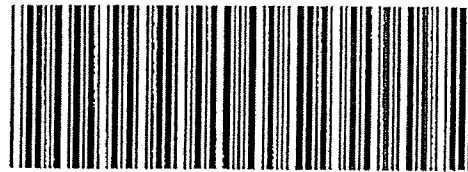


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FENNEMORE CRAIG *Box*  
3003 N CENTRAL AVE STE 2600  
PHOENIX AZ 85012-2913



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

98-1169019 12/24/98 12:34

PAULA 1 OF 1

DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS

JDMD - APOLLO VENTURE, L.L.C ., an  
Arizona limited liability company

DATED: December 24, 1998

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RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Fennemore Craig  
3003 North Central Avenue, Suite 2600  
Phoenix, AZ 85012-2913  
Attn: Ronald L. Ballard

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DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS ("Declaration"), is made this 24th day of December, 1998, by JDMD - APOLLO VENTURE, L.L.C., an Arizona limited liability company ("Declarant").

RECITALS:

A. Declarant is the owner of certain real property described in Exhibit "A" to this Declaration, which shall be the initial Covered Property under this Declaration, and the real property which may from time to time be annexed pursuant to this Declaration and become part of the Covered Property. The real property to be annexed in the future constitutes property subject to an option held by Declarant under a Purchase and Sale Agreement with Alternative Option Provisions dated September 5, 1997 with the University of Arizona, as seller, as subsequently amended (the "Option").

B. Declarant deems it desirable to establish certain covenants, conditions, easements and restrictions upon the Covered Property and every and each portion thereof, which will constitute a general scheme for the management and development on an integrated basis of the Covered Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of the improvements within the Covered Property.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that the Covered Property shall be held and conveyed subject to the following covenants, conditions, easements and restrictions which are hereby declared to be for the benefit of the Covered Property, and the owners of interests therein, their successors and assigns. These covenants, conditions, easements and restrictions shall run with such interests in the Covered Property and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and all of said interests as the dominant estate.

ARTICLE 1

DEFINITIONS

1.1 "Annexation Property" shall mean and refer to that certain real property covered by the Option which, upon exercise of the Option with respect thereto, will become annexed to the terms and provisions of this Declaration as more particularly described in Article 7 hereof.

1.2 "Approving Agent" shall mean, in the following order of precedence:

(a) Declarant (or its successors or assigns), until such time as it assigns its rights as Approving Agent to the Architectural Design Review Committee pursuant to Section 2.15 below as evidenced by the recordation of an instrument effecting such assignment, and after such assignment, the Architectural Design Review Committee shall be the Approving Agent.

(b) Thereafter, the Approving Agent shall be the board of directors of any organization, association or other entity (whether or not incorporated) organized by Declarant in which membership is available to all Owners provided Declarant or Declarant's successor has granted to such association the duties and powers of the Approving Agent as evidenced by the recordation of an instrument effecting such transfer. Such organization, association or other entity may provide preferential voting rights to Declarant.

1.3 "Architectural Design Review Committee" is defined in Section 2.15 below.

1.4 "Assessments" shall mean the following:

"Reconstruction Assessment" shall mean a charge against each Owner and its Lot representing a portion of the cost to the Operator for the reconstruction of any portion or portions of the Common Area pursuant to the provisions of this Declaration.

"Regular Assessment" shall mean the amount which is to be paid by each Owner to the Operator or the Approving Agent for such Owner's share of Common Expenses.

"Special Assessments" shall mean a charge against any particular Owner and such Owner's Lot to reimburse the Operator and/or the Approving Agent for costs incurred in bringing said Owner and/or such Owner's Lot into compliance with the provisions of this Declaration, together with attorneys' fees, interest and other charges payable by such Owner pursuant to the provisions of this Declaration.

1.5 "Building" shall mean any structural improvement on any Lot which is enclosed by exterior walls, floor and roof, and which is designed for the conduct within of the activities and business of the Owner of such Lot, or such Owner's Occupants.

1.6 "Common Area" shall mean and refer to those portions of the Covered Property and the Annexation Property (consisting of easements and tracts and other areas) more particularly described in Exhibit "B" attached hereto, which shall be for the common use and enjoyment and/or subject to easements in favor of the Declarant, the Owners and their Occupants. The Common Areas also include all street medians and the areas within the streets, sidewalks, entryways, roundabouts and intersections where brick pavers are installed and those private streets referred to in Exhibit "B". As noted, Exhibit B and the above description include portions of the Annexation Property, which are a part of the "Common Areas" and which are to be developed, pursuant to agreement with the Seller under the Option, along with the Common Areas on the Covered Property.

1.7 "Common Expenses" shall mean and refer to the actual and estimated costs of:

(a) improvement, maintenance, irrigation, management, operation, repair and replacement of the Common Area, including, without limitation, the costs of utilities, gardening and other services;

(b) unpaid Assessments;

(c) reasonable costs of management and performance of the Operator's and the Approving Agent's duties and obligations hereunder, including, but not limited to, compensation paid to managers, accountants, attorneys, contractors and employees and reasonable overhead expenses;

(d) taxes, if any, paid by the Operator attributable to any portion of the Project (based on the reasonable allocation by Operator if not separately assessed with respect to such parcels), excluding any taxes paid by Operator solely in its capacity as an Owner of a Lot;

(e) the reasonable costs of any insurance obtained by the Operator and/or Approving Agent pursuant to this Declaration, including, without limitation, public liability insurance, property damage insurance for the Common Area, Worker's Compensation insurance, fidelity coverage and other forms of insurance generally obtained by persons or firms performing functions similar to those performed by the Operator and/or Approving Agent;

(f) reasonable reserves as deemed appropriate by Operator;

(g) any costs or expenses incurred with respect to the maintenance, repair, or replacement of any Project monument sign or signs erected on the Covered Property pursuant to Section 4.1;

(h) any other expenses incurred by the Operator and/or Approving Agent for any reason whatsoever in connection with maintenance, management, operation and/or repair of the Common Area or in furtherance of the purposes of this Declaration or in the discharge of any duties or powers herein described.

1.8 "Covered Property" shall mean and refer to all the real property described in Exhibit "A" attached hereto and, subsequent to the annexation thereof pursuant to Article 7 of this Declaration, any real property which shall become subject to this Declaration.

1.9 "Declarant" means JDMD-Apollo Venture, L.L.C. and shall include the successors and assigns to such initial Declarant.

1.10 "Design Guidelines" shall mean and refer to those standards of architectural and landscape review promulgated from time to time by the Approving Agent and as more particularly described in Section 2.1 hereof.

1.11 "Environmental Requirement" shall mean the terms, provisions and requirements of the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901, et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, et seq.), Title 49 of the Arizona Revised Statutes, or any other Federal, state or local environmental law, statute, code, rule, regulation, order, decree, ordinance or common law.

1.12 "Estimated Budget" shall mean a pro forma operating statement or budget for each calendar year pursuant to which Operator shall estimate in good faith the total Common Expenses to be incurred for such year.

1.13 "Hazardous Substance" shall mean any pollutant, contaminant, solid waste, hazardous, infectious, radioactive or toxic waste, substance or material defined as such pursuant to the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901, et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, et seq.), Title 49 of the Arizona Revised Statutes, or any other Federal, state or local environmental law, statute, code, rule, regulation, order, decree, ordinance or common law.

1.14 "Lot" shall mean any lot into which the Covered Property is subdivided pursuant to a recorded subdivision plat or plats.

1.15 "Majority of Owners" shall mean Owners (including Declarant to the extent it is an Owner) of Lots containing greater than fifty percent (50%) of the gross square footage of the Lots. For purposes of determining the square footage of a particular Lot, such determination shall be based upon the actual square footage of real property contained within the boundaries of such Lot without reduction for any easements, set backs or other restrictions burdening said Lot.

1.16 "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot and/or the improvements thereon.

1.17 "Mortgagee" shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall mean the holder of a Mortgage that has priority over any other Mortgage encumbering a Lot and/or the improvements thereon.



1.18 "Occupant" shall mean and refer to the employees, tenants, subtenants, contractors, assigns, licensees, invitees, permittees and others who utilize an Owner's Lot under claim of right or with the Owner's consent.

1.19 "Operator" shall mean, in the following order of precedence:

(a) Declarant, until such time as Declarant elects to assign its rights as Operator pursuant to Section 8.1 hereinbelow as evidenced by the recordation of an instrument effecting such assignment.

(b) Thereafter, the Operator shall be any organization or association or other entity (whether or not incorporated) organized by Declarant in which membership is available to all Owners, provided Declarant or its successor has granted such association the right to exercise the duties and powers of the Operator described herein as evidenced by the recordation of an instrument effecting such transfer. Prior to any such transfer of the rights of the Operator to such organization, association or other entity, Declarant may cause such entity to be formed in order to hold title to the Common Areas.

All or a part of the rights and duties of the Operator may be assigned to any professional management company so long as Operator retains the rights to terminate such relationship upon no more than 30 days notice.

1.20 "Option" has the meaning given that term in Recital A above.

1.21 "Owner" shall mean and refer to one or more persons or entities who alone or collectively are the record owner of a Lot, including Declarant, but excluding those having any such interests merely as security for the performance of an obligation. If Declarant leases a Lot for a term which is in excess of six (6) years (excluding any options to extend the term thereof) and the lease or memorandum thereof is recorded in the Official Records of Maricopa County, State of Arizona, the lessee and its successors and assigns of such Lot and not the Declarant shall be deemed to be the Owner, so long as such lease remains in effect. If the ownership of any Building shall ever be severed from the Lot, whether by lease or by deed, the Owner of the interest in the Lot and not the Building shall be deemed an Owner hereunder; provided, however, the lien of Assessments herein established shall encumber the interest in both the Lot and the Building.

1.22 "Project" shall mean the Covered Property, including any portion of the Annexation Property which may be made subject to this Declaration pursuant to Article 7 hereof.

1.23 "Project Rules" shall mean and refer to those certain rules adopted from time to time by the Operator pursuant to this Declaration governing the use and enjoyment of the Common Area.

1.24 "Supplementary Declaration" shall mean those certain declarations of covenants, conditions, easements and restrictions or similar instruments, extending and subjecting all or any portion of the Annexation Property to the terms and provisions of this Declaration as provided in Article 7 hereof.

## ARTICLE 2

### RESTRICTIONS

2.1 Design Guidelines. From time to time, the Approving Agent shall promulgate a detailed set of Design Guidelines which shall serve as a general guideline to be utilized by the Approving Agent in reviewing proposed uses, Buildings, art in public places, graphics, signage, lighting, grading, traffic circulation, topography and any other proposed improvements, alterations or additions to be constructed, installed or planted upon the Covered Property, which shall set forth among other things, an approved landscape species list and standards for the design, color, appearance, quality and type of materials and location of any proposed improvements. Portions of the Design Guidelines may be specifically applicable to retail buildings and related improvements. All plans and specifications submitted to the Approving Agent must comply with the applicable Design Guidelines, unless the Approving Agent consents to any deviations in writing. Notwithstanding any other provision of this Declaration to the contrary, so long as there is an Approving Agent (or Architectural Design Review Committee) such Design Guidelines may not be amended or modified without the prior written consent of the Approving Agent, which consent it may withhold in its sole discretion. In addition, notwithstanding any subsequent changes or amendments to the Design Guidelines, the Design Guidelines which are in effect when a person or entity becomes an Owner of a Lot shall remain the Design Guidelines for such Lot for as long as such Owner retains its original interest therein and for as long as no substantial modifications are made to any improvements approved under such Design Guidelines. The Approving Agent shall cause copies of the Design Guidelines to be made available to prospective or existing Owners or Occupants upon the payment of a reasonable fee, as established by the Approving Agent from time to time. No such copy shall be deemed a formal statement of the limitations and restrictions of the Design Guidelines.

### 2.2 Permitted Uses.

(a) All Lots in the Covered Property shall be used for no purpose other than those which are consistent with the applicable Design Guidelines. In addition, any and all uses which are inconsistent with the Design Guidelines must be approved in writing by the Approving Agent. Without the prior written consent of the Approving Agent, all uses and operations of every kind and nature shall be conducted under roof and no outdoor storage shall be permitted at any time within the Covered Property except as may be authorized in the applicable Design Guidelines. The Approving Agent shall have the absolute right to revoke its consent previously granted to an outdoor user, if in the Approving Agent's judgment, such user is violating the terms and conditions upon which such consent was given.

(b) Operations and uses that are neither specifically prohibited nor specifically authorized by this Declaration or the Design Guidelines may be permitted in specific cases if such uses are in compliance with applicable law and the applicable Design Guidelines and if written operational plans and specifications for such operations or uses, and such other information as may be requested by the Approving Agent, are submitted to and approved in writing by the Approving Agent, in its sole discretion, which approval shall be based upon its analysis of the anticipated effect of such

operations or uses upon other Lots, upon other uses within the Covered Property and upon other real property in the vicinity of the Covered Property.

(c) No business operation shall be performed or carried out in such a manner that such operation or use, in the judgment of the Approving Agent, is or shall become an annoyance or nuisance to other portions of the Covered Property or other Owners or Occupants, or which shall in any way interfere with the quiet enjoyment by each of the Owners and Occupants of a Lot, or which shall in any way increase the rate of insurance for any other Lot or any portion of the Common Area, or would be considered a nuisance in accordance with the provisions of the Design Guidelines or applicable law. Without limiting the foregoing, there shall not be permitted any junk or salvage yard or any other use which may be offensive to the neighborhood by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, electromechanical disturbances, electromagnetic disturbances, radiation, air or water pollution or which may be hazardous by reason of danger of fire, explosion or microwave radiation. No use of a Lot shall be permitted which will result in the discharge of toxic matters into any sewer system or storm drain serving the Lot or the Project.

(d) There shall be maintained on each Lot only Buildings, paved walks, paved parking lots, paved driveways, lawns, landscaping and utility improvements or any other improvement which has been approved by the Approving Agent in writing, the construction and/or installation of which shall be subject to the approval of the Approving Agent in accordance with the provisions of this Declaration and the applicable Design Guidelines.

(e) The Operator may now or hereafter construct, erect, maintain, replace and change Project identification signs upon the Covered Property, provided that such action shall not unduly interfere with an Owner's or its Occupant's use of its Lot.

2.3 Off-Street Parking. Adequate off-street parking shall be provided by each Owner of a Lot to accommodate all parking needs of such Owner and its Occupants and in accordance with the applicable Design Guidelines. The intent of this provision is to eliminate the need for any on-street parking. Parking shall not be permitted between public street pavement and a property line. In addition, parking shall be set back from a street property line in accordance with the applicable Design Guidelines. No use shall be made of any Lot which will require parking in excess of the parking spaces then available thereon or which is otherwise not in compliance with the Design Guidelines.

2.4 Loading Areas. There shall be maintained on each Lot facilities for loading and unloading sufficient to serve the business conducted thereon without using the adjacent street therefor. Loading docks shall be set back and screened to minimize the visual effect from external public streets and neighboring Buildings, and must be located at the rear of a Building and set back from any external public streets in accordance with the applicable Design Guidelines unless the Approving Agent (taking into account the configuration of the Lot and the improvements thereon) consents in writing to another location.

2.5 Screening of Storage Areas. Unless specifically approved in writing by the Approving Agent, no materials, supplies, inventory, equipment or any other personal property shall be stored on any portion of a Lot except inside a Building or behind a solid visual barrier. Such barrier shall not be less than nor exceed the height specified in the applicable Design Guidelines and shall be constructed of materials acceptable to the Approving Agent and consistent with the standards set forth in the applicable Design Guidelines. In addition, such barrier must screen such area from the view of adjoining portions of the Covered Property and/or the public streets. All roof-mounted mechanical equipment, utility installations, duct work, radar equipment, radio or television antennae or any other devices which project vertically above the roof or roof parapet must be approved in writing by the Approving Agent and, if approved, shall satisfy requirements specified with respect thereto by the Approving Agent.

2.6 Signs. No exterior signs of any type which normally would be visible from the neighboring properties or public streets shall be placed or maintained on any Lot or Building unless the same shall comply with the provisions of the Design Guidelines and have been first approved in writing by the Approving Agent. Said approval shall not be unreasonably withheld provided that plans for the proposed sign or signs and the location of the same on the Lot or Building are submitted to the Approving Agent and the Approving Agent determines that the design, type and location conform to the sign standards set forth in the applicable Design Guidelines.

2.7 Grading of Lots. The grading of any Lot, or any modification, alteration or change to such grade, must be made in accordance with the provisions and standards of the applicable Design Guidelines and approved in writing by the Approving Agent.

2.8 Subdivision. Unless specifically approved by the Approving Agent, no Lot shall be further subdivided.

2.9 Undergrounding of Utility Lines. All electrical, telephone, cable and other utility lines within the Covered Property shall be placed underground and comply with the provisions of the applicable Design Guidelines, except for those certain utility lines existing within the Covered Property or the Annexation Property as of the date hereof which are not underground.

2.10 Maintenance of Drainage Facilities. The Owner of each Lot upon which any drainage facilities are located shall keep and maintain same together with any improvements constructed thereon, or which may hereafter be constructed thereon, in a reasonable condition according to their design, purpose and/or function, including, but not limited to, the removal of all obstructions which may or reasonably might cause redirection or impedance of the flow of the drainage thereon, regardless of the source or cause of such obstructions or impedance.

2.11 Entity with Authority to Approve.

(a) So long as there is an Approving Agent or an Architectural Design Review Committee, it shall have the exclusive right to grant approvals required hereby and to waive or vary the restrictions herein contained in particular respects whenever in its opinion such waiver or variance will not be detrimental to the intent and purpose of

this Declaration. The Approving Agent or Architectural Design Review Committee shall have the right to deny approval in any given instance despite the fact that the matter subject to approval is consistent with the requirements of any governmental agency.

(b) If there ceases to be an Approving Agent or Architectural Design Review Committee, a Majority of Owners shall have the exclusive right to grant approvals required hereby and shall have the exclusive right to waive or vary the restrictions herein contained in particular respects whenever in their opinion such waiver or variance will not be detrimental to the intent and purpose of this Declaration.

#### 2.12 Submission of Plans.

(a) No fence, wall, building, sign, structure, art form, display or other exterior improvement, or exterior addition to or change or alteration thereof (including painting unless of the same color and type as previously approved), or parking lot or structure, walkway, driveway, sprinkler system, external lighting, landscaping or any other such external improvement or planting, shall be commenced, constructed, erected, installed, placed, planted, altered, maintained or permitted to remain on any Lot until such time as a "Master Plan," if applicable, a "Schematic Plan" and a "Final Plan" (as such terms are defined in the Design Guidelines and which, along with any plans, specifications and drawings submitted to the Approving Agent, are sometimes referred to herein as the "plans and specifications") have been submitted to and approved in writing by the Approving Agent in accordance with the procedure and provisions of the applicable Design Guidelines. The requirement of approval set forth in this Article is in addition to, and not in substitution for, any and all other restrictions contained in this Declaration or as may be imposed by applicable law.

(b) All such plans and specifications shall be submitted in writing over the signature of the Owner and must be prepared by a licensed architect, unless the Approving Agent waives such requirement in writing. As a means of defraying its expenses, the Approving Agent may require a reasonable filing fee to accompany the submission of plans or other matters to it in an amount to be fixed from time to time. Plans and specifications not accompanied by payment of the required fee, if any, shall be deemed to have not been submitted. Upon completion of any improvement work approved by the Approving Agent, Owner shall promptly deliver to the Approving Agent "as built" plans and specifications for such improvements.

(c) Owner shall promptly commence the construction of all improvement work which has been approved by the Approving Agent, and as soon as construction of such work has been commenced, Owner shall diligently pursue completion of the same. If the Owner whose Final Plan has been approved by the Approving Agent has not commenced construction in accordance with such Final Plan within six (6) months of the Approving Agent's approval thereof, such Final Plan shall no longer be deemed approved and must be resubmitted to the Approving Agent for its approval in accordance with the provisions of this Declaration. Owner or Occupant shall be deemed to have commenced construction for purposes of this Paragraph 2.12 upon the pouring of foundation footings. The approval by the Approving Agent of any plans and

specifications submitted by an Owner shall be personal to such Owner, and may not be transferred or assigned by such Owner to any other person or entity (except to an Occupant on whose behalf the Owner has submitted such plans and specifications) without the prior written consent of the Approving Agent. Landscaping as approved by the Approving Agent must be installed prior to occupancy of the Building or within ninety (90) days of substantial completion of the Building, whichever occurs first; provided that if such landscaping cannot be installed at such time due to seasonal weather limitations, it shall be installed within sixty (60) days from the date on which the seasonal weather permits the planting of such landscaping, as determined by the Approving Agent.

(d) The Approving Agent shall not be liable in damages or otherwise by reason of 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 such plans and specifications. Every Owner and anyone else who submits plans and specifications to the Approving Agent for approval agrees by submission of such plans and specifications, and every Owner of any interest in the Covered Property agrees by acquiring title thereto or interest therein, that he will not bring any action or suit against the Approving Agent to recover any such damages. In addition, each Owner hereby agrees to indemnify and hold harmless the Approving Agent from and against any and all costs and expenses it may incur in connection with or as a result of any actions or claims brought against the Approving Agent on account of its approval or disapproval of any plans and specifications submitted to it by such Owner, including but not limited to reasonable attorneys' fees.

(e) In reviewing and approving plans and specifications pursuant to this Declaration, the Approving Agent's decisions may be based solely on aesthetic grounds, and the Approving Agent shall not be deemed to have made any representation or warranty regarding the suitability, adequacy or completeness of such plans and specifications. No approval shall be considered an approval of the plans from an engineering perspective or a determination that the plans are suitable to meet building, environment or engineering design standards or that the improvements have been built in accordance with such plans and specifications. The Approving Agent need not be a licensed engineer or architect. The Approving Agent shall not be liable for any damage, loss or prejudice suffered or claimed on account of or in connection with (a) the approval or disapproval of any plans, and specifications whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, and specifications; or (c) the development of any part of land within the Covered Property.

2.13 Evidence of Approval. Any person having an interest in any Lot may rely upon any instrument signed by the Approving Agent or Architectural Committee or, after there ceases to be an Approving Agent or Architectural Committee, by a Majority of Owners purporting to grant an approval or to waive or vary the restrictions herein contained in particular respects.

2.14 Time During Which to Raise Objection. Any construction, other than exterior signs, art in public places, driveways, parking areas, lighting, grading, landscaping, fences and screens, completed by the date as of which Declarant ceases to be the Approving

Agent, or, if later, completed for more than one (1) year shall be deemed approved, unless prior to the expiration of such period a suit for enforcement has been commenced and notice thereof duly recorded.

2.15 Architectural Design Review Committee. At any time the Declarant may execute, acknowledge and record an instrument appointing an architectural design review committee ("Architectural Design Review Committee") of not less than three (3) persons to assume the rights, powers and reservations of the Approving Agent as set forth in this Declaration. The aforesaid instrument may, in addition, set forth rules of procedure for such Architectural Design Review Committee. Upon the recordation of such an instrument, the rights, powers and reservations of the Approving Agent contained in this Declaration shall vest in said Architectural Design Review Committee and the Approving Agent's duties and obligations with respect thereto shall terminate. The members of the Architectural Design Review Committee shall serve at the pleasure of Declarant so long as Declarant is still an Owner of a Lot, and Declarant may remove, replace or appoint new members thereto in its sole and absolute discretion. At any time and from time to time after recordation of such instrument by Declarant and provided Declarant no longer is an Owner of a Lot, a Majority of Owners of the Covered Property by execution, acknowledgment and recordation of an amendment thereto, may appoint new members to the Architectural Design Review Committee, remove members therefrom, and may alter any procedural rules provided therefor.

2.16 Compliance With Governmental Regulations. Nothing herein contained shall be deemed to constitute approval of any use which is inconsistent with any applicable governmental rules, requirements, regulations, restrictions or ordinances.

2.17 Vehicles.

(a) No recreational vehicle or equipment shall be permitted to remain upon the Covered Property unless authorized in writing by the Approving Agent.

(b) No automobile, recreational vehicle or equipment or commercial vehicle or any other motorized vehicle may be dismantled, rebuilt, repaired, serviced, stored or repainted unless authorized by the Approving Agent in writing. The foregoing restriction shall not be deemed to prevent temporary parking for loading or unloading of vehicles.

(c) As used in this Paragraph 2.17, "recreational vehicle or equipment" shall include without limitation, trailers, boats, campers, trailer coaches, buses, house cars, camp cars in height inches in equipment, motor homes (if a size larger than seven (7) feet and/or greater than one hundred thirty-eight (138) wheel base length), or any other similar type of or vehicle.

(d) As used in this Paragraph 2.17, "commercial vehicle" shall be defined as a truck of greater than three-quarter (3/4) ton capacity and any vehicle with a sign displayed on any part thereof advertising any kind of business or on which racks, materials and/or tools are visible. The type of motor vehicle license plate shall not be material to the foregoing definition.

2.18 Antennas. No exterior antennas shall be permitted on any Lot or Common Area without prior approval of the Approving Agent, which approval may be conditioned upon reasonable terms as to the location of the antenna. No television, radio or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on any of the Buildings, structures or other improvements constructed on a Lot unless and until the same shall have been approved in writing by the Approving Agent, which approval may be conditioned upon reasonable terms as to the location of the antenna.

2.19 University of Arizona Approval. Until all of the property subject to the Option is purchased, each Owner, in addition to the approvals specified herein, is required, pursuant to a separately recorded restrictive covenant, to obtain the approval from the University of Arizona of the uses of its Lot and any construction of improvements thereon.

### ARTICLE 3

#### MAINTENANCE AND INSURANCE

3.1 Owners' Duties. Each Owner shall maintain in good order, repair and condition all fences, walls or other structures, driveways, lawns, parking areas, landscaping, Buildings or any other improvements, all exterior lighting, all exterior signs and all other areas located on such Owner's Lot in a first class condition (excluding those portions of the Common Area located within such Owner's Lot which the Operator is obligated to maintain pursuant to Section 3.5 of this Declaration). All repairs shall be at least of equivalent quality and design as the original work. All windows and exterior surfaces of any Building or any other improvements shall be washed and cleaned regularly. All trash and rubbish shall be kept in enclosed containers in the location and manner provided for by the Approving Agent. In addition, each Owner shall be liable to the Operator for any damage to the Common Area or to any of the equipment or improvements thereon which may be sustained by reason of the use thereof by such Owner or its Occupants.

3.2 Right and Duty of Owners to Insure. Each Owner shall carry or cause to be carried public liability insurance for damage to persons or property occurring upon such Owner's Lot or elsewhere upon the Covered Property, in any manner arising out of the use of such Owner's Lot. Such insurance shall be in an amount not less than Five Million Dollars (\$5,000,000.00), combined single limit, or in such other minimum amount as Operator may from time to time determine. Each Owner shall review annually the limits of such Owner's insurance coverage and increase such limits as appropriate. Each Owner shall furnish Operator with a current certificate of such insurance at all times. Such policies shall not adversely affect or diminish any coverage under any insurance obtained by Operator.

3.3 Failure to Maintain. If an Owner fails to maintain or cause to be maintained such insurance coverage, Operator may obtain such insurance and levy a Special Assessment against such Owner and such Owner's Lot for the amount of the premium therefor.

3.4 Destruction of Owner's Building or Other Structures. If any Building, structure or other improvement, located on an Owner's Lot is destroyed by any casualty, the Owner of such Lot shall either promptly restore such Building or other structure at such Owner's



cost to its original condition in as fast and efficient a means as possible, or to the extent the Owner of such Lot elects not to restore such Building, improvement or other structure following such damage or destruction, such Owner shall promptly raze such damaged or destroyed Building, improvement or other structure and shall forthwith grade, pave, and/or landscape the area on which such Building, improvement or other structure was located in a safe, sightly and attractive condition. In the event Owner elects to restore such Building or other structure, it shall deliver to the Approving Agent plans and specifications for such restoration in accordance with Paragraph 2.12, and the Approving Agent must approve of such plans in accordance with Paragraph 2.12 before the Owner may commence such restoration.

3.5 Operator's Duties. Subject to the obligation of each Owner to pay Assessments as hereinafter provided, Operator hereby covenants to maintain, irrigate, repair, clean, restore and replace any and all improvements and landscaping within the Common Area, and to promptly install thereon on a lien-free basis any and all necessary improvements for such maintenance, repair, restoration or replacement. Operator is hereby authorized to contract with, in its discretion, any responsible individual or entity to perform Operator's management and maintenance responsibilities hereunder.

3.6 Operator's Duty to Obtain Insurance: Types. Operator shall obtain and continue in effect adequate blanket public liability insurance (including medical payments) in an amount not less than Five Million Dollars (\$5,000,000.00), or in such other reasonable minimum amount as Operator may determine, covering all claims for personal injury and property damage arising out of a single occurrence on the Common Area. In addition, Operator shall obtain and continue in effect a master or blanket policy of fire and extended coverage casualty insurance in an amount equal to the full replacement cost of the improvements located upon the Common Area. Such insurance policies shall be maintained by the Operator as named insured for the benefit of Operator, the Approving Agent, the Owners and all Mortgagees as their interests may appear.

3.7 Destruction of Common Area Improvements. In the event of partial or total destruction of the improvements upon the Common Area, it shall be the duty of the Operator to restore and replace the same as promptly as practical pursuant to this Paragraph 3.7. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by such policies. To the extent the insurance proceeds are insufficient to complete such reconstruction, Reconstruction Assessments may be levied by the Operator to provide the necessary funds. In the event any excess insurance proceeds remain after any such reconstruction by the Operator, the Operator shall retain such sums and utilize the same to offset future Common Expenses. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Paragraph 3.7.

3.8 Eminent Domain. The term "taking" as used in this Paragraph 3.8 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Area. In the event of a threatened taking of all or any portion of the Common Area, the Owners hereby appoint the Operator and such persons as the Operator may delegate to represent all of the Owners in connection with the taking. The operator shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be

entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. In addition, the Declarant is authorized to bring an action in inverse condemnation, and in such event, the provisions of this Paragraph 3.8 shall apply with equal force. Any awards received on account of the taking of Common Area shall be paid to the Operator, who may in its sole discretion, retain any such award and utilize the same to offset future Common Expenses.

3.9 Project Rules. The Operator shall have the power to adopt, amend and repeal in its sole discretion nondiscriminatory rules (the "Project Rules") governing the use and enjoyment of the Common Area by the Owners and Occupants, which may include, without limitation, the establishment of a system of fines and penalties enforceable as Special Assessments. The Project Rules shall govern such matters in furtherance of the purposes of this Declaration, including, without limitation, the use of the Common Area and the parking of vehicles thereon; provided, however, that the Project Rules shall not be inconsistent with this Declaration. The Project Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration and shall be binding on the Owners, their Occupants and their successors and assigns. The Project Rules as adopted, amended or repealed, shall be available at the principal office of the Declarant to each Owner, Occupant and Mortgagee upon request. In the event of any conflict between the Project Rules and any other provision of this Declaration, the provisions of the Declaration shall control to the extent of any such conflict.

3.10 Environmental Matters. All Hazardous Substances on a Lot must be used, stored and disposed of in strict compliance with all Environmental Requirements. Each Owner shall comply with all Environmental Requirements. Any spills or releases of Hazardous Substances, or any Lot shall immediately be remediated at the Lot Owner's expense, and the remediation shall comply with all applicable Environmental Requirements. Failure to comply with any Environmental Requirements shall be deemed a violation of this Declaration even if no governmental authority takes action. Each Owner (the "Indemnitor") shall, and does hereby agree to, indemnify and hold Declarant, Operator, the Approving Agent and each other Owner and their directors, officers, employees, agents, attorneys, contractors, licensees, successors and assigns harmless from any and all actions, claims (including without limitation, third party claims), expenses, damages, losses, liabilities, remedial action costs and other costs, including without limitation, court costs, attorneys' fees, punitive damages, civil penalties and criminal penalties, which may result in connection with any Hazardous Material which is used upon or released by the Indemnitor (or its agents, employees, contractors, licensees or invitees) in, on, under or around or from the Indemnitor's Lots.

#### ARTICLE 4

#### EASEMENTS

4.1 Grant of Easement in Favor of Operator. Declarant hereby reserves and grants to Operator, together with the right to grant and transfer the same to its successors and assigns, a nonexclusive easement for ingress, egress, construction and maintenance purposes over such portions of the Covered Property as may be reasonably necessary for the purpose of permitting Operator to enjoy its rights as herein created and to discharge its maintenance and other obligations as described in this Declaration, including without limitation the installation and maintenance of any telecommunication system as provided in Paragraph 2.18 above.

4.2 Grant of Easement in Favor of Approving Agent. Declarant hereby reserves and grants to the Approving Agent, together with the right to grant and transfer the same to its successors and assigns, a non-exclusive easement for ingress and egress purposes over such portions of the Covered Property as may be reasonably necessary for the Approving Agent to discharge its obligations as described in this Declaration, including, without limitation, inspection of the exterior of the Buildings or other structures or improvements on each Owner's Lot to insure compliance with the applicable Design Guidelines and restrictions contained in or promulgated pursuant to this Declaration.

4.3 Drainage. Declarant hereby reserves, together with the right and obligation to grant and transfer the same to Owners of Lots within the Covered Property, non-exclusive easements for surface drainage over the Covered Property through the drainage patterns and systems as are established from time to time upon the Covered Property. Declarant also hereby reserves, together with the right and the obligation to grant and transfer the same to Owners of Lots within the Covered Property (including Annexation Property), such easement rights upon the Annexation Property which may become annexed to the Covered Property pursuant to Article 7 hereof. Each Owner shall maintain all such drainage facilities in a neat, orderly and safe condition and in such a manner as to prevent erosion or sliding problems and to facilitate the orderly discharge of water throughout the drainage systems and patterns established from time to time upon the Covered Property. Nothing herein shall prevent an Owner of a Lot, with the prior approval of the Approving Agent, from relocating the drainage patterns established upon such Owner's Lot provided such relocation does not unreasonably interfere with the drainage of other Lots within the Covered Property nor interfere with the orderly discharge of water by means of same.

4.4 Utilities. Declarant hereby reserves, together with the right and obligation to grant and transfer the same to Owners of Lots within the Covered Property, non-exclusive easements over the Covered Property for the installation and maintenance of electric, telephone, private or public communications, cable television, water, gas, sanitary sewer lines and drainage facilities as reasonably necessary to service each of the Lots. Declarant hereby reserves, together with the right and the obligation to grant and transfer the same to Owners of Lots within the Covered Property (including Annexation Property), such easement rights over the portions of the Annexation Property which may become annexed to the Covered Property pursuant to Article 7 hereof. Such easements shall not be located within the area of any Buildings, the location of which has been approved by the Approving Agent. Said easement and reservation shall include the right of each Owner to enter upon the Lots owned by others or to have utility companies enter upon such Lots in or upon which such utilities, connections, lines or facilities or any portion thereof lie, to repair, replace and generally maintain said connections, lines, or facilities as and when the same may be necessary. Nothing herein shall prevent any Owner of a Lot, with the prior approval of the Approving Agent, from relocating any installations or other facilities at its sole cost and expense, provided such relocation does not unreasonably interfere with the use and enjoyment of such installations and facilities by the Owners of Lots within the Covered Property served thereby. Each Owner shall be responsible to mark and keep track of, at its sole cost and expense, of the location of all underground utilities upon its Lot.

4.5 Easement for Use and Enjoyment of Common Areas. Declarant hereby reserves, together with the right and obligation to grant and transfer the same to Owners of Lots

within the Covered Property, nonexclusive easements for ingress, egress and use and enjoyment in and to the Common Area and such right shall be appurtenant to and shall pass with the interest required to be an Owner for every Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions set forth in this Declaration, including without limitation, the right of Operator to adopt Project Rules for the use and enjoyment of the Common Area and the right of Declarant to grant easements on, over and under the Common Area to public utilities or governmental entities or agencies, provided that such easements shall not unreasonably interfere with the right of any Owner to use and enjoy his Lot and the Common Area. In addition, Declarant hereby reserves, together with the right and obligation to grant and transfer the same to Owners of Lots within the Covered Property (including Annexation Property), such nonexclusive easements rights over the Common Area located upon the portions of the Annexation Property which may become annexed to the initial Covered Property by Declarant in accordance with Article 7 hereof. The private streets which are included within the Common Areas as described on Exhibit B may, at the option of Declarant, and without any required consent of any Owner, be dedicated for public use.

4.6 Dominant and Servient Estates. Each easement reserved pursuant to the provisions hereof is expressly for the benefit of each Lot and the Lot so benefited shall be the dominant estate and the Lot upon which each such easement is located shall be the servient estate and each such easement shall run with the land and shall inure to the benefit of and be binding upon the successors and assigns of the Declarant.

## ARTICLE 5

### COVENANT FOR PAYMENT OF COMMON EXPENSES

5.1 Covenant for Payment of Common Expenses. Prior to the sale by Declarant of the first Lots within the Project and not later than sixty (60) days prior to the beginning of each calendar year, Operator shall endeavor to deliver to each Owner an Estimated Budget of Regular Assessments which estimates the total Common Expenses to be incurred for such year and each Owner's share of the same. Each Owner shall pay such Owner's Regular Assessment as provided for in the Estimated Budget in installments designed by the Approving Agent which shall be monthly, quarter or annually as determined from time to time by the Approving Agent. If no Estimated Budget is delivered to the Owners, the Owners shall continue to pay the installments of the Regular Assessment they were paying under the Estimated Budget for the previous year until such time as a revised Estimated Budget is made available. The failure of Operator to timely prepare the Estimated Budget shall not constitute a waiver by Operator of its rights hereunder or relieve the Owners of their obligations to pay Regular Assessments as provided herein.

5.2 Calculation of Regular Assessments and Reconstruction Assessment. For purposes of this Declaration, an Owner's share of such Regular Assessments shall be calculated by multiplying any and all Common Expenses shown on the Estimated Budget, times a fraction, the numerator of which shall be the square footage of real property contained within such Owner's Lot and the denominator of which shall be the square footage of the real property contained within all Lots located within the Covered Property. The Operator, in its reasonable discretion, shall determine the actual square footage of each Lot within the Covered Property and

such determination shall be final and binding upon all Owners. All Regular Assessments shall be payable in the amount specified above at the times set forth in Section 5.1 above, without any right of offset or deduction whatsoever. An Owner's share of Reconstruction Assessments, if any, shall be based on the same fraction set forth above for Regular Assessments. Reconstruction Assessments shall be paid within ten (10) days of Owner's receipt of a statement therefor, and shall be paid without any right of offset or deduction whatsoever.

5.3 Commencement of Assessments. Assessments shall commence on the first day of the month following the first conveyance of a Lot by Declarant to an Owner or, in the absence of any such conveyance, upon the commencement date of any lease of space within the Covered Property.

5.4 Adjustment of Assessment. If the Operator determines, in its sole discretion, for any reason, that the Estimated Budget for the current year is, or will become insufficient to meet all Common Expenses, it shall promptly determine the approximate amount of such deficiency and issue a supplemental Estimated Budget and determine the revised amount of the Regular Assessment for each Owner and the date or dates of when payment of such revised Assessments are due.

5.5 Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Operator any and all Assessments levied against such Owner's Lot. Such Assessments are to be fixed, established and collected from time to time as provided in this Declaration. Any and all Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon the Lot against which such Assessment is made and may be enforced by suit or by sale under power of sale (which power is hereby granted), judicial foreclosure or any other manner allowed by law. Any exercise of the power of sale provided for above shall be conducted in accordance with applicable law. Notwithstanding any provision herein, such lien shall be junior and subordinate to the lien of any First Mortgage, and any purchaser at any foreclosure or trustee's sale (as well as any grantee or assignee by deed in lieu of foreclosure or trustee's sale) under any bona fide First Mortgage shall take title free and clear of any such lien, but otherwise subject to these covenants, conditions and restrictions; provided, however, that upon the acquisition of title to any Lot by or through any First Mortgage (by trustee's sale, foreclosure sale, deed in lieu of foreclosure or otherwise) Assessments accruing after the date of such acquisition of title shall be due and payable as otherwise specified herein. Each such Assessment, together with such interest, late charges, court costs, attorneys' fees and other costs of collection, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment becomes due. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors.

5.6 Purpose of Assessments The Assessments levied by the Operator shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, managing the Covered Property, enhancing and protecting the value, desirability and attractiveness of the Covered Property and the quality of the environment within the Covered Property, including, without limitation, improving, maintaining and administering the Covered

Property, administering and enforcing this Declaration, collecting and disbursing funds pursuant to this Declaration, improving and maintaining the Common Area, and the properties, services and facilities related to the use and enjoyment of the Common Area or in furtherance of any other duty or power of the Operator and/or the Approving Agent.

5.7 Certificate of Payment. The Operator shall, upon request, furnish to any Owner liable for Assessments or its Mortgagee, a written certificate setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

5.8 Reserves. The Assessments shall include reasonable amounts as determined by the Operator collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Area or any other purpose as determined by the Operator. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Operator in separate bank accounts to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Operator.

## ARTICLE 6

### DEFAULT BY OWNER

6.1 Cure of Defaults. If any Owner defaults in the performance of any of its obligations or agreements set forth herein, Operator shall have the right, but not the obligation, to cure such default for the account of and at the expense of such Owner, and shall be permitted to enter upon any Owner's Lot to effect such cure. Operator shall have the right to recover from such Owner all costs and expenses incurred in connection with such cure, plus interest on said amounts at the lesser of eighteen percent (18%) per annum, from the date such costs and expenses are incurred by Operator; provided, however, that the foregoing remedy shall not be exercisable until twenty (20) days following written notice of such breach to such Owner, and only if the breach has not been cured during said twenty (20) day period or if the nature of the default is not capable of cure within said twenty (20) day period, if the cure is commenced within said twenty (20) day period and thereafter diligently prosecuted to completion; provided, further, Operator shall deliver a copy of the notice served on an Owner pursuant to this Paragraph 6.1 to the Owner's First Mortgagee if such First Mortgagee has filed a written request with Operator to receive such notice, and such notice shall be delivered to the address specified in the First Mortgagee's request. Such First Mortgagee shall have the right to cure such default within the applicable cure periods set forth above.

6.2 Costs and Expenses. All costs and expenses of curing any default of an Owner, including interest on said amounts pursuant to Section 6.1, shall be levied against such Owner and shall be payable upon demand. Should such Owner fail to pay such costs and expenses within ten (10) days of its receipt of such written demand, such costs and expenses shall also constitute a Special Assessment and lien upon such Owner's Lot until paid, effective upon recordation of a verified notice of lien in the Official Records of Maricopa County, Arizona. Notwithstanding anything herein to the contrary, any such lien shall be subject and

subordinate to any bona-fide Mortgage encumbering any portion of such Owner's Lot at the time such notice of lien is recorded, and any purchaser at any foreclosure or trustee's sale (as well as any grantee or assignee by deed in lieu of foreclosure or trustee's sale) under any such bona fide Mortgage shall take title free and clear of any such lien, but otherwise subject to these covenants, conditions and restrictions. Except as provided above, any such lien shall be prior and superior to any lien recorded subsequent to the recordation of such notice of lien. Any such lien may be enforced by suit or action in any court of competent jurisdiction or by sale under power of sale (which power of sale is hereby granted), judicial foreclosure or in any other manner allowed by law. Any exercise of the power of sale provided for above shall be conducted in accordance with applicable law.

6.3 Abatement. The violation or breach of any covenant, condition or restriction herein contained by an Owner shall give to Operator and/or the Approving Agent and its successors and assigns the right to (i) enter such Owner's Lot and to summarily abate and remove, at the expense of the Owner of such Lot, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof; provided, however, that the foregoing remedy shall not be exercisable until twenty (20) days following written notice of such breach to such Owner, and only if the breach has not been cured during said twenty (20) day period or if the nature of such breach or default is not capable of cure within said twenty (20) day period, such cure is commenced within said twenty (20) day period and diligently pursued to completion; and/or (ii) prosecute proceedings at law or in equity against the person or persons who have violated or are attempting to violate any of these covenants, conditions or restrictions, to enjoin or prevent them from doing so, and to cause such violation to be remedied. Should any of the provisions hereof be violated, it will be difficult or impossible to determine the amount of damages resulting therefrom. Therefore, in addition to any other remedies set forth herein, Operator and/or the Approving Agent shall be entitled to seek a temporary and/or a permanent injunction by any court of competent jurisdiction against the breach of any such provisions.

6.4 Attorneys' Fees. In any legal or equitable proceeding for the enforcement, or to restrain the violation of these restrictions or any provisions hereof, the losing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

6.5 No Waiver: Enforcement by Owners. The failure of the Operator or the Approving Agent to enforce any provision of this Declaration or to seek redress for any breach of the provisions hereof shall in no event be deemed a waiver of the right to do so thereafter; provided, however, if the Operator or the Approving Agent shall fail to take affirmative steps to enforce the provisions hereof within thirty (30) days after the delivery to Operator or the Approving Agent of a written demand from a Majority of Owners specifying in detail the alleged default and required compliance, any Owner shall be authorized to enforce the provisions of this Declaration. The Approving Agent and Operator shall in no way be liable to the Owners or any other person or entity for their refusal or failure to enforce any of the provisions of this Declaration or for their waiver of such provisions or any violations thereof.

6.6 Protection of Mortgagees. A breach of any of the restrictions, conditions, covenants or reservations herein contained shall not defeat or render invalid the lien of any bona-

fide Mortgage made for value as to any Lot, or any portion or portions thereof, but such restrictions, conditions, covenants and reservations shall be binding upon and effective against any Owner or Owners of any such Lot, or any portion or portions thereof, whose title is acquired by foreclosure, trustees sale or otherwise.

6.7 Effect of Foreclosure. If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (a) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (b) the foreclosure of the lien of such Mortgage, the acceptance of a deed in lieu of foreclosure of such Mortgage or a sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of Foreclosures") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure. Nothing in this Section shall be construed to release any Owner from his personal obligation to pay any Assessment levied pursuant hereto.

## ARTICLE 7

### INTEGRATED NATURE OF THE COVERED PROPERTY

7.1 Development of the Covered Property. Declarant presently intends to sequentially develop the Covered Property and the Annexation Property on a phased basis; however, Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Moreover, Declarant hereby reserves the right to subject all or any portion of the Annexation Property to the terms and provisions of this Declaration or one or more separate declarations of covenants, conditions and restrictions which subjects said property to the jurisdiction and powers of an association or other entity with powers and obligations similar to the Approving Agent and the Operator but which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex the Annexation Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property, and such property shall not become subject to this Declaration unless and until a Supplementary Declaration shall have been executed and recorded by Declarant so annexing all or any portion of the Annexation Property to the terms hereof.

7.2 Supplementary Declarations. A Supplementary Declaration shall be a writing in recordable form which annexes real property to the plan of this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions set forth in this Declaration relating to Supplementary Declarations. Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the real property annexed thereby or as are not inconsistent with the plan of this Declaration as determined by the Declarant in its reasonable discretion. In no event, however,



shall any such Supplementary Declaration, or any merger or consolidation, revoke, modify or add to the covenants established by this Declaration with respect to the initial Covered Property.

7.3 Annexation Without Approval. All or any part of the Annexation Property may be annexed to and become subject to this Declaration without the approval, assent or vote of the Owners, provided that a Supplementary Declaration covering the portion of the Annexation Property to be annexed, shall be executed and recorded by Declarant. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the real property described therein, making said real property subject to this Declaration and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Lots in said annexed real property shall automatically be Owners hereunder.

## ARTICLE 8

### GENERAL PROVISIONS

8.1 Assignment of Operator's Rights and Duties. Any and all of the rights, powers, duties and reservations of Declarant as Operator herein contained may be assigned to any person, or any partnership, corporation or association upon recordation of an instrument executed by Operator and such assignee evidencing any such assignment. When such assignee evidences its consent in writing to accept such assignment and assume such duties, such assignee shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Operator herein and the prior Operator shall be relieved of any further liability with respect thereto; provided that if the Operator assigns such duties to a Majority of Owners, such assignment shall become effective immediately and the Majority of Owners shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assigned by Operator herein and Operator shall be relieved of any further liability with respect thereto. The term "Operator" as used herein includes all such assignees and their heirs, successors and assigns. At any time from and after the time Declarant or any parent, affiliate or subsidiary of Declarant shall cease owning any interest in any portion of the Covered Property, a Majority of Owners of Lots within the Covered Property may select a person or entity to perform Operator's duties and obligations hereunder, and in the event Declarant shall execute, acknowledge and record an instrument appointing a successor, a Majority of Owners may remove such successor and select another person or entity in its place and stead.

8.2 Covenants to Run with the Land; Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and any portion of the Annexation Property which has been annexed to the initial Covered Property and made subject to this Declaration pursuant to Article 7 hereof and shall inure to the benefit of and be enforceable for a term commencing upon the date hereof and terminating thirty (30) years from the date hereof; provided, however, unless one (1) year prior to the expiration of said thirty (30) year term there shall be recorded an instrument executed by the then Operator, if any, and by a Majority of Owners directing the termination of the covenants, conditions and restrictions herein contained, said covenants, conditions and restrictions in effect immediately prior to the expiration date of the thirty (30) year term shall be continued automatically without any further notice for an additional period of five (5) years and thereafter for successive terms of five (5)

years unless within one (1) year prior to the expiration of any such five (5) year period the covenants, conditions and restrictions herein contained are terminated pursuant to this Section. Notwithstanding the fact that the covenants, conditions, and restrictions set forth herein are terminated pursuant to this Paragraph 8.2, all of the easements set forth in Article 4 above shall remain in full force and effect and shall run with the land and be binding upon the successors and assigns of Declarant in accordance with the provisions of Article 4.

8.3 Notices. Any notice to be given to Operator, the Approving Agent, an Owner or a Mortgagee under the provisions of this Declaration shall be in writing and shall be delivered as follows:

(a) Notice to Operator shall be deemed to have been properly delivered when delivered personally or sent by certified mail, postage prepaid, return receipt requested to:

JDMD-Apollo Venture, L.L.C.  
2400 East Arizona Biltmore Circle  
Suite 1270, Bldg. 2  
Phoenix, AZ 85016

or as changed by notice properly delivered in accordance with this Section.

(b) Notice to the Approving Agent shall be deemed to have been properly delivered when delivered personally or sent by certified mail, postage prepaid, return receipt requested to the Approving Agent at the following address:

JDMD-Apollo Venture, L.L.C.  
2400 East Arizona Biltmore Circle  
Suite 1270, Bldg. 2  
Phoenix, AZ 85016

or as changed by notice properly delivered in accordance with this Section.

(c) Notice to an Owner or a Mortgagee shall be deemed to have been properly delivered when delivered personally or placed in the United States mail, first class, postage prepaid to the most recent address furnished by such Owner or Mortgagee in writing to Operator for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail within the County in which the Covered Property is located, shall be deemed delivered forty-eight (48) hours after such deposit.

8.4 Construction By Declarant. Nothing in this Declaration shall limit the right of Declarant to alter the Lots owned by Declarant, or to construct such additional improvements as Declarant deems necessary or advisable. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Covered Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of

Declarant at any time to establish on the Covered Property additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary for the proper development and disposal of portions of the Covered Property owned by Declarant. Declarant reserves the right to alter its construction plans and designs as it deems appropriate in its discretion.

8.5 Nonliability of Officials. To the fullest extent permitted by law, neither the Approving Agent, Operator or Declarant, nor any of their agents, employees, successors or assigns shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith and reasonably believed to be within the scope of their duties.

8.6 Project Name. The name of the Project shall be and remain The Cotton Center unless Declarant consents, in writing, to a change in the Project name as evidenced by the recordation of an amendment to this Declaration in accordance with Section 7.7 hereinbelow.

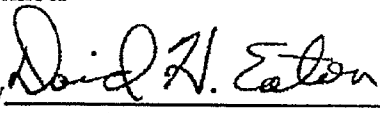
8.7 Amendments. Until such time as there is an Owner of any portion of the Covered Property other than Declarant, this Declaration may be amended and such amendment shall be effective when executed by Declarant, and any First Mortgagee of any portion of the Covered Property and when recorded in the Official Records of Maricopa County, Arizona. From and after the date that there is an Owner of any portion of the Covered Property other than Declarant, this Declaration may be amended and such amendment shall be effective when executed by Declarant and a Majority of Owners (including Declarant to the extent it is an Owner) of the Lots within the Covered Property and their First Mortgagees; provided, however, that no amendment affecting the rights of any Mortgagee shall be effective without the written consent of the Mortgagee. If any Mortgagees have filed a written request with the Operator to receive a copy of any such amendments, the Operator shall deliver a copy of such amendments to such Mortgagees at the addresses specified in their requests.

8.8 Severability. If any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not in any way affect, impair or invalidate any other provision of this Declaration and such provisions shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant and Ground Lessor have executed this Declaration on the date first herein above written.

JDMD-APOLLO VENTURE, L.L.C., an  
Arizona limited liability company

By: JDMD Investments, L.L.C., a  
Member

By:   
Name: David Eaton

Title: Authorized Member

STATE OF ARIZONA            )  
  )    ss  
County of MARICOPA         )

The foregoing instrument was acknowledged before me this 23rd day of December, 1998, by David Eaton, the Authorized Member of JDMD Investments, L.L.C., a Member of JDMD-Apollo Venture, L.L.C., an Arizona limited liability company, on behalf thereof.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

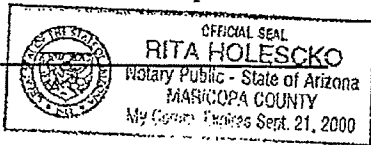


Exhibit A

A portion of Lots 62 and 63, BARTLETT-HEARD LANDS, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 13 of Maps, page 35, more particularly described as follows:

A parcel of land lying within Section 30, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of said Section 30;

THENCE along the West line of said Section 30, South 00 degrees 00 minutes 37 seconds West, a distance of 992.55 feet;

THENCE leaving said West line, North 39 degrees 55 minutes 31 seconds East, a distance of 51.43 feet, to the East line of the West 33.00 feet of said Section 30, and the POINT OF BEGINNING;

THENCE leaving said East line, North 39 degrees 55 minutes 31 seconds East, a distance of 380.75 feet;

THENCE North 89 degrees 09 minutes 56 seconds East, a distance of 750.18 feet;

THENCE along a line parallel with the West line of said Section 30, South 00 degrees 00 minutes 37 seconds West, a distance of 667.07 feet;

THENCE continuing along said parallel line, South 00 degrees 00 minutes 06 seconds East, a distance of 1346.73 feet;

THENCE leaving said parallel line, North 89 degrees 54 minutes 30 seconds West, a distance of 994.41 feet, to the East line of the West 33.00 feet of said Section 30;

THENCE along said East line, North 00 degrees 00 minutes 06 seconds West, a distance of 1330.66 feet;

THENCE continuing along said East line, North 00 degrees 00 minutes 37 seconds East, a distance of 378.64 feet, to the POINT OF BEGINNING.

EXHIBIT B

DESCRIPTION OF COMMON AREAS

The following as shown on the Final Plat for "Cotton Center" recorded in Book 487 of Maps, page 44 (#98-1117704), Records of Maricopa County, Arizona, lying within Section 30, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

The landscape easements along Roeser Road shown as Tracts A and C on such Final Plat.

The 20 foot landscape easements (and the public utility easement and sidewalk easements located therein) located along Cotton Center Parkway, 44th Street and Loop Road, as shown on such Final Plat.

The 30 foot landscape easements along 40th Street, Broadway Road and 48th Street shown on such Final Plat.

The traffic island shown as Tract D on such Final Plat.

The entry feature tracts shown as Tracts E, F, G, H, I, and J on such Final Plat.

The Well Site shown as Tract B on such Final Plat.

A private road or roads to be located in the future from Cotton Gin Loop (shown on the Plat) to both Broadway Road and 48th Street.

LAWYERS TITLE OF ARIZONA, INC.

When recorded, return to:  
Fennemore Craig  
3003 North Central Ave., Ste. 2600  
Phoenix, AZ 85012  
Attn: Ronald L. Ballard

325978-6-6-3--A  
Gorchessi

3/5 325978 V W

### RESTRICTIVE COVENANTS

In connection with the conveyance by JDMD-APOLLO VENTURE, L.L.C., an Arizona limited liability company ("Declarant") of the real property described in Exhibit A attached hereto and made a part hereof (the "Property"). Declarant hereby declares that the Property shall be subject to the following restrictive covenants:

(a) No owner or operator of the Property nor any of its tenants or assignees may construct, use or operate a Mexican Quick Serve Restaurant upon the Property, so long as the real property described on Exhibit B attached hereto is being used as a Mexican Quick Serve Restaurant. A Mexican Quick Serve Restaurant ("MQSR") is defined as any business or restaurant (other than as provided below) whose major product is mexican style food that would reasonably be deemed a direct competitor of a Taco Bell restaurant. By way of example a restaurant like a Del Taco, a Filiberto's, a Taco Time, or a Taco John would be a MQSR. However, a mexican food casual sit down dining restaurant, such as a Macayos or a Garcia's, is not a quick serve restaurant and is not a MQSR. Also, a McDonalds, a Wendy's, a Jack in the Box, Wataburger or a Burger King would be a quick serve restaurant and even though it may serve some mexican food, mexican food is not their major food type sold and would not be a MQSR.

(b) For a period of twenty years from the date hereof, the Property may not be used as a gasoline service station, car wash and/or convenience store; provided that such restriction as to each particular use shall expire if the parcel described on Exhibit C attached hereto is no longer used as a gasoline service station (with respect to gasoline service station restriction), a car wash (with respect to the car wash restriction) or a convenience store (with respect to the convenience store restriction).

(c) The Property may not be improved, utilized or sold for the purpose of operating a quick serve restaurant which primarily sells (or is generally known for selling) hamburgers. Such restriction shall not prevent the sale of hamburgers or other similar foods by any owner or operator which is not primarily engaged in the business of selling quick serve hamburgers. However, the owner and operator of the Property shall be restricted from subletting, licensing or otherwise utilizing any space in such properties to or for the benefit of any national, regional or local restaurant chain primarily known for selling hamburgers (including a Mini-Mac or other similar facility). The term of the foregoing restrictions shall expire at such time as the owner or operator of Lot 7 Unit III of Cotton Center (described on Exhibit D attached hereto) is not utilizing such parcel as quick serve restaurant which primarily sells hamburgers for a period of 90 consecutive days (or 180 consecutive days in the event of such cessation is due to casualty loss or repair or restoration activities).



The foregoing shall constitute covenants running with the Property and shall be binding upon all owners, tenants and other claiming an interest in the Property and their successors and assigns.

DATED: July 31, 2000.

JDMD-APOLLO VENTURE, L.L.C., an  
Arizona limited liability company

By: JDMD Cotton Center Venture, L.L.C.,  
an Arizona limited liability company,  
as Member

By: JDMD Investments, L.L.C., an  
Arizona limited liability company,  
its Managing Member

By: David W. Eaton

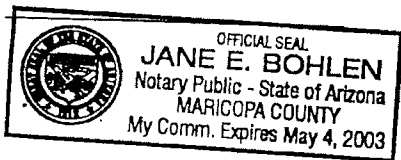
David Eaton  
Authorized Member

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this 31st day of July, 2000, by David Eaton, an Authorized Member of JDMD Investments, L.L.C., an Arizona limited liability company, as Managing Member of JDMD Cotton Center Venture, L.L.C., an Arizona limited liability company, the Managing Member of JDMD-Apollo Venture, L.L.C., an Arizona limited liability company, on behalf thereof.

Jane E. Bohlen  
Notary Public

My Commission Expires:



## Exhibit A

A part of Parcel 3 of Final Plat of "COTTON CENTER" recorded in Book 487 of Maps, page 44, lying within Section 30 Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the intersection of Cotton Center Boulevard and Cotton Gin Loop as shown on the Final Plat of Cotton Center, recorded in Book 487, page 44, Records of Maricopa County;

THENCE along the centerline of said Cotton Gin Loop, North 15 degrees 53 minutes 26 seconds West, distance of 70.42 feet;

THENCE leaving said centerline, South 74 degrees 06 minutes 24 seconds West, distance of 30.00 feet, to a point on the east line of Parcel 3 of said Final Plat, also being the POINT OF BEGINNING;

THENCE along the boundary lines of said Parcel 3, South 28 degrees 48 minutes 07 seconds West, distance of 42.65 feet;

THENCE South 73 degrees 29 minutes 39 seconds West, distance of 204.83 feet, to the beginning of a curve;

THENCE westerly along said curve, having a radius of 3010.00 feet, concave northerly through a central angle of 07 degrees 06 minutes 21 seconds, a distance of 373.31 feet, to a point of intersection with a non-tangent line;

THENCE leaving said boundary lines, North 00 degrees 24 minutes 10 seconds West, distance of 915.70 feet, to a point on said boundary lines of Parcel 3 and the beginning of a non-tangent curve;

THENCE along said boundary lines, easterly along said curve, having a radius of 670.00 feet, concave southwesterly, whose radius bears South 11 degrees 23 minutes 36 seconds West, through a central angle of 62 degrees 42 minutes 59 seconds, a distance of 733.39 feet, to the curve's end;

THENCE South 15 degrees 53 minutes 26 seconds East, distance of 273.59 feet, to the POINT OF BEGINNING.

**EXHIBIT B**

LOT 9 of COTTON CENTER UNIT II, a resubdivision of portions of Cotton Center,  
recorded in Book 499, page 24, Records of Maricopa County, Arizona.

**EXHIBIT C**

LOT 10 of COTTON CENTER UNIT II, a resubdivision of portions of Cotton Center,  
recorded in Book 499, page 24, Records of Maricopa County, Arizona.

**EXHIBIT D**

LOT 7 of COTTON CENTER UNIT III, a resubdivision of portions of Cotton Center,  
recorded in Book 516, page 08, Records of Maricopa County, Arizona.