest or other occupant or visitor of such Owner or other person for whom such Owner may be responsible shall be the obligation of such Owner as provided in paragraph 12 hereof.

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

23. Copy of Declaration to New Members. The Board shall give each new Owner of a Unit a copy of this Declaration and any and all amendments hereto within sixty (60) days notice of the conveyance of a Unit to such new Owner. However, the failure of the Board to provide such copy shall not relieve the new Owner from complying with this Declaration nor waive any of the rights, conditions or restrictions stated herein or create any liability on the part of the Association, the Board or their agents.

24. Remedies. In the event that any Owner shall fail to comply with the provisions of the Act, this Declaration,

the Articles, the Bylaws, or the rules and regulations of the Association, the Association shall have each and all of the rights and remedies provided for in the Act, this Declaration, the Articles, the Bylaws or said rules and regulations, or which may be available at law or in equity and may prosecute any action or other proceeding against such Owner for enforcement of such provisions or foreclosure of its lien and the appointment of a receiver for the Unit, or damages, or injunctive relief, or specific performance, or judgment for payment of money and collection thereof, or to sell the same as hereinafter provided, or any combination of such remedies or any other and further relief which may be available at law or in equity, all without notice and without regard to the value of such Unit or the solvency of such Owner. The proceeds of any rental or sale shall first be applied to discharge court costs, other litigation costs, including without limitation reasonable attorneys' fees, and all other expenses of the proceeding and sale. The remainder of such proceeds shall be applied first to the payment of any unpaid assessments or other charges and the satisfaction of any other damages, and any balance shall be held by the Association for the payment of any future assessments or other charges. Upon the confirmation of the sale, the purchaser of such Unit shall be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of possession for the purpose of acquiring such possession. The purchaser at any such sale shall take the Unit sold subject to all of the covenants, conditions and restrictions contained in this Declaration. All expenses of the Association in connection with any such action or proceeding, including court costs and reasonable attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, shall be secured by a lien upon the Unit of such defaulting Owner as provided in paragraph 7 hereof and shall bear interest at the rate of

twelve percent (12%) per annum from the date such were incurred.

In addition to the remedies granted to the Association pursuant to this paragraph 24, in the event that any Owner or the Association shall fail to comply with the provisions of the Act, this Declaration, the Articles, the Bylaws, or the rules and regulations of the Association, any Owner shall have each and all of the rights and remedies provided for in the Act, this Declaration, the Articles, the Bylaws or said rules and regulations or which may be available at law or in equity and may prosecute any action or other proceeding against such Owner or the Association for the enforcement of such provisions, injunctive relief and/or specific performance.

Notwithstanding any provision of this Declaration to the contrary, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration, or any right of reentry by reason thereof, shall not defeat or adversely affect the lien and/or rights of any Mortgagee except as herein expressly provided, each and all of such covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any lessee under any Lease or against any Owner of any Unit whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

25. Amendment. The provisions of this Declaration may be changed, modified or amended by an instrument in writing setting forth such change, modification or amendment, signed by Owners of Units to which not less than ninety percent (90%) of the undivided ownership of the Common Elements is appurtenant and acknowledged during the first twenty (20) years from the date of recordation of this Declaration and thereafter signed by Owners of Units to which not less than seventy-five percent (75%) of the undivided ownership of the Common Elements is appurtenant and acknowledged provided,

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However, that so long as any Class B membership remains outstanding, the Veterans Administration shall have consented to any such change, modification or amendment and provided further, that fifty-one (51%) of all Eligible Mortgage Holders shall have consented to any change, modification or amendment which establishes, provides for, governs or regulates any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the Common Elements;
- (4) Responsibility for maintenance and repair of the Common Elements and the Units;
- (5) Subject to the provisions of paragraph 34 and the provisions of the Act, reallocation of interests in the Common Elements or rights to the use of the Common Elements;
- (6) Boundaries of any Unit;
- (7) Convertibility of Units into Common Elements or of Common Elements into Units;
- (8) Subject to the provisions of paragraph 34 and the provisions of the Act, expansion or contraction of The Commons On Lemon or the addition, annexation or withdrawal of property to or from The Commons On Lemon;
- (9) Insurance or fidelity bonds;
- (10) Leasing of Units;
- (11) Imposition of any restrictions on the right of a Unit Owner to sell, transfer, or otherwise convey such Owner's Unit;
- (12) Any decision by the Association to establish self management if professional management has been previously required by an Eligible Mortgage Holder;
- (13) Restoration or repair of the Property after damage, destruction or condemnation in a manner other than as provided in paragraph 10.2 hereof;

(14) Subject to the provisions of this Declaration and the provisions of the Act, any action to terminate the Horizontal Property Regime created hereby after substantial destruction or condemnation occurs;

(15) Any provisions which are for the express benefit of Mortgage Holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors of First Mortgages on any Unit.

Any Eligible Mortgage Holder who receives a written request to approve any change, modification or amendment which does not require the consent of fifty-one percent (51%) of all Eligible Mortgage Holders and who does not notify the requesting party in the manner provided in paragraph 26 hereof within thirty (30) days after receipt of such request shall be deemed to have approved such change, modification or amendment.

Notwithstanding anything contained herein to the contrary, if the Act, this Declaration, the Articles or the Bylaws require the consent or agreement of the Owners of Units to which a specified percentage of the undivided interest in the Common Elements is appurtenant and/or any other persons having any interest in the Property for any such amendment or for any action specified in the Act or this Declaration, then any instrument so amending this Declaration or any provision hereof or providing for such action shall be signed by the Owners of not less than such specified percentage. Any such change, modification or amendment accomplished under any of the provisions of this paragraph 25 shall be approved in writing by an authorized representative of the Tempe City Attorney's Office and shall thereafter be effective upon recording of the instrument providing therefor signed and acknowledged as provided herein.

26. Notices. Notices provided for in the Act, this Declaration, the Articles or the Bylaws shall be in writing and shall be mailed postage prepaid if to the Association or the Board addressed to the address to which payments of

assessments are then sent and if to an Owner addressed to his Unit. The Association or the Board may designate a different address or addresses to which notices shall be sent from time to time by giving written notice of such change of address to all Owners. Any Owner may also designate a different address or addresses to which notices shall be sent by giving written notice of his change of address to the Association. Notices shall be deemed delivered five (5) days after being deposited properly addressed in the United States mail, postage prepaid, or immediately upon delivery in person.

Upon written request to the Board, which written request specifies an address to which notices may be sent, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners of the Unit subject to the Mortgage held by such Mortgagee.

27. Severability. If any provision of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance shall not be affected thereby, and the remainder of this Declaration, the Articles, the Bylaws or the rules and regulations, shall remain in full force and effect as if such invalid part were never included therein, and such invalid part shall be promptly amended as herein provided or reformed by such court so as to implement the intent thereof to the maximum extent permitted by law.

28. Perpetuities and Restraints on Alienation. If any of the easements, privileges, covenants, interests or rights

created by this Declaration would otherwise be unlawful, void or voidable for violation of the rule against perpetuities, then such shall continue in existence until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States, Ronald W. Reagan, or the Governor of Arizona, Bruce E. Babbitt.

29. Rights and Obligations. Each grantee of Declarant, by the acceptance of a deed of conveyance, each purchaser under any agreement of sale within the meaning of A.R.S. §33-741, by execution of such agreement for sale and each Mortgagee by the acceptance of any instrument conveying any interest in the Property as security for the performance of an obligation, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and equitable servitudes and shall be binding upon and shall inure to the benefit of any grantee, purchaser or any person having at any time any interest or estate in the Property or the Common Elements in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument of transfer, and each such grantee shall be entitled to bring, and shall be subject to, an action for the recovery of damages, or for injunctive relief, or both, resulting from any breach of any such provisions.

30. Waiver. Any right or remedy provided for in this Declaration shall not be deemed to have been waived by any act or omission, including without limitation any acceptance of payment or partial performance or any forbearance, except by an instrument in writing specifying such right or

remedy and executed by the person against whom enforcement of such waiver is sought.

31. Utility Easement. Notwithstanding any other provisions hereof, there is hereby created a blanket non-exclusive easement upon, across, over and under the Property (other than the interior of the Units) and the Common Elements for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including by way of illustration, but not of limitation, water, sewer, gas, telephone, electricity, television cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Common Elements and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of the Buildings; provided, that no such utility and service line or system may be installed or relocated on the Common Elements except as initially planned and approved by Declarant or as thereafter approved by the Board. This easement shall in no way affect any other previously recorded easements which affect the Property.

32. Protection for Eligible Mortgage Holders. All Eligible Mortgage Holders and Eligible Insurers and Guarantors shall be entitled to written notification by the Association upon the commencement of any eminent domain or condemnation proceedings against all or any part of the Property or of substantial damage to or destruction of any part of the Property. Upon written request, all Eligible Mortgage Holders and Eligible Insurers and Guarantors shall have the right (i) to examine all books and records of the Association during normal business hours; and (ii) to receive an audited financial statement of the Association as soon as available and in any event within ninety (90) days following the end of any fiscal year of the Association; (iii) to receive written notice of all meetings of the Unit

Owners and to designate a representative to attend all such meetings; (iv) to receive written notice of any default by any Mortgagor in the performance of any obligation by such Mortgagor under this Declaration or the Articles and Bylaws of the Association which default is not cured by such Mortgagor within sixty (60) days of the occurrence of such default; (v) to receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (vi) to receive written notice of any proposed action which would require the consent of Eligible Mortgage Holders holding Mortgages on Units to which a specified interest in the Common Elements is appurtenant as set forth in this Declaration. With respect to audited financial statements furnished pursuant to this paragraph, such statements shall be prepared at the cost of the Eligible Mortgage Holder, Insurer or Guarantor requesting the same until any of Phase II is annexed to The Commons On Lemon, subsequent to which such statements shall be prepared at the cost of the Association.

33. Professional Management Agreement. Any Agreement for professional management of the Property and the Common Elements or any contract providing for services to be performed by the Declarant for the Association shall provide for termination by the Association with or without cause and without payment of a termination fee or penalty on thirty (30) days written notice, and no such contract or agreement shall be of a duration in excess of one (1) year, renewable by agreement of the parties for successive one (1) year periods.

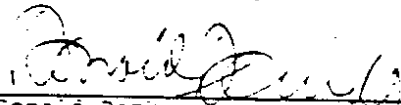
34. Plan of Development. Declarant hereby explicitly reserves the right to expand the horizontal property regime created hereby without the consent of any Unit Owner or any Mortgagee to include all or a portion of the real property legally described on Exhibit "C" attached hereto and incorporated herein by reference by recordation of a deed of

annexation describing the Units in Phase II. The property in Phase II shall be free and clear of all liens, taxes and assessments at the time of annexation and Declarant shall pay all liens, taxes and assessments which may affect such property prior to the time the same is annexed pursuant to VAR 4360(A)(4). Both Phases of The Commons On Lemon are planned to contain in total 53 Units. However, neither Declarant nor any other person has any obligation to submit any of the real property not included within the horizontal property regime created hereby to such horizontal property regime or to develop such real property in accordance with such plan or otherwise. The right of Declarant to create Phase II by annexation of all or a portion of the real property described on Exhibit "C" to this horizontal property regime shall expire on June 1, 1992. In the event the horizontal property regime created hereby is expanded to include Phase II each Owner in Phase II shall become a member of the Association and shall be entitled to exercise the same voting rights as Owners in Phase I of The Commons On Lemon and as provided in paragraph 4.1 hereof. Upon the annexation of Phase II the relative voting strength of the Declarant and the Owners will change and control of the Association, even though vested in Owners other than Declarant at the time of the annexation of Phase II may revert to the Declarant by virtue of the provisions of paragraph 4.1 hereof. Upon the annexation of Phase II to the horizontal property regime created hereby additional Common Elements will be created. However, the respective interest in and to the Common Elements appurtenant to each Unit in Phase I shall be reduced in direct proportion to the number of Units in the second Phase annexed to the Horizontal Property Regime. Subsequent to the annexation of Phase II, the interest in and to the Common Elements appurtenant to each Unit in the Horizontal Property Regime shall be equal to a fraction with a numerator of one and a denominator equal to the total number of Units then a part

of the Horizontal Property Regime and upon the annexation of Phase II, if such Phase is annexed, the undivided interest in the Common Elements appurtenant to each Unit in Phase I and Phase II shall be 1/51 of the whole. As a result there will be a smaller interest in a greater number of Common Elements appurtenant to each Unit in Phase I. Upon the annexation of all or a portion of the real property legally described on Exhibit "C" to the horizontal property regime created hereby, such property shall in all respects be subject to and the ownership and use thereof shall be governed in accordance with all of the covenants, conditions and restrictions set forth in this declaration of horizontal property regime. Notwithstanding anything contained herein to the contrary, Declarant shall have no right to expand the horizontal property regime created hereby by recordation of a deed of annexation to Phase II without the prior consent of the Veterans Administration. Prior to the annexation of all or any portion of the property legally described on Exhibit "C" attached hereto all improvements contained within the boundaries of the property to be annexed shall be substantially completed and shall be consistent, in terms of quality of construction, with the improvements constructed in Phase I of The Commons On Lemon.

IN WITNESS WHEREOF, The Commons On Lemon, a California general partnership, has executed this instrument as of this 12<sup>th</sup> day of October, 1985.

THE COMMONS ON LEMON, a  
California general partnership

By   
Donald Demko,  
General Partner

By \_\_\_\_\_  
Dean R. Dunphy,  
General Partner



APPROVED AS TO FORM:

85 501251

W. Kent Dreyer  
Assistant City Attorney  
of the City of Tempe

STATE OF ARIZONA       )  
                                  ) ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me  
this 22 day of October, 1985, by DONALD DEMKO and ~~DEAN~~  
~~R. DEMKO~~, the ~~sole~~ general partners of THE COMMONS ON  
LEMON, a California general partnership, for and on behalf  
of such partnership.

David J. [Signature]  
Notary Public

My Commission Expires:

6 Sept 1988

85 501251

TWA / 85159

9/13/85

PHASE I

That part of the Northwest quarter of Section 23, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

FROM the Southeast corner of the said Northwest quarter, Section 23, measure West (bearing of reference) along the South line of said Northwest quarter, Section 23, a distance of 538.68 feet; Thence North 01-25-57 West along a line which is the prolongation of the West line of Dorsey Square Apartment Planned Residential Development, recorded in Book 154 of Maps, page 31, Maricopa County Records, a distance of 226.43 feet to the POINT OF BEGINNING;

Thence South 88-34-03 West 170.00 feet;  
Thence North 67-06-00 seconds West 170.38 feet to a point on the West line of that property described in Docket 4569, page 471 (Quit Claim Deed);  
Thence North 02-40-32 East 92.99 feet to the Northwest corner of the said property described in Docket 4569, page 471;  
Thence South 88-37-40 East on a line which is parallel to and 305.00 feet Southerly from the South right-of-way line of Lemon Street a distance of 135.66 feet;  
Thence North 00-46-28 West 111.29 feet;  
Thence South 88-37-40 East 138.05 feet;  
Thence North 00-47-57 West 188.71 feet to the south right-of-way line of Lemon Street;  
Thence South 88-37-40 East a distance of 24.02 feet along the South right-of-way line of Lemon Street;  
Thence South 00-47-57 East a distance of 177.86 feet;  
Thence South 88-37-40 East a distance of 22.02 feet to a point along the West line of said Dorsey Square Apartment;  
Thence South 00-47-57 East along the West line of said Dorsey Square Apartments, a distance of 197.45 feet;  
Thence South 01-25-57 East 72.00 feet to the POINT OF BEGINNING

EXHIBIT A

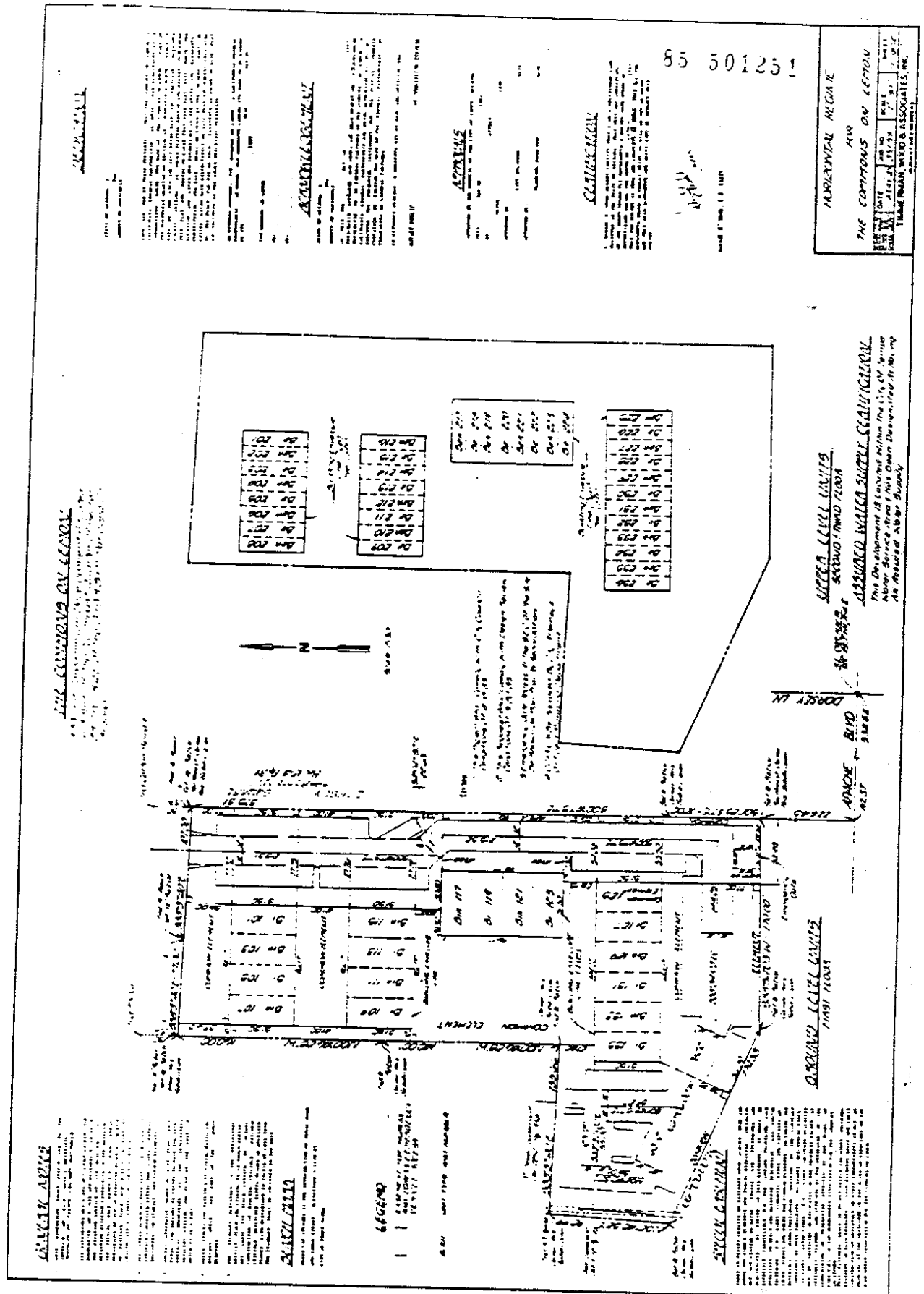


EXHIBIT B

85 501261

PERMANENT RECORD

THE COMPANIES OF LEON

|                              |             |      |          |
|------------------------------|-------------|------|----------|
| DATE                         | 10/11/50    | TIME | 10:00 AM |
| BY                           | W. J. B. J. | FOR  | 100-42   |
| THOMAS PHARMACEUTICALS, INC. |             |      |          |

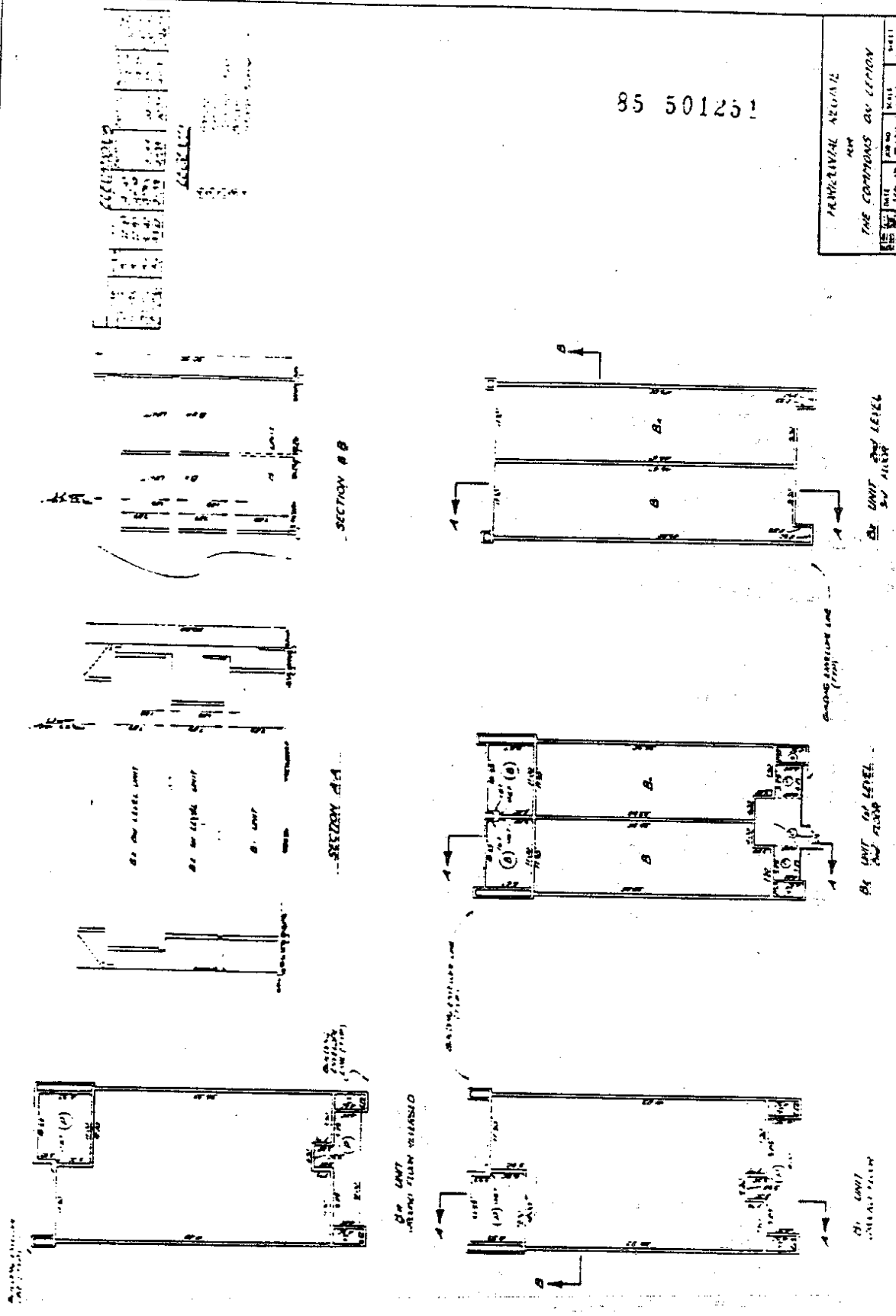


EXHIBIT B