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Nearhood Law Offices  
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Scottsdale, Arizona 85250

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**DECLARATION OF RESTRICTIONS  
AND GRANT OF EASEMENTS**

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (this "Declaration") is made as of JUNE 15, 2005, by PPOP, LLC, an Arizona limited liability company ("Declarant") with reference to the following recitals that are expressly made part of this Declaration.

1. PRELIMINARY

1.1. Parcels: Declarant is the owner of (i) the parcel of real property located in Scottsdale, Arizona, and legally described on Exhibit "A" attached hereto and made part hereto (the "Condominium Parcel"), and (ii) the parcel of real property located in Scottsdale, Arizona and legally described on Exhibit "B" attached hereto (the "Pad"). The Condominium Parcel and the Pad are contiguous and are collectively referred to herein as the "Project."

1.2. Purpose: The Declarant plans to develop the Project as an integrated business complex for the mutual benefit of both Parcels in the Project and, therefore, does hereby fix and establish the Easements and Restrictions upon and subject to which all of the Project, or any part thereof, shall be improved, held, leased, sold and/or conveyed. Such Easements and Restrictions shall run with the land and inure and pass with such Parcels and shall apply to and bind the respective successors in interests thereof, and all and each Easement and Restriction is imposed upon such Parcels as a mutual equitable servitude in favor of such Parcels and any portion thereof.

1.3. Definitions: The following defined terms shall have the meanings set forth below for purposes of this Declaration.

(a) "Association": Pinnacle Peak Office Park Association, an Arizona non-profit corporation

(b) "Approved Plans": The grading, drainage and utility plans for the Project designated by Declarant. Such approved grading, drainage and utility plans are referenced on Exhibit "C" attached hereto and made a part hereof.

(c) "Building": Any permanently enclosed structure placed, constructed or located on a Parcel, which shall include any appurtenant canopies and supports.

(d) "Building Area": All those areas on each Parcel designated as "Building Area" on the Site Plan.

(e) "City": The City of Scottsdale, Arizona.

(f) "Claims": Causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and court costs).

(g) "Condominium Parcel": The Parcel legally described on Exhibit "A." It is understood and agreed that the term "Condominium Parcel" shall mean the entire parcel described on Exhibit "A" although such Parcel has been or will be subdivided by Declarant into multiple commercial condominium units.

(h) "Declarant": PPOP, LLC, an Arizona limited liability company. Upon the date that PPOP, LLC transfers control of the Association to the members of the Association, under the terms of the Declaration of Covenants, Conditions and Restrictions for Pinnacle Peak Office Park Condominium, the term "Declarant" shall thereafter mean the Association.

(i) "Declaration": This Declaration of Restrictions and Grant of Easements.

(j) "Default Rate": The greater of (i) ten percent (10%) per annum or (ii) the prime rate plus three percent (3%). As used herein, "prime rate" shall mean the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading "Money Rates"; provided, however, that (A) if more than one such rate is published therein the prime rate shall be the highest such rate, and (B) if such rate is no longer published in the Wall Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short term loan interest rates charged by U.S. banks to corporate borrowers selected by Declarant.

(k) "Easements": The easements fixed and established upon the Project pursuant to this Declaration.

(l) "Governmental Regulations": Any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, or conditions of approval or authorization of any governmental entity, agency or political subdivision whether now in force or which may hereafter be in force.

(m) "Improvements": Any Building, sign, or Parking and Driveway Area improvements located in the Project.

(n) "Lienholder": Any mortgagee under a mortgage, a grantee under a deed to secure debt, or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

(o) "Occupant": Any owner of a condominium unit within the Condominium Parcel, and any other Person from time to time entitled to the use and occupancy of any portion

of a Building in the Project under any lease, sublease, assignment, license, concession, or other similar agreement.

(p) "Owner": Collectively, (i) the Declarant and/or its successor the Association, and (ii) each Person, who, at any given time, owns the Pad. For purposes of this Declaration, an Owner shall not include owners of a condominium unit within the Condominium Parcel, until such time of the Association is dissolved and the rights in the Association are conveyed to the owners of the units constituting the Condominium Parcel.

(q) "Pad": The Parcel legally described in Exhibit "B."

(r) "Parcel" or "Parcels": Individually or collectively, the Condominium Parcel and the Pad, as each is shown on the Site Plan and more particularly described in Exhibits "A" and "B."

(s) "Parking and Driveway Area": All those areas on each Parcel which are designated for vehicle parking, driveways, and pedestrian walkways.

(t) "Permittee": All Occupants and the members, managers, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, assignees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended use of the Project.

(u) "Person": Individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(v) "Project": Collectively, the Parcels.

(w) "Project Sign": The project sign for Pinnacle Peak Office Park designated on the Site Plan.

(x) "Restrictions": The covenants, restrictions, liens and encumbrances fixed and established upon the Project pursuant to this Declaration.

(y) "Site Plan": The site plan of the Project shown on Exhibit "D" attached hereto.

(z) "Utility Lines": Those facilities and systems for the transmission or other provision of utility services, including, but not limited to, water drainage, detention or retention systems or structures, water mains, sewers, lift stations, water sprinkler system lines, electrical conduits or systems, gas mains, and other public or private utilities providing service to all Owners of the Project in common.

## 2. BUILDING AND COMMON AREA DEVELOPMENT

2.1. Building Location: All Buildings shall be placed or constructed upon the Parcels only in the Building Areas. Buildings may be located (or relocated) anywhere within the

Building Area provided the total floor area of all Buildings constructed within a Building Area does not exceed the lesser of (i) the square footage assigned to such Building Area as shown on the Site Plan (or as otherwise designated herein), or (ii) the maximum square footage of floor area permitted on such Parcel by the application of the minimum parking requirements set forth in Section 4.1 below.

2.2. **Parking and Driveway Area:** The Parking and Driveway Area is hereby reserved for the sole and exclusive use of all Owners and Occupants of the Project and their Permittees. The Parking and Driveway Area may be used for vehicular driving, parking and pedestrian traffic and such other purposes as are usual and customary in office building complexes in the Phoenix/Scottsdale metropolitan area, unless otherwise specifically prohibited in this Declaration. The Parking and Driveway Area shall be maintained as provided for in Article 6. The Owners acknowledge and agree that incidental temporary encroachments upon the Parking and Driveway Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of Buildings, signs, and/or the Parking and Driveway Area, all of which are permitted under this Declaration so long as all activities requiring the use of such equipment are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the Parking and Driveway Area or with the normal operation of any business in the Project.

2.3. **Type and Design of Building:**

(a) All Improvements in the Project shall be constructed in conformity with the Approved Plans. In addition, any Buildings constructed on the Pad shall be designed and constructed to maintain a consistent exterior appearance with the Buildings constructed on the Condominium Parcel. Prior to constructing any Improvements on the Pad, the Owner of the Pad shall submit to Declarant grading, drainage, utility plans, and exterior designs and elevations so that Declarant may confirm compliance with this Section 2.3(a). No Improvements upon the Pad for which such plans have not been approved may be constructed. Unless specifically approved in writing by Declarant, the drainage, grading and utilities of the Pad shall not be modified, altered or otherwise changed from the Approved Plans (provided, however, a modification to a Utility Line that does not impact the Condominium Parcel shall not require additional approval). There shall be no interference with the established drainage pattern and system over any portion of the Parcels unless adequate provision is made for proper drainage and such interference is approved by the Owners.

(b) Every Building shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office, Inc. (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating as determined by local governing agencies of any Building built upon any other Parcel.

(c) No Building on the Pad (including any landscaping located thereon) shall exceed one (1) story and twenty-two (22) feet in height, inclusive of all architectural embellishments, mechanical fixtures, signage and television equipment, and screening for same.

(d) There shall not be constructed in the Project any parking structure, whether over or under ground level.

#### 2.4. Construction Requirements:

(a) All work performed in the construction, repair, replacement, alteration or expansion of any Improvements shall be performed as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Project, or any part thereof, to or from any public right-of-way, or (ii) customer vehicular parking in that portion of the Parking and Driveway Area located in front of any Building constructed in the Project. In addition, all work performed on Improvements on the Pad shall not unreasonably interfere, obstruct or delay (1) construction work being performed on the Condominium Parcel, or (2) the use, enjoyment or occupancy of the Condominium Parcel. Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all Buildings, signs and the Parking and Driveway Area improvements damaged or destroyed in the performance of such work.

(b) The Contracting Party (as defined in Section 2.4(a) above) shall not permit any mechanics', materialmen's or other professional services liens (as contrasted with consensual monetary liens such as construction and/or permanent financing) to stand against the other Parcel or interest therein, for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner of the Parcel encumbered by any such lien or claim of lien, (i) cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, or (ii) give such assurance as would enable a title insurance company to insure over such lien or claim of lien, failing which the Owner of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend, protect and hold harmless the Owners and Occupants for, from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, including an Owner's or Occupant's own negligence, unless such cause of action is solely the result of the negligent or willful misconduct of the indemnified Owner or Occupant.

(c) Staging for the initial construction of a Building, or the replacement, alteration or expansion of any Building, sign or Parking and Driveway Area improvements located in the Project including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall (i) be located solely on the constructing Owner's Parcel, or (ii) be limited to specific areas ("Staging Area") of the Project approved in writing by Declarant. Each Staging Area on any Parcel shall be located in such a way that it will not interfere with the use of the Parking and Driveway Area on any Parcel. Any Staging Area for the Pad shall be enclosed by a safety fence. Upon completion of such work, the Contracting Party shall, at its expense, restore



any damaged Parking and Driveway Area to a condition equal to or better than that existing prior to commencement of such work.

2.5. Temporary License: There is hereby granted and created a temporary license for access and passage over and across the Parking and Driveway Area to the extent reasonably necessary for any Owner to construct and/or maintain Improvements upon its Parcel; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed, and provided further that the use of such license shall not unreasonably interfere with the use and operation of (i) any business conducted by an Owner or Occupant, or (ii) the Parking and Driveway Area. Prior to exercising the rights granted herein, an Owner shall provide each other Owner with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by this Declaration. The Owner shall promptly pay all costs and expenses associated with such work, shall complete such work as quickly as possible, and shall promptly clean and restore the affected portion of the Parking and Driveway Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

2.6. Indemnity: In addition to the indemnification provided in Section 12.3 below, each Owner shall indemnify, defend, protect and hold each other Owner and its respective officers, directors, shareholders, employees and agents harmless for, from and against any and all Claims arising out of or related to injury to or death of any person or damage to or destruction of any property occurring on any Parcel and arising out of or resulting from any construction activities performed by or at the request of an Owner or its Occupants, including an Owner's or Occupant's own negligence, unless such damage or destruction is caused solely by the negligent or willful act or omission of the indemnified Owner.

2.7. Approval Procedures:

(a) Before any action requiring Declarant's approval is commenced, an Owner shall send to Declarant sufficient information to enable Declarant to make a decision as to the proposal, together with a review fee equal to Five Hundred and No/100 Dollars (\$500.00) to cover Declarant's costs incurred in reviewing the Owner's proposal. Declarant shall have the right to approve or disapprove the proposal in accordance with the manner and time procedures set forth in Section 14.6 below, and if Declarant disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval.

(b) Declarant shall not be liable in damages or otherwise for any reason, including any mistake in judgment, negligence or nonfeasance, arising out of or in connection with the approval or disapproval or failure to approve or disapprove any proposal submitted pursuant to this Declaration. The Owners agree that, by acquiring title to a Parcel and submission of such plans, drawings and/or specifications, it will not bring any action or suit against Declarant to recover any such damages. In addition, the Owner shall indemnify, defend, protect and hold Declarant and members, managers, employees and agents harmless for, from and against any and all Claims arising out of or related to the approval or disapproval of any plans, drawings and/or specifications submitted to Declarant by or on behalf of the Owner. No approval shall be considered an approval of the plans, drawings and/or specifications from an

engineering perspective or a determination that they meet building, environmental or engineering design standards, or that any such Improvements have been built in accordance with such plans, drawings and/or specifications.

### 3. EASEMENTS

3.1. Ingress and Egress: There is hereby granted and created a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across the Parking and Driveway Area.

3.2. Parking: There is hereby granted and created a nonexclusive easement for vehicular parking upon, over and across the parking areas within the Parking and Driveway Area; provided that (i) only authorized designees shall be permitted to park in any parking areas designated and marked as "reserved parking"; and (ii) each Owner shall endeavor, to the extent reasonably possible, to cause its Permittees to park only within the parking areas located on that Owner's Parcel. There shall be no parking in any driveway areas, "no parking" areas, or areas reserved for safety vehicles. Handicap parking areas shall be strictly observed and enforced.

#### 3.3. Utility Lines and Facilities:

(a) There is hereby granted and created a nonexclusive easement under, through and across the Parking and Driveway Area for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, removal and replacement of Utility Lines, subject to the written approval of Declarant as to the location of such Utility Lines, and otherwise consistent with the Approved Plans for the Project. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements, except that fire hydrants, ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or Improvements located in the Project) or which have been approved by Declarant shall be permitted. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a private party. The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the Parking and Driveway Area or with the normal operation of any business in the Project. The Owner performing the installation, operation, maintenance, repair or replacement of such easement facilities, shall bear all costs related thereto, shall repair to the original specifications any damage to the Parking and Driveway Area resulting from such use, and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of the easement facilities.

(b) At any time and from time to time an Owner shall have the right to install, repair, maintain and/or relocate on its Parcel any Utility Line installed (or to be installed) pursuant to the foregoing grant of easement which is then located (or to be located) on the Parcel of such Owner, provided that (i) in the case of an installation or relocation, such installation or relocation shall be performed only after sixty (60) days' notice in writing of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by

the Utility Line, (ii) in the case of a repair and/or maintenance, such repair and/or maintenance shall be performed only after thirty (30) days notice in writing of the Owner's intention to undertake repair and/or maintenance shall have been given to the Owner of each Parcel served by the Utility Line, except in the case of an emergency (defined as any situation where there is an imminent threat of harm to persons or property), when such notice shall be given a reasonable period in advance of such emergency repair as is practicable, (iii) any such repair, maintenance and/or relocation shall not unreasonably interfere with or diminish utility service to the Parcels served by the Utility Line, (iv) any such repair, maintenance and/or relocation shall not reduce or unreasonably impair the usefulness, capacity or function of the Utility Line, (v) any such repair, maintenance and/or relocation shall be performed without cost or expense to the Owner or Occupant of any other Parcel, (vi) any such repair, maintenance and/or relocation shall provide for the original and relocated area (if applicable) to be restored using materials and design standards which equal or exceed those originally used, (vii) any such repair, maintenance and/or relocation shall not interfere with the business operation of any Owner or Occupant of the Project, and (viii) if an electrical line/computer line is being relocated, the Owner shall coordinate such interruption to eliminate any detrimental effects, and no such relocation shall be done without first obtaining the prior written consent of the Owner of each Parcel, which consent may not be unreasonably withheld, conditioned or delayed. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(c) The terms and provisions of this Section 3.3 shall survive the expiration or earlier termination of this Declaration.

3.4. Signs: There is hereby granted and created a non-exclusive easement under, through and across the Parking and Driveway Area for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.2 of this Declaration and all Utility Lines appurtenant thereto. No signage (temporary or otherwise) with respect to Persons who are not Owners or Occupants shall be permitted in or upon the Project.

3.5. Dedication to Public Entities: Without the prior written consent of Declarant, which consent may be granted or withheld in the sole and absolute discretion of Declarant, no Owner shall grant any easement for the benefit of any property not within the Project; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Parcel to governmental or quasi-governmental authorities or to public utilities to service the granting Owner's Parcel.

3.6. No Merger: Notwithstanding an Owner's ownership of more than one Parcel, the easements granted hereunder shall burden and benefit each Parcel individually, without merger as a result of such common ownership, and upon conveyance of a Parcel so that such Parcel ceases to be under common ownership, neither the Owner conveying said Parcel nor the Owner acquiring said Parcel shall need to execute additional documentation to evidence the existence of said easements, and said easements shall relate back to and shall be deemed to have been created as of the date this Declaration is recorded in the Office of the Maricopa County Recorder.



3.7. Permanent Drive: Unless otherwise approved in writing by Declarant, which approval may be withheld in Declarant's sole and absolute discretion, those certain accessways shown on the Site Plan as "Permanent Drive(s)" including, without limitation, the curb cuts on such accessways, shall not be altered or modified.

3.8. Storm Drainage and Detention Easements: There is hereby granted and created the perpetual right and easement to discharge surface storm water drainage and/or runoff over, upon and across the Parking and Driveway Area, upon the following conditions and terms: (i) the grades and the surface water drainage/retention system for the Project shall remain in strict conformance with the Approved Plans, and (ii) no Owner shall alter or permit to be altered the surface of the Parking and Driveway Area or the drainage/retention system constructed on its Parcel if such alteration is not in conformance with the Approved Plans or would materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention and distribution facilities shall be deemed a Utility Line. All drains, gutters, downspouts, berms, swells, and other drainage facilities and systems (collectively, "Systems") shall be maintained by each Owner, with respect to the portion of each such System located upon an Owner's Parcel, in a neat, orderly, safe and sanitary condition, and in such a manner as to facilitate the orderly discharge of water by means thereof.

#### 4. OPERATION OF COMMON AREA

##### 4.1. Parking:

(a) Except for parking areas designed and marked as "reserved parking," there shall be no charge for parking in the Parking and Driveway Area without the prior written consent of Declarant or unless otherwise required by law. The parking area on each Parcel shall contain sufficient ground level parking spaces in order to comply with the minimum requirements of applicable Governmental Regulations.

(b) In the event of a condemnation of part of a Parcel or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required in this Section 4.1, the Owner whose Parcel is so affected shall use its best efforts (including, without limitation, using proceeds from the condemnation award or settlement) to restore and/or substitute parking spaces in order to comply with the parking requirements set forth in this Section 4.1. If such compliance is not possible, the Owner whose Parcel is so affected shall not be deemed in default hereunder, but such Owner shall not be permitted to expand the Building located upon its Parcel. If such Building is thereafter reduced other than by casualty, the Building on such Parcel may not subsequently be increased unless the parking requirement is satisfied.

##### 4.2. Signs:

(a) Subject to the provisions of subparagraph (b) below, no free-standing, permanent sign structures other than the Project Sign may be erected or maintained in the Project. The Project Sign shall display the designation of Pinnacle Peak Office Park. The cost of

constructing, installing, maintaining, insuring, repairing and replacing the Project Sign structure (including electrical hookup to a common meter) shall first be paid by the Declarant.

(b) Provided the signage otherwise permitted by Governmental Regulations to the Project Sign is not adversely affected thereby, the Pad may have, subject to Governmental Regulations, one free-standing, permanent sign structure on said Parcel, at the location designated on the Site Plan. Such sign structure shall display a single designation for the Occupant of the Pad. The initial design of the sign structure (including, without limitation, height and size) shall be subject to the prior written approval of Declarant. The cost of constructing, installing, maintaining, insuring, operating, repairing and replacing such sign structure and sign fascia shall be paid by the owner or occupant of the Pad.

(c) Except as otherwise approved by Declarant, all signs within the Project shall conform with the following standards:

(i) All exterior Building signs shall be restricted to identification of the business or service located or provided therein, and no business may be identified on signage located on the Building of another Occupant.

(ii) No exterior Building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

4.3 Protection of Parking and Driveway Area: Each Owner and Occupant shall have the right to take such steps as it deems necessary to prevent those Persons not authorized by this Declaration to use the Parking and Driveway Area from using the Parking and Driveway Area for ingress, egress, parking or any other purpose. Subject to Governmental Regulations, such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Project except along the common boundary line of any Parcel with any other Parcel; provided, however, that any impairment of vehicular access to or from the Project, or any part thereof, shall require Declarant's prior written approval, which may be withheld in the Declarant's sole and absolute discretion.

## 5. RESTRICTIONS ON USE

5.1 Permitted Use: Business activities in the Project shall be limited to business office usage (defined as any office that does not provide services directly to a consumer); and retail office usage (defined as any office which provides services directly to consumers, including but not limited to financial institutions, real estate, stock brokerage and title companies, travel and insurance agencies, veterinarians and medical, dental and legal clinics).

### 5.2. Use Restrictions:

(a) No portion of the Project shall be used for any retail (other than retail office usage defined above), restaurant, food service, tavern, bar or for any of the following purposes: a store; gun range; car wash facility or gasoline station; a warehouse; an animal kennel; theater, auditorium, sports or other entertainment viewing facility (whether live, film, audio/visual or video); bowling alley; skating rink; fitness center, workout facility, gym, health spa or studio, or exercise facility; pawn shop; mortuary; any establishment engaged in the

business of selling, exhibiting or delivering pornographic or obscene materials; a so-called "head shop"; off-track betting parlor; junk yard; recycling facility or stockyard; motor vehicle or boat dealership, repair shop (including lubrication and/or service center) or motor vehicle or boat storage facility; self-storage facility; a laundromat or dry-cleaning facility; a discotheque, dance hall, comedy club, night club or adult entertainment facility; billiard or pool hall; massage parlor, game parlor or video arcade; a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees and not to customers (but shall specifically not prohibit a school which is incidental to a primary retail purpose); rendering plant; industrial, residential or manufacturing uses; school or house of worship; or telephone solicitations in a so-called "boiler room" operation.

(b) The following shall not be allowed to operate in the Parking and Driveway Area: traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fireworks, sales by transient merchants utilizing vehicles or booths and other promotions of any nature.

(c) No portion of the Project shall be used for a business or use which creates strong, unusual or offensive odors, fumes, dust or vapors; emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; or creates unusual fire, explosive or other hazards, or materially increases the rate of insurance for any other Parcel, Owner or Occupant.

(d) For purposes of this Declaration, Persons who are not Owners or Occupants engaging in the following activities in any portion of the Project will not be considered to be Permittees under this Declaration: (i) exhibiting any placard, sign, or advertisement; (ii) distributing any circular, handbill, placard, or booklet; (iii) soliciting memberships or contributions; (iv) parading, picketing, or demonstrating; and (v) failing to follow regulations relating to the use of the Project.

(e) This Declaration is not intended to, and does not, create or impose any obligation on an Owner to operate, continuously operate, or cause to be operated a business or any particular business in the Project or on any Parcel.

## 6. MAINTENANCE STANDARDS

6.1. Maintenance Obligations: Each Owner shall, except as hereinafter provided, maintain the Parking and Driveway Area on its Parcel at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and restriping, when necessary, to maintain clearly visible parking stall and traffic control lines;

(b) Removing all papers, debris, filth and refuse from the Parking and Driveway Area and washing or thoroughly sweeping the Parking and Driveway Area to the extent reasonably necessary to keep the Parking and Driveway Area in a clean and orderly condition;

(c) Placing, painting, maintaining, repairing, replacing and repainting, as and when necessary, all directional signs, markers, striping, pedestrian crossings and all informational signs such as "Handicapped Parking," upon or within the Parking and Driveway Area;

(d) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required, including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contacts. Each Owner shall maintain and provide electricity to all lighting fixtures attached to its respective Building(s) at its sole cost and expense;

(e) Maintaining and watering all landscaped areas; maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as necessary;

(f) Maintaining, repairing and replacing, when necessary, all Parking and Driveway Area walls (including, without limitation, all fences, walls or barricades constructed pursuant to Section 4.3 above);

(g) Maintaining, repairing and replacing, when necessary, all Parking and Driveway Area storm drains, sewers, lift stations and other Utility Lines not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the Buildings and Improvements located in the Project;

(h) Performing itself or contracting with a competent third party or parties to perform any of the services described herein;

(i) Maintaining commercial general liability insurance as set forth in Article 12 hereof;

(j) Supervising traffic at entrances and exits to the Project and within the Project if necessary as conditions reasonably require in order to maintain an orderly and proper traffic flow; and

(k) Keeping the Parking and Driveway Area and all common Utility Lines free from any obstructions, unless such obstruction is permitted under the provisions of this Declaration.

6.2. Duty to Maintain: Each Owner shall be responsible for the maintenance, insurance and lighting of its own Parcel as enumerated in Section 6.1 above. In the event any Owner defaults in the performance of such obligations, the other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the notice and cure provisions and remedies of Sections 10.2, 11.1 and 11.2 shall apply.

6.3. Indemnity Against Liens: Each Owner shall indemnify, defend, protect and hold the other Owner and all Occupants harmless for, from and against any and all Claims in connection with any and all liens arising out of any work performed, materials furnished to or

obligations incurred by such Owner in connection with the operation and maintenance of the Parking and Driveway Area hereunder.

## 7. LIGHTING

After completion of the Parking and Driveway Area lighting system on its Parcel, each Owner shall keep its Parcel fully illuminated each day from dusk to at least 11:00 p.m. unless the Owners agree upon a different time. Each Owner shall keep any exterior Building security lights on from dusk until dawn. During the term of this Declaration, there is hereby granted and created an irrevocable license for the purpose of permitting the lighting from one Parcel to incidentally shine on the adjoining Parcels. Unless otherwise approved in writing by Declarant, all exterior lighting fixtures and facilities on any portion of the Project shall (i) be of the type installed on the Condominium Parcel, and (ii) not exceed an average lighting output of three (3) foot candles.

## 8. PAYMENT OF TAXES

8.1. Taxes and Assessments: Each Owner shall pay direct to the tax collector, prior to delinquency, the real property taxes and other special taxes and assessments levied and assessed against the Owner's Parcel, including the portion of the Parking and Driveway Area on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments.

8.2. Failure to Pay Taxes and Assessments: Each Owner shall indemnify, defend, protect and hold the other Owners and all Occupants harmless for, from and against any and all Claims in connection with any and all liens arising out of the failure of an Owner to pay prior to delinquency, all taxes and assessments described in Section 8.1 above.

## 9. SUCCESSORS AND ASSIGNS; LIMITATION ON RELEASE

This Declaration and the Easements and Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, Occupants, successors and assigns, and upon any Person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, and such Owner, then at such time as the selling Owner executes and delivers to the other Owner a written statement in which the name and address of the new Owner, the effective date of the conveyance, and the Parcel conveyed, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of title. Failure to deliver any such written statement shall not affect the running of any covenants herein with the land, nor shall such failure negate, modify or otherwise affect the liability of the new Owner pursuant to the provisions of this Declaration, but such failure shall constitute a default by conveying Owner resulting in continued liability hereunder.



## 10. DEFAULT

10.1. Default: In the event any Owner or Occupant fails to perform any other provision of this Declaration, which failure continues for a period of ten (10) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner may thereafter institute legal action against the defaulting Owner or Occupant for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner or Occupant shall not be deemed to be in default if such failure to perform cannot be rectified within said ten (10) day period and such Owner or Occupant is diligently proceeding to rectify the particulars of such failure and rectifies same within a period not to exceed thirty (30) days; provided further, however, that in the event of an emergency, such failure shall be deemed a default if such failure is not rectified in a period reasonable for the nature and circumstances of such emergency (by way of example, but not as a limitation, the failure to promptly maintain the Parking and Driveway Area such that Owners, Occupants and Permittees can utilize the reciprocal easements granted in Section 3.1 above shall constitute an emergency).

10.2. Self-Help: If an Owner or Occupant of any Parcel fails to perform any provision of this Declaration, then, upon the expiration of the cure period provided in Section 10.1, and upon an additional ten (10) days prior written notice (except that no additional notice shall be required in an emergency), any Owner shall have the right, but not the obligation, to enter upon the defaulting Owner's or Occupant's Parcel to cure such default for the account of and at the expense of the Owner or Occupant of such Parcel. If an Owner exercises its self-help right, then, within ten (10) days after receipt of an invoice from such Owner, the defaulting Owner and/or Occupant shall reimburse to such Owner all costs reasonably incurred by the Owner in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs. Furthermore, the Owner shall have the right, if such invoice is not paid within said ten (10) day period, to record a lien on the Parcel of the defaulting Owner and/or Occupant for the amount of the unpaid costs incurred by the Owner pursuant to this Section 10.2 and the administrative fee, together with accrued interest at the Default Rate.

10.3. Remedies Cumulative: In addition to the remedies set forth in this Declaration, each Person entitled to enforce this Declaration shall be entitled to exercise all other remedies provided by law or in equity to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any Person shall exclude any other remedy herein, by law or in equity, but each shall be cumulative.

## 11. LIEN FOR EXPENSES OR TAXES

11.1. Effectiveness of Lien: The liens provided for in Section 10.2 above shall only be effective when filed as a claim of lien against the defaulting Owner or Occupant in the Office of the Maricopa County Recorder, signed and verified, which shall contain at least:

- (a) An itemized statement of all amounts due and payable pursuant hereto;
- (b) A description sufficient for identification of that portion of the real property of the defaulting Owner or Occupant which is the subject of the lien;

(c) The name of the Owner or Occupant of the property which is the subject of the lien; and

(d) The name and address of the Owner or Person recording the claim of lien.

The lien shall attach from the date a claim of a lien is recorded and may be enforced in any manner allowed by law, including, but not limited to, by suit in the nature of an action to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Arizona. The Owner or Person who recorded the claim of lien shall release the claim of lien once the costs and expenses secured by the lien have been paid in full.

11.2. Priority of Lien: The claim of lien, when so established against the real property described in the claim of lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the claim of lien, and shall be subordinate to any others. The claim of lien shall be for the use and benefit of the Person curing the default of the Owner in default.

## 12. LIABILITY INSURANCE; INDEMNIFICATION

### 12.1. Liability Insurance:

(a) Each Owner shall maintain or cause to be maintained commercial general liability insurance with broad form coverage insuring against claims on account of bodily injury or death, personal and advertising injury, property damage or destruction, and contractual liability (i.e., exclusions for liability assumed under contract must be deleted) that may arise from, or be related to (i) the conduct of the Owner and/or Occupants, or (ii) the condition, use or occupancy of each Owner's Parcel (the "Owner's Liability Insurance").

(b) The Owner's Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State of Arizona with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better (or a comparable standard under an international rating system), and have limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate. The insurance required pursuant to this Section 12.1 shall be at least as broad as the most commonly available ISO Commercial General Liability policy form CG 00 01 0798 and shall include the following provisions: (i) the policy may not be canceled or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days' prior written notice by the insurer to each insured and additional insured; (ii) severability of interests; (iii) an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds; (iv) name all other Owners as additional insureds; and (v) endorsed to cover said Owner's agreement to indemnify as set out in this Declaration. Each Owner agrees to furnish to the other Owner requesting same evidence that such insurance is in full force and effect. The Owners agree that such evidence being readily available on the Internet shall be a satisfactory method of delivering such evidence. If not part of such policy, the Owner's Liability Insurance shall have at least the following

endorsements: (1) deleting any employee exclusion on personal injury coverage; (2) including coverage for injuries to or caused by employees; (3) providing for blanket contractual liability coverage (including all of an Owner's indemnity obligations contained in this Declaration), broad form property damage coverage and products completed operations, owner's protective and personal injury coverage; and (4) providing for coverage of employer's automobile non-ownership liability. The Owner's Liability Insurance shall be written on an "occurrence" basis form and not on a "claims made" form. The insurance referenced in this Section 12.1 may be provided under (A) an individual policy specifically covering such Owner's Parcel, (B) a blanket policy or policies which includes other liabilities, properties and locations of such Owner; so long as the amount and coverage of insurance required to be carried hereunder is not diminished, (C) a plan of self-insurance satisfying the criteria set forth in Section 12.1(c) below, or (D) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with this Article 12, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed one percent (1%) of an Owner's net worth unless such Owner complies with the requirements regarding self-insurance pursuant to Section 12.1(c) below.

(c) Any insurance required to be maintained by an Owner may be maintained in whole or in part either under a plan of self-insurance, or from a carrier which specializes in providing coverage to or for such Owner or its affiliates, or firms in the same or related businesses if such Owner's net worth exceeds \$100,000,000 Dollars as shown in its most recent audited financial statement, or if such Owner's financial statements are reported on a consolidated basis with a parent corporation, then as certified by an officer of such Owner.

#### 12.2. Insurance Coverage During Construction:

(a) Prior to commencing any construction activities which cost in excess of Twenty Thousand and No/100 Dollars (\$20,000.00) within the Project, each Owner or Occupant shall obtain or require its contractor to obtain and thereafter maintain, so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

(i) Workers' compensation and employer's liability insurance:

(a) Worker's compensation insurance as required by any applicable law or regulation.

(b) Employer's liability insurance in the amount of Two Million and No/100 Dollars (\$2,000,000.00) each accident for bodily injury, Two Million and No/100 Dollars (\$2,000,000.00) policy limit for bodily injury by disease, and Two Million and No/100 Dollars (\$2,000,000.00) each employee for bodily injury by disease.

(ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:

(a) Required coverages:

- (1) Premises and Operations;
- (2) Products and Completed Operations;
- (3) Contractual Liability insuring the indemnity obligations assumed by contractor under the contract documents;
- (4) Broad Form Property Damage (including Completed Operations);
- (5) Explosion, Collapse and Underground Hazards;
- (6) Personal Injury Liability; and
- (7) Builders' Risk

(b) Minimum limits of liability:

- (1) Two Million and No/100 Dollars (\$2,000,000.00)  
per occurrence;
- (2) Two Million and No/100 Dollars (\$2,000,000.00)  
aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work); and
- (3) Two Million and No/100 Dollars (\$2,000,000.00)  
general aggregate applied separately to the Project.

(iii) Automobile Liability Insurance: Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, with limits of liability of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

(iv) Umbrella/Excess Liability Insurance: The general contractor shall also carry umbrella/excess liability insurance in the amount of Five Million and No/100 Dollars (\$5,000,000.00). If there is no per project aggregate under the Commercial General Liability policy, the limit shall be Ten Million and No/100 Dollars (\$10,000,000.00).

(b) If the construction activity involves the use of another Owner's Parcel, the Owner of such other Parcel shall be added as an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration without at least thirty (30) days' prior written notice to the insureds and each additional insured. If such insurance is canceled or expires, the constructing Owner shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall

supply each Owner with certificate(s) of insurance with respect to all insurance required by this Section 12.2.

12.3. Indemnification by Owners: Subject to the provisions of Section 13.4 below regarding waiver of subrogation with respect to damage to property, each Owner shall defend, indemnify, protect and hold the other Owner and all Occupants harmless for, from and against any and all Claims in connection with the loss of life, personal injury and/or damage to property (i) arising from or out of any occurrence in or upon the indemnifying Owner's Parcel, including an Owner's or Occupant's own negligence; (ii) occasioned wholly by any negligent or willful act or omission of the indemnifying Owner, its Occupants or their respective agents, contractors, servants or employees; or (iii) in connection with the failure to comply with the provisions of this Declaration. If an Owner shall, without fault, be made a party to any litigation commenced by or against the Owner or Occupants of another Parcel, or if an Owner shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, the indemnifying Owner shall defend such Owner using attorneys reasonably satisfactory to such Owner and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. An Owner shall have the right to engage its own attorneys in connection with any of the provisions of this Section 12.3 or any of the provisions of this Declaration, including, but not limited to, any defense of or intervention by such Owner, notwithstanding any contrary provisions of the laws or court decisions of the State of Arizona.

### 13. PROPERTY DAMAGE AND EMINENT DOMAIN

13.1. Damage to Buildings: If any of the Buildings located on any Parcel are damaged or destroyed by fire or other cause, the Owner of such Parcel shall promptly cause either (i) the repair, restoration, or rebuilding of the Building so damaged or destroyed to a condition and an architectural style existing immediately prior to the damage or destruction, (ii) the rebuilding of a completely new Building (subject to the approval process set forth in this Declaration), or (iii) the razing of any damaged Building, the filling of any excavation, and performance of any other work necessary to put such portion of the Project in a clean, sightly and safe condition. All Building Areas on which Buildings are not reconstructed following a casualty or "Taking" (as defined in Section 13.5 below) shall be (1) graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Project or any portion thereof, (2) covered by decomposed granite, gravel, sod, hydroseed or as otherwise permitted by Governmental Regulations, and (3) kept weed free and clean at the subject Owner's sole cost and expense until such time as Buildings are reconstructed thereon.

13.2. Casualty Damage to Parking and Driveway Area: In the event any of the Parking and Driveway Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this Declaration, the Owner upon whose Parcel such Parking and Driveway Area is located shall repair or restore such Parking and Driveway Area at its sole cost and expense with all due diligence. Except to the extent limited by Section 13.4 below, in the event such damage or destruction of Parking and Driveway Area is caused wholly by the negligent or willful act of another Owner, Occupant or third Person, the Owner obligated to make such repair or restoration reserves and retains the right to proceed against such other Owner or third Person for indemnity, contribution or damages.



13.3. **Property Insurance:** To assure performance of their respective obligations under Sections 13.1 and 13.2 above, the Owners of the respective Parcels shall cause to be carried causes of loss - special form property insurance at least as broad as ISO Special Form Causes of Loss, CP 1030 0695, in an amount not less than eighty percent (80%) of the full insurable replacement cost (excluding footings, foundations or excavations) of all Buildings and improvements (including Parking and Driveway Area improvements) on their respective Parcels, except if the Owner of said Parcel, or party responsible for any required restorations, is permitted to "self insure" pursuant to Section 12.1(c). The insurance referenced in this Section 13.3 may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner, so long as the amount and coverage of insurance required to be carried hereunder is not diminished, (iii) a plan of self-insurance satisfying the criteria set forth in Section 12.1(c) above, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with Article 13, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed one percent (1%) of an Owner's net worth unless such Owner complies with the requirements regarding self-insurance pursuant to Section 12.1(c) above. The Owner's property insurance shall be carried by an insurance company or companies qualified to do business in the State of Arizona with a Best's Key Rating Guide Property/Casualty (United States) rating of at least A- and a financial rating of VIII or better (or a comparable standard under an international rating system).

13.4. **Waiver of Subrogation:** The Owners and Occupants each hereby waive any rights one may have against the other on account of any loss or damage occurring to an individual Owner or Occupant, or its respective property, either real or personal, arising from any risk generally covered by ISO Special Form Causes of Loss, CP 1030 0695 and from any risk covered by property insurance then in effect. In addition, the Owners and Occupants, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any insurance company may have against the Owners and Occupants. It is the intent of the parties that with respect to any loss from a named peril required to be covered under a policy of property insurance, the parties shall look solely to their respective insurance company for recovery. The foregoing waivers of subrogation shall be operative only so long as available in the State of Arizona, and provided further that no policy of insurance is invalidated thereby.

13.5. **Eminent Domain:** In the event the whole or any part of the Project shall be taken or damaged by right of eminent domain or any similar authority of law or any transfer in lieu thereof (a "Taking"), the entire award for the value of the leasehold estate and improvements so taken shall belong to the Owner of the Parcel so taken or to such Owner's Lienholders or Occupants, as they may have agreed between or among themselves, and in the absence of any such agreement, as provided by law, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Declaration. Any Owner of a Parcel which is not the subject of a Taking may, however, file a collateral claim with the condemning authority over and above the value of the Parcel (or portion thereof) being so taken to the extent of any damage suffered by such Owner resulting from the severance of the land or improvements so taken. In the event of a partial Taking, the Owner of the portion of the Project so taken shall restore the Improvements located on the Parking and Driveway Area of the Owner's Parcel as nearly as possible to the condition existing prior to the Taking to insure the continued

ingress/egress to, from and between all areas of the Project to the extent reasonably feasible, without contribution from any other Owner.

#### 14. GENERAL PROVISIONS

14.1. Covenants Run With the Land: The terms of this Declaration and each Restriction and Easement on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof, and shall run with the land.

14.2. No Public Dedication: Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Project or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed. An Owner shall have the right to close, if necessary, all or any portion of the Parking and Driveway Area on its Parcel from time to time as may be necessary, in the opinion of such Owner, to prevent a dedication thereof or the accrual of any rights of the public therein.

14.3. Duration: The term of this Declaration shall be perpetual, unless terminated by written agreement of the Owners. Upon termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration shall terminate and have no further force or effect.

14.4. Injunctive Relief: In the event of any violation or threatened violation by any Person of any of the Easements, Restrictions or other terms of this Declaration, any or all of the Owners of the property included within the Project shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law or in equity.

14.5. Modification and Termination: Notwithstanding the provisions of Section 14.6 below, this Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of all of the Owners at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the Owners and recorded in the office of the recorder of Maricopa County. No modification or termination of this Declaration as provided herein shall adversely affect the rights of any senior Lienholder unless such Lienholder consents in writing to the modification or termination.

14.6. Method of Approval: Unless otherwise provided in this Declaration, whenever approval, consent or satisfaction (collectively, an "approval") is specifically required of an Owner pursuant to the express terms of this Declaration (or any Exhibit hereto), it shall not be unreasonably withheld, conditioned or delayed. Unless provision is made for a specific time period, approval or disapproval shall be given within thirty (30) days after receipt of written request for approval. If an Owner neither approves nor disapproves within the required time period, then the Owner requesting approval shall have the right to send a second written request for approval. If such second request states on its face in all capital letters that failure to respond thereto within fifteen (15) days shall be deemed approval, then the failure to respond within such fifteen (15) day period shall constitute the approval of the Owner from whom approval was requested. Except with respect to approvals which are deemed approved pursuant to the

preceding sentence, all approvals (including conditional approvals) and disapprovals shall not be effective unless given or made in writing. If an Owner disapproves, the reasons therefor shall be stated in reasonable detail in writing. An Owner's approval of any act or request by another Owner shall not be deemed to waive or render unnecessary approval of any similar or subsequent acts or requests. Since the submission of a proposed amendment to the Declarant is not an item of "consent" or "approval", the Declarant may consider any proposed amendment to this Declaration in its sole and absolute discretion without regard to reasonableness or timeliness.

14.7. Estoppel Certificates: Any Owner may, at any time and from time to time, in connection with the sale or lease of the Owner's Parcel, or in connection with the financing or refinancing of the Owner's Parcel by bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Owner requesting such Owner to execute a certificate certifying that to the best knowledge of the other Owner, (i) neither the requesting Owner nor the other Owner is in default in the performance of its obligations under this Declaration, or, if a default is alleged, specifically describing the nature and amount thereof, and (ii) confirming that this Declaration has not been amended (or, if so, identifying the amendments), and is in full force and effect. Each Owner shall execute and return such a certificate within thirty (30) days after receipt of a request therefore. The Owners acknowledge that such certificates may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback lessors. Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and/or relevant information (but it shall estop such person from making assertions contrary to those set forth in the certificate for the period covered by the certificate), nor shall such issuance be construed to waive any rights of the issuer to challenge acts committed by the Owners for which approval by the Owners was required but not sought or obtained.

14.8. Breach Shall Not Permit Termination: It is expressly agreed that a breach of this Declaration shall not entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any act in contravention of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

14.9. Notices:

(a) All notices given pursuant to this Declaration shall be in writing and shall be given by facsimile, by personal delivery, by United States mail or United States express mail postage or delivery charge prepaid, return receipt requested, or by an established express delivery service (such as Federal Express or United Parcel Service), sent to the person and address or facsimile number designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the

Project is located. Notices given by attorneys on behalf of their client(s) in the manner provided in this subsection are effective and recognized notice pursuant to this Declaration. All notices to Declarant shall be sent to the person and address set forth below:

PPOP, LLC  
P.O. Box 25428  
Scottsdale, Arizona 85255  
Attention: E.J. Pospisil

The Person and address to which notices are to be given may be changed at any time by the Declarant. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section, (iii) in the case of a facsimile, the date and time of receipt as shown on the confirmation of the facsimile transmission, (iv) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

14.10. Waiver: The failure of a Person to insist upon strict performance of any of the Restrictions or other terms and provisions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions or other terms and provisions contained herein by the same or any other Person.

14.11. Attorneys' Fees: In the event any Person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the non-prevailing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

14.12. Severability: If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

14.13. Not a Partnership: The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Owners. Each Owner shall be considered a separate party and no Owner shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged. Except as

herein specifically provided, no rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Project, nor shall any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third party beneficiary of any of the provisions contained herein.

14.14. Captions and Headings: The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

14.15. Interpretation: Whenever the context requires construing the provisions of this Declaration, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar importance) are used with respect thereto. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party. Unless otherwise provided, references to Articles and Sections refer to the Articles and Sections of this Declaration.

14.16. Recordation: Upon execution, this Declaration shall be recorded in the Office of the Maricopa County Recorder.

14.17. Limitation on Liability: Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons or corporations who constitute a respective Owner hereunder, including, but not limited to, members, managers, officers, directors, employees or agents thereof, with respect to any of the terms, covenants, conditions and provisions of this Declaration. In the event of a default of an Owner hereunder, the Owner who seeks recovery from such Owner shall look solely to the interest of such Owner in such Owner's Parcel for the satisfaction of each and every remedy of the non-defaulting Owner; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Owner (i) to pursue equitable relief in connection with any Restriction of this Declaration, including a proceeding for a temporary restraining order, preliminary injunction, permanent injunction or specific performance; and (ii) to recover from such Owner all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, an Owner's breach of its obligation to carry Owner Liability Insurance, or to fund its self-insurance obligation, if applicable.

14.18. Lienholder Protection: This Declaration and the Easements and Restrictions established hereby with respect to each Owner and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but all the Easements and Restrictions and other provisions, terms and conditions contained in this Declaration shall be binding upon and effective against any Person (including, but not limited to, any mortgagee or beneficiary under a deed of trust) who acquires title to any Parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.



14.19. Variances: Where appropriate, the Owners may, in their sole and absolute discretion, grant written variances to the provisions of this Declaration (in lieu of an amendment), signed by all of the Owners, where strict adherence to the requirements of this Declaration or any architectural standards established by the Owners would, in the judgment of the Owners, cause undue hardship. The granting of a waiver or variance to one Owner shall not automatically entitle the other Owner to the same waiver or variance, it being understood that each request for a waiver or variance shall be treated on its own individual merits.

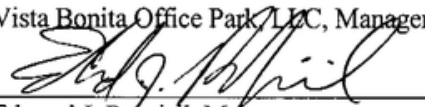
14.20. Time of Essence: Time is of the essence with respect to the performance of each obligation of this Declaration.

14.21. Conflict with Declaration: To the extent possible, this Declaration shall be construed and interpreted consistent with the terms and conditions of the Declaration of Covenants, Conditions and Restrictions for Pinnacle Peak Office Park Condominium (the "Condominium Declaration"), recorded in the Official Records of the Maricopa County Recorder prior to the recordation of this Declaration. In the event of any irreconcilable conflict between the terms of this Condominium Declaration and the terms of the Condominium Declaration, the terms of the Declaration shall prevail.

EXECUTED as of the day and year first above written.

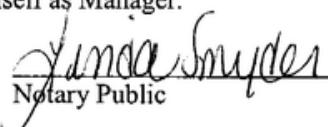
PPOP, LLC,  
an Arizona limited liability company

By: Vista Bonita Office Park, LLC, Manager

  
Edward J. Pospisil, Manager

STATE OF ARIZONA     )  
                                      )ss.  
County of Maricopa     )

On this 15 day of June, 2005, before me personally appeared Edward J. Pospisil, who acknowledged himself to be the Manager of Vista Bonita Office Park, LLC, the Manager of POPP, LLC, an Arizona limited liability company, and that he, in such capacity being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Manager.

  
Notary Public

My Commission Expires:



## List of Exhibits

- A = Legal Description of the Condominium Parcel
- B = Legal Description of the Pad
- C = Approved Grading, Drainage and Utility Plans
- D = Site Plan

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EXHIBIT "A"

"Legal Description of the Condominium Parcel"

Pinnacle Peak Office Park, a condominium Plat as recorded  
in Book 753 of Plats, page 16.

EXHIBIT "B"  
"Legal Description of the Pad"

**LEGAL DESCRIPTION**

A Parcel of land being in a portion of the Southwest One-quarter of Section 11, Township 4 North, Range 4 East of the Gila and Salt River Base & Meridian, Maricopa County, Arizona, being more particularly described as follows:

**BEGINNING** at the Southeast corner of "PINNACLE PEAK OFFICE PARK", a Condominium Plat, as recorded in Book 753 of Maps, Page 16, records of Maricopa County, Arizona;

thence North 89 Degrees 59 Minutes 18 Seconds West along the Southerly line of said Plat for 169.75 feet;

thence along the following nine (9) courses, said courses also being segments of the Easterly line of Tract "A", as shown on said plat:

- 1) North 00 Degrees 00 Minutes 42 Seconds East for 97.50 feet;
- 2) thence South 89 Degrees 59 Minutes 18 Seconds East for 40.00 feet;
- 3) thence North 00 Degrees 00 Minutes 42 Seconds East for 115.69 feet;
- 4) thence North 76 Degrees 07 Minutes 37 Seconds West for 16.48 feet;
- 5) thence North 00 Degrees 00 Minutes 42 Seconds East for 12.28 feet;
- 6) thence North 03 Degrees 37 Minutes 59 Seconds East for 41.56 feet;
- 7) to a point on a curve having a radius of 18.00 feet and whose radius point bears South 86 Degrees 23 Minutes 05 Seconds East; thence along the arc of said curve, through a central angle of 42 Degrees 27 Minutes 47 Seconds for 13.35 feet;
- 8) thence South 68 Degrees 31 Minutes 07 Seconds East for 179.72 feet;
- 9) to a point on a curve having a radius of 20.00 feet and whose radius point bears South 21 Degrees 28 Minutes 53 Seconds West; thence along the arc of said curve, through a central angle of 61 Degrees 08 Minutes 04 Seconds for 21.34 feet to a point on the Easterly line of said Plat;

thence South 21 Degrees 28 Minutes 53 Seconds West along the Easterly line of said Plat for 21.22 feet to a point on a curve having a radius of 495.00 feet and whose radius point bears South 68 Degrees 31 Minutes 08 Seconds East;

thence along the Easterly line of said Plat on the arc of said curve, through a central angle of 21 Degrees 28 Minutes 11 Seconds for 185.49 feet back to the **TRUE POINT OF BEGINNING**.

Said lands containing 41,419.997 square feet  
or 0.951 acres, more or less

**LEGAL DESCRIPTION**

GILBERTSON ASSOCIATES, INC.  
8502 E. PRINCESS DRIVE, STE.  
100 SCOTTSDALE, AZ. 85025  
480-607-2244



FILE NAME: k:\d\1992\03\Outparcel-legal.dwg  
DATE PLOTTED: 7-11-05



## LINE TABLE

LINE	LENGTH	BEARING
L1	169.75	N89°59'18"W
L2	97.50	S00°00'42"W
L3	40.00	S89°59'18"E
L4	115.69	S00°00'42"W
L5	16.48	S76°07'37"E
L6	12.28	S00°00'42"W
L7	41.56	S03°37'59"W
L8	179.72	N68°31'07"W
L9	21.22	S21°28'53"W
L10	49.56	N00°00'07"E
L11	50.00	N89°59'18"W
L12	48.80	S00°00'07"W

## CURVE TABLE

CURVE	LENGTH	DELTA	RADIUS
C1	13.35	42°27'47"	18.00
C2	21.34	61°08'04"	20.00
C3	185.49	21°28'11"	495.00

"PINNACLE PEAK  
OFFICE PARK"  
(BK.753, PG.16, M.C.R.)

S.E. CORNER "PINNACLE  
PEAK OFFICE PARK"  
(BK.753, PG.16, M.C.R.)

S.W. CORNER  
"PINNACLE PEAK OFFICE PARK"  
(BK.753, PG.16, M.C.R.)

PINNACLE PEAK ROAD  
(BK.287, PG.26, M.C.R.)

**SUBJECT PROPERTY**  
0.951 AC.

N58°31'24"W  
30.75'

L=565.49'  
A=80°00'00"  
R=405.00'

N21°28'53"E  
78.78'

LOS PORTONES DRIVE  
(INST. #86-002887 & 86-002889, M.C.R.)

## SKETCH OF LEGAL DESCRIPTION

GILBERTSON ASSOCIATES, INC.  
8502 E. PRINCESS DRIVE, STE.  
100 SCOTTSDALE, AZ. 85025  
480-607-2244



SCALE: 1" = 50'



FILE NAME: \\k\d\992\03\Outparcel-legal.dwg  
DATE PLOTTED: 7-11-05

EXHIBIT "C"

"Approved Grading, Drainage and Utility Plans"

EXHIBIT "D"

"Site Plan"

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