

When recorded return to:  
Bell Traylor Construction Co.  
4711 North 12th Street  
Phoenix, Arizona 85014

71994 /

OK 10048-1507

Recorded \_\_\_\_\_  
Docket \_\_\_\_\_  
Pages \_\_\_\_\_

02-R MISC.

DECLARATION OF HORIZONTAL PROPERTY REGIME

TOGETHER WITH

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

Fontana II  
Final Plat No. 110

This Declaration is made on the 19th day of March,  
1973 by Transamerica Title Insurance Company of Arizona, an Arizona  
corporation, as Trustee, hereinafter referred to as "Declarant".

ARTICLE I

DECLARATION OF HORIZONTAL PROPERTY REGIME

Section 1. DESCRIPTION. Declarant is the owner of real property in  
Maricopa County, Arizona, described as follows:

Apartments A to D, Buildings #149 to #173 inclusive of the Fontana  
Final Plat No. 110 subdivision according to the plat of record in the  
office of the County Recorder of Maricopa County, Arizona in Book 160  
of Maps at Page 44.

Section 2. DECLARATION. Pursuant to Chapter 4.1, Article 1, Sections 33-  
551 to 33-561 inclusive, Arizona Revised Statutes, 1956, Declarant does hereby  
submit said property described above to the Horizontal Property Regime in order  
to establish the nature of the use and enjoyment of the aforescribed property.

Section 3. DESCRIPTION OF THE LAND. The land shall be as described in  
the recorded plat referred to in Section 1. above.

(a) DESCRIPTION OF THE SPACE OF THE BUILDING. There  
shall be twenty-five (25) multi-unit buildings  
in the Horizontal Property Regime, each of which  
shall contain four (4) apartments. Each building  
shall be identified numerically 149 through 173.  
The cubic content space of each building with refer-  
ence to its location on the land is as more fully  
set forth and described in the recorded plat  
referred to in Section 1 above.

(b) DESCRIPTION OF SPACE OF APARTMENT. The horizontal  
Property Regime shall be composed of one hundred (100)  
individual apartments. Each apartment within each  
building shall be separately identified alphabetically  
as A through D as shown on the plat referred to in  
Section 1 above. Each apartment in the Horizontal  
Property Regime shall include an individual apartment,  
patio, heating and air conditioning unit, one parking  
space, storage area, stairway and balcony, if any, each  
bearing the same alphabetical identification as shown  
on the plat referred to in Section 1 above. The cubic  
content space of each apartment located within the

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STATE OF ARIZONA }  
County of Maricopa }

I hereby certify that the  
within instrument was filed and  
recorded at request of

*Deft. Transamerica Title Ins. Co.*

In Docket 10048  
on page 1507-1522

Witness my hand and official  
seal the day and year aforesaid.  
PAUL H. MARSTON

County Recorder

*Linda B. Buehler*  
Deputy Recorder

RECEIVED MAR 28 1973

building and of each patio, heating and air conditioning unit, parking space, storage area, stairway and balcony, if any, and any other area subject to individual ownership and exclusive control is as more fully set forth and described in the recorded plat referred to in Section 1 above.

- (c) DESCRIPTION OF GENERAL COMMON ELEMENTS. The general common elements shall include all of said property referred to in Section 1 above, including the land upon which the apartments are located, the buildings, all bearing walls, columns, floors, roofs, slabs, all recreation facilities, swimming pools, pumps, landscaping, pavements, private drives, all waste, water and gas pipes, ducts, chutes, conduits, wires, drainage lines, other utility and installation lines, the foundations of the apartments, the foundations of the buildings, and all other devices and premises designed for common use or enjoyment by more than one owner or owners of a single apartment, all as is more fully set forth and described herein and in the recorded plat referred to in Section 1 above, and except for an apartment as defined, and except for the outlets of utilities when located within an apartment, and those areas allocated for use by an apartment for parking, patio, heating and air conditioning unit, stairway, storage, and balcony purposes, as shown on said plat. The common elements shall remain undivided; and no owner shall bring any action for partition; it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the common elements.

- (d) DESCRIPTION OF SPACE OF LIMITED COMMON ELEMENTS. There shall be additional areas constituting a portion of the general common elements which are hereby set aside and allocated for the limited use of the apartments as follows:

Laundry facilities identified as Unit E in each of the multi-unit buildings shall be limited as to usage to the four apartments contained therein.

The cubic content space of Unit E (laundry facilities) with reference to its location within the multi-unit building is as more fully set forth and described in the recorded plat referred to in Section 1 above.

- (e) FRACTIONAL INTEREST. Each apartment shall bear an undivided fractional interest in the entire Horizontal Property Regime as set forth hereinafter: one-one hundredth (1/100).

Section 4. VERTICAL DIMENSION: All reference to vertical dimension made in this document or on the recorded map referred to in Section 1 above shall be based upon the elevations as described below:

**BENCH MARKS:**

Top of brass cap set in concrete at the:

West 1/4 Corner, Section 11, Township 3 North, Range 6 East of the Gila and Salt River Base and Meridian.  
Elevation 1625.27.

ARTICLE II

DEFINITIONS

Section 1. "Apartment" shall mean a separate freehold estate consisting of an airspace defined as follows: The boundaries of each such Apartment are as follows:

- (a) The lower vertical boundary is the surface of the finished floor thereof.
- (b) The upper vertical boundary is a horizontal plane, the elevation of which coincides with the elevation of the surface of the finished ceiling or ceilings thereof.
- (c) The lateral boundaries are the interior surfaces of the perimeter walls, windows and doors thereof and vertical planes coincidental with the interior surfaces of the perimeter walls thereof, extended upwards to intersect the upper horizontal boundary.
- (d) Each such Apartment includes the surfaces so described, and the portions of the building and improvements lying within said boundaries. Each such Apartment shall also include the heating and air conditioning unit, ranges, dishwasher, garbage disposal units, water heaters, and other household appliances lying within said boundaries and/or appurtenant areas.
- (e) The airspaces for parking, patios, storage areas, heating and air conditioning unit, balconies and stairways, if any, are, where so designated, for the exclusive use of the Apartment.
- (f) Unless otherwise indicated, all airspace boundary lines intersect at right angles.

The following are not part of an Apartment: Bearing walls, columns, vertical supports, roofs, floors, foundations, pipes, ducts, flues, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the Apartment. There are uncovered parking areas which are for the use of Owners and their guests and invitees, subject to the regulations established by the Fontana II Homeowners Association. In interpreting deeds, plats, declarations, and plans, the existing physical boundaries of an Apartment or an Apartment reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plat, plan, or declaration, regardless of settling or lateral movement of the building, and regardless of minor variances between the boundaries as shown on the plan or in the deed and declaration and those of the building. Each of the four (4) Apartments in each building shall be deemed to be a separate and distinct Apartment.

Section 2. "Articles" shall mean the Articles of Incorporation of the Association which are, or shall be filed in the office of the Corporation Commission of the State of Arizona, or its successor, as said Articles may be amended from time to time.

Section 3. "Association" shall mean and refer to the Fontana II Homeowners Association, an Arizona non-profit corporation, its successors and assigns, formed as an entity through which the Owners may act, in accordance with Arizona Revised Statutes 33-551.1 to 33-561 (1962).

Section 4. "Board" shall mean the Board of Directors of the Association.

Section 5. "Building" shall mean and refer to the structures designated as buildings on the recorded plat referred to in Section 1 of Article I above, in accordance with Arizona Revised Statute 33-551.2 (1962).

Section 6. "Bylaws" shall mean the Bylaws of the Association as such Bylaws may be amended from time to time.

Section 7. "General Common Elements" shall mean all the general common elements for the common use or enjoyment by more than the Owner or Owners of a single Apartment, as described in Article I, Section 3 (c) above and in Arizona Revised Statute 33-551.6 (1962). The General Common Elements may sometimes hereinafter be referred to as "Common Elements".

Section 8. "Declarant" shall mean Transamerica Title Insurance Company, an Arizona corporation, as Trustee, including its successors and assigns.

Section 9. "Declaration" shall mean this document, as same may from time to time be amended.

Section 10. "Improvement" shall mean all physical structures, including, but not limited to, the buildings, private drives, parking areas, fences and walls, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

Section 11. "Member" shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

Section 12. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Apartment. "Owner" shall include the purchaser of an Apartment under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Apartment merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include a lessee or tenant of an Apartment. For the purposes of Article VII only, unless the context otherwise requires, "Owner" shall also include the family, invitees, licensees, and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any Apartment.

Section 13. "Property" shall mean and refer to the land whether committed to the Horizontal Property Regime in fee or as a leasehold interest, the buildings, all other improvements located thereon, and all easements, rights, and appurtenances belonging thereto.

Section 14. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

Section 15. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE III

PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Apartment, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Apartment remains unpaid; and for a period not to exceed 60 days for any infraction of this Declaration;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Owners agreeing to such dedication or transfer has been recorded.

Section 2. DELEGATION OF USE. Any Owner may delegate, in accordance with this Declaration, his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or to a reasonable number of his guests or invitees, said number shall be as determined from time to time by the Board of Directors.

ARTICLE IV

HOMEOWNERS ASSOCIATION

Section 1. It is recognized that at the date hereof construction of all the common elements and the proposed dwelling units contemplated by the recorded subdivision map referred to in Article I above have not been completed, and that the Homeowners Association envisioned by this declaration is not operative. In order that said units be constructed and sold, and said Common Elements be installed and protected, and that the said Association become stabilized and operational in the support and promotion of the objectives of said Article I the Dell Traylor Construction Company, hereinafter referred to as "Developer", hereby reserves unto itself, at its option, the sole and exclusive right to manage the affairs of the Homeowners Association. The Developer shall have the sole and exclusive right to make contracts or agreements on behalf of the Association for maintenance of Common Elements and operation of the Association, and do all other things as authorized by this Declaration.

Section 2. The Fontana II Homeowners Association, a non-profit corporation, organized under and by virtue of the laws of the State of Arizona governing non-profit corporations, shall accept ownership of and provide such necessary and appropriate action for the maintenance, repair, replacement, and management of all Common Elements including, but not limited to privately owned streets, walks, landscaping, walls, pools, and recreational facilities. Ownership of a unit which is subject to assessment shall be a member of the Association, and each unit shall be entitled to one vote in any balloting of the members, with the exception that the developer shall be entitled to three votes for each lot or unit owned by it or Declarant. The

intent of this provision is to provide Dell Traylor Construction Company with control over the Homeowners Association until 75% of the units are sold. Membership shall be appurtenant to and may not be separated from ownership of any unit which is subject to assessment.

Section 3. Until such time as 75% of the units in the above described premises have been conveyed to the purchasers thereof all right, discretion, power and authority herein granted to said Homeowners Association and said unit owners through said Homeowners Association including the right to collect assessments (excepting reserves for replacement) shall, at the option of the Developer remain with the Developer directly or through said Homeowners Association. Capital improvements or additions to the general common elements may be achieved by an affirmative vote of a majority of the unit owners. Upon such affirmative vote said improvement or addition will be installed by the Developer, and the Developer shall prorate the such costs to each unit owner and collect such costs as if it were an assessment as provided for herein. Upon sale of not less than 75% of said units, or unless earlier required Developer such right, discretion, power and authority shall be assumed by the unit owners who are then members of the Homeowners Association, through their Officers and Directors who shall be duly elected at such time.

Section 4. Until such time as 75% of the total units have been conveyed or transferred from the Developer, or the trustee, neither the Developer or the trustee shall be liable for any assessment referred to herein for any unoccupied units or lots. In lieu of payment of such assessment the Developer will assume responsibility for month-to-month maintenance, repair, and management of Common Elements until such time control of the Association is assumed by the owners of occupied units. For purposes of this paragraph assumption of control of the Association is defined as having passed conclusively to the owners collectively upon completion of the following requirements:

- (a) Dell Traylor Construction Co. shall notify the owner of each occupied unit that the Board of Directors of the Homeowners Association has resigned effective thirty (30) days after date of notice.
- (b) Delivery of the Homeowners Association corporate minutes and seal, if any, to any one of the owners of record receiving such notice, on committee organized for such purpose.

There shall be no outstanding or accrued debts against the Association at the time of assumption of control by the owners. Beginning with the date of control of the Association by the owners, the Dell Traylor Construction Co. shall be assessable at a rate of one-half (1/2) of the assessment established by the Board of Directors for each unit available for habitation, and said assessment shall be paid monthly.

#### ARTICLE V

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. PERSONAL OBLIGATION OF ASSESSMENTS. Each Owner of any Apartment, by acceptance of a deed therefor, except as provided for in Article IV above, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided in the Articles and Bylaws. The annual and special assessments, late payment penalties, if any, together with interest, costs, and reasonable attorney's fees, shall be a lien on the Apartment and the Common Elements as created by the Articles or Bylaws. Each such

Section 3. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all apartments and may be collected on a monthly, quarterly, or annual basis.

Section 4. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments shall commence as to all Apartments on the first day of the month following the conveyance of an Apartment to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Apartment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors.

Section 5. Until January 1 of the year immediately following the conveyance by Declarant of the first unit to an Owner, the maximum annual assessment shall be THREE HUNDRED <sup>1</sup>/<sub>100</sub> — Dollars (\$ 300.00) per each Unit.

- (a) From and after January 1 of the year immediately following the conveyance of the first unit to an Owner, the maximum annual assessment may be increased each year up to six percent (6%) above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first unit to an Owner, the maximum annual assessment may be increased above six percent (6%) by a vote of two-thirds (2/3) of all members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board may fix the annual assessment at an amount not in excess of the maximum.

#### ARTICLE VI

##### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of an Apartment which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Apartment which is subject to assessment. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to such apartment, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be

assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such apartment at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of all owners, for the improvement and maintenance of the Common Elements, and for all purposes set forth in the Articles, including but not limited to, management fees, insurance premiums unless otherwise provided for, expenses for maintenance, repairs and replacements of Common Elements, reserves for contingencies, and charges for water and other utilities for the Common Elements.

- (a) The Association shall establish and maintain a reserve fund for replacements by the allocation and payment monthly to such reserve fund an amount to be designated from time to time by the Board of Directors. Such fund shall be deposited in a special account with a safe and responsible depository, and may be in the form of a cash deposit or invested in obligation of, or fully guaranteed as to principal by the United States of America. The reserve fund is for the purpose of effecting replacement or repair because of damage, depreciation or obsolescence to Common Area Elements.
- (b) By appropriate action of the Board of Directors the Association may establish and maintain a general operating reserve by allocation and payment thereto monthly of a sum equivalent to not less than 3 percent of the monthly assessments chargeable to the owners in the condominium pursuant to the By-laws. Upon accrual in said General Operating Reserve Account of an amount equal to 15 percent of the current annual amount of assessments chargeable to the owners in the condominium pursuant to the By-laws, the rate of such monthly allocations may, by appropriate action of the Association be reduced from 3 percent to 2 percent provided however, that in the event withdrawals from such account reduce it below said 15 percent accrual, the rate of such monthly deposits shall immediately be restored to 3 percent; at any time thereafter upon accrual in said General Operating Reserve account of an amount equal to 25 percent of the current annual amount of assessments chargeable to the owners in the condominium pursuant to the By-laws, such monthly deposits may be appropriate action of the Association, be discontinued and no further deposits need be made into such General Operating Reserve so long as said 25 percent level is maintained and provided, further, that upon reduction of such reserve below said 25 percent level, monthly deposits shall forthwith be made at the 3 percent rate until the 25 percent level is restored. This reserve shall remain in a special account and may be in the form of cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America, and shall at all times be under the control of the Association. This cumulative reserve is intended to provide a measure of financial stability during periods of special stress and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments by owners in the condominium and other contingencies. Reimbursements shall be made to the account upon payment of delinquencies for which funds were withdrawn from the reserve.



established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer or ownership to an Apartment shall operate to transfer said membership to the new Owner thereof, and a charge of \$25.00 shall be assessed and paid to the Association by the transferee in each such transfer.

Section 2. All Owners shall be entitled to one vote for each Apartment owned. When more than one person holds an interest in any Apartment, all such persons shall be Members. The vote for such Apartment shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Apartment and fractional votes shall not be allowed. In the event more than one vote is cast for a particular Apartment, none of the votes for such Apartment shall be counted and said votes shall be deemed void.

## ARTICLE VII

### COVENANTS, CONDITIONS AND RESTRICTIONS

Section 1. SINGLE-FAMILY RESIDENTIAL USE. An Apartment shall be used, improved and devoted exclusively to Single-Family Residential use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such property. Nothing herein shall be deemed to prevent the lease of an Apartment to a single-family from time to time by the Owner thereof, subject to all of the provisions of this Declaration.

\*\* Section 2. ANIMALS. No animals, birds, fowl poultry, or livestock, other than a reasonable number of domestic dogs, cats, fish, and birds in cages shall be maintained in any apartment and then only if they are kept therein solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be visible from a neighboring unit or street. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this paragraph, a particular animal or bird is a generally recognized household pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein. The Board shall have the right to prohibit maintenance of any animal or bird which constitutes, in the opinion of the Board, a nuisance to any other Owner. As used in this Declaration, the term "reasonable number" shall be deemed to limit the number of dogs, cats, and birds, to two (2) each. Dogs and other animals must be kept on a leash when not confined in the owners' apartment. No owner shall permit its dog or animal to create unsanitary conditions anywhere on the common properties. When such conditions are created the owner will be assessed \$10.00 for clean-up expenses by the Association and may seek other satisfaction as permitted by law and this declaration.

Section 3. ANTENNAS. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property whether attached to a building or structure or otherwise, unless approved by the Board.

Section 4. UTILITY SERVICE. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings

\*\* Section 2. ANIMALS (Revised). No cats or dogs shall be permitted from this day (June 1, 1978). Any other animals or birds shall be maintained in the Apartment and not allowed to become a nuisance.  
(This was recorded in the Maricopa Co. Records office.)

or other structures approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Board.

Section 5. IMPROVEMENTS AND ALTERATIONS. No improvements, exterior painting, landscaping or decorative alterations, repairs, excavation, or other work which in any way alters the exterior appearance of any Property, or the improvements located thereon shall be commenced, erected, maintained, made or done without the prior written approval of the Board or any committee established by the Board for the purpose.

Section 6. TEMPORARY OCCUPANCY. No temporary buildings or structure of any kind shall be used at any time for a residence on any Property.

Section 7. TRAILERS AND MOTOR VEHICLES. Except with approval of the Board, no mobile home, trailer of any kind, truck camper, or permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any Property or street (public or private) in such a manner as will be visible from neighboring property. No boat, trailer, recreational vehicle, camper, truck, motorcycle, motorbike, scooter, or other similar motor vehicle which does not fit within assigned parking spaces, shall be parked or stored on any private drive or in any part of the Property other than in the Boat and Trailer Storage Area as shown on the recorded plat referred to in Article I, Section 1 above, and the Association will charge a reasonable fee for each space therein. Only automobiles in operating condition shall be parked in covered and uncovered parking areas. Provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Board.

#### Section 8. REPAIR AND MAINTENANCE.

- (a) BY OWNER. Each owner of an Apartment shall maintain, repair, replace, and restore at his own expense all portions of the Apartment, and such maintenance, repair, replacement or restoration shall be subject to control and approval of the Association. No owner shall remove, alter, injure, or interfere with any shrubs, trees, grass or plantings placed upon any Property by Declarant or the Association without first obtaining the written consent of the Association.
- (b) BY THE ASSOCIATION. The Association shall have full power to control and it shall be its duty to maintain, repair and make necessary improvements to all Common Elements and the improvements thereon with the exception of the glass surfaces in the exterior portions of the Apartments and with the exception of outlets of all utility installations of the buildings when located in the Apartments. The Association shall further be empowered with the right and duty to periodically inspect all Common Elements in order that minimum standards of repair, design, color and landscaping shall be maintained for beauty, harmony and conservation within the entire project.
- (c) GENERAL MAINTENANCE. In the event that the Association determines that an improvement or the Common Elements are in need of repair, restoration or painting, or that the landscaping is in need of installation, repair, restoration, the Association shall undertake to remedy such condition and the cost

thereof shall be charged to the Owners and shall be subject to levy, enforcement and collection by the Association in accordance with the assessment lien procedure provided for in the Articles or Bylaws. The Association shall have a limited right of entry in and upon all Common Elements and the exterior of all Apartments for the purpose of taking whatever corrective action may be deemed necessary or proper by the Association. When so required to enter an Apartment for the purpose of performing installation, alterations or repairs to the mechanical or electrical services, including water, sewer, and other utility services, reasonable requests for entry shall be made and such entry be at a time reasonably convenient to the Owner whose Apartment is to be entered. Nothing in this Article shall in any manner limit the right of the Owner to exclusive control over the interior of his Apartment. Provided, however, that an Owner shall grant the right of entry therein to the Association or any other Owner, or their authorized representatives, or any other person, in case of any emergency originating in or threatening his Apartment, whether the Owner is present or not.

- (d) REPAIR NECESSITATED BY OWNER. In the event that the Association determines that an improvement or the Common Elements are in need of repair, restoration or painting, or that the landscaping is in need of installation, repair, or restoration which has been caused by an Owner, or any person designated by the Owner under the provisions of Article III, Section 2 above, then the Association shall give written notice to the Owner of the conditions complained of. Unless the Board has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such reasonable period of time as may be determined by the Board after said written notice is first given, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Association shall undertake to remedy such condition or violation complained of. The cost thereof shall be deemed to be an assessment to such Owner and his Apartment and subject to levy, enforcement and collection by the Association in accordance with the assessment lien provided for in the Articles or Bylaws. The Association shall have the same right of entry in and upon all Common Elements and an Apartment as defined in subsection (c) above. The Board shall have the sole right to determine whether any such costs expended by the Association were related to General Maintenance or were Repairs Necessitated by an Owner, and the determination of same shall be binding and final as to an Owner.

Section 9: NUISANCES. No nuisance shall be permitted to exist or operate upon any property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. The Board in its sole discretion shall have the right to determine the existence of any nuisance.

Section 10. TRASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or kept on any Property except in covered containers of a type, size and style which are approved by the Board. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection, and then only the shortest time reasonably necessary to effect such collection.

Section 11. CLOTHES DRYING FACILITIES. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.

Section 12. RESTRICTION ON FURTHER SUBDIVISION. No Apartment within the \_\_\_\_\_ shall be further subdivided or separated into smaller apartments by an Owner, and no portion less than all of any such Apartment nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board. Only the entire Apartment, together with the improvements thereon, may be rented, and then only to a single family and subject to provisions of this Declaration.

Section 13. SIGNS. No sign whatsoever (including, but not limited to, commercial, political and similar signs) which are visible from neighboring property shall be erected or maintained on any Property except:

- (a) Such signs as may be required by legal proceedings;
- (b) Not more than two (2) residential identification signs each of a combined total face area of seventy-two (72) square inches or less;
- (c) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen (18) by twenty-four (24) inches in height and width and having a face area not larger than three square feet;
- (d) Such signs the nature, number, and location of which have been approved by the Board in advance, and;
- (e) Such signs, the number, type and size of which as may be approved from time to time by Declarant for developers.

Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of Property.

Section 14. EASEMENTS. There is hereby created a blanket easement upon, across, over and under the above described Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company or the Association or their agent to install and maintain facilities and equipment on said Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of any building. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said Property except as initially designed and installed or thereafter approved by the Board. This easement

shall in no way affect any other recorded easements on said Property. This easement shall be limited to Improvements as originally constructed. There shall be an access easement to all buildings for the delivery and collection of the U. S. Mail.

Section 15. ENCROACHMENT. Each Apartment shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event a building is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on parts of the adjacent residence due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 16. COMMON WALLS. The rights and duties of Owners with respect to Common Walls shall be as follows:

- (a) The owners of contiguous apartments who have a Common Wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
- (b) In the event that any Common Wall is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to re-build and repair the Common Wall without cost to the other adjoining Owner or Owners.
- (c) In the event any such Common Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests, or family, it shall be the obligation of the Association to rebuild and repair such wall.
- (d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Common Wall without the prior consent of the Board.
- (e) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Common Wall, or with respect to the bearing of the cost thereof, the Owners shall submit the dispute to the Board, the decision of which shall be final and binding on all Owners.

Section 17. INSURANCE. The Board, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the Property except contents of individual Apartments, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from all reasonable hazards. The Board, or its duly authorized agent, shall also obtain a broad form public liability policy covering all Common Elements, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners. Insurance on individual Apartments will be written in the name of the individual owners as their interest may appear. In addition to the aforesaid insurance required to be carried by the Association, any Owner may, if he wishes, at his own expense,

carry any and all other insurance he deems advisable. It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, personal liability insurance, theft and other insurance covering personal property damage and loss.

Section 19. ENFORCEMENT. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 19. SEVERABILITY. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 20. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the Apartment, and Common Elements, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy percent (70%) of the Apartment Owners, and thereafter by an instrument signed by not less than a majority of the Apartment Owners. Any amendment must be recorded.

Section 21. VIOLATIONS AND NUISANCE. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners of Apartments. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agents of any of them, may enforce by self-help any of the provisions of this Declaration.

Section 22. VIOLATION OF LAW. Any violation of any state, municipal, or local law, ordinance, or regulation, pertaining to the ownership, occupation or use of any property within the Fonrana II is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 23. BINDING EFFECT. By acceptance of a deed or by acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenant and agree that the Apartments and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encountered with its respective Apartment

even though the description in the instrument of conveyance or encumbrance may refer only to the Apartment.

Section 24. OFFER OF SALE. Any Owner who desires to sell, lease or rent his apartment shall, prior to accepting any offer to purchase, lease or rent, give to the Board written notice of the terms and amount of such offer, including the name and address of the offeror. If, within fifteen (15) days after service of such notice by Owner, any member or group of members of the Association submits to the Board an identical firm and binding offer to purchase, lease or rent, the Owner shall accept the offer of said member or group of members of the Association in preference to the original offer described in the notice to the Board, and in the event more than one (1) member or group of members of the Association submits an identical firm and binding offer to the Board within said fifteen (15) day period, the Owner may, at his discretion, accept any one of such offers. If no identical offer from a member or group of members of the Association is submitted within said fifteen (15) day period, the Board shall, upon request of the Owner, execute an affidavit stating that the Owner has complied with the provisions hereof. Such affidavit shall contain the information that the Board has been duly elected, that a particular apartment has been offered for sale or lease, identifying the same, and that the proper notice to sell has been served by the Owner and that the fifteen (15) day period has passed and that no member or group of members of the Association submitted an identical firm and binding offer within the time allowed herein. Such affidavit shall be deemed conclusive evidence of the truth of the facts therein recited. The selling Owner may, at the expiration of said fifteen (15) day period, and at any time within sixty (60) days after the expiration of said period, accept the offer described in said notice.

The provisions of this paragraph shall not be applicable or be enforceable by the Board or by any person with respect to:

- (a) A sale, transfer or conveyance of any Apartment to any person, pursuant to a judgment of foreclosure of a mortgage of record or deed of trust;
- (b) An original sale of any unit by Declarant, or its assignees or successors in interest;
- (c) Any rental, with or without a written lease, for a term of one (1) year or less; provided that any subsequent lease to the same person or persons, organization, entity, association or corporation, directly or indirectly, shall not be exempt from the provisions of this Article.
- (d) A transfer of title by testamentary disposition or intestate succession.

Section 25. EXEMPTION OF OWNER. No Owner of an Apartment may exempt himself from liability for his fair and equitable contribution towards the common expenses by waiver and non-use of any of the Common Elements and facilities or by the abandonment of his Apartment.

Section 26. Each Owner shall be responsible for compliance by said owner's agent, tenant, guest, invitee, lessee, licensee, their respective servants and employees to the provisions of this Declaration, Articles, By-laws and Association rules as they may be amended from time to time. The owner's failure to so ensure compliance by such persons shall be grounds for the same action available to the Board by reason of said Owner's own non-compliance.

IN WITNESS WHEREOF, the TRANSAMERICA TITLE INSURANCE COMPANY  
OF ARIZONA, as Trustee has caused its corporate name to be signed  
and its corporate seal to be affixed by the undersigned officer thereunto  
duly authorized this day of March, A.D., 1973.

TRANSAMERICA TITLE INSURANCE COMPANY  
OF ARIZONA, as Trustee

By Richard Brittain  
Trust Officer

STATE OF ARIZONA }  
County of Maricopa } ss.

Before me, this 19th day of March, 1973,  
personally appeared Richard Brittain, who  
acknowledged himself to be a Trust Officer of the TRANSAMERICA TITLE INSURANCE  
COMPANY OF ARIZONA and that he as such officer, being  
authorized so to do, executed the foregoing instrument for the purposes  
therein contained by signing the name of the corporation as Trustee, by himself  
as such officer.

Karin A. Merrick  
Notary Public

My commission expires:  
3-2-76.



933912247



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

93-0827244 11/30/93 10:58

JOHN 1 OF 1

When Recorded Please Return to:  
James H. Hazlewood, Esq.  
Shimmel, Hill, Bishop & Gruender, P.C.  
3700 N. 24th Street  
Phoenix, AZ 85016

SECOND AMENDMENT TO DECLARATION OF  
HORIZONTAL PROPERTY REGIME TOGETHER WITH  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
FONTANA II

THIS SECOND AMENDMENT is made to that certain Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions made on the 19th day of March, 1973.

WITNESSETH:

WHEREAS, Saguaro Woods Homeowners Assn., Inc., formerly known as Fontana II Homeowners Association and Fontana II Council of Co-Owners, Inc., is an Arizona non-profit corporation and is the Association designated under the Declaration of Horizontal Property Regime, together with Covenants, Conditions and Restrictions recorded in the office of the Maricopa County Recorder in Docket 10048, Pages 1507-1522 inclusive, on March 19, 1973, as amended by that certain amendment recorded in Docket 12923, Pages 560-567 inclusive, on May 23, 1978 (hereafter "Declaration"); and

WHEREAS, the real property subject to the Declaration and all amendments thereto is described as:

Apartments A to D, Buildings No. 149 to 173  
inclusive of the Fontana Final Plat No. 110  
Subdivision according to the Plat of record  
in the Office of the County Recorder of  
Maricopa County, Arizona in Book 160 of Maps  
at page 4.

WHEREAS, the Declaration, at Article VII, Section 20, provides that it may be amended after the first twenty-year period from the date the Declaration was recorded by an instrument signed by not less than a majority of the Apartment Owners, which instrument must be recorded; and

WHEREAS, the following Apartment Owners, who are all members of the Association are desirous of amending the Declaration;



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

93-0912247 12/28/93 04:51

FRANK 1 OF 1

When recorded return to:  
James H. Hazlewood  
Shimmel, Hill, Bishop & Gruender, P.C.  
3700 North 24th Street  
Phoenix, Arizona 85016

*Hold for Pick Up.*

SECOND AMENDMENT TO DECLARATION OF  
HORIZONTAL PROPERTY REGIME TOGETHER WITH  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
FONTANA II

THIS SECOND AMENDMENT TO DECLARATION OF HORIZONTAL PROPERTY  
REGIME TOGETHER WITH COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
FONTANA II IS BEING RE-RECORDED DUE TO THE INSTRUMENT FOR  
AMENDMENT OF DECLARATION OF HORIZONTAL PROPERTY REGIME TOGETHER  
WITH COVENANTS, CONDITIONS AND RESTRICTIONS FOR FONTANA II AND  
THREE (3) SIGNATURE PAGES WERE ERRONEOUSLY OMITTED.

NOW, THEREFORE, the Association declares that the Declaration, to which all of the real property described above is subject, is hereby amended in the following manner:

Article VII, Section 2. ANIMALS. The present Section 2 as amended, is deleted in its entirety and replaced in its entirety by the language set forth on the attached instrument.

Article VII, Section 18. Enforcement. A paragraph shall be added to the end of the existing Section 18, set forth on the attached instrument.

Article VII, Section 24. Offer of Sale. The existing Section 24 is deleted in its entirety and replaced in its entirety by the language set forth on the attached instrument.

All other provisions of the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned officers of Saguaro Woods Homeowners Assn., Inc. attest that the following Apartment Owners, which constitute more than a majority of the Apartment Owners, have signed this Second Amendment to Declaration of Horizontal Property Regime together with Covenants, Conditions and Restrictions for Fontana II for the purposes stated herein.

SAGUARO WOODS HOMEOWNERS ASSN.,  
INC.

By: Glenn Sayers  
Its: President

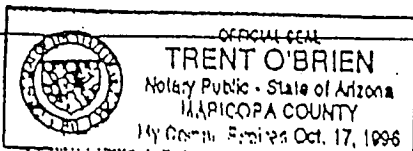
ATTEST:  
By: Rosemary Mulhigan  
Its: Secretary

STATE OF ARIZONA            )  
                                      ) s.s.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 1993 by Glenn Sayers, President of Saguaro Woods Homeowners Assn., Inc. an Arizona non-profit corporation, on behalf of the corporation.

My Commission Expires:

John M. O'Brien  
Notary Public



STATE OF ARIZONA           )  
                                  ) s.s.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this  
10<sup>th</sup> day of November, 1993 by Rosmary Mulligan,  
Secretary of Saguaro Woods Homeowners Assn., Inc. an Arizona non-  
profit corporation, on behalf of the corporation.

My Commission Expires: \_\_\_\_\_

Trent M. O'Brien  
Notary Public



INSTRUMENT FOR AMENDMENT OF DECLARATION OF  
HORIZONTAL PROPERTY REGIME TOGETHER WITH COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR FONTANA II

Article VII, Section 2. ANIMALS. The present Section 2, which prohibits cats or dogs (by amendment dated June 1, 1978) is deleted in its entirety and replaced in its entirety by the following:

Article VII, Section 2. ANIMALS. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of common household pets such as dogs, cats, fish, and birds in cages shall be maintained in any Apartment and then only if they are kept solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance to other Owners or residents. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be Visible From Neighboring Property. The Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal or bird is a generally recognized common household pet, or is creating a nuisance, or whether the number of animals or birds maintained in any Apartment is reasonable. As used in this Declaration, the term "reasonable number" with respect to dogs, cats and birds, shall be deemed to be a maximum of two (2) each. Dogs must be kept on a leash when not confined in the Apartment, enclosed yard or patio. Owners and residents of Apartments with pets are responsible for cleaning up after the pets and they shall not allow such pet(s) to create unsanitary conditions anywhere on the Property.

From and after 60 days from the recording of this amendment, all animals and pets except fish must be registered with the Association pursuant to rules and procedures promulgated by the Board of Directors. A \$100.00 per dog (including those owned as of the date of this Amendment) security deposit must be paid to the Association for all dogs, as well as any other animals which the Board in its discretion deems to warrant a security deposit. New animals must be registered with the Association and the security deposit must be paid within thirty (30) days of bringing the animal onto the Property. A \$50.00 per month fine will be imposed until the Owner or resident is in compliance. Any fines or monetary penalties imposed by the Association upon an Owner or resident will be applied first to the security deposit. The security deposit, to the extent it has not been used, will be returned to the person who supplied it upon permanent removal from the Property of the subject animal.

Noncompliance with any of the restrictions and requirements herein, including noise, cleanup, nuisance, or leashing, will subject Apartment Owners and residents to the following fines: First Offense - notice/warning; Second Offense and/or

failure to timely remedy - \$50.00; Third Offense and/or failure to timely remedy - \$100.00; Fourth Offense and/or failure to timely remedy - animal is deemed a nuisance by the Board of Directors and must be removed from the property within thirty (30) days. If not removed, a \$200.00 per month fine will be imposed until the animal is removed. To the extent the security deposit does not cover fines imposed by the Association, the Apartment Owner is responsible for such fines. Unpaid fines, to the extent not covered by a security deposit shall be deemed to be assessments and collected in the same manner as assessments under Article V of the Declaration. They are the personal obligation of the Owner of the Apartment. Further, a notice of lien will be recorded against an Apartment when unpaid fines are \$200.00 or greater.

INSTRUMENT FOR AMENDMENT OF DECLARATION OF  
HORIZONTAL PROPERTY REGIME TOGETHER WITH COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR FONTANA II

Article VII, Section 18. ENFORCEMENT. The following paragraph shall be added to the end of Section 18:

The Association shall have the power and the authority, through its Board of Directors, to impose reasonable monetary penalties (fines) after notice and an opportunity to be heard for violations of the covenants and restrictions herein or the Rules and Regulations of the Association. Such fines shall be deemed to be assessments if unpaid and shall be collectible in the same manner as assessments. A notice of lien will be recorded against an Apartment when fines greater than \$200.00 are unpaid.

The following is the schedule of enforcement for violations of the covenants and restrictions herein or the Rules and Regulations of the Association:

First Offense - Notice/warning sent to Owner of Apartment, with ten (10) days to correct the noted violation.

Second Offense or violation continuing after ten (10) days - Notice and \$50.00 fine.

Third Offense or violation continuing an additional (10) days - Notice and \$100.00 fine.

Fourth Offense or violation continuing an additional (10) days - Notice and \$200.00 fine.

Additional offenses or continuing violations, fines double every ten (10) days. Any Owner or resident affected by the violation notice or fine shall be entitled to request to appear before the next available meeting of the Board of Directors to be heard with respect to the alleged violation. The Board of Directors has sole discretion to waive fines or otherwise act as a result of such appearance.

INSTRUMENT FOR AMENDMENT OF DECLARATION OF  
HORIZONTAL PROPERTY REGIME TOGETHER WITH COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR FONTANA II

Article VII, Section 24. OFFER OF SALE. The existing Section 24 is deleted in its entirety and replaced in its entirety by the following:

Article VII, Section 24. OFFER OF SALE. Any Owner who desires to sell, lease or rent his Apartment shall notify the Association, through its managing agent, or through its Board of Directors at of the intention to sell, lease or rent the Apartment, and the name of the Realtor, if any, representing the Owner. The Owner shall also furnish, in the event of sale, lease or rental of the Apartment, the name of the purchaser, lessee, tenant, or renter. The Board of Directors and the Association shall have the power and authority to require that copies of leases be provided to the Association and/or that a form of tenant registration form be provided.