

When recorded, return to:

SOUTH POINT CODOMINIUMS  
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**DECLARATION OF CONDOMINIUM AND  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR SOUTH POINT CONDOMINIUMS**

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**DECLARATION OF CONDOMINIUM AND  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SOUTH POINT CONDOMINIUMS**

This Declaration of Condominium and Declaration of Covenants, Conditions and Restrictions is made as of the 31<sup>st</sup> day of July 1990, by South Point Partners, an Arizona General Partnership (hereinafter referred to as (“Declarant”).

**WITNESSETH:**

Declarant is the owner of the real property described on Exhibit “A” hereto (“the Initial Property”) and on Exhibit “B” hereto (“the Annexable Property”). Declarant intends by this Declaration to impose upon the Initial Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Initial Property and of all owners of residential property within such parts, if any, of the Annexable Property as may hereafter be subjected to this Declaration, as provided herein. Declarant desires to provide a flexible (yet common) and reasonable procedure for the overall development of the Initial Property and such parts, if any, of the Annexable Property as may hereafter be subjected to this Declaration, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such property as is now or may hereafter be subjected to this Declaration, as provided herein. The Association described herein may perform education, recreational, charitable and other social welfare activities.

NOW THEREFORE, Declarant hereby declares that all of the property described on Exhibit “A” hereto and any additional property as may be subjected to this Declaration shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property now and hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described properties or any part thereof, and their heirs, person representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

FURTHER, Declarant hereby submits the Condominium to be known as South Point Condominium and hereby declares that all of the Condominiums, including the annexable property as hereinafter described and as such annexable property becomes

subject to this Declaration as hereinafter described, shall be subject to these Covenants, Conditions and Restrictions and shall be held, conveyed, mortgaged, encumbered, leased, rented, occupied, improved and used subject to the following covenants, conditions, restrictions, easements and equitable servitudes. The restrictions set forth in this Declaration shall run with the Condominium, shall be binding upon all persons having or acquiring any right, title or interest in the Condominium, or any part thereof, shall inure to the benefit of every portion of the Condominiums, and any interest therein shall inure to the benefit of and be binding upon any successor in interest of the Declarant and of each owner and may be enforced by Declarant, by any owner or other successors in interest or by the Association.

## **ARTICLE I**

### **DEFINITIONS**

#### Section 1

**“Condominium”** shall mean the real property located in Mohave County, Arizona, which is described in Exhibit “A” attached to this Declaration, and incorporated herein by reference, constitute the real property covered by this Declaration as of the effective date hereof, and any portion of the annexable property as hereinafter described, together with all buildings and improvements, improvements located thereon and all easements, rights and appurtenances belonging thereto, whether such building or other buildings or other improvements are or were originally offered to the public for lease, rental or sale. No gainful occupation, profession, trade or other non-residential use shall be conducted in any Condominium.

#### Section 2

**“Building”** shall mean and refer to the structures designated as buildings on the plat.

#### Section 3

**“Condominium Documents”** shall mean and refer to this Declaration and the Articles, Bylaws, association Goals and Architectural Committee Rules.

#### Section 4

**“Declarant”** shall mean South Point Partners, an Arizona General Partnership, its successors and any person or entity to whom it may expressly assign its rights under this Declaration.

## Section 5

**“Declaration”** shall mean and refer to this entire document as the same may be amended from time to time.

## Section 6

**“Improvements”** shall mean and refer to all physical structures, including, but not limited to, buildings, private drives, parking areas, fences, walls and landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

## Section 7

**“Plat”** shall mean and refer to:

- (i) The plat for the South Point Condominiums, recorded on Thursday, the 23<sup>rd</sup> day of August, 1990, with the County Recorder of Mohave County, Arizona, as Reception No. 90—60271, and any amendments thereto, insofar as said plat covers the real property described on the exhibits attached hereto, including any portion of the annexable property which is annexed by the Declarant pursuant to Article VI of this Declaration; and,
- (ii) Any other plat, and any amendments thereto, recorded against all or any portion of the real property described in the exhibits attached hereto, or any portion of the annexable property, all of which is annexed by the Declarant pursuant to Article VI of this Declaration. The boundaries described on the plat are for engineering and measuring purposes only.

## Section 8

**“Special Declarant Right//Development Right” or Declarant Right”** shall mean and refer to the rights created and reserved in this Declaration, or which may be otherwise provided for in this Declaration.

## Section 9

**“Unit”** shall mean and refer to a portion of the Condominium which is intended for separate fee ownership and is not intended to be owned in common with the other owners of units in the Condominium. The number of each unit is shown on the plat. The boundaries of each unit are the interior unfinished surfaces of the perimeter walls, floor, ceilings, windows and doors thereof, and each unit includes both the portions of the building and the airspace encompassed within the boundaries of the unit. The boundaries of each unit shall also include the balcony, patio or fenced-in rear yard area. Each unit shall also include the range, dishwasher, and garbage disposal located in the units and

other built-in household appliances lying within said boundaries. The following shall not be considered part of a unit: bearing walls, columns, vertical supports, floors, foundations, patio walls and fences, except the fences separating each unit, pipes, ducts, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit. No structural part of a building and no part of a unit forming a part of any systems serving one or more other units or the general common elements shall be deemed or construed to be a part of a unit.

#### Section 10

**“Articles”** shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Bylaws and the statutes and regulations of the State of Arizona.

#### Section 11

**“Association”** shall mean and refer to South Point Homeowners’ Association, an Arizona non-profit corporation, and its successors and assigns, consisting of the owners of the Condominiums.

#### Section 12

**“Board of Directors”** or **“Board”** shall be the elected body of the Association having its normal meaning under Arizona corporate law.

#### Section 13

**“Bylaws”** shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time in accordance with the provisions thereof and with the applicable provisions of this Declaration, the Articles and the statutes and regulations of the State of Arizona.

#### Section 14

**“Common Area”** shall mean (a) all real and personal property hereafter owned by the Association for the common use and enjoyment of the Owners, (b) real and personal property owned by Declarant which is designated by Declarant as being for the common use and enjoyment of the Owners, and (c) such portions of public rights-of-way adjacent to all or any part of the Properties over or with respect to which the Association or Declarant has reserved or been granted (or hereafter reserves or has granted to it), explicitly or implicitly, an easement or other right or permission for installing and

maintaining landscaping, irrigation systems, perimeter or boundary walls and the like (including, but not limited to, landscaped medians and perimeter or boundary walls on or within public rights-of-way adjacent to all or any part of the Properties.

*Section 14 amended April 11, 1991 redefining the “Common Area” to include the following amenities: A furnished clubhouse with a kitchen facility; a heated swimming pool with a Ramada; a heated spa; pool furniture including a table, chairs, umbrellas and lounge chairs; a satellite TV system; pool landscaping and landscaping around the clubhouse and condominium units.*

#### Section 15

**“Common Expenses”** shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration or pursuant to the Articles or the Bylaws.

#### Section 16

**“Member”** shall mean and refer to a person or entity entitled to membership in the Association, as provided herein, provided, however, that there shall be only one Class “A” membership for each Condominium, as further provided in Article III below.

#### Section 17

**“Mortgage”** shall include a deed of trust, as well as a mortgage.

#### Section 18

**“Mortgagee”** shall include a beneficiary or holder of a deed of trust, as well as a mortgage.

#### Section 19

**“Mortgagor”** shall include the trustor of a deed of trust, as well as a mortgagor.

#### Section 20

**“Owner”** shall mean and refer to the owner (as evidenced by a recorded document), whether one or more persons or entities of a Condominium that is part of the Properties (including, without limitation, persons who acquire title by means of a trustee’s deed issued as a result of the exercise of a power of sale under a deed of trust, or

who acquire title by means of a deed in lieu of the foreclosure of a mortgage or deed of trust) or, in the case of any valid and outstanding recorded executor agreement of sale with respect to a Condominium, the purchaser under such agreement of sale. The term “Owner” shall exclude in all cases any party holding an interest merely as security for the performance of an obligation.

Section 21

“**Person**” means a natural person, corporation, partnership, trustee or other legal entity.

Section 22

“**Properties**” shall mean and refer to the real property described in Exhibit “A” attached hereto and shall further refer to such additional property as may hereafter be subjected to this Declaration off which is nor or may hereafter be owned in fee simple by the Association.

Section 23

“**Annexable Property**” shall mean and refer to the real property located in Mohave County, Arizona, which is described on Exhibit “B” attached to this Declaration, together with all buildings and other improvements located thereon and all easements, rights and appurtenances belonging thereto.

**ARTICLE II**  
**PROPERTY RIGHTS AND DESCRIPTION OF CONDOMINIUM**

Section 1

“**Property Rights**”: Every Owner shall have a right and easement f enjoyment in and to the Common area, subject to any restrictions or limitations contained herein or in any instrument conveying to the Association or subjecting to this Declaration such property, and subject further to the reasonable rules and regulations of the Association. Any Owner may assign his, her or its right of enjoyment to (and share the same with) the members of his or her household and assign the same to and share the same with his, her or its tenants and invitees subject to the provisions of this Declaration and to reasonable regulation by the Board and otherwise in accordance with procedures as the Board may adopt.

## Section 2

**“Description of Condominium”:** The Condominium as of recordation of this Declaration shall be comprised of a total of ninety-three (93) units, which will be numbered on the plats as Units 1 through 93, inclusive. The number of units within the Condominium may be increased by the annexation of all or any part of the annexable property or pursuant to the other Articles of this Declaration. Declarant hereby reserves as Declarant right to construct all improvements to the Condominiums as provided in this Declaration.

## Section 3

**“Description of the Boundaries of Each Building”:** The boundaries of each building with reference to its location on the land is described on the plat. The boundaries of each building shall be the exterior of the outside walls of said building, except that where there are patios, balconies or fences which enclose a unit yard extending beyond the exterior of the outside walls, the boundaries of each building shall be the plane of the outer edge of the exterior wall surrounding said patios, balconies or fences or the plane of the boundary line shown on the plat for said patios, balconies or fences which extend outward furthest from the exterior walls of said building. The upper and lower boundaries of the building shall be as shown on the plat.

## Section 4

**“Description of the Boundaries of Each Unit”:** The vertical boundaries of each unit and of each area of the Condominium shall be subject to individual ownership and exclusive control. The unit shall not have any horizontal boundaries; provided, however, that ownership and rights in the airspace above a unit shall be as governed by common law and restricted by any governmental zoning or building ordinance or law.

## Section 5

**“Description of General Common Elements”:** The general common elements shall include all of the Condominiums except for the units. The general common elements shall include, but not be limited to, the land upon which the units are located, the buildings, all exterior and bearing walls, columns, vertical supports, floors, patio walls and fences, except fences, if any, separating each unit, ceilings and roofs, slabs, recreational facilities, pumps, landscaping, pavements, parking spaces, private drives, all waste, water pipes, ducts, conduits, wires, drainage lines, or other utility installations, reservoirs, water tanks and pumps servicing more than one unit, the foundations of the

units and the foundations of the buildings, and all other devices and premises designated for common use or enjoyment by more than the owner of a single unit.

#### Section 6

**“Description of Unit as a Separate Parcel of Real estate”:** IF there is an owner other than Declarant, each unit that has been created, together with its interest in the general common elements, constitutes for all purposes a separate parcel fo real property and should be separately taxed and assessed. There should be no separate tax or assessment rendered against any general common elements, except those general common elements, if any, to which the Declarant reserves the right of withdrawal or de-annexation for which the Declarant alone is liable for the payment of taxes as long as Declarant retains the right of withdrawal or de-annexation.

#### Section 7

**“Fractional Interest”:** Each unit shall have a fractional undivided interest in the general common elements, and shall bear responsibility for its allotment of a portion of the common expenses based upon such fractional interest. The formula used to arrive at each individual unit’s undivided fractional interest in the general common elements shall be the fraction, the numerator of which shall be the total square footage for such individual unit (set forth on the plat), the denominator of which shall be the total square footage of all the combined units then existing in the Condominium and subject to this Declaration. In the event the Declarant annexes all or any portion of the annexable property pursuant to Article VI, the fractional interest of each unit in the general common elements shall be adjusted by the Declarant.

#### Section 8

**“Amendment by Declarant”:** Declarant has the right to amend this Declaration during any period of Declarant control to comply with any applicable laws or to correct any error or any inconsistencies in this Declaration, if such amendment does not adversely affect the rights of any unit owner.

## **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

#### Section 1

**Membership:** The Association shall have two (2) classes of membership, Class “A” and Class “B”, as follows:

**(a) Class “A”**

There shall be one Class “A” membership in the Association for each Condominium that is subject to this Declaration. Each such membership shall be held by the Owner (from time to time) of such Condominium and shall be appurtenant to and may not be separated from ownership of such Condominium. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner’s membership. No Owner,, whether one or more persons, shall have more than one membership per Condominium owned. In the event any Condominium is owned by two or more persons or entities whether by joint tenancy, tenancy in common, community property or otherwise, the membership as to such Condominium shall be joint, provided, however, that such owners shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall make such designation and such designation shall be binding for all purposes. In no event shall more than one (1) Class “A” membership exist for each Condominium.

**(b) Class “B”**

Class “B” members shall be Declarant and any assignee of all or any part of Declarant’s Class “B” membership rights.

Section 2

**Voting:** The voting rights of the Class “A” and Class “B” members are as follows:

**(a) Class “A”**

Each Class “A” member shall be entitled on all issues to one (1) vote for each Condominium with respect to which such members holds the interest required for membership by Section 1 hereof. When more than one person holds such interest in any Condominium, there shall be only one (1) vote with respect to such Condominium, which vote shall be exercised by the person designated to exercise the power to cast such vote, as provided in Section 1 of this Article III. Any attempt to cast a vote appurtenant to a Condominium in a manner inconsistent with the afore-described

designation shall result in the suspension of the power to cast such vote until such time as such vote is cast in accordance with such designation. Any Owner of a Condominium that is leased may, in the lease or other written instrument, assign the voting right appurtenant to the Condominium to the lessee of the Condominium, provided that copy of such instrument is furnished to the Secretary prior to any meeting.

**(c) Class “B”**

The Class “B” member or members shall originally be entitled to one hundred and thirty-eight (138) votes, this number shall be decreased by one (1) vote for each Class “A” vote existing at any one time.

*Section 2, Class “B” amended April 11, 1991 to read:*

*The Class “B” member or members shall originally be entitled to two hundred and seventy-nine votes (279), (3) for each lot owned; this number shall be decreased by one vote for each Class “A” vote existing at any one time.*

At such time as Declarant, in its sole discretion, shall determine, the Class “B” membership shall terminate, at which time Declarant shall notify the members of the Association, in writing, of the termination of Class “B” status. Declarant shall have the right, at any time and from time to time, to assign all or any part of its voting rights appurtenant to its Class “B” membership rights (as well as all or any other rights appurtenant thereto) to one or more persons or entities acquiring any part of the property described in Exhibit “B” hereto for purposes of development and sale.

**ARTICLE IV  
MAINTENANCE**

The Association shall maintain and keep in good repair the Common Area; the cost of such maintenance to be a Common Expense of the Association. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated upon the Common Area, including any perimeter or boundary walls.

**ARTICLE V**  
**INSURANCE AND CASUALTY LOSSES**

Section 1

**Insurance:** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. The insurance required hereby shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a comprehensive public liability policy covering the Association for all damage or injury caused by the negligence of the Association or any of its agents, and, at the Board's discretion and if reasonably available, directors' and officers' liability insurance. The comprehensive public liability policy shall be in amounts not less than Five Hundred Thousand Dollars (\$500,000.00) per person or One Million Dollars (\$1,000,000.00) per occurrence, as respects bodily injury, and Two Hundred Fifty Thousand Dollars (\$250,000.00), as respects property damage. Premiums for all such insurance shall be a Common Expense.

All such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with one or more companies authorized to provide such insurance in the State of Arizona.
- (b) Exclusive authority to adjust losses under policies in force on property owned by the Association shall be vested in the Board of Directors.
- (c) In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance provided by individual owners, occupants or their mortgagees, and the insurance carried by the Association shall be primary.
- (d) The Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Board of Directors or the Owners and their respective tenants, servants, agents and guests (if securing same will impose on the Association no additional cost or only such reasonable cost as the Board of Directors may determine in its discretion.)

## Section 2

### **Damage and Destruction:**

- (a) Immediately after any damage or destruction by fire or other casualty to all or any part of the property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article V, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.
- (b) Any major damage or destruction to the Common Area shall be repaired or reconstructed unless, at a special meeting of the Members of the Association duly noticed and convened within sixty (60) days after the occurrence of such damage or destruction, the Members determine, by a vote of not less than seventy-five percent (75%) of all votes represented at such meeting (either in person or by valid proxy), not to so repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or a reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made or become available; provided, however, that such extension shall not exceed sixty (60) days. No mortgagee (except for one holding a mortgage executed and delivered by the Association or Declarant upon the Common Area affected) shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed. The Board of Directors shall determine whether any minor damage or destruction to the Common Area should be repaired or reconstructed.
- (c) In the event that it is determined by the Association in the manner described above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be maintained by the Association in a neat and attractive condition as an underdeveloped portion of the Common Area.

## Section 3

**Repair and Reconstruction:** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of

a vote of the Members, levy an equal assessment against the Owner of each Condominium. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be used to meet Common Expenses.

## **ARTICLE VI ANNEXATION OF ADDITIONAL LAND**

### Section 1

**Rights of Annexation:** Declarant hereby expressly reserves the right until seven (7) years from the date of recording of this Declaration to annex without the consent of any Owner, all or any portion of the Annexable Property into the property subject to this Declaration. The annexation of all or any portion of the Annexable Property shall be accomplished by the Declarant recording with the County Recorder of Mohave County, Arizona, a Declaration of Annexation stating the following:

- (1) The legal description of the Annexable Property being annexed.
- (2) A description of any portion of the Annexable Property being added which will become Common Area.
- (3) A description of any Lots within the Annexable Property being annexed which will be Attached Dwelling Lots.

### Section 2

**Abandonment of Unannexed Property:** Notwithstanding any contrary provision of this Declaration, Declarant reserves the right to abandon all or any portion of the Annexable Property. Any such election to abandon all or any part of the Annexable Property shall be accomplished by the recordation with the County Recorder of Mohave County, Arizona, of the Declaration of Abandonment executed by the Declarant describing that portion of the Annexable Property which has been abandoned. Upon recordation of such a Declaration of Abandonment, the real property described in such Declaration of Abandonment shall no longer be subject to annexation pursuant to Section 1 of this Declaration.

### Section 3

**No Assurance:** Declarant makes no assurances that it will annex all or any portion of the Annexable Property. Declarant makes no assurances as to what

improvements may be constructed on Annexable Property except that such improvements shall be consistent in quality, material and style with the improvements constructed on the real property described in Exhibit A attached to this Declaration.

## **ARTICLE VII RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

### Section 1

**The Common Area:** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and shall keep it in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

### Section 2

**Educational, Recreational and Social Programs:** The Association shall be responsible for providing such educational, recreational and social programs as the Board of Directors deems appropriate in its discretion.

### Section 3

**Personal Property and Real Property for Common Use:** The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to all or any part of the real property described on Exhibits "A" or "B" hereto as may be conveyed or assigned to the Association by Declarant (or Declarant's successors or assigns) (including, but not limited to, such parts of the Common Area as may now or hereafter be held by the Declarant). Declarant shall retain full discretion as to the date or dates upon which it will transfer to the Association all or any of the portions of the Common Area as it may now or hereafter hold, provided, however, that Declarant shall have no obligation whatsoever to transfer to the Association any of the portions of the Common Area which it now holds or hereafter may hold so long as Declarant owns any part of the real property on Exhibit "B" hereto.

### Section 4

**Rules and Regulations:** The Association through its Board of Directors, may make and enforced reasonable rules and regulations that shall be consistent with the rights and duties established by this Declaration. Sanctions for violation of such rules

and regulations may be imposed by the Board of Directors and may include reasonable monetary fines which shall constitute a lien upon the Owner's Condominium or Condominiums and suspension of the right to vote and the right to use the Common Area. In addition, the Board of Directors shall have the power to seek relief in any court for violations or to abate unreasonable disturbances.

#### Section 5

**Implied Rights:** The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## **ARTICLE VIII ASSESSMENTS**

#### Section 1

**Creation of General Assessments:** In order to provide funds to enable the Association to meet its financial and other obligations and to create appropriate reserves, there is hereby created a right of assessment exercisable by the Board of Directors. General Assessments shall be allocated equally among all Condominiums and shall be for Common Expense.

Each Owner, by acceptance of his, her or its deed with respect to one or more Condominiums, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest from the date due at a rate equal to the higher of (a) eighteen percent (18%) per annum, or (b) two percent (2%) per annum plus the prime rate of the interest quoted from time to time at Phoenix, Arizona Security Pacific Bank (or its successor) for commercial loans to its most credit-worthy customers (but in neither event at a rate greater than the maximum rate of interest, if any, permitted by the laws in effect in the State of Arizona at the time such interest accrues), and together with such costs and reasonable attorneys' fees as may be incurred in seeking to collect such assessments shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each assessment is made.

Each such assessment, together with interest, costs and reasonable attorneys' fees as provided above, shall also be of such Condominium at the time the assessment arose, and his, her or its grantee shall be jointly and severally liable for such portion thereof as

may be due and payable at the time of conveyance, except that no first mortgagee who obtains title to a Condominium pursuant to the remedies provided in the applicable mortgage shall be liable for unpaid assessments that accrued prior to such acquisition of title.

General Assessments for each fiscal year shall be due and payable annually on or before the first day of February or such fiscal year. Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board of Directors. In addition to any other powers of collection or enforcement granted hereunder, in the event any assessments with respect to a Condominium are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date on which assessments with respect to such Condominium are due and payable.

## Section 2

**Computation of Assessment; Annual Budget:** The Board shall prepare and adopt an estimated annual budget for each fiscal year of the Association. Such budget shall take into account the estimated Common Expenses and cash requirements of the Association for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Common Area. The annual budget may provide for a reserve for contingencies for the year (or for subsequent fiscal years) and a reserve for replacements in reasonable amounts as determined by the Board. The Board shall cause a copy of the budget and a statement of the amount of the assessments to be levied against each Condominium for the following fiscal year to be delivered or mailed to each Owner not less than sixty (60) days following the meeting of the Board at which such budget shall have been adopted.

## Section 3

**Special Assessments:** The Association may levy a Special Assessment in any year, provided, however, that any Special Assessment shall be effective only with the approval of not less than fifty-one percent (51%) of all Class "A" votes represented in person or by valid proxy at a meeting of Members duly called and convened to consider such Special Assessment. Special Assessments shall be allocated equally among all Condominiums.

## Section 4

**Lien for Assessments:** The assessments provided for herein shall constitute a lien on each Condominium prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or

charge of any first Mortgage of Record (meaning any recorded Mortgage with first priority over any other Mortgages with respect to such unit) made in good faith and for value. Such liens may be foreclosed in the manner provided for the foreclosure of mortgages.

The Association shall have the power to bid for any Condominium at any sale to foreclose the Association's lien on the Condominium, and to acquire and hold, lease, mortgage and convey the same. During the period owned by the Association following foreclosure, no right to vote shall be exercised on its behalf and no assessment shall be assessed or levied on or with respect to it. Suit to recover a money judgment for unpaid assessments, rent, interest and attorneys' fee shall be maintainable without foreclosing or waiving the lien securing the same.

**ARTICLE IX**  
**ARCHITECTURAL STANDARDS;**  
**ARCHITECTURAL CONTROL COMMITTEE**

All property which is now or hereafter subjected to this Declaration shall be subject to architectural and environmental review as provided herein. This review shall be in accordance with this Article and such standards as may be promulgated by the Board or the Architectural Control Committee, as applicable. The Board of Directors shall have the authority and standing on behalf of the Association to enforce in any court of competent jurisdiction its decisions, decisions of said Committee, and any of the other provisions of this Declaration.

The Architectural Control Committee ("ACC") shall have exclusive jurisdiction over all original construction and any modifications, additions or alterations to improvements on any portion of the Condominiums (including, but not limited to, the construction or installation of fences, heating, ventilating, air conditioning and cooling units, solar panels, paint, or any other construction, modification, addition or alteration affecting the exterior appearance of any Condominium. The ACC shall promulgate Architectural and Environmental Standards and Application Procedure. No original construction, modification, alteration or addition subject to the ACC's jurisdiction shall be commenced until it has been approved by the ACC as provided herein. Any Owner seeking to construct any new improvements, or to make any modification, alteration or addition to any existing improvement upon the Properties (or to cause same to be constructed or made) shall first submit to the ACC detailed plans, specifications and

elevations relating to the proposed construction. The ACC shall have thirty (30) days after submission of such plans, specifications and elevations to approve or disapprove of the proposed construction, modification, alteration or addition or to request additional information, and, if the ACC disapproves, to give such owner reasonably detailed written reasons for such disapproval. In the event the ACC fails either to approve or disapprove the proposed construction (or to request additional information) within said thirty (30) day period, such proposed construction shall be deemed approved. So long as Declarant owns any portion of the Properties, Declarant shall have the right, in its sole discretion, to appoint the members of the ACC, none of whom shall be required to reside upon the Properties. In addition, Declarant shall have the power and authority to assign any part or all of its right to appoint members to the ACC to any assignee of Declarant's rights hereunder (as evidenced by a specific instrument assigning such rights recorded in the office of the Lake Havasu City, Arizona Recorder [or other appropriate governmental office]). Declarant (or an assignee described in the preceding sentence) shall have the right, but not the obligation, to surrender such appointment power to the Board of Directors at any time prior to Declarant's (or such assignee's) sale of all of its portions of the Condominiums. Following the sale by Declarant (or such assignee) of all of its portions of the Condominiums, or following the earlier surrender, if any, by Declarant (or such assignee) of the appointment power hereby granted, the Board of Directors shall appoint members of the ACC, none of whom shall be required to reside on the Properties. Notwithstanding the foregoing, the ACC shall have the right, at its option, to delegate the authority granted to it herein with respect to modifications, alterations or additions to existing improvements on the Condominiums to the appropriate board or committee, so long as the ACC has determined that such board or committee has in force written review and enforcement practices, procedures and appropriate written guidelines and standards at least equal to those of the ACC. Such delegation may be revoked and jurisdiction resumed at any time by written notice.

## **ARTICLE X USE RESTRICTIONS**

### Section 1

**Residential and Recreational Purposes:** The Condominiums shall be used only for residential, recreational and related purposes.

## Section 2

**Signs:** No billboards or signs of any type or character shall be erected or permitted on any part of the Condominiums (except for signs erected and maintained by Declarant or an assignee described in Section 4 above in connection with marketing of portions of the Properties by Declarant or such assignee). Nothing herein shall be deemed to prohibit attachment to the exterior of a Condominium of a single nameplate identifying the occupant or a single "For Sale" sign, provided that such nameplates, and "For Sale" signs shall be subject to the rules and regulations of the Board or such committee as the Board may designate. Further, nothing herein shall be deemed to prohibit installation and maintenance of directional signs, street signs or similar signs as may be approved by the Board for installation or maintenance by the Association.

## Section 3

**HVAC and Solar Panels:** No heating, air conditioning, evaporative cooling or solar energy collecting units or panels shall be placed, constructed or maintained upon the Condominiums including, but not limited to, upon the roof or exterior walls of any Condominium, with the exception of HVAC equipment as originally installed.

## Section 4

**Antennas and Towers:** No television, radio, shortwave or other antenna, pole or tower shall be placed, constructed or maintained upon the Condominiums.

## Section 5

**Vehicles:** No private passenger automobiles or pick-up trucks shall be parked at the Condominiums or any roadway adjacent thereto except within a carport appurtenant to a Condominium, or within areas designated for such purpose by the Association, provided, however, that the foregoing shall not apply to boats or recreational vehicles parked in the designated "holding area" for a period not to exceed twenty-four (24) hours for purposed of loading and unloading such vehicles. No mobile home, motor home, boat, recreational vehicle, trailer (excluding boat trailers), truck, camper, permanent tent or similar vehicle or equipment shall be kept, placed, maintained, constructed, reconstructed, or repaired at the Condominiums or any roadway adjacent thereto. Subject to the foregoing, no motor vehicles of any kind which are not in operating condition shall be parked in any uncovered parking areas (including, but not limited to, private driveways appurtenant to a Residential Unit).

## Section 6

**Nuisance:** No rubbish or debris of any kind shall be placed or be permitted to accumulate, for any unreasonable length of time at the Condominiums, and no odors shall be permitted to arise therefrom, so as to render the Properties or any portion thereof unsanitary, unsightly, offensive or detrimental to any other portion of the Condominiums in the vicinity thereof to its occupants. No nuisance shall be permitted to exist or operate so as to be offensive or detrimental to any Owner. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Properties. The Board in its discretion shall have the right to determine the existence of any such nuisance. Furthermore, the Board has the right to remove any nuisance at the expense of the Owner responsible for the nuisance.

## Section 7

**Drainage Alteration; Easements:** No vegetation (except suitable ground cover) may be planted or permitted to remain on areas subject to drainage easements, as shown on recorded plats, in such manner as to interfere with drainage or which shall be deemed by the Board to be a detriment to utilities located under or near such vegetation. It is the responsibility of the owner thereof to maintain all property subject to recorded easements.

## Section 8

**Right of Entry:** The Board or its agents shall have the right of entry to the Condominiums for the purposes of investigating possible or actual violations of these covenants and use restrictions and correcting such violations.

## Section 9

**Clothes Drying Facilities:** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any part of the Condominiums.

## Section 10

**Pets:** No animals, livestock or poultry of any kind shall be raised bred or kept at the Condominiums provided, however, that nothing herein shall be construed as prohibiting the keeping of ordinary household pets in a Condominium, subject to rules and regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred or maintained for any commercial purpose.

## Section 11

**Renting or Leasing of Condominiums:** Condominiums may be rented or leased only by written leases and subject to the following restrictions: All tenants shall be subject to the terms and conditions of this Declarative, the Articles, the Bylaws and the rules and regulations adopted by the Board as though such tenant were an Owner. Each Owner agrees to cause his, her or its tenant, occupant or persons living with such Owner or with his, her or its tenant to comply with the Declaration, the Articles, the Bylaws and the rules and regulations adopted by the Board, and is responsible and liable for all violations and losses caused by such tenants or occupants, notwithstanding the fact that such occupants of the Condominiums are fully liable for any violation of said documents and regulations; failure to comply shall be, at the Board's option, considered a default in the lease.

In the event that a tenant, occupant or person living with the tenant violates a provision of the Declaration, the Articles, the Bylaws or rules and regulations adopted by the Board, the Association shall have the power to bring an action or suit against the tenant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity, including, but not limited to, all remedies available to the landlord upon the breach or default of the lease agreement by the tenant. The Association's costs in doing so, including, but not limited to, reasonable attorney's fees, together with interest as provided in Section 8 of Article XII hereof, shall be reimbursed by the tenant to the Association and constitute a lien on the applicable Condominium which shall have the priority and may be enforced in the manner described in Section 4 of Article VIII hereof.

The Board shall also have the power to impose reasonable fines upon the tenant and the Owner for any violation by the tenant, occupant or person living with the tenant of any duty imposed under the Declaration, the Articles, the Bylaws of the Association or the rules and regulations adopted by the Board, and to suspend the right of the tenant, occupant, or person living with the tenant to use the Common Area.

## Section 12

**Miscellaneous:** The Board, in its good faith discretion, is hereby authorized to grant such waivers of the restrictions contained in this Article X as it shall deem appropriate in the circumstances, so long as the use permitted by such waiver shall not result in an unsafe, unsanitary or aesthetically displeasing condition and shall not result, in the Board's discretion, in a substantial departure from the common plan of

development contemplated by this Declaration. In addition, all of the Condominiums shall continue at all times to be subject to any and all applicable zoning laws and ordinances, provided however, that where the provisions of this Declaration are more restrictive than such laws or ordinances, the provisions of this Declaration shall control.

*Article X amended November 5, 2002 to include:*

*Section 13*

***Maximum Number of Occupants Per Unit:***

- 1. For the purpose of preventing overcrowding within dwelling units, to preserve property values, and to maintain the health and safety of residents within South Point Condominiums, no Owner of any two-bedroom Unit shall cause or allow their Unit to be occupied by more than four individuals, and no Owner of any one-bedroom Unit shall cause or allow their Unit to be occupied by more than two individuals.*
- 2. Nothing in this Amendment shall be construed to prohibit Owners from allowing guests more in number than stated above for a maximum of one week, provided common courtesies are observed, especially with regard to noise and established parking restrictions. Owners will at all times remain responsible for the actions of their guests.*

**ARTICLE XI  
GENERAL PROVISIONS**

Section 1

**Term:** The covenants, conditions and restrictions of this Declaration (a) shall run with and bind the Condominiums, (b) shall inure to the benefit of and shall be enforceable by the Association, by Declarant (or Declarant's assignee, as evidenced by an instrument recorded in the office of the Lake Havasu City, Arizona Recorder [or other appropriate governmental office]) or the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, and (c) shall remain in full force and effect until January 1, 2030, at which time said conditions, covenants and restrictions, unless revoked by an affirmative vote of Members holding, personally or by valid proxy, not less than seventy-five percent (75%) of all votes eligible to be cast at a meeting of Members, shall automatically be extended for successive periods of twenty-five (25) years each, until revoked in the manner provided above.

## Section 2

**Amendment:** Except as otherwise provided herein, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing at least seventy-five percent (75%) of all votes then in existence. No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant and any assignee of such right or privilege. So long as the Class “B” membership exists, Declarant may, without vote of the Owners, amend this Declaration, so long as no substantive rights of any existing Owner are adversely affected.

## Section 3

**Indemnification:** The Association shall indemnify every officer and director of the Association against any and all expenses, including attorneys’ fees, reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be Members of the Association and therefore subject to assessment to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director of the Association, may be entitled.

## Section 4

**Easements for Utilities, Etc.:** here is hereby reserved to Declarant the power to grant blanket easements upon, across, over and under all of the Condominiums for ingress, egress, installation, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, including, but not limited to, water, sewers, telephones, cable television and electricity, provided that no such easement shall interfere with a Condominium or its reasonable use and such easements shall require the holder of the easement to repair any damage caused to the property of any Owner. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the

Declarant or the Association, as applicable, shall have the right to grant such easement on said property in accordance with the terms hereof.

#### Section 5

**No Partition:** No person acquiring any interest in the Condominiums or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property which may nor may be subject to this Declaration.

#### Section 6

**Severability:** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

#### Section 7

**Perpetuities:** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Bush, President of the United States.

#### Section 8

**Enforcement:** The Association shall have the standing and power to enforce the provisions of this Declaration and the provisions of any other recorded document pertaining to any Condominium and its costs in doing so, including, but not limited to, reasonable attorneys' fees, together with interest thereon from the date the costs are expended at a rate equal to the higher of (a) eighteen percent (18%) per annum, or (b) two percent (2%) per annum plus the prime rate of interest quoted from time to time at Phoenix, Arizona by Security Pacific Bank (or its successor) for commercial loans to its most credit-worthy customers (but in neither event at a rate greater than the maximum rate of interest, if any, permitted by the laws in effect in the State of Arizona at the time such interest accrues), shall constitute a lien on all Condominiums owned by the Owner or Owners against whom the action is taken, which lien shall have the priority and may be enforced in the manner described in Section 4 of Article VIII hereof. To establish a fund for the enforcement of any and all such provisions, the original purchaser from Declarant (or from an assignee of Declarant's rights hereunder, as evidenced by a specific

instrument assigning said rights recorded in the office of the Lake Havasu City, Arizona Recorder [or other applicable governmental office]) of a Condominium shall pay to the Association, upon the close of escrow of such purchaser's purchase of such Condominium, a one-time fee of fifty dollars (\$50.00), each of which fees (together with all interest accruing on such fees) shall be placed by the Association in a separate account (or shall be otherwise separated and distinguished from all other funds of the Association) and used by the Board of Directors solely for the purposes of enforcing the provisions of this Declaration and the provisions of any other recorded document pertaining to any Condominium or of any rules or regulations adopted by the Board of Directors, or by any committees established by the Board of Directors. The establishment and existence of said enforcement fund shall in no way effect or remove any Owner's obligation for costs (including, but not limited to, attorneys' fees) incurred by the Association in taking action against such Owner, as provided in the first sentence of this Section 8.

#### Section 9

**Property Held in Trust:** Any and all portions of the real property described on Exhibits "A" or "B" hereto which are held in a subdivision or other trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is Declarant, shall be deemed for all purposes hereunder to be owned by Declarant and shall be treated for all purposes hereunder in the same manner as if such real property were owned in fee by Declarant. No conveyance, assignment or other transfer of any right, title or interest in or to any of such real property by Declarant to any such trust (or the trustee thereof) or to Declarant by any such trust (or the trustee thereof) shall be deemed for purposes of this Declaration to be a sale of such real property or any right, title or interest therein.

#### Section 10

**FHA/VA Approval:** If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B membership, the following actions will require the prior approval of the FHA or VA, as applicable, unless the need for such approval has been waived by FHA or VA: Dedications of Common Area (except where such dedication is required as of the date hereof to Lake Havasu City); and amendment of this Declaration.

IN WITNESS WHEREOF, SOUTH POINT PARTNERS, an Arizona general partnership, has hereunto caused its name to be signed by the signatures of its duly authorized officials as of the day and year first above written.