

WHEN RECORDED, RETURN TO:

Arizona First Partners 1 LLC
5041 E Pershing Avenue
Scottsdale, Arizona 85254-3621

**DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR LAS SENDAS OFFICE CONDOMINIUMS
AN OFFICE CONDOMINIUM ASSOCIATION**

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WITNESSETH:

A. Declarant is the owner of that certain real property located in Mesa, County of Maricopa, State of Arizona, which is legally described as set forth on Exhibit A attached hereto and incorporated by this reference (the "Property"). Declarant has caused the condominium subdivision plat for Las Sendas Office Condominiums (the "Plat") to be recorded and according to such Plat the legal description of the Property is as set forth on Exhibit A hereto and incorporated herein by this reference. The Property is to be known as the Las Sendas Office Condominiums.

B. It is the intention of the Declarant to develop the Property as an office center, including office buildings and Common Elements. As depicted on the Plat, the Property contains or will contain four (4) office suites, according to the Plat of record in the Office of the County Recorder, Maricopa County, Arizona, in Book _____, of Maps and Plats at Page _____.

C. Declarant desires to create a Condominium in accordance with the Arizona Condominium Act, Arizona Revised Statutes §§ 33-1201 et seq., as the same may be amended or renumbered ("Act"), with respect to the Property, and to impose certain covenants, conditions and restrictions upon the Property in order to establish a general scheme for the development, sale, use and enjoyment of the Property as an office condominium.

NOW THEREFORE, Declarant hereby creates a condominium in accordance with and subject to the Act with respect to the Property, and declares that the Property shall be operated in accordance with the Act and shall be held, developed, operated, sold, and conveyed subject to the easements, restrictions, covenants and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

This Declaration of Condominium and of Covenants, Conditions and Restrictions for Las Sendas Office Condominiums is made as of _____, 2007, by **Arizona First Partners 1, LLC**, an Arizona limited liability company ("Declarant").

**ARTICLE 1
DEFINITIONS**

1.1 General Definitions. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time ("Act").

1.2 Defined Terms. The following capitalized terms shall have the general meanings described in the Act and for purposes of this Declaration shall have the specific meanings set forth below:

(a) "Architectural Review Committee" or "ARC" means the committee established by the Board pursuant to Section 6.7 of this Declaration.

(b) “Articles” means the Articles of Incorporation of the Association, as amended from time to time.

(c) “Assessments” means the Common Expense Assessments, Special Assessments, Exceptional Maintenance Assessments, Individual Expense Assessments, Enforcement Assessments and Water Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

(c) “Assessment Lien” means the lien granted to the Association by the Condominium Act and the Members to secure the payment of Assessments, monetary penalties and other charges owed to the Association.

(d) “Association” means Las Sendas Office Condominiums, an Arizona non-profit corporation, its successors and assigns. Declarant intends to organize the Association under the name of “Las Sendas Office Condominiums,” but if such name is not available, Declarant may organize the Association under such other name, as Declarant deems appropriate.

(e) “Board” means the Board of Directors of the Association.

(f) “Building” means a structure containing one or more Units that have been or will hereafter be constructed on the land included in the Condominium, as shown on the Plat.

(g) “Bylaws” means the Bylaws of the Association, as amended, modified, supplemented, restated or replaced from time to time.

(h) “City” means the City of Mesa, Arizona, a municipal corporation.

(i) “Collection Costs” means all costs, fees, charges, and expenditures (including, without limitation, attorney’s fees, court costs, filing fees and recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, interest or other amounts payable to the Association pursuant to this Declaration.

(j) “Common Elements” means all portions of the Condominium other than the Units.

(k) “Common Element Ownership Percentage” means each Unit’s percentage interest in the Common Elements pursuant to Section 2.6 of this Declaration.

(l) “Common Expenses” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves. “Common Expense Assessment” means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

(m) “Common Expense Liability” means the liability for Common Expenses allocated to each Unit by this Declaration pursuant to Article 2, Section 2.6.

(n) “Condominium” means the real property located in Maricopa County, Arizona, which is more particularly described in Exhibit A attached to this Declaration, together with all Buildings and other Improvements located on the real property.

(o) “Condominium Act” or “Act” means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.

(p) “Condominium Documents” means this Declaration, the Articles, the Bylaws, the Association Rules and any ARC Rules or Design Guidelines.

(q) “Declarant” means Arizona First Partners 1, LLC, an Arizona limited liability company, its successors and assigns.

(r) “Declaration” means this Declaration of Condominium and of Covenants, Conditions and Restrictions, as amended from time to time, together with the exhibits.

(s) “Development Rights” means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following during the Period of Declarant Control:

(i) Create and construct, as applicable, easements, Units, Buildings, Common Elements or Limited Common Elements within the Condominium and in connection therewith to utilize those portions of the Common Elements for the placement, operating, storage and maintenance of such machinery, equipment and temporary construction facilities as may be necessary to create and construct the same;

(ii) Determine Unit sizes, subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(iii) Add real estate to the Condominium in accordance with the Condominium Act;

(iv) Withdraw real estate from the Condominium;

(v) Amend the Declaration during the Period of Declarant Control pursuant to § 33-1243(E), to comply with the Condominium Act or any other applicable law, to specify Unit sizes, to add development percentages pursuant to Section 2.6 of this Declaration, to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner, or to reallocate parking spaces which are designated as Limited Common Elements;

(vi) Make the Condominium part of a larger condominium or planned community;

(vii) Amend the Declaration during the Period of Declarant Control pursuant to § 33-1243(E), to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal

corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

(t) “Eligible Insurer or Guarantor” means an insurer or governmental guarantor of a First Mortgage who has requested in writing notice of certain matters.

(u) “Eligible Mortgage Holder” means a Mortgagee who has requested in writing notice of certain matters from the Association.

(v) “Enforcement Assessment” means an assessment levied pursuant to Section 7.8 of this Declaration.

(w) “First Mortgage” means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

(x) “Improvement” means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, buildings, private drives, paving, fences, walls, hedges, plants, trees and shrubs of every type and kind.

(y) “Individual Expense Assessment” means an assessment levied pursuant to Section 7.7 of this Declaration.

(z) “Invitee” means any person whose presence within the Condominium is approved by or is at the request of a particular Owner, Lessee or Occupant, including, without limitation, customers, family members, guests, employees and contractors.

(aa) “Lessee” means any Person who is the tenant or lessee under a written lease of a Unit.

(bb) “Limited Common Elements” means a portion of the Common Elements specifically designated in the Plat or this Declaration as a Limited Common Element and allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more but fewer than all of the Units.

(cc) “Member” means any Person who is or becomes a member of the Association.

(dd) “Mortgagee” means the holder of any First Mortgage.

(ee) “Occupant” means a person, other than an Owner, in possession of a Unit at the request or consent of the Owner.

(ff) “Owner” means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. “Owner” shall not include Persons having an interest in a Unit merely as security for the performance of an obligation. “Owner” shall not be deemed to include for any purpose a lessee or tenant of a Unit. “Owner” shall

include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract. "Owner" shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units, the fee simple title to which is vested in a trustee pursuant to A.R.S. §33-801, et seq., the trustor shall be deemed to be the Owner.

(gg) "Parcel" means the land described on Exhibit A attached hereto, together with all Improvements situated thereon and all easements and rights appurtenant thereto.

(hh) "Parking Space" means a portion of the Common Elements intended for the parking of a single motor vehicle and identified on the Plat as a parking space.

(ii) "Period of Declarant Control" means the period of time within which Declarant shall have control of the Association, during which period the Declarant or persons designated by the Declarant may appoint or remove the officers and Directors, and may exercise Development Rights and Special Declarant Rights, provided that the Declarant Control Period shall terminate no later than the earliest of the following:

- A. Ninety (90) days after the conveyance of seventy-five percent of the Units as defined in Article 2.6 below to Unit Owners other than the Declarant; or
- B. Four (4) years after Declarant shall have ceased to offer Units for sale in the ordinary course of business; or
- C. The date that Declarant shall relinquish control by written notice to the Association, which notice may be recorded in the sole discretion of the Declarant.

(jj) "Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(kk) "Plat" means the "Final Plat for Las Sendas Office Condominiums", which plat has been recorded on _____, 2007 in Book _____ of Maps, Page _____, Instrument No. 2007-_____, Official Records of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

(ll) "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit Owner, except for a Person who purchases a Unit and then leases it to the Declarant for use in connection with the sale of other Units, or a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.

(mm) "Recording" means placing an instrument in the public record in the office of the County Recorder of Maricopa County, Arizona.

(nn) "Rules" means the rules and regulations adopted by the Board of Directors, as amended from time to time.

(oo) “Special Declarant Rights” means any right or combination of rights reserved by or granted to the Declarant in this Declaration or by the Condominium Act to do any of the following:

(i) Construct Improvements provided for in this Declaration or shown on the Plat;

(ii) Exercise any Development Right;

(iii) Maintain sales offices, management offices, models, and signs advertising the Condominium;

(iv) Use easements through the Common Elements for the purpose of making Improvements within the Condominium or within real estate which may be added to the condominium;

(v) Appoint or remove any officer or Director of the Association during the Period of Declarant Control.

(vi) Appoint or remove any member of the Architectural Review Committee during the Period of Declarant Control.

(vii) Designate employee parking areas or spaces and deed covered parking spaces as Limited Common Elements to individual Units (which rights may be assigned in a duly recorded notice to the Association.)

(viii) Exercise the rights described in Section 3.4 of this Declaration.

(pp) “Structure Assessment” means the portion of the Common Expense Assessment levied and assessed against each Unit pursuant to Article 7 of this Declaration.

(qq) “Unit” means a portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 of this Declaration and designated on the Plat as a Unit.

(rr) “Water Assessments” means the Water Usage Assessments and the Supplemental Water Fee Assessments against the Units pursuant to Section 7.3 of this Declaration.

ARTICLE 2
SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION
OF PERCENTAGE INTERESTS, VOTES AND
COMMON EXPENSE LIABILITIES

2.1 Submission of Property. The Declarant hereby submits the Parcel to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this

Declaration. The Declarant designates each Unit for separate ownership or occupancy. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Parcel and shall be binding upon and inure to the benefit of the Declarant and all Unit Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Condominium, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of all Owners and shall be enforceable by the Association. Declarant make no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is the Las Sendas Office Condominiums.

2.3 Name of Association. The name of the Association is Las Sendas Office Condominiums.

2.4 Identification of Units. The identifying numbers of the Units are one (1) through four (4), inclusive. Declarant shall not be required to use all of the available Unit numbers if the Buildings are sold to fewer than four (4) Unit Owners. The legal description of a Unit which shall be used to describe the Unit and all Common Elements, rights, obligation and interests appurtenant to that Unit shall be as follows: "Unit [Number], Las Sendas Office Condominiums, according to the Declaration of Condominium and of Covenants, Conditions and Restrictions recorded as Document No. 2007-_____ and as shown on the Plat recorded in Book _____ of Maps, Page _____, Instrument No. 2007-_____, records of Maricopa County, Arizona; together with an undivided _____ percent (___%) interest in the Common Elements as set forth in said Declaration and as shown on the Plat."

2.5 Unit Boundaries.

(a) The boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floor, exterior doors and windows of the Unit and the bottom surface of the floor slab or roof structure, as applicable, located above the Unit. All Improvements or alterations constructed or installed within such boundaries, demising walls, air conditioning or heating units, and all chutes, flues, pipes, ducts, wires, and conduits (but excluding any such items serving another Unit or other Units) are part of that Unit.

(b) Except as otherwise provided in this Declaration or Plat, any air conditioning or heating unit, chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture, whether located within or outside of the boundaries of a Unit, which serve only one Unit, is a Limited Common Element allocated exclusively to the Unit served, and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

(c) Subject to the provisions of Subsection 2.5(b) of this Declaration, all spaces, interior partitions and other fixtures and Improvements within the boundaries of a Unit are part of the Unit.

(d) In the event of any inconsistency or conflict between the provisions of this Section and the Plat, the Plat shall control.

(e) The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the Buildings and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.

(f) Subject to approval of the Association, payment of all related costs or expenses incurred by the Association (including engineering and attorneys' fees), and compliance with Arizona law, any Unit Owner may subdivide a Unit, and Unit Owners sharing a common boundary between their Units may adjust that boundary.

2.6 Allocation of Common Element Ownership Percentages. The Declarant shall calculate and allocate Common Element Ownership Percentage among the Units in its sole and absolute discretion. Subject to adjustment for any subdivision or adjustment pursuant to Section 2.5(f) and for the addition of Units pursuant to the Condominium Act, each Unit's percentage interest in the Common Elements is as follows:

UNIT	COMMON ELEMENT OWNERSHIP PERCENTAGE
100	Twenty-eight percent (28%)
150	Twenty-two percent (22%)
200	Twenty-eight percent (28%)
250	Twenty-two percent (22%)
TOTAL	
4 Units	One hundred percent (100%)

The Declarant may amend the Declaration without a vote of the Members to change Common Element Ownership Percentages. After the Declarant has sold all the Units, the Association may change the Common Element Ownership Percentage only by a unanimous vote of all the Members, and specifically not by a unanimous vote of a quorum of the Members.

2.7 Allocation of Votes in the Association. The total votes in the Association shall be four. Each Unit shall be allocated one vote.

2.8 Allocation of Limited Common Elements.

(a) The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one or more, but less than all, of the Units as follows:

(i) Any air conditioning or heating unit, chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture, whether located within or outside of the boundaries of a Unit, which serve only one Unit is a Limited Common Element allocated exclusively to the Unit served.

(ii) If any air conditioning or heating unit, chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the boundaries of a Unit, the portion serving only one Unit is a Limited Common Element allocated exclusively to the Unit served, the use of which is limited to that Unit, and any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

(iii) Any patios, awnings, entryways and exterior doors and windows or other fixtures designed to serve a single Unit, but which are located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit served and their use is limited to that Unit.

(iv) Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his Unit, subject to the rights granted to the Declarant or the Association by the Condominium Documents. All Limited Common Elements must be used in accordance with the Declaration and the Rules. An Owner of a Unit to which a Parking Space has been allocated as a Limited Common Element may lease such parking space to another Owner, Lessee or Occupant, but no Parking Space shall be leased to any Person who is not an Owner, Lessee or Occupant.

(b) So long as the Declarant owns any Unit, the Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements (including, but not limited to, Parking Spaces) which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by deed and/or by an amendment to this Declaration executed by the Declarant. The Members may not vote on an amendment that allocates a Parking Space as a Limited Common Element. After the Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding one hundred percent (100%) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

2.9 Rights Reserved to Declarant. Declarant reserves the right at any time and from time to time, subject to the provisions of the Act, to exercise any or all of the Special Declarant Rights.

ARTICLE 3 EASEMENTS

3.1 Utility Easement. There is hereby created an easement upon, across, over, under, and through the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, chilled

water, telephone, fiber optic cable or other communications facilities, cable television, connections to antennae permitted hereunder, and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company, Declarant, or the Association to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed, approved and constructed by the Declarant or as approved by the Association. This easement shall in no way affect any other recorded easements on the Common Elements.

3.2 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is a created easement for ingress and egress for pedestrian traffic to and from the U.S. Post Office mailbox. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes except that such easements shall not extend to any parking facilities that are Limited Common Elements, which are reserved exclusively for the use of the applicable Unit. Such easements shall run in favor of and be for the benefit of the Owners, Lessees, Occupants and Invitees.

3.3 Unit Owners' Easements of Enjoyment.

(a) Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Units and Common Elements;

(ii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust or other security interest, in the manner and subject to the limitations set forth in the Condominium Act; and

(iii) All rights and easements set forth in this Declaration and the Act including, but not limited to, the rights and easements granted to the Declarant by this Declaration.

(iv) The right of the Association to grant non-exclusive easements over all or a portion of the Common Elements if the Board of Directors determines that the granting of the easement is necessary for the development or maintenance of the Common Elements or beneficial to the Owners, Lessees and Occupants.

(v) The right of the Association to suspend the right of an Owner, Lessee or Occupant to use the Common Elements for any period during which the Owner, Lessee or Occupant is in violation of any provision of the Condominium Documents;

(vi) The right of the Association to restrict or limit the use of any common amenities by an Owner and such Owner's family, guests and invitees during any period that the Unit is leased to a Lessee.

(b) A Unit Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

(c) Notwithstanding the provisions of this Section 3.3, no Owner, Lessee or Occupant of a Unit or their guests or invitees shall have the right to use any Limited Common Elements not allocated to the exclusive use of their Unit.

3.4 Declarant's Rights and Easements

(a) The Declarant shall have the right and an easement on, over and under those portions of the Common Elements not located within the Buildings for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

(b) Declarant reserves the right to make any and all amendments unilaterally so long as Declarant has not sold any Units to end-users. After Declarant has sold a unit to an end-user, Declarant reserves the right to amend this Declaration as long as the amendment does not impair a material right of an Owner, or to correct errors.

(c) Declarant and its employees and agents shall have the right and an easement to maintain sales or leasing offices, management offices, storage areas, models and related facilities throughout the Condominium and to maintain one or more marketing, directional or advertising signs on the Common Elements so long as the Declarant is marketing Units in the Condominium. Declarant reserve the right to maintain models, management offices, storage areas and sales and leasing offices in any Units owned or leased by the Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate. Declarant may store materials and equipment in any Parking Spaces allocated as Limited Common Elements to Units owned by the Declarant or in any Parking Spaces which have not been allocated as Limited Common Elements. Declarant may from time to time relocate models, storage areas, management offices and sales and leasing offices to different locations within the Condominium. Declarant and its employees and agents shall have the right and an easement to install or post signs, flags, awnings, lights and banners on the Common Elements in connection with its marketing of Units for sale or lease.

(d) So long as Declarant is marketing Units in the Condominium for sale or lease, Declarant shall have the right to restrict the use of the Parking Spaces which are not allocated as Limited Common Elements. Such right shall include reserving such Parking Spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities. Declarant

shall have the right to lease to an Owner, Lessee or Occupant or any other Person any Parking Spaces which have not been allocated as a Limited Common Element.

(e) The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Condominium that has not been represented to the Association as property of the Association. The Declarant reserves the right to remove from the Condominium any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

(f) Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Elements and the Units to erect and construct the Common Elements and the Units shown on the Plat and all other Improvements Declarant may deem appropriate and to use the Common Elements and any Units owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.

(g) The Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Common Elements and the Units for the purpose of completing any renovations, warranty work or modifications to the Common Elements or the Units the Declarant deems necessary or desirable.

(h) The Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of performing the Declarant's obligations under the Condominium Act and the Condominium Documents and for the purpose of exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration. The rights granted to or reserved by the Declarant in this Section 3.4 are in addition to any rights granted to or reserved by the Declarant elsewhere in the Condominium Documents.

(i) To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights. Except as expressly set forth in this Declaration, there is no time limit within which any Development Right or Special Declarant Right must be exercised or will lapse, and there are no conditions or limitations on the exercise of any Development Right or Special Declarant Right.

(j) So long as the Declarant owns one or more Units, the Declarant shall have the right to the exclusive use, without charge, of any portion of any of the facilities within the Common Elements for employee meetings, administrative purposes, special events or any other purpose. The Declarant's rights under this Subsection shall have priority over the rights of any Owner, Lessee or Occupant to use the Common Elements.

(k) In the event of any conflict or inconsistency between this Section 3.4 and any other provision of the Condominium Documents, this Section 3.4 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.4 shall be enforceable by injunction, by any other remedy available at law or in equity

(including, but not limited to, the right to sue for damages) and/or by any means provided in this Declaration.

3.5 Easement for Support. To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the Condominium, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit in the Condominium, the Common Elements and the Limited Common Elements.

3.6 Easements and Rights of the Association for Pest Control. Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium. The Association may cause the temporary removal of any Owner, Lessee or Occupant for such periods and at such times as necessary for prompt, effective treatment of wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than fifteen (15) days or more than thirty (30) days notice of the need to temporarily vacate shall be given to the Owners, Lessees and Occupants of the Unit affected. The notice shall state: (a) the reason for the temporary relocation; (b) the date and time of the beginning of the treatment; (c) the anticipated dated and time of termination of treatment; and (d) that the Owner, Lessee or Occupant will be responsible for their own accommodations during the temporary relocation.

3.7 Common Elements Easement in Favor of the Association. The Common Elements shall be subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

3.8 Common Elements Easement in Favor of Unit Owners. The Common Elements shall be subject to the following easements in favor of the Units benefited:

(a) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(b) For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the

common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(c) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the stone, block, brick or other masonry walls bounding the Unit and the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding the Unit, the bottom surface of floor or roof joists or concrete floors (as applicable) above the Unit and the top surface of the floor joists or concrete floors below the Unit to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably interfere with any other Unit, the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(d) For the maintenance of any lighting devices, outlets, medicine cabinets, exhaust fans, grease traps, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of the Common Elements.

(e) For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under this Declaration.

3.9 Units and Limited Common Elements Easement in Favor of Association. The Units and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) For inspection of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements;

(c) For correction of emergency conditions in one or more units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units.

(d) For the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents.

(e) For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, their guests, tenants, contractors, invitees and the other occupants of the Unit.

Except in case of emergency, the Association shall only enter a Unit at reasonable times and upon reasonable notice to the Unit Owner or, if the Unit is leased, to the Lessee. In the event of an emergency, the Association may enter a Unit without prior notice to the Unit Owner or the Lessee, but promptly following the Association's entry into the Unit, the Association shall notify the Unit Owner or the Lessee of the nature of the emergency condition which required entry without notice.

3.10 Easement for Unintended Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, shifting or settling, or alteration or restoration authorized by this Declaration or any reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists. Notwithstanding the foregoing, no tree, shrub, or planting of any kind on any Unit shall be allowed to overhang or otherwise encroach upon any sidewalk or pedestrian way from ground level to a height of eight (8) feet.

3.11 Easements for Utilities and Maintenance. On behalf of all Owners, the Association may create and dedicate easements over the Common Elements: (a) for the benefit of all service providers for the installation, repair, replacement and maintenance of sanitary sewers, water, electric, gas and telephone lines and facilities, heating and air-conditioning facilities, cable telephone or master television antenna or satellite lines or cables, and drainage facilities, and for ingress to and egress from the Condominium in connection therewith, and (b) for ingress to and egress from the Condominium for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Condominium and the Owners, Lessees and Occupants including, without limitation, for U.S. Mail distribution and collection and private or municipal refuse collection, without the joinder or consent of any First Mortgagee or other Person.

ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS

4.1 Use Restrictions. No Unit shall be used for any purpose prohibited by this Declaration.

4.2 Commercial Use. The Units may be used only for such office uses or purposes as may be permitted from time to time by applicable zoning code and the applicable zoning ordinance(s) adopted with respect to all or any portion of the Property.

4.3 Antennas. No antenna, satellite television dish 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 portion of the Condominium whether attached to a Unit, Building, structure or otherwise, unless approved in writing by the ARC or installed by Declarant.

4.4 Utility Service and Easements. No lines, wires, solar energy devices or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, except those installed by Declarant, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are installed and maintained underground or concealed in, under or on Units, Buildings or other structures so as not to be

visible from the Common Elements. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Buildings or structures permitted under this Declaration. No structure, landscaping or other Improvement shall be placed, erected or maintained by any Owner upon any portion of the Common Elements or any area designated as a public utility easement which may damage or interfere with the installation and maintenance of utilities or which may change the flow of drainage channels in such easement areas or which may obstruct or retard the flow of water through drainage channels in such easement areas. Such public utility easement areas, and all Improvements thereon, shall be maintained by the Owner of the Unit on which the easement area is located unless such easement area is maintained by the Association, the utility company or a county, municipality or other public authority.

4.5 ARC Approval of Improvements and Alterations.

(a) No Unit Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the ARC. No new construction, addition, alteration, repair, change or other work which in any way alters the exterior appearance, including without limitation, the exterior color scheme of any Unit, window coverings or the Improvements located thereon from its appearance on the date the Unit was conveyed by the Declarant without the prior written approval of the ARC. Unit Owners may make non-structural additions, alterations and improvements to the interior of their Units without the prior written approval of the ARC, so long as prior to the commencement of each interior addition, alteration or improvement, the Unit Owner has provided plans and specifications for the proposed alteration, addition or improvement to the Association, and an architect or engineer, licensed in Arizona, certifies that such interior addition, alteration or improvement will not impair the structural integrity of the Building within which such addition, alteration or improvement is to be made.

(b) Any Owner requesting the approval of the ARC shall also submit to the ARC any additional information which the ARC may request. In the event that the ARC fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the ARC have been received, such application for approval shall be deemed denied. Whether or not such approval shall be given by the ARC, the Owner shall deliver to the ARC, upon the request of the ARC, a reasonable review fee that shall be determined by the ARC, as the same may be adjusted from time to time. The ARC, on behalf of the Association, shall have the authority to engage the services of an engineer, architect or other design professional to assist it in the review process, and the Owner shall be responsible to reimburse the Association the compensation that shall be paid or payable to such engineer, architect or other design professional in connection with such review process.

(c) The approval of the ARC of any addition, alteration, repair, change or other work pursuant to this Section 4.5 shall not be deemed a waiver of the ARC's right to withhold approval of any similar addition, alteration, repair, change or other work subsequently submitted for approval. If any Owner fails to receive such approval, the Association shall have the authority to request the removal of such building, shed, alteration or other Improvement at the Owner's expense.

(d) The Association may, in its discretion, establish a deposit for any structural additions, alterations or improvements. The Association may, in its discretion, establish guidelines for types of additions, alterations, or improvements that may be exempt from such approval requirement. The Unit Owners shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements and, if an addition, alteration or improvement voids a warranty, for the cost to obtain a replacement warranty that results from any such additions, alterations or improvements.

(e) Upon receipt of approval from the ARC for any new construction, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the new construction, addition, alteration, repair, change or other work approved by the ARC as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the ARC.

4.6 Waste Disposal. Dumpsters or similar waste disposal items shall be located in Board designated locations in the Common Elements and shall be screened. No garbage, rubbish or trash shall be placed or kept on any Unit except in covered containers. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors shall be permitted to arise there from, 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 incinerators shall be kept or maintained in any Unit. No wastes resulting from activities conducted on the Property shall be discharged into the streets within the Property.

4.7 Parking. Parking shall be allowed on a non-exclusive basis for the Owners and their employees, lessees, licensees and invitees. Certain covered parking spaces will be assigned by the Declarant. Such covered parking shall be reserved and allocated by Declarant at the time of the sale of the Units. The remaining parking spaces shall be used according to the designations on the Plat. Any use of any Unit which could result in an overburdening of the parking areas by exceeding the maximum density allowed as shown on the Plat shall be prohibited. No automobile, motorcycle, motorbike, or other motor vehicle shall be parked upon any part of the Condominium except in designated parking areas and no Unit Owner shall park or allow its guests, lessees, licensees or invitees to park in any parking space assigned as a Limited Common Element of another Unit. All parking areas within the Property shall be paved.

4.8 Prohibited Uses. No Unit within the Condominium shall be used for residential, industrial or retail purposes. Each Unit shall only be used as permitted by the applicable zoning, as amended from time to time. There shall not be permitted any junk or storage of visually offensive salvage in the Common Elements or any other use which will be offensive to the neighborhood by reason of odor, fumes, dust, smoke, noise or pollution or will be hazardous by any reason of danger of fire or explosion.

Notwithstanding any provision in this Declaration or the applicable zoning code to the contrary, no part of the Project shall be used for an activity or purpose considered by the Board of Directors in its sole discretion to be objectionable as an intrusion into the environment of sound, odor, visual effect or physical impact which in its opinion will disturb or tend to disturb the other Unit Owners, lessees or occupants of the Project or which is deemed to constitute a

nuisance. Unless the Board of Directors has determined that such operation and use will enhance the Project, and will not constitute a nuisance, or visually be detrimental to any Unit(s) within the Project, the following operations and uses will not be permitted in the Project:

1. Agriculture. Agricultural uses include animal husbandry, except that Declarant may use any part of the Project for agricultural purposes as an interim use prior to development.
2. Residential/Lodging. Any residence; Recreational Vehicle parks; camping; labor camps.
3. Vehicle Sales. Recreational Vehicle sales; new or used automobile, truck or motorcycle sales or leasing.
4. Storage Yards, Parking Lots. Storage yards for bulk materials; Recreational Vehicle storage; Public or private parking lots except lots in conjunction with approved projects; Truck, bus, and heavy equipment garages, dispatching and weighing stations; Bulk storage and distribution of petroleum, or other hydrocarbon products, or other chemicals; Gas stations; tent shelters or other temporary storage.
5. Food or Plant Products Processing. Fish products, sauerkraut, vinegar, sugar beets; Coffee roasting; chocolate or cocoa products manufacturing; Grain mills, storage and elevators; Feed (grains) manufacturing and/or processing; Seed treatment, processing or extraction of oil; Paper or wood pulp.
6. Animal Products Processing. Fat rendering; Stockyards or slaughtering of animals; Meat smoking or packing.
7. Wrecking and Salvage Operations, Vehicle Repairs. Auto wrecking and salvage; Recreational Vehicle or automobile repair; junk yards; House movers, equipment storage or wrecking yards; Waste paper or glass recycling.
8. Mining/Mineral Exploration. Surface mining operations, including aggregate or minerals; Subsurface mining of any kind; Drilling for and/or the removal of gas or oil.
9. Heavy Manufacturing. Manufacture of bricks, blocks, large concrete or pre-cast items such as pipe and construction shapes; Processing of cement, clay, cinders, aggregate, pumice; Concrete and asphalt concrete mixing plants; Saw mills or planing mills; Plating works; Battery manufacturing; Refining of petroleum or other hydrocarbon products; Manufacturing or distillation of chemicals, including insecticides and herbicides; Smelting of metal; Rolling or stamping of metal; Foundry casting; Sand blasting yards.
10. Sewage/Garbage. Sewage disposal or treatment plants; Equipment yards for septic tank, cesspool servicing or cleaning companies; Dumping, disposal, distillation, incineration or reduction of garbage, bones, dead animals, refuse or silage.

11. **“Public” Facilities.** Stadiums; Cemeteries; Carnivals, rodeos and the like; Animal kennels and hospitals, grooming or animal care; Jail or detention facilities; Childcare (unless operated without an outdoor recreational area).
12. **Storage of Radioactive Materials.** Storage, use or disposal of radioactive materials (unless used for medical diagnosis and therapy or exempt from Arizona Atomic Energy Commission licensing requirements). No permitted radioactive materials shall be disposed of through the sewer system serving the Condominium or otherwise disposed of the within the boundaries of the Property.

4.9 Temporary Occupancy. Temporary buildings or structures used during the construction of buildings or structures approved by the Association shall be permitted but must be removed promptly upon completion of the construction of the building or structure.

4.10 Removal of Minerals. No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

4.11 Diseases and Insects. No Unit Owner shall permit any thing or condition to exist upon the Condominium that could induce, breed or harbor infectious plant diseases or noxious insects. Each Unit Owner shall perform such pest control activities in his Unit as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

4.12 Trees and Landscaping. Trees within the parking area shall be planted as determined by the Declarant and the Board. No trees, bushes, shrubs or plants shall be planted, placed or removed until the plans and specifications for the species and placement or removal of any such trees, bushes, or plants have been submitted to and approved in writing by the ARC. Any masonry screen walls on or along the Property boundaries shall be constructed of, or painted with, graffiti-resistant materials.

4.13 Repair of Mechanical Equipment and Vehicles.

(a) No repairs of any detached machinery, equipment or fixtures (but excluding machinery or equipment being used in connection with the construction of Improvements within the Condominium) shall be made upon the Property within the view of neighboring property, pathways or streets.

(b) Except for emergency repairs, no automobile, motorcycle, motorbike, or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium. No inoperable vehicle may be stored or parked on any portion of the Condominium.

4.14 Towing of Vehicles. The Association shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, all-terrain vehicle, golf cart or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the

Association upon demand by the owner of the vehicle or equipment. In addition to the above, each Unit Owner shall have a similar right to tow with respect to vehicles or equipment parked in violation of the Condominium Documents in parking spaces assigned to that Unit as Limited Common Elements.

4.15 Signs. No billboards and no signs of any nature shall be allowed at the Property unless the ARC approves such signs. The ARC may adopt standards for signs and shall publish said standards to all Owners. No unsightly objects or nuisance shall be erected, placed or maintained on any part of the Property. In addition, unless approved by the ARC, no temporary signs (including without limitation, “for sale”, “for rent”, or “coming soon” signs) shall be allowed at the Property, except to the minimum requirements of Arizona law. Signage as to each Unit shall be installed according to rules and approvals of the ARC and the Board.

4.16 Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of any part of the Condominium. All laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Condominium shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

4.17 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium. No activity shall be conducted upon the Condominium which is unreasonably offensive or detrimental to any portion of the Condominium or to any Unit Owner or other occupant of the Condominium or is an unreasonable annoyance to any Unit Owner, or other occupant of the Condominium as determined by the Association. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium except as approved by the Association.

4.18 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors, or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Association. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or any Limited Common Elements allocated to the Unit shall be constructed or installed without the prior written consent of the Association.

4.19 Leasing of Units. No Unit shall be leased for a period of less than one (1) year. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the lessee to comply with the terms of the Condominium Documents shall be a default under the lease. The Association shall have the right to approve the intended use of the Unit by the lessee. The Unit Owner shall promptly notify the Association of the lessee’s intended use before a lease is signed. The Unit Owner shall also promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will occupy the Unit during the term of the lease. The Board of Directors may enact reasonable rules and regulations related to tenants, specifically including the right to evict a tenant for violating the Condominium Documents. Owners shall have the right to lease less than their entire Unit.

4.20 Sonoran Desert Conditions. The Association lies within the Sonoran Desert and contains many species of insects, reptiles and other animals. Scorpions, snakes, spiders, bobcats,

hawks, javelina, gila monsters, pack rats and other animals indigenous to the area may be found throughout the Association in the natural areas and may enter upon portions of the Property from time to time. Each Owner and Lessee, for itself and its licensees and invitees, assumes the risk that such animals may be present and may present a danger. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner, Resident, Lessee, invitees or licensees for any claims or damages resulting, directly or indirectly, from the existence of such indigenous animals within the Association.

4.21 Burning. No open fires or burning shall be permitted on any part of the Property at any time.

4.22 Declarant Approval Required. After the expiration of the Period of Declarant Control and for so long as the Declarant owns any Unit, any action for which the consent or approval of the Board of Directors is required under this Declaration may be taken only if such action is also consented to or approved by the Declarant.

4.23 Lighting. All outdoor lighting shall be directed down and away from any adjacent residential properties and public roadways. All other lighting standards on the Property shall be restricted to twenty (20) feet in height.

4.24 Mechanical Equipment. Subject to prior written approval of the ARC, HVAC facilities and other general mechanical equipment for all Buildings and Units will be achieved by placing the facilities and equipment either on the ground and screening it with walls and/or landscaping to abate noise or on the roofs with appropriate screening if required by the local municipality or deemed advisable by the Association.

4.25 Repairs. No Unit within the Property shall be maintained so as to detract from the appearance or quality of other areas of the Condominium. The Owner of any Unit within the Property shall be responsible for regularly maintaining and repairing (including replacements, where necessary), in good, sightly and well kept order and condition, each such Unit and appurtenant Limited Common Elements, except for the assigned covered Parking Spaces. The Association shall maintain the covered Parking Spaces, including, but not limited to, the pavement and the cover and all structural components.

4.26 Common Walls. Common walls shall be walls constructed on the boundary line between two (2) Units owned by different Owners. The rights and duties of Owners of Units with respect to common walls shall be as follows:

(a) The Owners of contiguous Units who have a common wall shall both equally have the right to use such wall provided that such use by the Owner does not interfere with the use and enjoyment of the same by the other Owner.

(b) In the event that any common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to promptly rebuild and repair the common wall without cost to the other Owner.

(c) In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, guests, tenants, licensees or

invitees, then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good a condition as formerly at their joint expense.

(d) Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners and the ARC pursuant to Section 4.5 above.

(g) In the event any Owner acquires an adjoining Unit, or a part of an adjoining Unit, such Owner may remove or alter any intervening common wall or create apertures in intervening partitions if such do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Section shall not be considered an alteration of a Unit Boundary.

4.27 Smoking. The Board shall have the power to restrict smoking on the Property to specific outdoor areas and in accordance with Arizona law.

ARTICLE 5 OPERATION, MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall operate, maintain, repair and replace all Common Elements, whether located inside or outside the Units, and all Parking Spaces constituting General or Limited Common Elements. Except as otherwise provided in Section 5.3 and 5.4 and to the extent actually collected from a Unit Owner, the cost of all such operation, maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. Limited Common Elements, other than covered Parking Spaces, shall be maintained, repaired and replaced by the applicable Unit Owner pursuant to Section 5.2 of this Declaration. The Association may assign Parking Spaces to Unit Owners by a vote of one hundred percent (100%) of the Unit Owners.

5.2 Duties of Unit Owners.

(a) Each Unit Owner shall maintain, repair and replace, at its own expense, all portions of its Unit in a good, clean and sanitary condition.

(b) Each Unit Owner shall be responsible for the maintenance and repair of the following portions of the Common Elements: (i) the Limited Common Elements, allocated to the Unit pursuant to this Declaration (except the covered Parking Spaces); (ii) exterior skylights, doors and windows; and (iii) all other Improvements allocated to the Unit as a Limited Common Element.

5.3 Repair or Restoration Necessitated by Unit Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements, landscaping or equipment thereon that results from the negligence or willful conduct of the Unit Owner or of the Owner's Lessees, Occupants or Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner or of the Owner's Lessees, Occupants or Invitees shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.4 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair its Unit or any Limited Common Element which such Unit Owner is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the non-performing Unit Owner pursuant to Article 7 of this Declaration. The Association's entry to perform the maintenance or repair shall not be deemed a trespass.

5.5 Utilities. The Association shall cause to be provided to each Unit means of connection to the following utilities and services, subject to interruption from causes beyond the Association's control: electrical power, municipal water and sewer service, natural gas and a point of presence for connection to telephone and fiber optic cable communications facilities. The Association shall have no responsibility for failure or interruption of service by any utility or provider. The Association shall install separate meters for the utilities. Meters may be located in Units or in the Common Elements. All charges for utility service shall be the sole obligation and responsibility of the Owner of each Unit.

5.6 Sprinkler System. In accordance with the requirements of the City, the Buildings are equipped with a sprinkler system. The heads of the sprinkler system will intrude into the Unit. All pipes, heads and other parts of the sprinkler system (whether located within or outside of the Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. No Owner, Lessee or Occupant shall make any modifications or repairs to the sprinkler system without the approval of the Board of Directors. Owners, Lessees and Occupants shall immediately notify the Association of any broken or damaged sprinkler heads or other components of the sprinkler system. If a Unit Owner, Lessee or Occupant or their Invitees causes the sprinkler system to be activated (except in the case of a fire) or damages or destroys any part of the sprinkler system, the Unit Owner shall be responsible for the cost of any repairs to the sprinkler system made by the Association and for all other losses or damages resulting from such actions.

ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

6.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as an Arizona non-profit corporation. The Association shall be the entity through which the Unit Owners shall act.

The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents, together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing one hundred percent (100%) of the Members. Unless the Condominium Documents or the Act specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors. Without a vote of the Members, the Board of Directors shall have the specific authority to encumber assessments as security for a loan.

6.2 Directors and Officers. During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the Directors and the officers of the Association, none of whom shall be required to be Unit Owners.

(a) Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least two (2) Directors, all of whom must be Unit Owners (or, in the case of Unit Owners that are not natural persons, legal representatives of Unit Owners). The Board of Directors elected by the Unit Owners shall then elect the officers of the Association. The officers need not be Members.

(b) The Declarant may voluntarily surrender its right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal Rules. The Rules may, among other things, restrict and govern the use of any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, contractor, licensee or lessee of such Unit Owner.

6.4 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association is mandatory for all Unit Owners. An Owner shall automatically, upon becoming an Owner, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Unit and may not be separately assigned, transferred or conveyed.

6.5 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one Person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If

any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void. Each Member shall have one (1) vote for each Unit owned by such Member.

6.6 Personal Liability. No director or officer of the Association, no member of any committee of the Association, no managing agent of the Association or such managing agent's employees and no other person acting on behalf of the Board of Directors shall be personally liable to any Member or to any other Person other than the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence in the discharge of such person's duties and responsibilities under the Condominium Documents provided such person acted in good faith and without intentional misconduct.

6.7 Architectural Review Committee. The Board shall establish the ARC consisting of not less than two (2) members appointed by the Board to regulate the external design, appearance and use of the Condominium and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board. The ARC may promulgate rules for approval by the Board concerning the standards and procedure for architectural review. The Board may function as the ARC.

ARTICLE 7 ASSESSMENTS

7.1 Preparation of Budget.

(a) At least sixty days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses, including, but not limited to:

(i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing;

(ii) the cost of wages, materials, insurance premiums, taxes, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium;

(iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and

- (iv) such amounts as may be necessary to provide a reserve fund.

The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units.

(b) For establishing a reserve fund, the Board of Directors shall select a funding method that is generally accepted in the industry. The Board shall contribute to the reserve fund in an industry standard funding method and as reflected in the Association's initial reserve study or any later supplements to that study. Should the total amount in the reserve fund fall ten percent (10%) below the amount on a reserve study prepared according to an industry accepted funding method adopted by the Board, the Association's Common Expense Assessments shall automatically increase twenty percent (20%) every year until the reserve fund equals or is greater than the amount on a reserve study prepared according to an industry accepted funding method. The twenty percent (20%) increase in the Common Element Annual assessments occurs by operation of this Declaration and does not require an act or resolution of the Association's Board. When an automatic twenty percent (20%) increase occurs, the entire amount of the twenty percent (20%) increase shall be contributed to the reserve fund, and may not be used for any other purpose.

(c) Within thirty days after the adoption of a budget, the Association shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Article 7 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay its allocable share of the Common Expenses as provided in Article 7 of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against its Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

(d) The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

7.2 Common Expense Assessment.

(a) For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 7.2(e) through 7.2(h) of this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2(a) shall be in the sole discretion of the Board of Directors.

If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, non-payment of Assessments by

Members, in its sole discretion, it may increase the Common Expense Assessment for the remainder of that fiscal year, and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

(b) A portion of the Common Expense Assessment levied by the Association shall be used to establish and maintain a reserve fund. This reserve fund shall be established and maintained by the method designated by this Declaration. Such fund shall be deposited in a segregated 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 Declarant intends that the Association may only use the reserve funds for the purpose of effecting replacements and maintenance of capital and structural elements and mechanical equipment of the Common Elements, excluding Limited Common Elements that must be repaired, maintained and replaced by the Unit Owners. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of the Common Elements.

(c) The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments. If the Board requires installments, there shall be a late fee on the late payment of each installment.

(d) Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Elements, shall be assessed against all of the Units in accordance with Subsection 7.2(a) of this Declaration.

(e) A portion of the Common Expense Assessment levied by the Association may be an insurance assessment, in the event a Unit Owner has not provided the Association with satisfactory evidence on insurance on a Unit.

(f) At the discretion of the Board, the Common Expense Assessment amount for any Owners to whom covered parking is assigned may include as a Unit Expense their pro rata share, based on the respective number of covered parking spaces and related facilities assigned to them, of the amount necessary for the maintenance, repair and/or replacement of such covered parking facilities.

(g) If any Common Expense is caused by the negligence or willful misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against its Unit. If the use of any Unit increases the cost to the Association of the insurance maintained by the Association pursuant to Article 8, the increased cost shall be assessed solely on such Unit.

(h) Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to the Common Expense Liabilities.

(i) All Assessments, monetary penalties and other fees and charges levied against a Unit shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, monetary penalties or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, monetary penalties and other fees and charges levied against its Unit shall not pass to any unrelated bona fide third party who succeeds to the title of the Unit Owner unless expressly assumed by such successor, but such Assessments, monetary penalties and other fees and charges shall constitute an Assessment Lien on the Unit, as provided in Section 7.6 (except as provided in Section 7.7), regardless whether they are so assumed as personal obligations of the successor Owner. Neither shall an Owner be relieved from the obligation to pay any of the Assessments on the contention the Owner did not receive a coupon book or invoice.

7.3 Water Assessments.

(a) In the event that each Building is served by a single water meter and water usage by each individual Unit is sub-metered, the Association shall pay for all water usage, shall allocate the cost among the Units in proportion to each Unit's use of water for the period, and shall assess each Unit its share of the water bill ("Water Usage Assessments").

(b) Declarant paid to the City of Mesa a water resource development fee with respect to the Condominium based upon estimated water usage. Pursuant to applicable ordinances, additional water resource development fees ("Supplemental Water Fees") may be payable if actual water usage exceeds the estimate. If Supplemental Water Fees become payable with respect to the Condominium, the Association shall pay them and shall assess each Unit its pro-rata share of the Supplemental Water Fee in proportion to each Unit's actual water usage in excess of the Unit's share (using the percentage share set forth in Section 2.6) of the original water usage estimate for the Condominium (the "Supplemental Water Fee Assessment").

(c) The Units' sewer charges are based upon water usage. Unit Owners must pay their sewage charges. If a Unit Owner seeks a reduction of its sewer charges based upon evaporation or for any other reason, the Unit Owner (and not the Association) must petition the City of Mesa for that relief.

7.4 Special Assessments. In addition to Common Expense Assessments and Water Assessments, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners. Special assessments shall be allocated in accordance with each Unit's Common Expense Liability.

7.5 Exceptional Maintenance Assessments. In addition to the Common Expense Assessments and other Assessments listed above, the Association may levy an Exceptional Maintenance Assessment against a specific Unit Owner or tenant for the purposes of defraying, in whole or in part, the costs of any exceptional maintenance required by that Unit Owner's or

tenant's exceptional use of a Unit i.e. more frequent refuse removal, additional security, exceptional traffic, etc. Unless otherwise specified by the Board of Directors, this Exceptional Maintenance Assessment shall be due thirty (30) days after notice of the Exceptional Maintenance Assessment is given to the Unit Owner.

7.6 Individual Expense Assessment. The Association may contract with various suppliers of goods or services to provide to the Owners, Lessees and Occupants goods or services which the Association is not required to provide under the Condominium Documents. Any such contract may either provide that the Association shall pay for the cost and expense of the goods or services provided to the Owners, Lessees or Occupants under the contract or that the cost and expense shall be billed directly to the Owner, Lessee or Occupant receiving such goods or services. Any such costs and expenses paid by the Association shall be assessed as an Individual Expense Assessment to the Unit receiving such goods or services.

7.7 Enforcement Assessment. The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (a) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; (b) any attorney fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Condominium Documents by the Owner or the Owner's Lessees, Occupants or Invitees; (c) any monetary penalties levied against the Owner; or (d) any amounts (other than Regular Assessments, Special Assessments, Individual Assessments and User Fee Assessments) which become due and payable to the Association by the Owner or the Owner's Lessees, Occupants or Invitees pursuant to the Condominium Documents.

7.8 Purposes for which Association's Funds May be Used. The Association may use the funds and property collected and received by the Association (including, but not limited to, all Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Condominium Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Condominium Documents or applicable law; (c) providing or promoting activities and services the Board of Directors deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Condominium and the Owners, Lessees and Occupants; (d) contracting for services (including, without limitation, trash collection or cable television) to be provided to Owners, Lessees and Occupants; and (e) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Condominium.

7.9 Transfer Fee. Each Purchaser shall pay to the Association, or, at the option of the Association, to the Association's managing agent, immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Unit.

7.10 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each person who purchases a Unit shall pay five months of assessments to the Association immediately upon becoming the Unit Owner. Funds paid the Association pursuant to this Section may be used by the Association for payment of common expenses or any other purpose permitted under this

Declaration. Payment made pursuant to this Section shall be non-refundable and shall not be offset or credited or considered as an advance payment of the Common Expense Assessment or any other Assessments levied by the Association pursuant to this Declaration. The Board of Directors shall have the right to temporarily or permanently cease assessing an amount to the Working Capital Fund, and having ceased to assess an amount to the Working Capital Fund, the Board reserves the right to reinstate assessment of the Working Capital Fund.

7.11 Reserve Fund. To assist the Association in establishing adequate funds to meet its Capital Expenses, each Owner who purchases a Unit shall pay \$1200.00 to the Association immediately on becoming the Unit Owner (“Reserve Fee”). Such payment shall be required upon each transfer of title of each Unit. The Board of Directors shall have the discretion to increase this initial contribution to the reserve fund to an amount greater than \$1200.00. The funds paid to the Association pursuant to this Section are to be used by the Association solely for establishing reserves. Such funds may only be used to establish the reserve account or to apply to towards repair or reconstruction of elements within the Common Elements including Limited Common Elements. Payment made pursuant to this Section shall be non-refundable and shall not be considered as an advance payment of any other Assessments levied by the Association pursuant to this Declaration. Upon termination of the Period of Declarant Control, the Board of Directors shall have the right, by affirmative vote of the majority of the members of the Board, based upon the Board’s analysis of the replacement and repair reserves, using an industry accepted funding method, to permanently or temporarily cease to assess the Reserve Fee, and having ceased to assess the Reserve Fee, the Board reserves the right to reinstate the Reserve Fee at anytime thereafter. Declarant intends that the Board shall have the right to begin or cease the Reserve Fee as the Board deems appropriate from time to time. Declarant shall not be liable for any past or future reserve fund contributions. By agreeing to be bound by this Declaration, each Owner who purchases a Unit agrees and acknowledges that this method of establishing and maintaining a reserve fund is adequate to meet anticipated costs to maintain, replace or make improvements on the Common Elements.

7.12 Effect of Non-Payment of Assessments; Remedies of the Association.

(a) Assessments that are payable monthly pursuant to Section 7.2(b) shall be paid on or before the first day of each month. Special Assessments shall be paid in accordance with Section 7.5. All other Assessments shall be paid within ten days after receipt of the applicable statement or invoice. Any Assessment, or any installment of an Assessment, which is not paid within ten days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the interest rate of interest of eighteen percent (18%). In addition, the Board of Directors may establish a reasonable late fee to be charged to Unit Owner and assessed against the Unit as part of the Assessment Lien for each installment of an Assessment that is deemed delinquent.

(b) All Assessments, monetary penalties and other fees and charges imposed or levied against any Unit or Unit Owner shall be secured by the Assessment Lien as provided for in the Act. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Assessment Lien, the Association shall have the right, but not the obligation, to record a notice of lien claim

setting forth the amount of any delinquent assessments, monetary penalties, attorneys' fees or other fees or charges imposed or levied against a Unit or the Unit Owner which are secured by the Assessment Lien.

(c) Before recording a lien against any Unit, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments and/or charges together with interest and other allowable charge, stating the date due and the amount of the delinquency through that date. Each default shall constitute a separate basis for demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Unit of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments and/or other charges, interest, late charges, lien fees and reasonable attorney's fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

(d) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties, attorneys' fees and all other fees and charges owed to the Association in any manner allowed by law, including, but not limited to: (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (ii) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale upon such terms and conditions as the Board of Directors shall determine.

7.13 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure (in its own name or in the name of an affiliate owned and controlled by it), shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other fees and charges against the Unit which became payable prior to such sale or transfer but shall be subject to all subsequently accruing Assessments. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units (including the foreclosed Unit) as a Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the personal obligation of the defaulting Unit Owner.

7.14 No Exemption of Unit Owner. No Unit Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and non-use of any of the Common Elements and facilities or by the abandonment of its Unit.

7.15 Certificate of Payment. The Association on written request shall furnish to a lien holder, Unit Owner or person designated by a Unit Owner, a statement setting forth the amount of unpaid Assessments against its Unit. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

7.16 No Offsets. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets, recoupment or claim against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

7.17 Surplus Funds. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any reserves may in the discretion of the Board of Directors either be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense Liability or be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Assessments.

7.18 Monetary Penalties. In accordance with the procedures set forth in the Bylaws, the Association shall have the right to levy reasonable monetary penalties against a Unit Owner for violations of the Condominium Documents.

7.19 Reduced Assessments. The Declarant shall pay Common Expense Assessments with respect to Units owned in an amount equal to twenty-five percent (25%) of the Common Expense Assessment payable by other Owners other than Declarant ("Reduced Assessments"). Declarant shall be required to pay to the Association Deficiency Assessments as provided below. At the expiration of the Period of Declarant Control, Declarant shall no longer be required to pay any Deficiency Assessments. No Unit shall be subject to assessment until such time as the Unit has been constructed.

7.20 Deficiency Assessments. During any period that Declarant is paying Reduced Assessments, the Declarant shall pay or contribute to the Association cash as may be necessary to make up any budget shortfalls of the Association resulting from the Reduced Assessments paid by the Declarant, which contribution shall be based upon the number of Units owned by the Declarant as of the end of the period for which the deficiency has been calculated (hereinafter referred to as "Deficiency Assessments"). The total of such Deficiency Assessments, when combined with Reduced Assessments already paid, shall not exceed the full amount of the Assessment levied on the Units. In no event shall Declarant be required to pay Deficiency Assessments for a period which, when added to the reduced Annual Assessment, if any (or pro rata portion thereof), paid for such period, exceeds the Annual Assessments or pro rata portion thereof that would be payable by an Owner other than Declarant. As an example of the effect of the foregoing, if the Annual Assessment per Unit was \$240.00, the Reduced Assessment (25% of the Annual Assessment) paid by Declarant was consequently \$60.00, and there was a shortfall in such year, the maximum Deficiency Assessment payable by Declarant will be \$180.00, calculated by taking the pro rata full Annual Assessment (\$240.00) and subtracting the pro rata reduced Annual Assessment (\$60.00).

ARTICLE 8 INSURANCE

8.1 Scope of Coverage.

(a) Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(i) Property insurance on the Common Elements and Units, exclusive of improvements and betterments installed in Units by Unit Owners (but including items required to be restored by the Association), issued under a standard special form "All Risk of Direct Physical Loss Form" in an amount equal to the maximum insurable replacement value of the Common Elements and Units, as determined by the Board of Directors; provided, however that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, and other items normally excluded from a property insurance policy.

(ii) Broad form commercial general liability insurance, for a limit to be determined by the Board of Directors, but not less than \$1,000,000 per occurrence; \$1,000,000 personal injury and advertising injury; \$2,000,000 products and completed operations aggregate; and \$2,000,000 annual aggregate with an umbrella liability policy with limits no less than \$4,000,000 per occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include a cross-liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner.

(iii) Automobile liability insurance arising out of the use of hired and owned or non-owned automobiles for a limit not less than One Million Dollars (\$1,000,000.00).

(iv) At the option of the Board of Directors, employment practices liability insurance for a limit not less than Five Hundred Thousand Dollars (\$500,000.00) providing coverage for any legal liability that results from lawsuits related to employment contracts to which the Association is a party.

(v) Worker's compensation insurance to the extent necessary to meet the requirements of Arizona law and employer's liability insurance with limits not less than \$1,000,000 each accident; \$1,000,000 disease policy limit; and \$1,000,000 disease each employee.

(vi) Directors and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

(vii) Boiler and machinery insurance providing coverage (including business income coverage) in the minimum amount of \$500,000 per accident per location.

(viii) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Unit Owners, including officers', directors' and employees' errors and omissions coverage and fidelity insurance or fidelity bond covering an amount equivalent to three months' estimated Assessments plus all reserves being maintained by the Association.

(ix) If the Condominium is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered on the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.

(x) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(1) Each Unit Owner shall be an insured or additional insured under the policy with respect to liability arising out of its ownership of an undivided interest in the Common Elements or its membership in the Association.

(2) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household.

(3) No act or omission by any Unit Owner, unless acting within the scope of its authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(4) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by mortgagees or beneficiaries under deeds of trust. In the event of a casualty to a Unit, the Unit Owner shall be required to reimburse the Association for payment of the Association's deductible, and for the cost to repair the Unit.

(5) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.

(6) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).

(7) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each Mortgagee named in the policy at least ten days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(8) “Agreed Amount” endorsements.

(b) If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Unit Owner’s policy shall provide primary coverage.

(c) The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 8.1 in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

(d) Notwithstanding any of the other provisions of this Article 8 to the contrary, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. Each Unit Owner appoints the Association, or any insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (a) the collection and appropriate disposition of the proceeds thereof; (b) the negotiation of losses and execution of releases of liability; (c) the execution of all documents; and (d) the performance of all other acts necessary to accomplish such purpose.

(e) The Association and its directors and officers shall have no liability to any Owner or First Mortgagee or other Person having a lien on a Unit if, after a good faith effort, (a) the Association is unable to obtain insurance required hereunder because the insurance is no longer available; (b) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (c) the Members fail to approve any increase in the Regular Assessment needed to pay the insurance premiums.

(f) The Board of Directors shall determine annually whether the amounts and types of insurance the Association has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Condominium is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association.

8.2 General Requirements All insurance provided for in this Article 8 shall be written under valid and enforceable policies issued by insurance companies authorized and

licensed to transact business in the State of Arizona with a financial strength rating of A:VII or better from A.M. Best Company and/or A+ or better from Standard & Poor's. All such policies shall provide for a minimum of thirty (30) days advance written notice to the Association prior to the cancellation or material change of any insurance coverage under the policy.

8.3 Fidelity Bonds or Insurance.

8.3.1 The Association shall maintain blanket fidelity bonds or fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of the fidelity bonds or fidelity insurance maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the greater of the estimated maximum funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond or insurance policy, or the sum equal to three months aggregate Regular Assessments on all Units plus reserve funds. Fidelity bonds or fidelity insurance obtained by the Association must also meet the following requirements:

(a) The fidelity bonds shall name the Association as an obligee, and fidelity insurance shall name the Association as the named insured;

(b) The bonds or the insurance policies shall contain waivers by the issuers of the bonds or the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

(c) The bonds or insurance policies shall provide that they may not be canceled or substantially modified (including cancellation from nonpayment of premium) without at least ten (10) days prior written notice to the Association and each First Mortgagee.

8.3.2 The Association shall require any management agent of the Association to maintain its own fidelity bond or fidelity insurance in an amount equal to or greater than the amount of the fidelity bond or fidelity insurance to be maintained by the Association pursuant to Subsection 8.3.1. The fidelity bond or fidelity insurance maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee or an insured.

8.4 Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

8.5 Insurance Obtained by Unit Owners. Unit Owners shall obtain insurance for their own benefit for all portions of the Units and at their own expense. Unit Owners may obtain insurance covering personal property and personal liability coverage. All Unit Owners and their tenants shall at all times maintain or cause to be maintained contents insurance with respect to their Units.

8.6 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lien holders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in Arizona law.

8.7 Restoration. In the event of damage or destruction of any portion of the Condominium, the damage or destruction shall be repaired or replaced by the Association so that the damaged portion of the Common Elements, including Limited Common Elements, is restored to substantially its prior condition, except as may otherwise be provided in the Condominium Act. The Association shall have no responsibility for restoration of any alteration, installation or Improvement that constitutes part of a Unit as defined in Subsections 2.5 (a) or 2.5 (b), as applicable.

8.8 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on written request, to any mortgagee, or beneficiary under a deed of trust, or Unit Owner. Each Unit Owner shall provide proof of insurance to the Association. The insurer issuing the policy shall not cancel or refuse to renew the policy until thirty days (ten days in the case of non-payment of premium) after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

ARTICLE 9 RIGHTS OF MORTGAGEES

9.1 Notification to Mortgagees. Upon receipt by the Association of a written request from a holder or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and number or address of the Unit to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;

(b) Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by the Unit Owner of any obligation under the Condominium Documents, which delinquency or default remains uncured for the period of sixty days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 9.2 of this Declaration.

9.2 Approval Required for Amendment to Declaration, Articles or Bylaws.

(a) Subject to the right of the Board of Directors or the Association to amend this Declaration or established in other provisions, the approval of at least sixty-seven percent (67%) of all Eligible Mortgage Holders (based upon one vote for each vote allocated under Section 2.7 to the Unit encumbered by the First Mortgage owned) shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (i) Voting rights;
- (ii) Elimination of Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Boundaries of any Unit or Building;
- (vii) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use, except adjustments to percentage interests in accordance with Section 2.6 upon the addition or deletion of Units as otherwise provided in this Declaration, or pursuant to the Declarant's right to allocate such interests in accordance with Section 2.8(b);
- (viii) Convertibility of Units into Common Elements or of Common Elements into Units;
- (ix) Leasing of Units;
- (x) Imposition of any restrictions on a Unit Owner's right to sell or transfer its Unit;
- (xi) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (xii) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (xiii) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;

(xiv) Any provisions which expressly benefit holders of First Mortgages, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

(b) Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by at least sixty-seven percent (67%) of all Eligible Mortgage Holders (based upon one vote for each vote allocated under Section 2.7 to the Unit encumbered by the First Mortgage owned).

(c) Any Eligible Mortgage Holder who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws, and who does not deliver or mail to the requesting party a negative response within fifteen days, shall be deemed to have approved such request.

(d) The approvals required by this Section shall not apply to amendments that may be executed by the Declarant in the exercise of its Special Declarant Rights.

9.3 Right of Inspection of Records. Any Unit Owner, Mortgagee or Eligible Insurer or Guarantor will, upon written request, be entitled to: (a) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (b) receive within ninety days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, at a reasonable charge to the requesting party; and (c) receive notice of all meetings of the Members of the Association in accordance with Arizona law.

9.4 Prior Written Approval of Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least sixty-seven percent (67%) of all Eligible Mortgage Holders of First Mortgages (based upon one vote for each vote allocated under Section 2.7 to the Unit encumbered by the First Mortgage owned) or one hundred percent (100%) of the votes of all Unit Owners (other than the Declarant or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon or terminate this Declaration or the Condominium;

(b) Except for adjustments made to percentage interests in accordance with Section 2.6 upon addition or deletion of Units as otherwise provided in this Declaration, change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

(c) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this Subsection;

(d) Use hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

(e) Nothing contained in this Section or any other provisions of this Declaration shall be deemed to grant the Association the right to partition any Unit without the consent of the Unit Owner thereof. Any partition of a Unit shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as provided under Arizona law.

9.5 Liens Prior to First Mortgage. All taxes, assessments, and charges that may become liens prior to the First Mortgage under local law shall relate only to the individual Unit and not to the Condominium as a whole.

9.6 Condemnation or Insurance Proceeds. No Unit Owner, or any other party, shall have priority over any rights of any holder of a First Mortgage of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units or Common Elements.

9.7 Limitation on Partition and Subdivision. No Unit shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Unit.

9.8 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of the Declaration or Bylaws, or (ii) a termination of the Condominium, the provision requiring the consent of the greatest number or percentage of Unit Owners, Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that the Declarant shall have the right to unilaterally amend this Declaration, the Articles or the Bylaws during the Period of Declarant Control in order to (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (b) correct any error or inconsistency in the Declaration, the Articles or the Bylaws if the amendment does not adversely affect the rights of any Unit Owner, or (c) comply with the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Department of Veterans Affairs.

ARTICLE 10 CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

10.1 Defined Terms. As used in this Article 10, the following terms shall the meaning set forth below:

(a) **"Alleged Defect"** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the of the Common Elements or any Unit by a Declarant Party including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.

(b) **"Declarant Party"** means: (i) the Declarant and its members, managers, officers and employees; (ii) the entity which platted the Condominium if different from but affiliated with Declarant; (iii) the general contractor for the Condominium; (iv) the subcontractors, material suppliers, labor suppliers, architects, engineers and consultants of any of the said contractors, including but not limited to their respective members, managers, directors, officers, partners, employees, agents and independent contractors; or (v) any employee or other representative of the Declarant who serves as a director or officer of the Association.

(c) **"Claim"** means: (i) any claim or cause of action by a Claimant against a Declarant Party arising out of or related in any way to an Alleged Defect, including, without limitation, any claim or cause of action for breach of express or implied warranties, negligence or that a Declarant Party was negligent in the planning, design, engineering, grading, construction or development of the Condominium; or (ii) any claim or cause of action against a Declarant Party arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

10.2 Agreement to Resolve Certain Disputes without Litigation. The Association, all Unit Owners and all Declarant Parties agree that it is in the best interests of the Association, the Unit Owners and the Declarant Parties to encourage the amicable resolution of Claims and to resolve Claims without the emotional and financial costs of litigation. Therefore, the Association, all Unit Owners and all Declarant Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 10.

10.3 Notice of Alleged Defect. The Association or any Unit Owner who becomes aware of any Alleged Defect which could be the basis for a Claim against any Declarant Party shall give written notice (the "Notice of Alleged Defect") promptly to each Declarant Party who could be responsible for the Alleged Defect. The Notice of Alleged Defect shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Unit Owner giving the Notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. Following the receipt by a Declarant Party of a Notice of Alleged Defect, the Declarant Party and any of its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Association or Unit Owner giving the Notice of Alleged Defect to enter onto or into, as applicable, the Common Elements or any Unit for the purposes of inspecting and/or conducting testing to determine the existence, nature and extent of the Alleged Defect and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the

Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Nothing set forth in this Section 10.3 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated under applicable law or any warranty provided by the Declarant or any other Declarant Party. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace under this Section shall be irrevocable and may not be waived or otherwise terminated, except by written document, in recordable form, executed and recorded by the Declarant Party. In no event shall any statute of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of the Alleged Defect. If the Alleged Defect is not repaired or replaced to the satisfaction of the Association or Unit Owner giving the Notice of Alleged Defect within sixty (60) days after the Notice of Alleged Defect is given to the Declarant Party, then the Association or Unit Owner may proceed with the preparation of the delivery of a Notice of Claim as provided in Section 10.4.

10.4 Notice of Claim. The Association or any Unit Owner who contends or alleges to have a Claim (a "Claimant") against any Declarant Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Declarant Party or initiating any legal action, cause of action, proceeding, or arbitration against any Declarant Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Declarant Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Declarant Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes.

10.5 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed

upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

10.6 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 10.6. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. The Association, the Unit Owners and all Declarant Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 10.6. The Association, the Unit Owners and all Declarant Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Declarant Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 10.6, the arbitration shall be conducted in accordance with the following rules:

(a) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other rules as the AAA may determine to be applicable (the "AAA Rules").

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 10.6, the provisions of this Section 10.6 shall govern.

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 10.6 as the "Arbitrator".

(d) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or

profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) **Disclosure**. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 10.6.(c).

(f) **Compensation**. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) **Preliminary Hearing**. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) **Management of the Arbitration**. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) **Confidentiality**. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) **Hearings**. Hearings may be held at any place within Pima County, Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) **Final Award**. The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the

parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

10.7 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Declarant Party of a Claim Notice with respect to an Alleged Defect, the Declarant Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 10.7 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Declarant Party. In no event shall any statutes of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

10.8 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Claimant receiving the judgment, award or settlement is the Association, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

10.9 Approval of Arbitration or Litigation. The Association shall not deliver a Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast one hundred percent (100%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 10.4.

10.10 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 10.6. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

10.11 Federal Arbitration Act. Because many of the materials and products incorporated into the Condominium are manufactured in other states, the development and conveyance of the Units evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et. seq.) now in effect or as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

10.12 Conflicts. In the event of any conflict between this Article 10 and any other provision of the Condominium Documents, this Article 10 shall control.

10.13 Amendment. Notwithstanding any provision in this Declaration to the contrary, this Article 10 may not be amended without the affirmative vote of the Declarant.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 10 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 10. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 10, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF A UNIT OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 10 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE MARICOPA COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE 10 ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER IN THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THE RESPECTIVE SUCCESSORS AND ASSIGNS.

ARTICLE 11 GENERAL PROVISIONS

11.1 Enforcement. The Association, or any Unit 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 the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter. Nothing herein shall require the Association to take any action against a Person who shall be in breach of any one or more of the provisions set forth in this Declaration. The Association shall have the right to take any action or decline to take any action in its sole and absolute discretion. Neither the Association nor the Declarant shall bear any liability of any nature or kind whatsoever to any Person by reason of the Association declining to take action to enforce the provisions of this Declaration.

11.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

11.3 Duration. The covenants and restrictions of this Declaration shall run with and bind the Condominium in perpetuity.

11.4 Termination of Condominium. The Condominium may be terminated as specifically provided in this Declaration or as otherwise provided for in the Condominium Act.

11.5 Amendment.

(a) Except for Article 10 and in cases of amendments that may be executed by a Declarant in the exercise of its Special Declarant Rights or under Section 33-1220 of the Condominium Act, by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the Declaration, including the

Plat, may be amended only by a vote of the Unit Owners to which at least one-hundred percent (100%) of the votes in the Association are allocated. Except to the extent expressly permitted or required by the Condominium Act or this Declaration, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of permitted Units or change the boundaries of any Unit, the allocated Interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners. Any amendment to this Declaration adopted by the Unit Owners during the Period of Declarant Control must be approved in writing by the Declarant. After the expiration of the Period of Declarant Control, an amendment to this Declaration shall not amend or delete any provisions of Article 4, Section 4.2 Commercial Use; Article 4, Section 4.8 Prohibited Uses; Article 10; or this Section 11.5 in the absence of the unanimous consent of the Unit Owners.

(b) An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing.

(c) Any amendment adopted by the Unit Owners pursuant to this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to its Special Declarant Rights or the Condominium Act shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County.

(d) During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to: (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (b) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; or (c) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or (d) exercise its Special Development Rights.

11.6 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

11.7 Notices. All notices, demands, statements or other communications required or permitted to be given to or served on a Unit Owner under this Declaration shall be in accordance with Arizona law and if in writing, shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner. A Unit Owner may change its address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association in accordance with the requirements of this Section. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit

is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file its correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

11.8 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for itself, its heirs, personal representatives, successors, transferees and assigns, binds itself, its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences its interest that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. The Declarant, its successors, assigns and grantees, covenants and agrees that the Units and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

11.9 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

11.10 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.

11.11 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Owner or Member from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership or membership, or impair any rights or remedies which the Association may have against such former Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

11.12 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Bylaws or the Association Rules, the provisions of this Declaration shall prevail.

11.13 Joint and Several Liabilities. In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit Owners set forth in, or imposed by, the Condominium Documents shall be joint and several.

11.14 Guests and Tenants. Each Unit Owner shall be responsible for compliance by its agents, tenants, guests, invitees, licensees and their respective servants, invitees, licensees,

agents, and employees with the provisions of the Condominium Documents. A Unit Owner's failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own non-compliance.

11.15 Attorneys' Fees. In the event the Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or non-compliance with the condominium documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees, costs, expert witness fees, and litigation expenses incurred in the action and any appeal.

11.16 Number of Days. In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the next day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

11.17 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was recorded, the recording data of the Notice of Violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

11.18 Non- Waiver. Failure by the Board, The Association or by any Owner to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any of such provisions, unless the Declaration has been totally abandoned.

11.19 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

ARTICLE 12 EMINENT DOMAIN

12.1 Total Taking of a Unit. If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. Upon such a taking, unless the decree otherwise provides, that Unit's allocated interests in the Common Elements and in the Common Expenses shall automatically be reallocated to the remaining Units in proportion to their respective allocated interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Condominium Act. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Element.

12.2 Partial Taking of a Unit. Except as provided in Section 12.1, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in the value of his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. On acquisition, unless the decree otherwise provides, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be reduced in proportion to the reduction in size of the Unit and the portion of the allocated interests divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced interest.

12.3 Taking of Common Elements. If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken shall be paid to the Association for the benefit of the Unit Owners, and any portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of the acquisition.

12.4 Taking of Entire Condominium. In the event the Condominium in its entirety is acquired by eminent domain, the Condominium is terminated and the provisions of A.R.S. § 33-1228 apply.

12.5 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any First Mortgagee under a lien encumbering his Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Elements, or any part thereof. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns or an Owner.

IN WITNESS WHEREOF, the undersigned Declarant executed this Condominium Declaration as of the day and year first above written.

DECLARANT:

ARIZONA FIRST PARTNERS 1 LLC

An Arizona limited liability company

David Haney, Manager

State of Arizona)
) ss.
County of Maricopa)

On this _____ day of _____ 2007, before me, the undersigned Notary Public, personally appeared _____ and _____, personally known to me or proved by satisfactory evidence to be the _____ of Arizona First Partners 1, LLC, an Arizona limited liability company, and that they, in such capacity to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
Commission Expires: _____

EXHIBIT A

Legal Description

EXHIBIT B

Sign Rules