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**CAPTION HEADING:**

**Condominium Declaration for:  
Quail Run Condominiums**

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## CONDOMINIUM DECLARATION FOR QUAIL RUN CONDOMINIUMS

This Condominium Declaration for Quail Run Condominiums (the "**Declaration**") is made effective as of the 21 day of APRIL, 2006, by Covaciu, L.L.C., an Arizona limited liability company ("**Declarant**").

### ARTICLE 1 DEFINITIONS

As used herein, unless the context otherwise requires, the following terms shall have the following definitions.

1.1 "**Addendum**" means an addendum to this Declaration and the Plat executed pursuant to any one of Sections 2.10, 2.11 or 2.13 of this Declaration and Recorded.

1.2 "**Adjoining Unit**" means a Unit which shares an interior common wall with another Unit.

1.3 "**A.R.S.**" means the Arizona Revised Statutes, as amended from time to time.

1.4 "**Articles**" means the articles of incorporation of the Association, as amended from time to time.

1.5 "**Assessment Lien**" means the lien granted to the Association by the Condominium Act to secure the payment of Assessments, monetary penalties, late charges, interest and other fees, charges and amounts owed to the Association.

1.6 "**Assessments**" means the Regular Assessments, Special Assessments, Individual Expense Assessments and Enforcement Assessments levied pursuant to this Declaration.

1.7 "**Association**" means the Quail Run Condominium Association, an Arizona nonprofit corporation, whose membership shall consist of each Owner of a Unit in the Condominium, and whose function is to serve as the "**unit owners' association**", as defined in the Condominium Act, and to enforce the Condominium Documents.

1.8 "**Board of Directors**" means the Board of Directors of the Association.

1.9 **"Building"** means each of the buildings located on the Parcel and containing the Units as shown on the Plat.

1.10 **"Bylaws"** means the Bylaws adopted by the Association pursuant to A.R.S. § 33-1246, and A.R.S. § 10-3101 et seq., for the purpose of regulating the affairs of the Association, as amended from time to time.

1.11 **"Collection Costs"** means all costs, fees, charges and expenditures (including, without limitation, attorneys' 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.

1.12 **"Common Elements"** means all portions of the Condominium other than the Units.

1.13 **"Common Expenses"** means the actual or estimated costs or expenses incurred or to be incurred by the Association and all financial liabilities of the Association including, without limitation, the following:

A. The cost of maintenance, management, operation, repair and replacement of the Common Elements and all other areas within the Condominium maintained by the Association;

B. The cost of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

C. The cost of any utilities, trash pickup and disposal, landscaping, and other services benefiting the Unit Owners and their Units to the extent such services are paid for by the Association;

D. The cost of fire, casualty, liability, worker's compensation and other insurance maintained by the Association as provided in this Declaration;

E. Reasonable reserves as deemed appropriate by the Board of Directors or required by the Condominium Documents;

F. The cost of bonding of the directors, officers and employees of the Association, any professional manager or any other person handling the funds of the Association;

G. Governmental taxes or assessments paid by the Association;

H. Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements or portions thereof; and

I. Any cost incurred by the Association in furtherance of the purposes of the Association, the discharge of the obligations imposed on the Association by the Condominium Documents of the Condominium Act or the exercise by the Association of any of the powers or rights granted to the Association by the Condominium Documents or the Condominium Act.

**1.14 "Common Expense Liability"** means the percentage of undivided interest in the Common Expenses allocated to each Unit by Section 2.7 of this Declaration.

**1.15 "Condominium"** means the Parcel, together with the Buildings and all other Improvements located thereon.

**1.16 "Condominium Act"** means the Arizona Condominium Act, A.R.S. § 33-1201, et seq., as amended from time to time.

**1.17 "Condominium Documents"** means this Declaration and the Articles, the Bylaws, the Plat and the Rules, if any.

**1.18 "Declarant"** means Covaciu, L.L.C., an Arizona limited liability company, and its successors for the purpose of the development and sale of the Condominium and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

**1.19 "Declaration"** means this Declaration, as amended from time to time.

**1.20 "Development Rights"** means any right or combination of rights to do any of the following:

A. Create easements, Units, Common Elements or Limited Common Elements within the Condominium;

B. Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

C. Amend this Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in this Declaration if the amendment does not adversely affect the rights of any Unit Owner; and

D. Amend this Declaration during the Period of Declarant Control 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.

**1.21 "Eligible Insurer or Guarantor"** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 13.1 of this Declaration.

**1.22 "Eligible Mortgage Holder"** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 13.1 of this Declaration.

**1.23 "Enforcement Assessment"** means an Assessment levied pursuant to Section 7.7 of this Declaration.

**1.24 "First Mortgage"** means any mortgage or deed of trust on a Unit with first (1<sup>st</sup>) priority over any other mortgage or deed of trust on the same Unit. Any mortgage or deed of trust on a Unit is referred to as a "Mortgage".

**1.25 "First Mortgagee"** means the holder of any First Mortgage. "Mortgagee" means the holder of any "Mortgage".

**1.26 "Improvement"** means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium in connection with the initial construction of the Condominium, including, but not limited to, buildings, paving, fences, walls, signs, exterior lighting, and hedges, plants, trees and shrubs of every type and kind.

**1.27 "Individual Expense Assessment"** means an Assessment levied by the Association pursuant to Section 7.6 of this Declaration.

**1.28 "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, family members, guests, employees and contractors.

**1.29 "Lessee"** means any Person who is the tenant or lessee under a written lease for a Unit.

**1.30 "Limited Common Elements"** means a portion of the Common Elements specifically designated in this Declaration as a Limited Common Element and allocated by the Plat or this Declaration or by operation of the Condominium Act for the exclusive use of one (1) or more but fewer than all of the Units.

**1.31 "Member"** means any Person who is or becomes a member of the Association.



1.32 "Occupant" means a Person other than an Owner in possession of a Unit, including at the request of or with the consent of an Owner.

1.33 "Owner" or "Unit Owner" means the record owner, whether one (1) 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. Unit Owner shall not include a Person having an interest in a Unit merely as security for the performance of an obligation, or a Lessee. 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 subject to A.R.S. § 33-741, *et seq.* In the case of a Unit, 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 Unit Owner. In the case of a Unit, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner. The term Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of the sale or purchase transaction.

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

1.35 "Parking Space" means a portion of the Common Elements designed as a parking space on the Plat.

1.36 "Patio" means a portion of the Common Elements designated as a patio on the Plat.

1.37 "Period of Declarant Control" means the time period commencing on the date this Declaration is Recorded and ending on the earlier of: (A) ninety (90) days after the conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant; or (B) four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

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

1.39 "Plat" means that certain Condominium Plat of Quail Run Condominiums Recorded in Book 831 of Maps, page 41, in the records of the office of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

1.40 "Purchaser" means any Person, other than Declarant, who by means of a voluntary transfer becomes a Unit Owner.

1.41 "Record" or "Recording" means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and "Recorded" means having been so placed of public record.

1.42 "Regular Assessment" means the Assessments levied against Units by the Association pursuant to Section 7.4 of this Declaration.

1.43 "Rules" means the rules and regulations adopted by the Board of Directors, if any, as amended from time to time.

1.44 "Single Family" means a group of one (1) or more persons each related to the other by blood, marriage or legal adoption or a group of not more than four (4) persons not all so related who maintain a common household in a Unit.

1.45 "Special Assessment" means the Assessment levied against Units by the Association pursuant to Section 7.5 of this Declaration.

1.46 "Special Declarant Rights" means any right or combination of rights to do any of the following:

- A. Construct Improvements provided for in this Declaration or shown on the Plat;
- B. Exercise any Development Right;
- C. Maintain sales offices, management offices, models and signs advertising the Condominium;
- D. Use easements through the Common Elements for the purpose of making Improvements within the Condominium; and
- E. Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

1.47 "Town" means the Town of Fountain Hills, Arizona.

1.48 "Unit" means a portion of a Building identified as a Unit on the Plat. The boundaries of the Units are described in Section 2.5 of this Declaration and are shown on the Plat.

## ARTICLE 2 THE CONDOMINIUM

**2.1 Submission of Property.** Declarant is the owner of fee title to the Parcel. Declarant hereby submits the Parcel to 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. 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 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 and enforceable by the Association. Declarant makes 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 the Condominium.** The name of the Condominium created by this Declaration is the "Quail Run Condominiums".

**2.3 Name of Association.** The name of the Association is the "Quail Run Condominium Association".

**2.4 Identifying Numbers of Units.** The Identifying Numbers of the Units are set forth on *Exhibit B*, attached hereto and incorporated herein by this reference, and as set forth on the Plat.

**2.5 Unit Boundaries.**

A. The boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floor, ceiling, doors and windows of the Unit. Each Unit shall include all openings and outlets of all utility installations in the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and any other materials constituting any part of the finished surfaces of the perimeter walls or floors of the Unit are part of the Unit, and all other portions of the perimeter walls and floors are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements (including, but not limited to, chutes, flues, ducts, wires, conduits, heating and air conditioning units, hot water heaters and gas, cable television, internet service, telephone, alarm, water and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the

boundaries of a Unit but which serve more than one (1) Unit are part of the Common Elements. In the event of any inconsistency or conflict between the provision of this Subsection 2.5.A and the Plat in regard to the description of the boundaries of the Unit, this Section 2.5.A shall control.

B. The location and dimensions of the perimeter walls of the Units as shown on the Plat are based on architectural drawings and are approximate. The actual location and dimensions of the perimeter walls of the Units may vary from the location and dimensions of the perimeter walls as shown on the Plat. The actual physical location and dimensions of the perimeter walls of a Unit, as initially constructed, or as reconstructed following the damage or destruction of such walls, shall be considered the location and dimensions of the perimeter walls of the Units for purposes of this Declaration (except for the calculation of the percentage of undivided interests of each Unit in the Common Expenses and in the Common Elements pursuant to Section 2.6 below and the allocation of votes in the Association pursuant to Section 2.7 below) regardless of any variances from the location and dimensions of the perimeter wall as shown on the Plat.

C. Declarant reserves the right to relocate the boundaries between adjoining Units owned by Declarant and to reallocate each such Unit's Common Element Interest, votes in the Association and Common Expense Liabilities subject to and in accordance with A.R.S. § 33-1222.

**2.6 Allocation of Common Element Interest and Common Expense Liabilities.** The undivided interests in the Common Elements and in the Common Expenses are allocated equally among the Units. Thus, each Unit is allocated a one eighty-eighth ( $1/88^{\text{th}}$ ) fractional interest in the Common Elements and the Common Expenses. The fraction of undivided interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective fraction of undivided interest. The ownership of each Unit shall not be conveyed separate from the fraction of undivided interest in the Common Elements allocated to the Unit. The undivided fraction of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of any undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

**2.7 Allocation of Votes in the Association.** The total votes in the Association are eighty-eight (88). One (1) vote is allocated to each Unit. All votes allocated to a Unit must be cast as one (1) Unit. No fractional voting is permitted.

## 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 (1) Unit as follows:

1. Any chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, heating and air conditioning units, natural gas, cable or satellite television, internet service, telephone service, water and electric pipes, lines or meters), located outside of the boundaries of a Unit, which serve only one (1) Unit are a Limited Common Element allocated solely to the Unit served.

2. If a chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, hot water heaters, heating and air conditioning units, natural gas, cable or satellite television, internet service, telephone service, water and electric pipes, lines or meters) lies partially within and partially outside the designated boundaries of a Unit, the portion outside the boundaries of the Unit which serves only the Unit is a Limited Common Element allocated solely to the Unit, the use of which is limited to the Unit served.

3. All doors and windows in the perimeter walls of a Unit are Limited Common Elements allocated to the Unit. The glazing, sashes, frames, sills, thresholds, hardware, flashing and other components of the doors and windows are part of the doors and windows allocated as Limited Common Elements.

4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways, or patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside of the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

5. Each ground floor Unit is allocated the Patio adjoining the Unit as shown on the Plat. The boundaries of each Patio should be as follows: (a) the lower boundary shall be the unfinished concrete floor of the Patio; (b) the upper boundary shall be a horizontal plane having an elevation equal to the elevation of the finished ceiling of the Unit to which the Patio is allocated; and (c) the vertical boundaries shall be the vertical planes corresponding to the exterior wall of the Building in which the Unit is located and interior unfinished surfaces of the fence enclosing the Patio.

6. Each Unit is allocated one (1) Parking Space, which is specifically identified on the Plat by the same numerical reference as the Unit on the Plat.

7. The stairway to each group of second (2<sup>nd</sup>) floor Units is appurtenant to those second (2<sup>nd</sup>) floor Units.

B. Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to such Owner's Unit, subject to



the rights granted to Declarant or the Association by the Condominium Documents. All Limited Common Elements must be used in accordance with this Declaration and the Rules. The Limited Common Elements allocated to a Unit shall be maintained by either the Owner of such Unit or the Association, as applicable, pursuant to the provisions of Article 5 of this Declaration.

C. A Limited Common Element may be reallocated by an Addendum to this Declaration. The Addendum shall be executed by the Owners between or among whose Units the allocation is made, shall state the manner in which the Limited Common Element is to be reallocated and, before Recording the Addendum, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed Addendum is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute and Record the Addendum.

D. So long as Declarant owns any Unit, Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an Addendum executed by Declarant. After Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding at least sixty-seven percent (67%) 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 Addendum executed by the Board of Directors and Recorded with the County Recorder.

**2.9 Relocation of Boundaries Between Adjoining Units.** The boundaries between or among adjoining Units may be relocated by an Addendum. The Owners of the Units affected by the relocation of boundaries shall prepare an Addendum that identifies the Units involved, specifies the outer boundaries of the Units and their dimensions and includes the Units' identifying numbers. If the Owners of the adjoining Units have specified a reallocation between their Units of the allocated interests in the Common Elements and in the Common Expenses, the Addendum shall state the proposed reallocation. The Addendum shall be executed by the Owners of those Units, shall contain words of conveyance between or among them and, before Recording the Addendum, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed Addendum is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute and Record the Addendum.

**2.10 Combination of Units.** If adjoining Units were initially conveyed by Declarant to different Persons but subsequently become owned by the same Person, the Owner of the adjoining Units may remove all or a portion of the demising wall between the adjoining Units provided the removal of a portion or all of the demising wall is approved by the Board of Directors prior to removal. The provisions of Section 4.3 of this Declaration

shall apply to any request by an Owner of adjoining Units to remove all or a portion of the demising wall between the Units. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that the removal of the demising wall will not impair the structural integrity or mechanical systems of the Building or lessen the support of any portion of the Condominium. The fact that a demising wall between adjoining Units is removed with approval of the Board of Directors shall not affect the Units' percentage undivided interest in the Common Elements or the Units' Common Expense Liability. A demising wall between adjoining Units which is removed with approval of the Board of Directors may be reconstructed with the prior written approval of the Board of Directors, which approval shall not be unreasonably withheld or delayed. If the reconstruction of a demising wall is approved by the Board of Directors, the provisions of Section 4.3 shall apply to the reconstruction of such demising wall. If a demising wall is subsequently removed by an Owner with the consent of the Board of Directors, then the space in which the demising wall was previously situated shall be a Limited Common Element allocated to the adjoining Units and shall be maintained, repaired and replaced by the Owner of the adjoining Units and shall be considered part of the adjoining Units for purposes of Article 4. If a demising wall is reconstructed with the approval of the Board of Directors, the allocation as a Limited Common Element of the space in which the demising wall is situated shall automatically terminate and the demising wall shall not thereafter be considered a part of the adjoining Units for purposes of Article 4.

**2.11 Condominium Conversion.** In order to comply with A.R.S. § 33-1215(A)(11), the Declarant states that the Parcel is being converted from a multi-family rental property to a residential condominium property. Original construction of the Buildings was completed in 1986. The original Owner, builder, developer and general contractor is unknown and the applicable Town building permits are no longer available. Subsequent to the development of the Parcel in 1986, as determined by a search of the Maricopa County Recorder's records, the names and addresses of the successive Owners of the Condominium were (i) Fountain Properties Limited Partnership, an Arizona limited partnership, P.O. Box 17795, Fountain Hills, Arizona 85268, (ii) Bruce J. Cann and Shelagh M. Cann, as Trustees under the Bruce J. and Shelagh M. Cann Trust Agreement dated November 28, 1984, as amended in its entirety December 17, 1990, 95 Main Street, Suite 6, Los Altos, California 94022, (iii) Los Cuatros Apartments, Ltd., A Limited Partnership, an Ohio limited partnership, 6315 North 16<sup>th</sup> Street, Phoenix, Arizona 85014, and (iv) Covaclu, L.L.C., an Arizona limited liability company, 22814 North 52<sup>nd</sup> Street, Phoenix, Arizona 85054. Declarant agrees to provide the following information on request: (a) The name and address of any builder, developer, general contractor, subcontractor, architect and engineer who designed or made Improvements to the Parcel immediately before the first Unit was sold; and (b) A specific description of all Improvements that were made by any of the above-named parties.



**ARTICLE 3  
EASEMENTS AND DEVELOPMENT RIGHTS**

**3.1 Utility Easement.** There is hereby granted and created an easement upon, across, over and under the Common Elements and the Units for the installation, replacement, repair or maintenance of utility lines and systems, including, but not limited to, natural gas, water, sewer, telephone, electricity, cable or satellite television, or other communication lines and systems such as a T-1 internet line, and dryer and toilet exhaust ducts. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or Declarant to install and maintain the necessary utility lines, pipes, dryer and toilet exhaust ducts, facilities and equipment on the Common Elements and the Units, but no sewer lines, natural gas lines, electrical lines, water lines, or other utility or service lines or facilities may be installed or located on the Common Elements or the Units except as initially designed, approved and constructed by Declarant or as approved by the Board of Directors. This easement shall in no way affect any other Recorded easements affecting the Common Elements.

**3.2 Unit Owners' Easements of Enjoyment.**

A. Each Owner shall have a non-exclusive easement for the use and enjoyment of the Common Elements (except for any Limited Common Elements) for their intended purposes. To the extent that any Unit is allocated a Limited Common Element pursuant to this Declaration, the Owner of the Unit to which the Limited Common Element is allocated has an exclusive easement for the use and enjoyment of that Limited Common Element. The easements granted by this Section 3.2 shall be appurtenant to the Unit and shall be subject to the following provisions:

1. The right of the Association to adopt reasonable Rules governing the use of the Common Elements.

2. 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, if such action is approved by Owners entitled to cast at least ninety percent (90%) of the votes in the Association. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Condominium Act.

3. 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 such easement(s) is necessary for the development or maintenance of the Common Elements or beneficial to the Owners, Lessees and Occupants.

4. All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to Declarant by Section 3.3.

5. 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.

B. Notwithstanding the provisions of Section 3.2 A to the contrary, if a Unit is leased or rented, the Lessee and the members of the Lessee's immediate family residing with the Lessee shall have the right to use any recreational amenities which are part of the Common Elements during the term of the lease, and the Unit Owner shall have no right to use such recreational amenities until the termination or expiration of the lease.

C. The guests of any Owner, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.2 C may use the Common Elements provided they are accompanied by a Member, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.2. The Board of Directors shall have the right to limit the number of guests who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests to certain specified times.

D. The 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.

E. The provisions of this Section 3.2 shall not apply to any of the Limited Common Elements that are allocated to the exclusive use of one (1) or more but less than all of the Units.

### **3.3 Declarant's Rights and Easements.**

A. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, storage areas, models and related facilities throughout the Common Elements and in any Unit owned or leased by Declarant and to maintain one or more marketing, directional or advertising signs on the Common Elements so long as Declarant is marketing Units in the Condominium. Declarant may from time to time relocate models, storage areas, management offices and sales and leasing offices to different locations within the Condominium. Declarant shall have the right and an easement to install or post signs, lighting, flags and banners on the Common Elements in connection with its marketing of Units.

B. 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.

C. 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. 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.

D. 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 construct all other Improvements Declarant may deem appropriate and to use the Common Elements and any Units owned by 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.

E. 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 Declarant deems necessary or desirable.

F. 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 discharging 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.

G. 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.

H. So long as Declarant owns any Unit, Declarant shall have the right to the exclusive use, without charge, of any portion of any of the facilities within the Common Elements on a short term basis for employee meetings, administrative purposes, special events or any other purpose, subject to the following: (1) the availability of the facilities at the time a request is submitted by Declarant to the Association; (2) Declarant shall indemnify the Association against any loss or damage

resulting from Declarant's use thereof; and (3) Declarant shall return the facilities to the Association in the same condition as existed prior to Declarant's use thereof. The Declarant's rights under this Subsection H shall have priority over the rights of any Owner, Lessee or Occupant to use the Common Elements.

I. In the event of any conflict or inconsistency between this Section 3.3 and any other provision of the Condominium Documents, this Section 3.3 shall control and prevail over such other provisions. The rights of Declarant set forth in this Section 3.3 shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any means provided in this Declaration.

J. Declarant reserves a non-exclusive easement over, upon, across and through the Common Elements for ingress and egress to and from the public right-of-way adjacent to the Condominium.

**3.4 Easement for Support.** There is hereby granted and reserved to each Unit a non-exclusive easement for structural support over every other Unit, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to a non-exclusive easement for structural support in favor of every other Unit, the Common Elements and the Limited Common Elements.

**3.5 Easement 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 nor more than thirty (30) days notice of the need to temporarily vacate shall be given to Occupants and to the Owner 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 such Person's own accommodations during the temporary relocation.

**3.6 Easements in Favor of Unit Owners.**

A. The Common Elements shall be subject to the following easements in favor of the Units benefited:

1. For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone, cable, and other communication wiring and cables and all other utility lines and conduits

which are part of or serve any Unit and which pass across or through a portion of the Common Elements.

2. 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; 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.

3. 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 Section 5.2 of this Declaration.

B. Notwithstanding any other provision of this Declaration to the contrary, no Owner, Lessee or Occupant or any other Person (except for the Association) shall penetrate, alter or damage any part of the Common Elements, including but not limited to, the roof and perimeter walls of the Units. Penetrating the roof or perimeter walls of the Units could damage the soundproofing and fire rating of the Units.

**3.7 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 conditions (including, without limitation, broken or leaking water pipes, broken hot water heaters or obstructed sewer lines) in one (1) or more Units or Limited Common Elements which have damaged or if left uncorrected could damage the Common Elements, the Limited Common Elements or other 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 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, Lessees and 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.

**3.8 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, reconstruction, shifting, settlement or movement of any improvement or alteration or restoration authorized by this Declaration or any reason other than an encroachment created by the intentional conduct or gross negligence of a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted and created.

**3.9 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 or cable television lines or cables, internet provider lines or cables, alarm and security systems, 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, United States mail distribution and collection and private or municipal refuse collection, without the joinder or consent of any First Mortgagee or other Person.

#### ARTICLE 4 RESTRICTIONS

**4.1 Use.** All Units and Limited Common Elements allocated thereto shall be used, improved and devoted exclusively to residential use by a Single Family. No gainful occupation, profession, trade or other nonresidential use shall be conducted on or in any Unit or Limited Common Element, but a Unit Owner or other Occupant of a Unit may conduct a business activity within a Unit so long as: (A) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (B) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (C) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Unit Owners or other Occupants in

the Condominium; (D) the trade or business conducted by the Unit Owner or Occupant does not require any employees working in or from such Unit who does not permanently reside in the Unit; (E) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or parking violations; (F) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; and (G) the business activity is consistent with the overall residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of Condominium Occupants, as may be determined from time to time in the sole discretion of the Board of Directors.

The terms "business" and "trade" as used in this Section 4.1 shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (A) such activity is engaged in full or part time; (B) such activity is intended or does generate a profit; or (C) a license is required for such activity. The mere leasing of a Unit by the Unit Owner thereof in accordance with the provisions of Section 4.15 below shall not be considered a trade or business within the meaning of this Section 4.1.

**4.2 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 installed, used or maintained on any portion of the Condominium whether attached to the Building or otherwise without the prior written approval of the Board of Directors, unless the guidelines of the Federal Communications Commission or other applicable law prohibits the Board of Directors from requiring such prior approval. Even if the guidelines of the Federal Communications Commission or other applicable law prohibits the Board of Directors from requiring prior approval for the installation or use of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with the Rules.

**4.3 Improvements and Alterations.**

A. Except as otherwise expressly provided in this Declaration, no Owner, Lessee or Occupant or any other Person other than the Association shall make any alterations or modifications to the Common Elements or construct or install any Improvement on the Common Elements without the prior written approval of the Board of Directors.

B. Any Owner, Lessee or Occupant may make nonstructural additions, alterations and improvements within such Owner's Unit without the prior written approval of the Board of Directors, but the Owner of the Unit shall be responsible for any damage to other Units and to the Common Elements which results



from any such alterations, additions or improvements. No Owner, Lessee or Occupant shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Owner, Lessee or Occupant receives the prior written approval of the Board of Directors and an architect or engineer, licensed in the State of Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of the Building or lessen the support of any portion of the Condominium.

C. Notwithstanding Subsection 4.3.B., no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of the Building shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. Except as expressly permitted by this Section 4.3, no wall, partition, fixture or other Improvement situated within a Unit shall be constructed, installed or modified without the prior written approval of the Board of Directors.

D. No Owner, Lessee or Occupant shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior consent of the Board of Directors. No Owner, Lessee or Occupant shall overload the floors of any Unit. Waterbeds and other furnishings which may cause floor overloads shall not be placed, kept or used in any Unit, except with advance written approval of the Board of Directors.

E. The Board of Directors may condition the approval of any proposed additions, alterations or improvements to a Unit or the Common Elements in any manner, including, without limitation: (1) retaining approval rights of the contractor to perform the work; (2) restricting the time during which such work may be performed; (3) requiring the placement of a security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (4) requiring the provision to the Board of Directors of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Arizona; and (5) requiring that the Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Owner shall be obligated to designate Declarant, the Association, the Board of Directors and any other Person designated by the Board of Directors as additional insureds under the policy. The Owner shall be responsible for all costs incurred by the Board of Directors in connection with the Board of Director's review of proposed changes to the Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Board of Directors to assist in their review.

Any such costs not timely paid by the Unit Owner shall be deemed an Individual Expense Assessment.

F. Proposed additions, alterations and improvements to a Unit or the Common Elements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are made shall defend, indemnify and hold harmless the Association, Declarant and all other Owners, Lessees or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Association.

G. The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 4.3 or any Rules of the Association governing additions, alterations or improvements to the Units or the Common Elements. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Association nor any of their respective members, officers, directors, managers, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the Association and their respective members, officers, directors, employees, managers, agents, contractors, consultants or attorneys harmless for, from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Lessee or Occupant of the Owner's Unit.

**4.4 Trash Containers and Collection.** No rubbish, trash or garbage shall be placed or kept on the Common Elements except in covered containers of a type, size and style which are approved by the Board of Directors. All rubbish, trash and garbage shall be regularly removed from the Units by the Owners, Lessees or Occupants thereof. All trash, garbage or rubbish must be kept in sanitary containers

and must be bagged and deposited in designated trash receptacles. No rubbish, trash or garbage shall be kept on any Balcony or Patio. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium.

**4.5 Animals.** Except as expressly permitted by this Section 4.5, no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Residential Unit or on any other portion of the Condominium. A reasonable number of Permitted Pets may be kept or maintained in a Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. For purposes of this Section 4.5, a "Permitted Pet" shall mean: (A) a dog, not to exceed seventy-five (75) pounds in weight; (B) a cat; or (C) a fish or bird of a variety commonly kept as a household pet. The Board of Directors shall have the absolute authority to determine what constitutes a reasonable number of Permitted Pets. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Unit, or be an annoyance to a person of ordinary sensibilities. All dogs shall be kept on a leash when outside a Unit and all dogs shall be directly under the control of the Unit Owner, Lessee or Occupant at all times. Any person bringing a dog onto the Common Elements shall immediately remove any feces deposited on the Common Elements by the dog. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building or any other Unit. Upon the written request of any Owner, the Board of Directors shall determine whether, for the purposes of this Section 4.5, a Permitted Pet makes an unreasonable amount of noise, causes an odor which is detectable outside the Unit or is an annoyance to a person of ordinary sensibilities. Notwithstanding any other provision of this Section, no dog which the Board of Directors determines, in its sole discretion, is of a breed which has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals shall be kept in a Unit or on any other portion of the Condominium. Any dog or other Permitted Pet which has bitten or attacked a person or other animal or any dog or other Permitted Pet which the Board of Directors, in its sole discretion, determines has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals within the Condominium or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners, Lessees or Occupants or their guests shall be removed from the Condominium by the owner of the Permitted Pet within three (3) days after written demand for removal of the Permitted Pet is given to the owner by the Board of Directors. The Board of Directors shall have the right to adopt, amend and repeal Rules governing the keeping of Permitted Pets in the Condominium.

**4.6 Diseases and Insects.** No Owner, Lessee or Occupant shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Association, each Owner shall perform such pest

control activities in such Owner's Unit as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

**4.7 Motor Vehicles.** 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, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Condominium, except in a parking space (a "**Parking Space**") designated on the Plat. If a Parking Space is assigned to a Unit as a Limited Common Element, then no Owner, Lessee or Occupant may park any automobile, motorcycle, motor bike or other motor vehicle owned or leased by such Unit Owner, Lessee or Occupant in any Parking Space other than the Parking Space assigned to the Unit as a Limited Common Element or any other Parking Space not designated as a Limited Common Element for any other Unit. No boat, boat trailer or other trailer shall be parked or kept on any part of the Common Elements.

**4.8 Towing of Vehicles.** The Board of Directors shall have the right to have any automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, 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. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle.

**4.9 Signs.** No signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the interior of a Unit if the signs would be visible from the exterior of the Building, without the prior written approval of the Board of Directors. The Association shall provide a central location for sale and rental information.

**4.10 Lawful Use.** No immoral, improper, offensive, or unlawful use shall be made of any part of the Condominium. All valid 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.

**4.11 Nuisances and Offensive Activity.** No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the condominium which is offensive or detrimental to any portion of the Condominium or any Owner, Lessee or Occupant or which interferes with quiet enjoyment of a Unit by the Owner, Lessee or Occupant thereof.

**4.12 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 Board of Directors. Except where permitted by the Rules, no enclosures, drapes, blinds, shades screens or other items affecting the exterior appearance of a Unit shall be constructed or installed without the prior written consent of the Board of Directors. Window tinting is prohibited.

**4.13 Patios.** No furniture, furnishings, umbrellas, plants or other items which would extend above the top of the fence or wall enclosing the Patio shall be installed, kept or maintained in any Patio without the prior written approval of the Board of Directors unless expressly permitted by the Rules. Subject to the provisions of the City ordinances and other applicable laws or regulations and the Rules, spas, barbecues and related accessories and equipment may be used in Patios. Owners, Lessees and Occupants shall use appropriate safety measures when operating spas and barbecues.

**4.14 Rental of Units.** All leases of Units must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other Occupants shall be a default under the lease. There shall be no subleasing of Units or assignments of leases. No Unit may be leased for a term of less than thirty (30) days. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with a copy of the signed lease and the following information: (A) the commencement date and expiration date of the lease term; (B) the names of each of the Lessees and each other person who will reside in the Unit during the lease term; (C) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (D) the name, address and telephone number of a person whom the Association can contact in the event of an emergency involving the Unit. Any Owner who leases such Owner's Unit must provide the Lessee with copies of this Declaration and the Rules. The Owner shall be liable for any violation of this Declaration or the Rules by the Lessee or other Persons residing in the Unit and their guests or invitees and, in the event of any such violation, the Unit Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

**4.15 Time Sharing.** No Unit shall be divided or conveyed on a time increment basis or measurable chronological periods or pursuant to any agreement, plan, program or arrangement under which the right to use, occupy or possess a Unit, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time one hundred eighty (180) consecutive calendar days or less.

**4.16 Hazardous Materials.** No Owner, Lessee or Occupant shall use or keep in a Unit or any Limited Common Element allocated to the Unit any kerosene, gasoline, or inflammable or combustible fluid or material or other hazardous materials, other than those required, in limited quantities, for normal cleaning of a Unit.

**4.17 Noise Reduction.** Any hard floor coverings installed in a Unit must use a sound control underlayment system which must include perimeter insulative material which will insure that impact noises will not be transmitted into the Unit below the floor either directly through the floor or by going around the floor and through the surrounding walls. In order to maintain the highest level of acoustical privacy possible, the Board of Directors may, from time to time, adopt rules and regulations to reduce levels of noise emission from Units. Additionally, no loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernable between Units. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules. All Owners, Lessees and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the rules and regulations of the Association and any noise reduction ordinance of the City. Each Owner, Lessee and Occupant acknowledges that Declarant has not made any written or oral representation or warranty concerning the sound insulation capabilities of the Units and that in any multi-family dwelling sound may be audible between Units, particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Unit is very low.

**4.18 Declarant Approval Required.** After the expiration of the Period of Declarant Control and for so long as 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 Declarant.

**4.19 Outside Speakers and Amplifiers.** No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of any Building without the prior written approval of the Board of Directors.

## **ARTICLE 5 MAINTENANCE AND REPAIR**

**5.1 Duties of the Association.** The Association shall maintain, repair and replace (1) all Common Elements, except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2, (2) the walls of the Balconies and (3) the walls enclosing the Patios. The Association shall also be responsible for washing the exterior windows of the Condominium and repainting the exterior of the Condominium. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and

replacement of the Common Elements or any components of the Units which the Association is obligated to maintain, repair or replace. The Association shall maintain, repair and replace the Common Elements and the components of the Units which the Association is obligated to maintain, repair and replace in accordance with manufacturers' requirements and in accordance with any maintenance manuals provided to the Association by manufacturers, Declarant or any contractor or subcontractor involved in the construction of the Units or Common Elements. The Association shall not be liable to an Owner, Lessee or other Person for any damage to any Unit or any personal property situated therein resulting from broken or leaking pipes or drains which the Association is obligated to maintain, repair and replace or from water entering any Unit from outside the Building unless such damage is caused by the gross negligence of the Association. Owners, Lessees and Occupants shall immediately notify the Association of (a) any broken or leaking water pipes, toilets, clothes washers or hot water heaters and (b) any water intrusion into the Buildings from the roofs or windows.

**5.2 Duties of Unit Owners.** Each Owner shall maintain, repair and replace, at such Owner's own expense, all portions of such Owner's Unit, together with the doors and windows allocated to such Unit as Limited Common Elements, in a good, clean and sanitary condition. In addition, each Owner shall maintain the interior of the Balcony and/or Patio allocated to such Owner's Unit in a good, clean and sanitary condition. Any Owner, Lessee or Occupant that leaves such Person's Unit unoccupied for more than seven (7) consecutive days shall turn off the water to all toilets and the clothes washer in the Unit. Each Owner shall cause the HVAC system serving the Owner's Unit to be inspected periodically (but in all events, not less than annually) by a qualified technician to properly assess the condition of the system and to identify any necessary repair, maintenance or replacement of the system. The Owner shall promptly make all recommended repairs, maintenance and replacements of the HVAC system, and all repairs, maintenance and replacements must be performed by a licensed contractor. No person other than a licensed contractor performing repairs, maintenance or replacement of an HVAC system or Association employees, agents or contractors shall be permitted on the roof of a Building without the prior written approval of the Board of Directors. In the event any plumbing pipes or fixtures serving a Unit are located within the boundaries of another Unit, then the Owner of the Unit served shall have an easement over, upon and through such other Unit for the maintenance, repair and replacement of such plumbing pipes and fixtures; provided, however, that except in case of emergency, the Owner of the Unit served shall give the Owner or Lessee of the other Unit at least forty-eight hours notice prior to entering the other Unit.

**5.3. Repair or Restoration Necessitated by Owner.** Each Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the 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 an Owner or of the Owner's Lessees, Occupants or Invitees shall be assessed against the Owner as provided in Section 7.4.D hereof.



**5.4 Owner Default in Maintenance.** If an Owner fails to maintain in good condition and repair such Owner's Unit or any Limited Common Element which such 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 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 nonperforming unit Owner pursuant to Section 7.4.D hereof.

**5.5 Sewer Facilities.** As used in this Section, the term "Sewer Facilities" means all sewer lines and appurtenant facilities within the boundaries of the Condominium, except for: (a) any sewer lines and appurtenant facilities which serve only one Unit and which are located within the boundaries of the Unit or are part of the Common Elements but are allocated to the Unit by this Declaration as a Limited Common Element; and (b) any sewer lines and appurtenant facilities which have been accepted by and are the responsibility of a governmental or private sewer company. The Association shall be responsible for the operation, maintenance, repair and replacement of the Sewer Facilities in compliance with all applicable federal, state and local laws, ordinances and regulations. The Association will advise any utility company or other entity to which the Association gives permission to make additional improvements to the Condominium that the services which are available under Arizona law to locate and mark underground utility lines and facilities within dedicated public rights-of-way are not available to locate the Sewer Facilities, and, therefore, a private person or entity will need to be employed for such purpose. Sewer lines and appurtenant facilities which serve only one Unit and which are located within the boundary of a Unit or which are part of the Common Elements but are allocated to the Unit by this Declaration as a Limited Common Element shall be maintained, repaired and replaced by the Owner of the Unit served.

**5.6 Utilities.** The utility charges metered separately to a Unit shall be the responsibility of the Owner of such Unit. The utility charges for utilities jointly metered to serve more than one (1) Unit shall be the responsibility of the Association and shall be Common Expenses.

## ARTICLE 6 ASSOCIATION

**6.1 Rights, Powers and Duties of the Association.** No later than the date on which the first (1<sup>st</sup>) Unit is conveyed to a Purchaser, the Association shall be incorporated as a nonprofit Arizona 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 Condominium Act, including, without limitation, the following: (A) commence and maintain actions or restrain and enjoin any actual or threatened breach of this Declaration and enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration; (B) pay taxes, capital improvement assessments or special assessments and other liabilities which are or would become a lien on any portion of the Condominium owned or maintained by the Association; (C) levy Assessments and perfect and enforce liens as hereinafter provided; (D) enter into contracts including, but not limited to, management contracts; (E) perform the duties set forth herein, including but not limited to, maintenance and repair of the Common Elements and the obtaining of insurance; and (F) adopt, amend and repeal Rules as it deems reasonable. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the affirmative vote of Unit Owners holding more than sixty-seven percent (67%) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

**6.2 Directors and Officers.** During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, none of whom are required to be Unit Owners. Upon the termination of the Period of Declarant Control, the Members shall elect the Board of Directors which must consist of an odd number as designated by the Board of Directors but comprised of at least three (3) but not more than nine (9), all of whom must be Unit Owners. The Board of Directors elected by the Members shall elect the officers of the Association. Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association prior to termination of the Period of Declarant Control, and in that event 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 Declarant, be approved by Declarant before they become effective.

**6.3 Membership.** Each Owner shall be a member of the Association. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner, and such Owner's successor-in-interest shall likewise automatically succeed to such membership in the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant (and then only to the purchaser involved in such sale) or by intestate succession, testamentary disposition, foreclosure of a mortgage of record or other legal process transferring equitable or fee simple title to such Unit (and then only to the Person to whom such title is transferred). Any attempt to make a prohibited transfer of a membership will be void and will not be recognized by or reflected upon the books and records of the Association. In the event the Owner of any Unit should fall or refuse to transfer the membership registered in such Owner's name upon the sale of such Owner's Unit to the purchaser of such Owner's Unit, the Association shall have the right to enter a transfer upon the books of the Association and issue a new membership to the

purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

**6.4 Personal Liability.** No member of the Board of Directors, or any officer of the Association, or any Managing Agent, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

**6.5 Managing Agent.** The Board of Directors may employ a responsible person or entity as managing agent (a "Managing Agent") to manage, operate and maintain the Common Elements, with all of the administrative functions and such other powers and duties as the Board of Directors may delegate from time to time and for such fees as the Board of Directors may establish consistent with other provisions of this Declaration. Any agreement for management of the Condominium shall be in writing and shall provide for termination by the Association, with or without cause and without payment of a termination fee or penalty, on thirty (30) days written notice, and the term of such agreement shall not exceed one (1) year, renewable by written agreement of the parties for successive periods of one (1) year each.

**6.6 Board of Directors' Determination Binding.** Subject to the right of any Owner to institute an action at law or in equity, in the event of any dispute or disagreement between any Owners related to the Condominium, or any question of interpretation or application of the provisions of the Condominium Documents, the determination thereof by the Board of Directors shall be final and binding on each and all of such Owners.

**6.7 Action by Owners.** The Board of Directors may not act on behalf of the Association to amend or terminate this Declaration, or to elect members of the Board of Directors, except in filling vacancies in its membership for the unexpired portion of any term.

**6.8 Annual Meeting.** The Association shall hold an annual meeting as provided in the Bylaws.

**6.9 Right of Association to Enter Units.** The Association, acting through the Board of Directors or its duly authorized agent, shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or in any Unit to abate any infractions, to make repairs, or to correct any violation of any of the restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner in accordance with Section 7.4.D of this Declaration. If, in the case of an emergency, it becomes necessary to break into a Unit because no means of access was provided by the Occupant or Owner, the Association,

its directors, officers and agents shall not be liable for any damage done to the Unit as a result of the exercise of this right of entry. The party exercising this right of entry shall see that reasonable measures are taken to secure the Unit until either the Occupant or Owner shall be notified that the Unit has been entered.

**6.10 Utilities.** The Association shall acquire and pay for the following: (A) water, sewer, electrical, natural gas and other utility service for the Common Elements; (B) refuse and rubbish collection for the Common Elements and the Units; and (C) water, sewer and all other jointly metered utilities for the Units. Each Unit Owner shall be responsible for obtaining any telephone, cable television or internet service (including individual hookup charges for any master service provided by the Association) that such Owner may desire, and the costs of any such services shall be the responsibility of the Unit Owner.

**6.11 Availability of Condominium Documents.** With the exception of records which may be withheld from disclosure pursuant to Arizona law, the Association will maintain current copies of the Condominium Documents and the Association's own books, records, and financial statements will be available for inspection during normal business hours by any Owner or Mortgagee (or any Eligible Insurer or Guarantor of a Mortgagee).

**6.12 Action by Owners.** To the extent permitted by the Act, all actions required to be taken by the Owners, acting as a unit owners' association for the Condominium, shall be taken by the Association acting as such unit owners association, by and through its directors and officers.

**6.13 Additional Provisions In Articles of Incorporation and Bylaws of the Association.** The Articles and Bylaws may contain any provision not inconsistent with the Act or with this Declaration relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members.

**6.14 Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, may adopt, amend, and repeal Rules. The Rules may, among other things, restrict and govern the use by any Unit Owner, Lessee, or Occupant, or their guests and invitees, of any area within the Condominium subject to the Association's jurisdiction and control; provided, however, that the Rules may not unlawfully or unreasonably discriminate and shall not be inconsistent with the Act, the applicable federal and state Fair Housing Acts, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be recorded.

## ARTICLE 7 ASSESSMENTS

**7.1 Creation of Lien and Personal Obligation for Assessments.** Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree to pay to the Association, such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, court costs and all other costs of collection incurred by the Association in collecting or attempting to collect delinquent assessments, whether or not suit is filed, shall be a continuing lien upon the Unit against which each such Assessment is made in favor of the Association pursuant to A.R.S. § 33-1256. Each such Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor.

**7.2 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance, care, preservation, and protection of the Condominium, enhancing the quality of life in the Condominium and the value of the Condominium including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, or in furtherance of any other duty or power of the Association.

### **7.3 Preparation of Budget.**

A. At least thirty (30) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first (1<sup>st</sup>) 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: (1) 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; (2) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (3) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (4) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units. The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification



of any budget by the Members shall be required. The budget must be approved by a majority of the Board of Directors.

B. At least ten (10) days before the beginning of each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Owner a summary of the budget and a statement of the amount of the Regular Assessment assessed against the Owner's Unit in accordance with Section 7.4. 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 an Owner's obligation to pay such Owner's allocable share of the Common Expenses as provided in Section 7.4, and each Owner shall continue to pay the Regular Assessment for such Owner's Unit as established for the previous fiscal year until notice of the Regular Assessment for the new fiscal year has been given to the Owners by the Board of Directors.

#### 7.4 Regular Assessments.

A. For each fiscal year of the Association commencing with the fiscal year in which the first (1<sup>st</sup>) 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 this Declaration) shall be assessed against each Unit as set forth in Section 2.7 of this Declaration. The amount of the Regular Assessment assessed pursuant to this Subsection 7.4 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, nonpayment of Assessments by Members, the Board of Directors may increase the Regular Assessment for that fiscal year and the revised Regular Assessment shall commence on the date designated by the Board of Directors.

B. The Regular Assessments shall commence as to all Units on the first (1<sup>st</sup>) day of the month following the conveyance of the first (1<sup>st</sup>) Unit to a Purchaser. The first (1<sup>st</sup>) Regular 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 Regular Assessments or Special Assessments to be paid in installments.

C. 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 Element maintained by the Association, shall be assessed against all of the Units in accordance with Subsection 7.4.A.

D. If any Common Expense is caused by the misconduct of any Owner, the Association shall assess that Common Expense exclusively against such Owner's Unit. 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 their Common Expense Liabilities.

E. All Assessments, monetary penalties and other fees and charges levied against a Unit shall be the personal obligation of the Owner of the Unit at the time the Assessments, monetary penalties or other fees and charges became due. The personal obligation of an Owner for Assessments, monetary penalties and other fees and charges levied against the Unit shall not pass to the Owner's successors in title unless expressly assumed by them.

**7.5 Special 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, provided that any Special Assessment (other than a Special Assessment levied pursuant to Section 10.1 as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by Owners representing sixty-seven percent (67%) of the votes in the Association who are voting in person or by absentee ballot at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Owners.

**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 amount (other than Regular Assessments, Special Assessments and Individual Expense 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, cable television or internet service) 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 No Exemption or Offsets.** No Owner shall be exempt from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents because of waiver or nonuse of any of the Common Elements and facilities or by the abandonment of such Owner's Unit. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets 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.

**7.10 Statement.** The Association shall, upon demand, furnish to any Owner liable for Assessments a statement in writing signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

**7.11 Transfer Fee.** Each Purchaser of a Unit shall pay to the Association or its 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 or its Managing Agent for the administrative cost resulting from the transfer of a Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

**7.12 Reserves.**

A. The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common

Elements which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.14 or any other funds of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Withdrawal of funds from the Association's Reserve Account shall require the signatures of either (1) two (2) members of the Board of Directors; or (2) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. The Board of Directors shall obtain a reserve study at least once every five (5) years, which study shall at a minimum include: (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost of repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

B. Unless the Association is exempt from Federal or State taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association.

**7.13 Initial Working Capital Fund.** To provide the Association with initial operating funds, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Unit, a sum equal to two (2) monthly installments of the Regular Assessment for the Unit. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**7.14 Reserve Contribution.**

A. Except as provided in Section 7.14.B, each Purchaser shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.12. The amount of the Initial Reserve Contribution shall be set by the Board of Directors prior to the conveyance of the first (1<sup>st</sup>) Unit to a Purchaser. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve (12) month period without the

approval of Members holding more than sixty-seven percent (67%) of the votes in the Association.

B. No Reserve Contribution shall be payable with respect to: (1) the transfer or conveyance of a Unit by devise or intestate succession; (2) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (3) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board of Directors determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (4) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (5) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's Interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

C. All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.12. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

**7.15 Unsegregated Real Property Taxes.** Until such time as real property taxes have been segregated by the County Assessor of Maricopa County for the Units, the taxes shall be paid by the Association on behalf of the Owners. In connection with such payment, the proportionate share of such tax or installment thereof for a particular Unit shall be determined by multiplying the tax or installment in question by the respective percentage interest of such Unit in the Common Elements. The Association may levy a Special Assessment against any Owner who fails to pay his or her share of any real property taxes pursuant to this Section 7.15. In the event such special Assessment is not paid within thirty (30) days of its due date, the Board of Directors may resort to all remedies of the Association for the collection thereof.

## ARTICLE 8 EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

**8.1 Delinquency.** Any Assessment which is not paid when due is delinquent. Whenever an Assessment is delinquent, the Board of Directors may at its option invoke any or all of the sanctions provided for herein.

**8.2 Late Charge.** If any Assessment is not paid within fifteen (15) days after the date when it becomes due and payable, the Owner shall be obligated to pay a late charge in an amount established by the Board of Directors. The amount of such late charge until paid shall constitute part of the Assessment Lien.

**8.3 Interest.** If any Assessment is not paid within thirty (30) days after it becomes due and payable, interest at the rate of eighteen percent (18%) per annum or



such other rate as may be then in effect as established by the Board of Directors from time to time may be assessed on the amount owing from the date due until such time as it is paid.

**8.4 Action at Law.** The Association shall have the right, at its option, to enforce collection of any delinquent Assessments in any manner allowed by law. The Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay same or to foreclose the Assessment lien in the manner provided by law for foreclosure of a realty mortgage; provided, however, that the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise the other. All Collection Costs, whether or not a lawsuit is commenced, including the costs of preparing and filing the complaint shall be assessed against the delinquent Owner and such Owner's Unit. Collection Costs will thereafter be added to the amount in delinquency (plus interest and/or late charges, if appropriate). Each Owner vests in the Association or its assigns the right and power to bring actions at law and/or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

**8.5 Notice of Lien.** 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. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien. Although not required in order to perfect the Assessment Lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent Assessments, monetary penalties or other fees or charges imposed or levied against a Unit or the Unit Owner which are secured by the Assessment Lien.

**8.6 Foreclosure Sale.** Any foreclosure and sale provided for in this Declaration is to be conducted in accordance with applicable provisions relating to the foreclosure of realty mortgages in the State of Arizona. The Association, may through its duly authorized agents, have and exercise the power to bid on the Unit at the foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit.

**8.7 Suspension.** The Board of Directors may suspend for the entire period during which an Assessment remains delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

**8.8 Priority of Assessment Lien.** The Assessment Lien shall have priority over all liens, other interests and encumbrances, except for: (1) liens and encumbrances Recorded before the Recording of this Declaration; (2) liens for real estate taxes and other governmental assessments and charges; and (3) the lien of any First Mortgage or seller's interest in a first (1<sup>st</sup>) contract for sale Recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a



deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person. Any assessments and charges against the Unit which accrue prior to such sale or transfer, shall remain the obligation of the defaulting Unit Owner.

## ARTICLE 9 INSURANCE

**9.1 Insurance Requirements Generally.** Prior to the first conveyance of a Unit to an Owner other than Declarant, and at all times thereafter, the Association shall have the authority to and shall obtain and maintain in full force and effect the insurance coverages required pursuant to Section 9.2 of this Declaration. All such insurance shall be obtained from responsible companies duly authorized to transact insurance business in the State of Arizona with no less than a Class A financial category rating in Best's Key Rating Guide (or any comparable rating in any comparable publication). The Board of Directors shall review all such insurance at least annually and shall increase the amounts thereof as it deems necessary or appropriate. Each insurance policy shall, to the extent reasonably available, contain the following provisions:

A. Each Unit Owner shall be an insured under the policy with respect to liability arising out of ownership of an undivided interest in the Common Elements or membership in the Association;

B. There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household, except for claims against Unit Owners by members of their households for employee dishonesty or forgery;

C. No act or omission by any Unit Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy;

D. 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 Unit Owners or their mortgagees or beneficiaries under deeds of trust;

E. For policies of property insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy;

F. Any insurance trust agreement will be recognized by the insurer;  
and

G. Contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of any Owner or the Association due to the negligent acts of the Association or any other Owner.

**9.2 Scope.** 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:

A. A special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the Common Elements. The Board of Directors, in its discretion, may elect to have the property insurance also cover the Units, except for: (1) additions, alterations and improvements supplied or installed by the Unit Owners; and (2) furniture, furnishings or other personal property of the Unit Owners. Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of an insurance trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Insured property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. The replacement cost shall be reviewed annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

B. Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than One Million and No/100 Dollars (\$1,000,000.00) for any single occurrence and Umbrella or Excess Liability Coverage in an amount not less than Two Million and No/100 Dollars (\$2,000,000.00). 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 (i) a cross liability clause to cover liabilities of the Owners as a group to an Owner, and (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles.

C. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and, if the Association has any employees, a policy of employer's liability insurance with coverage limits determined by the Board of Directors.

D. Directors' and officers' liability insurance in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) covering all the directors and officers of the Association.

E. 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, without limitation, umbrella general liability insurance which would provide general liability coverage in excess of the coverage provided by the policy to be obtained pursuant to Subsection 9.2.B above.

F. If applicable, pressured, mechanical and electrical equipment coverage on a comprehensive form in an amount not less than Five Hundred Thousand and No/100 Dollars (\$500,000.00) per accident per location.

G. If required by any governmental or quasi-governmental agency (including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation) flood insurance in accordance with the applicable regulations of such agency.

**9.3 Primary Insurance.** 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 Association's policy shall provide primary coverage.

**9.4 Deductible.** The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association 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 negligence, misuse or neglect for which such Unit Owner is responsible.

**9.5 Insurance Trust.** Notwithstanding any of the other provisions of this Article 9 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.

**9.6 No Liability.** 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.

**9.7 Annual Review.** 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.

**9.8 Fidelity Bonds.** The Association shall obtain and maintain blanket fidelity bonds or insurance covering all persons or entities handling funds of the Association in amounts not less than the maximum funds that will at any time be in the possession of the Association but, in no event less than the total of: (A) Regular Assessments for a three (3) month period with respect to all Units; and (B) all reserve funds maintained by the Association. All fidelity bonds shall name the Association as an obligee and all fidelity insurance shall name the Association as the insured. In addition, all such bonds shall provide that the same shall not be terminated, cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and all First Mortgagees. 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. In addition, the Association shall require any Managing 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. The fidelity bond or fidelity insurance maintained by the Managing Agent shall cover funds maintained in bank accounts of the manager and need not name the Association as an obligee or an insured.

**9.9 Insurance by Owners.** Each Owner may obtain such additional or other insurance as such Owner deems desirable, including insurance covering such Owner's furnishings and personal property, including, by way of illustration but not of limitation, any additions, alterations and improvements such Owner may have made to such Owner's Unit, and covering personal liability of such Owner and such Owner's employees, agents and invitees and any other persons for whom such Owner may be responsible. Any insurance policy obtained by an Owner must not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Association and must, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and their employees, agents and invitees and against any Mortgagee of all or any part of the Condominium or any Unit or other person for which the Association or any such Owner or Mortgagee may be responsible.

**9.10 Payment of Premiums.** Premiums for all insurance obtained by the Association pursuant to this Article 9 shall be Common Expenses and shall be paid for by the Association.

**9.11 Payment of Insurance Proceeds.** Any loss covered by property insurance obtained by the Association in accordance with this Article 9 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 lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Condominium Act.

**9.12 Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this Article 9 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner or Mortgagee. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

## ARTICLE 10 DESTRUCTION OF IMPROVEMENTS

**10.1 Automatic Reconstruction.** Any portion of the Condominium for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (A) the Condominium is terminated; (B) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (C) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or allocated Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Condominium in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.5.

**10.2 Determination not to Reconstruct Without Termination.** If eighty percent (80%) of the Unit Owners (including every Owner of a Unit or an allocated Limited Common Element which will not be rebuilt) vote not to rebuild, and the Condominium is not terminated in accordance with the Condominium Act, the insurance proceeds shall be distributed in proportion to their interests in the Common Elements to the Owners of those Units and the Owners to which those Limited Common Elements were allocated, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to the Common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be automatically reallocated as if the Unit had been condemned under



A.R.S. § 33-1206A, and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

**10.3 Distribution of Insurance Proceeds in the Event of Termination of the Condominium.** Notwithstanding any provisions of this Article 10 to the contrary, the distribution of insurance proceeds resulting from the damage or destruction of all or any part of the Common Elements shall be distributed as provided in the Condominium Act in the event of a termination of the Condominium.

**10.4 Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the Insurer of any totally or partially destroyed Building or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to the Building or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 10.1 and 10.2, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged or destroyed Common Elements have been completely repaired or restored or the Condominium is terminated.

**10.5 Repair of Units.** Installation of improvements to, and repair of any damage to, the interior of a Unit not covered by property insurance maintained by the Association shall be made by and at the individual expense of the Owner of that Unit and shall be completed as promptly as practicable and in a lawful and workmanlike manner.

**10.6 Priority.** Nothing contained in this Article 10 shall entitle an Owner to priority over any lender under a lien encumbering such Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

## ARTICLE 11 EMINENT DOMAIN

**11.1 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 the 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 shall become a Common Element.

**11.2 Partial Taking of a Unit.** Except as provided in Section 11.1, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in the value of a 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.

**11.3 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.

**11.4 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.

**11.5 Priority and Power of Attorney.** Nothing contained in this Article 11 shall entitle an Owner to priority over any First Mortgagee under a lien encumbering the 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 of an Owner.

## ARTICLE 12 DISPUTE RESOLUTION

**12.1 Agreement to Resolve Certain Disputes Without Litigation.** As used in this Article 12, the term "Claim" shall mean: (A) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Elements, the Units or any other part of the Condominium, including, without limitation, any claim or cause of action that the Common Elements or the Units are defective or that Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning,

design, engineering, grading, construction or development thereof; or (B) any claim or cause of action against Declarant or any employee, agent, director, member or officer of Declarant 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. The Association, Declarant, all Unit Owners, Lessees, Occupants and other Persons bound by this Declaration and any Person not otherwise bound by this Declaration who agrees to submit to this Article 12 (collectively, the "**Bound Parties**") agree that the dispute resolution procedures set forth in this Article 12 shall apply to all Claims.

**12.2 Notice of Alleged Defect.** Any Bound Party that becomes aware of any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit or any other part of the Condominium (the "**Alleged Defect**") shall give written notice (the "**Notice of Alleged Defect**") promptly to each Bound 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.

**12.3 Notice of Claim.** Any Bound Party who contends or alleges to have a Claim (a "**Claimant**") against any other Bound 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 (as defined in Section 12.5), the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (1) a description of the Claim; (2) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (3) 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; (4) the estimated cost to repair such Alleged Defect; (5) 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); (6) a description of the fee arrangement between such attorney and the Association; (7) 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; (8) the estimated time necessary to conclude the action; and (9) 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

A.R.S. (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 A.R.S. Section 12-2602B.

**12.4 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 under the auspices of an independent mediation service designated by Declarant. 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.

**12.5 Binding Arbitration.** In the event a Claim is not resolved by mediation, the Claimant shall have thirty (30) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 12.5. 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. All Bound 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 12.5. All Bound 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 Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration.

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 American Arbitration Association ("**AAA**") Commercial Arbitration Rules, as amended from time to time (the "**AAA Rules**").