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***DECLARATION OF CONDOMINIUM  
AND OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
GREENWAY ESTATES CONDOMINIUM***

***MARICOPA COUNTY, ARIZONA***

***LID***

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**DECLARATION OF CONDOMINIUM AND OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
GREENWAY ESTATES CONDOMINIUM**

**THIS DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GREENWAY ESTATES CONDOMINIUM** is made this 29<sup>th</sup> day of April, 2005 by **SEDONA CONSULTANTS, L.L.C.**, an Arizona limited liability company as “**Declarant**” and is as follows:

**ARTICLE I DEFINITIONS**

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

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

**(A) “Articles”** means the Articles of Incorporation of the Association, as they may be amended from time to time.

**(B) “Assessments”** means individually or collectively, as the context may require, the Common Expense Assessment, Special Assessments and Enforcement Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

**(C) “Assessment Lien”** means the lien granted to the Association by A.R.S. §33-1256 of the Condominium Act to secure the payment of Common Expense and Special Assessments, and other charges owed to the Association by a Unit Owner, including certain types of Enforcement Assessments and Collection Costs.

**(D) “Association”** means the **Greenway Estates Condominium Association**, an Arizona nonprofit corporation to be organized by Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. All references to the Association, acting by and through its Board, in this Declaration shall also mean and refer to any professional management company or Managing Agent to the extent any duties of the Board may be so delegated to such Managing Agent, and as the context may so require. The Association shall Record such contact notice as is required by A.R.S. §33-1256 regarding the Managing Agent or any other relevant contacts in the event the Condominium is self-managed.

(E) **“Board of Directors”** or **“Board”** means the Board of Directors of the Association.

(F) **“Building”** means any of the six structures containing residential Units as shown on the Plat.

(G) **“Bylaws”** means the Bylaws of the Association, as they may be amended from time to time.

(H) **“City”** means the City of Phoenix, Arizona.

(I) **“Collection Costs”** means all costs, fees, charges and expenditures (including, without limitation, demand letter fees, attorneys’ fees, court costs, filing fees, lien fees, and Recording fees) incurred by the Association in collecting and/or enforcing payment of any Assessments or other amounts payable to the Association pursuant to this Declaration, without regard to whether a law suit is filed or legal action otherwise undertaken by or on behalf of the Association.

(J) **“Common Elements”** means all portions of the Condominium other than the Units, including, without limitation, structural portions of residential Buildings, the pool and recreational areas, landscaped areas, walkways, exterior walls, fences and gates, parking areas and private drives.

(K) **“Common Expenses”** means the actual or estimated costs or expenditures incurred or to be incurred by, or financial liabilities of, the Association, together with required allocations to reserves. Common Expenses include, without limitation, the following items: (a) the cost of maintenance, repair and replacement of the Common Elements; (b) the cost of maintenance of other areas of the Condominium which are the responsibility of the Association under this Declaration; (c) the cost of utilities, trash disposal, landscaping, professional management, and other services to the Condominium except for those services separately metered or billed to the Unit Owners; (d) the cost of insurance and surety bonds maintained by the Association pursuant to this Declaration; (e) reserve amounts determined by the Board; and (f) payments for taxes, liens or encumbrances against the Common Elements, if any, except to the extent directly assessed or allocated to individual Units and their proportionate interest therein.

(L) **“Common Expense Assessment”** means the assessment levied against the Units pursuant to Section 7.1(A) of this Declaration.

(M) **“Common Expense Liability”** means the total liability for Common Expenses allocated to each Unit pursuant to Section 2.3 of this Declaration.

(N) **“Condominium”** means the real property located in Maricopa County, Arizona, described on **Exhibit A** attached hereto and incorporated herein by this reference above and on

the Plat, together with all Buildings and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto. **The legal name of the Condominium created by this Declaration is “Greenway Estates Condominium.”**

(O) **“Condominium Documents”** means this Declaration, including the Plat, and the Articles, Bylaws, and Rules (including any Architectural Rules).

(P) **“Declarant”** means *Sedona Consultants, LLC*, an Arizona limited liability company, and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument or who succeeds to any Special Declarant Right pursuant to A.R.S. §33-1244 of the Condominium Act.

(Q) **“Declaration”** means this *Declaration of Condominium and of Covenants, Conditions and Restrictions for Greenway Estates Condominium*, as it may be amended from time to time, and, where appropriate by context, the Plat.

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

(i) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(ii) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(iii) Amend the Condominium Documents during the Period of Declarant Control as provided in Sections 12.5(D) and (E) below.

(S) **“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 9.0 of this Declaration.

(T) **“Eligible Mortgage Holder”** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.0 of this Declaration.

(U) **“Enforcement Assessment”** means an Assessment levied pursuant to Section 7.4 of this Declaration.

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

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



(X) **“Improvement”** means all physical structures including, but not limited to, Buildings, parking areas, the pool and recreational equipment and areas, private drives, fences, walls and gates, trash receptacles, cluster mailboxes, utility systems, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

(Y) **“Invitee”** means any person whose temporary or periodic presence within the Condominium, including any Unit, has been solicited, approved by or arranged for by a particular Unit Owner, Lessee, or Resident, including without limitation, his guests, employees, business invitees, licensees, contractors and agents.

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

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

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

(CC) **“Modifications”** means any renovations, additions, alterations or improvements to a Unit after the date that Unit is first conveyed to a Purchaser.

(DD) **“Period of Declarant Control”** means the time period commencing on the date this Declaration is recorded in the Official Records of the Maricopa County, Arizona Recorder, and ending on the earlier of:

(i) Ninety (90) days after the conveyance of seventy-five percent (75%) of the Units in the Condominium to Unit Owners other than the Declarant;

(ii) Four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business; or

(iii) June 30, 2008.

(EE) **“Person”** means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, government subdivision or agency, or other legal or commercial entity, and in the case of a subdivision trust, means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

(FF) **“Plat”** means the *Final Plat of Greenway Estates Condominium* Recorded on May 2, 2005, in Book 745 of Maps, page 20, in the Official Records of Maricopa County, Arizona; and any amendments, supplements, or corrections thereto.

**(GG) “Purchaser”** means any Person, other than Declarant, who by means of a voluntary transfer becomes a Unit Owner.

**(HH) “Recording”** means the act of placing an instrument of public record in the Office of the Maricopa County, Arizona Recorder and **“Recorded”** means having been so placed of public record.

**(II) “Resident”** means any Person actually and lawfully residing on a temporary or permanent basis within a Unit, including a Unit Owner or Lessee of that Unit, and their respective family members.

**(JJ) “Rules”** means the rules and regulations adopted by the Association, as they may be amended from time to time. **“Architectural Rules”** means any Rules (including design guidelines, standards and procedures) adopted by the Architectural Committee or the Board pursuant to Section 4.3 of this Declaration, as amended or supplemented from time to time.

**(KK) “Single Family”** means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of or a group of not more than three (3) persons not all so related, who maintain a common household in a Residential Dwelling.

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

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

**(ii)** Exercise any Development Right;

**(iii)** Maintain sales offices, management offices, model Units and signs advertising the Condominium;

**(iv)** Use easements through the Common Elements for the purpose of making Improvements within the Condominium;

**(v)** Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control;

**(vi)** Exercise the rights reserved to Declarant pursuant to Section 3.3 and Section 4.22 of this Declaration.

**(MM) “Unit”** means a portion of the Condominium as described in this Declaration and as shown on the Plat that is designated for separate ownership and occupancy.

**(NN)** ***“Unit Owner”*** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include (i) Persons having an interest in a Unit merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Unit. The term “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 through which a seller has conveyed to a purchaser equitable title to a Unit under which the seller is obligated to convey to the purchaser the remainder of seller’s title in the Unit, whether legal or equitable, upon payment in full of all monies due under the contract. The term “Unit 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 a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S., §§33-801 et seq., the Trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of the trust who is entitled to possession or occupancy of the Unit shall be deemed to be the Unit Owner.

## ***ARTICLE 2 DESCRIPTION OF THE CONDOMINIUM***

**2.0 Submission of Property.** The real property described on ***Exhibit A***, together with all Improvements, easements, rights and appurtenances thereto, is hereby submitted to a Condominium in accordance with the provisions of the Condominium Act. ***The Identifying Numbers of the Units submitted to the Condominium are Units 101 through 131, inclusive, as further shown on the Plat.*** The Condominium consists of all real property shown on the Plat.

### ***2.1 Unit Boundaries.***

**(A)** The physical boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors and windows of the Unit with: (i) the underside of the finished but undecorated ceiling as the top horizontal boundary; (ii) the top of the finished but undecorated flooring shall be the bottom horizontal boundary; and (iii) the interior of the finished but undecorated walls shall be the vertical boundaries. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements. The openings and outlets of all utility installations in the Unit shall be part of the Unit. The structural elements of exterior windows and doors in any perimeter wall forming the vertical boundaries of a Unit shall be Limited Common Elements allocated to that Unit as provided in Section 2.5 below.

**(B)** If any chute, flue, duct, wire, conduit, bearing wall, bearing column, heating or air conditioning unit or apparatus or other fixture lies partially within and partially outside the boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated

solely to that Unit as further provided in Section 2.5 below and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

**(C)** Subject to the provisions of subsection (B) of this section, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit.

**(D)** In the event of an inconsistency or conflict between the provisions of this section and the Plat, this section shall control.

**(E)** The existing physical boundaries of a Unit or a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its proper boundaries rather than any description contained in any Recorded deed, plat, plan or declaration, regardless of the settling, rising or lateral movement of the Building in which that Unit is located and regardless of any minor variances between the boundaries shown on the Plat and the actual physical boundaries.

**(F)** 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 of the Condominium Act.

**(G)** All square footages of individual Units referenced by Declarant on the Plat or in marketing materials and brochures are approximate only.

**2.2** **Allocation of Common Element Interest.** The undivided interests in the Common Elements of the Association shall be allocated equally among the Units. Accordingly, each Unit's interest in the Common Elements shall be stated as a fraction or percentage equal to 1/31 or 3.2258%. The percentage of 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 Common Element Interest. The undivided Common Element Interest allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description of the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit.

**2.3** **Allocation of Common Expense Liabilities.** The undivided interest in the Common Expense Liability of the Association shall be allocated equally among the Units. Accordingly, each Unit's Common Expense Liability shall be stated as a fraction or percentage equal to 1/31 or 3.2258% of the total Common Expenses of the Association each fiscal year of the Association.

**2.4** **Allocation of Votes in the Association.** The votes in the Association shall be equal to the number of Units in the Condominium from time to time. The votes shall be allocated equally among all the Units with each Unit having one (1) vote and the total number of votes in the Condominium being thirty-one (31).

## **2.5 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 Unit as follows:

**(i)** Each Unit is allocated the Entrance (collectively, ***“Entrance”***) adjoining or attached to the Unit as shown on the Plat. The boundaries of each Entrance shall be as follows: (i) the lower horizontal boundary shall be the unfinished concrete slab of the Entrance; (ii) the upper horizontal 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 (iii) the vertical boundaries shall be the vertical planes corresponding to the exterior wall of the Building in which the Unit is located and a vertical plane intersecting with the lower and upper horizontal boundaries farthest from the Building.

**(ii)** Each Unit is allocated either a Patio or Yard Limited Common Element (collectively sometimes referred to herein as a, ***“Patio”***) adjoining or attached to the Unit as shown on the Plat. The boundaries of each Patio shall be as follows: (i) the lower horizontal boundary shall be the unfinished concrete floor of the Patio; (ii) the upper horizontal 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 (iii) the vertical boundaries shall be the vertical planes corresponding to the exterior wall of the Building in which the Unit is located and the interior finished surfaces of the fence, railing or concrete wall partially or completely enclosing the Patio.

**(iii)** Units 101, 103, 105, 108, 110, 112, 113, 115, 117, 120, 122, 124, 126, 127, 129, and 131 are allocated the Balcony Limited Common Element (***“Balcony”***) adjoining or attached to the Unit as shown on the Plat. The boundaries of each Balcony shall be as follows: (i) the lower horizontal boundary shall be the unfinished floor of the Balcony; (ii) the upper horizontal boundary shall be a horizontal plane having an elevation equal to the elevation of the finished ceiling of the Balcony or, if none, the unfinished ceiling of the Unit to which the Balcony is allocated; and (iii) the vertical boundaries shall be the vertical planes corresponding to the exterior wall of the Building in which the Unit is located and the interior surfaces of the fence, railing or wall enclosing the Balcony.

**(iv)** Any gas, electric or water meter which serves only one Unit is allocated to the Unit it serves. Any chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, heating and air conditioning units and related equipment and natural gas, cable television, water and electric pipes, lines or meters), located outside of the boundaries of a Unit, which serve only the Unit is a Limited Common Element allocated solely to the Unit served. If a chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, heating and air conditioning units, hot water heaters, and related equipment and natural gas, cable television, water and electric pipes, lines or meters), lies partially within and partially outside of the boundaries of a Unit, the portion outside the boundaries of a Unit which serve only the Unit is a Limited Common Element allocated solely to the Unit served.

(v) Any shutters, awnings, window boxes, doorsteps, stoops, porches, and all other fixtures designed to serve a single Unit, but located outside of the Unit's physical boundaries, are Limited Common Elements allocated exclusively to that Unit. 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.

(B) A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of §33-1218(B) of the Condominium Act.

(C) The 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 amendment to this Declaration executed by the Declarant. After the Declarant no longer owns any Units, 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 amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

### ***ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS***

***3.0 Utility and Service Company Easements.*** There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, natural gas, water, sewer, telephone, electricity, cable television or other communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or Declarant to erect and maintain the necessary utility lines, pipes, facilities and equipment on the Common Elements, but no sewers, electrical lines, gas or water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed and/or as thereafter approved and constructed by the Board of Directors. This easement shall in no way affect any other Recorded easements on the Common Elements.

***3.1 Easements for Ingress and Egress.*** There is hereby granted and created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic, including, without limitation, emergency access and utility repair vehicles, over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Unit Owners and Residents and their respective Invitees.

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

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

**(i)** The right of the Association to adopt reasonable Rules governing the use of the Common Elements;

**(ii)** The right of the Association to suspend the right of a Unit Owner, Lessee or Resident (and their respective Invitees) to use the Common Elements for any period during which the Unit Owner, Lessee or Resident is in violation of the Condominium Documents as further provided in Article 10 below;

**(iii)** The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, subject to the vote or written assent of those Unit Owners representing at least eighty percent (80%) of the votes in the Association, and with the consent of Declarant during the Period of Declarant Control; and, in all events, subject to an easement for ingress and egress if access to a Unit is through the Common Elements to be conveyed or mortgaged;

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

**(v)** The rights of Declarant to establish the rules and operation of any Condominium controlled access privacy gate, if any, as may be installed or erected while Declarant has any Units for sale;

**(vi)** The right and obligation of the Association to assign to every Unit Owner one mailbox space in accordance with U.S. Postal Regulations and to provide an access key thereto. Mailbox number assignments may be changed from time to time as permitted by law; and

**(vii)** 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 of this Declaration.

**(B)** If a Unit is leased, the Lessee and all other Residents of the Unit shall have the right to use the Common Elements during the term of the lease, and any non-Resident Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease.

(C) The Invitees of any Resident entitled to use the Common Elements pursuant to Sections 3.2(A) or Section 3.2(B) above may use the Common Elements provided they are accompanied by a Member, Lessee or other person entitled to use the Common Elements pursuant to Section 3.2(A) or Section 3.2(B) above. The Board of Directors shall have the right to reasonably limit the number of Invitees who may use the Common Elements at any one time, the number of times any particular type of Invitee may use the recreational Common Elements, and the times during which Invitees may use the Common Elements.

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

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

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

(A) Declarant shall have the right, and an easement on and over the Common Elements, to construct, improve, modify, or alter the Common Elements and the Units shown on the Plat and to erect, install or modify all other Improvements as Declarant may deem necessary and to use the Common Elements and any Units owned by Declarant for construction purposes, including for the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and for the performance of work respecting the Condominium. If, during Declarant's pre-sale and sales period, any electronic privacy gates are installed, Declarant shall have the sole right to establish the hours and rules of operation of any such controlled access privacy gates and may require the gates to remain open during daylight marketing hours.

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

(C) Declarant shall have an easement through all of the Units, at reasonable times and upon reasonable notice for any access necessary to complete any warranty work, Modifications or Improvements to be performed or constructed by Declarant.

(D) Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and model Units throughout the Condominium and to maintain one or more advertising, model and directional signs on the Common Elements while Declarant is selling or preparing to sell Units in the Condominium. Declarant reserves the right to place models, management offices and sales and leasing offices in any Units owned by Declarant and



on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

(E) Declarant may from time to time relocate model Units, management offices and sales and leasing offices to different locations within the Condominium. Upon the relocation of a model Unit, management, business, sales or leasing office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

(F) So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to reserve parking spaces in the Condominium not allocated as Limited Common Elements or otherwise assigned to particular Units, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(G) 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 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.

(H) Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration. 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.

(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 other means provided in this Declaration.

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

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

(A) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

**(B)** For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

**(C)** For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the stone, block, brick or other masonry walls bounding the Unit and the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding the Unit: provided that any such action will 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.

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

**(E)** For the performance of the Unit Owner's obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 5.1(B) of this Declaration.

### **3.6 Easements in Favor of Association.**

**(A)** 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:

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

**(ii)** For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from the exterior of Units or Limited Common Elements.

**(iii)** 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.

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

(v) For entry into Yard Limited Common Elements to effect sprinkler repairs to the shared sprinkler system for a Building, with each Unit Owner whose Unit is allocated a Yard Limited Common Element hereby agreeing to provide Association access to the Yard upon reasonable prior notice by the Association.

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

(vii) For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees and other Residents, and their respective Invitees.

(B) Except in case of emergency, the Association shall not enter a Unit unless a Unit Owner or other responsible adult is present. In the event of an emergency, a Board member or any authorized Association representative may enter a Unit without prior notice to the Unit Owner, Lessees or any other Residents, as applicable, but promptly following the Association's entry into the Unit, the Association shall notify the Unit Owner, Lessee, or other Residents of the nature of the emergency condition requiring entry without notice.

3.7 **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, alteration or restoration authorized by this Declaration, settling or shifting, or any reason other than the encroachment onto the Common Elements or any Unit caused by the intentional misconduct or gross negligence of a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted.

3.8 **Plat Easements.** The Condominium as a whole and the individual Units and the Common Elements are subject to all easements and rights-of-way shown or dedicated on the Plat.

#### **ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS**

4.0 **Single Family Residential Use.** All Units and any Limited Common Elements as may be allocated thereto from time to time 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 such Limited Common Element, but a Unit Owner or Resident may conduct a business activity within a Unit so long as: (i) the

existence or operation of the business activity is not apparent or readily detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (iii) the business activity only results in occasional or minimal time duration visits or contact with non-Residents coming to the Unit and does not involve the door-to-door solicitation of Residents in the Condominium; (iv) the trade or business conducted by the Unit Owner or Resident does not have more than one (1) employee working in or from such Unit who is not also a lawful Resident thereof; (v) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or parking violations; (vi) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; and (vii) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of Residents or Invitees in or to the Condominium, 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 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: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof shall not be considered a trade or business within the meaning of this section.

**4.1 Antennas.** No Unit Owner or other Person may erect, use or maintain any antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electro-magnetic radiation outside of his Unit or visible from the exterior of his Unit, whether attached to a Building or structure or otherwise, unless approved by the Board. Even if applicable law prohibits the Board from requiring such 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 such reasonable Rules as the Board may adopt consistent therewith including Rules regarding screening and protection of Common Elements from potential damage.

**4.2 Utility Service.** Except for lines, wires and devices existing on the Condominium on the date this Declaration is Recorded and maintenance and replacement of the same, no lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are contained in conduits or cables installed and maintained underground or concealed in, under or on Buildings or other structures approved by the Board. All utilities not separately metered to the Units shall be paid by the Association as a Common Expense. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Buildings or structures approved by the Board.

### **4.3 Modifications/Further Restrictions on Use.**

**(A)** Except as expressly provided in this Section 4.3, no Person shall make any Modifications to a Unit or any Limited Common Element allocated thereto without the prior written consent of the Board. The request for Modification shall be made on a “**Modification Approval Request Form**” promulgated by the Board. The Modification Approval Request Form may: (A) provide the Association with a written indemnity against liability in accordance with Section 6.4 below in a form provided by the Board of Directors upon request and consistent with said Section 6.4; (B) evidence a written acknowledgment that any such Modification may negate or amend any contractual, statutory or common law warranty expressly or implicitly provided by Declarant; and (C) may establish any additional conditions, if any, imposed by the Board pursuant to Section 4.3(B) below. Prior to submitting a Modification Approval Request Form, the Unit Owner of the Unit to be modified shall retain an architect or engineer licensed in Arizona. Such architect or engineer shall provide sealed plans and specifications to the Board together with the Modification Approval Request Form, unless the delivery of such plans and specifications are otherwise waived by the Board in writing. The architect or engineer shall certify to the Board in connection therewith that such Modification will not impair the structural integrity of the Building or the mechanical systems serving the same within which such Modification is to be made. Prior to commencing a Modification, the Unit Owner of the Unit to be modified must receive a formal written approval of the Modification from the Board as provided in Section 4.3(B) below and obtain a building permit, if such is required pursuant to Section 4.3(F) below and provide a copy of the permit to the Board. The Unit Owner shall, to the extent, permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such Modification.

**(B)** The Board of Directors may condition the approval of any proposed Modification to a Unit in any reasonable manner, including, without limitation: (i) restricting the time during which such work may be performed; (ii) requiring the placement of a construction security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (iii) requiring the Unit Owner causing the Modification to obtain and maintain, prior to commencement and during completion of the Modification, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Unit Owner shall designate Declarant, the Association, the Board of Directors and any other Person designated by the Board as additional insureds under the policy. If the Board fails to expressly approve the requested Modification in writing within forty-five (45) days after the receipt of a fully complete Modification Approval Request Form, the requested Modification shall be deemed disapproved. If the Board receives an incomplete Form, the Board shall promptly notify the Unit Owner of any deficiencies and the time for approval shall not commence until a completed Application Form is delivered to the Board. The Board may disapprove a proposed Modification even though the plans and specifications may be in substantial compliance with this Declaration and any Architectural Rules if the Board, in its sole and absolute discretion, determines that the proposed Modification, or some aspect or portion thereof, is undesirable or unattractive. Decisions of the Board may be based on purely aesthetic considerations. Each Unit Owner acknowledges that such determinations are necessarily

subjective in nature and that the decision of the Board shall be final on all matters submitted to it pursuant to this Section 4.3.

**(C)** Except as provided in Section 4.3(D) below, any Unit Owner may make nonstructural Modifications to the interior of his Unit that do not affect mechanical systems within the Building without the prior written approval of the Board, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such Modifications.

**(D)** Notwithstanding the foregoing, and except as provided in Section 4.3(J) below regarding Declarant Improvements, no Modification within a Unit, whether structural or not, which would be visible from the exterior of the Building or from another Unit shall be made without the prior written consent of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed Modification is aesthetically pleasing and in harmony with the surrounding Improvements.

**(E)** No Unit Owner, Lessee or other Resident shall overload the electric wiring in the Building or operate machines, appliances, accessories or equipment in such 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.

**(F)** Any Unit Owner acquiring an adjoining Unit, and, upon receiving the approval of the Board set forth in this Section 4.3, may remove or alter any non-structural common wall or partition between adjoining Units or create apertures therein even if certain elements therein are part of the Common Elements or Limited Common Elements, if such acts do not impair the structural integrity of the Building or its mechanical systems or lessen the support of any part of the Condominium and as further provided in A.R.S. §33-1221(3) of the Condominium Act. No Unit Owner (other than Declarant) may remove any such common wall or partition between adjoining Units without first obtaining the consent, and satisfying any "fire wall" requirements of, the City. The fact that a demising wall between adjoining Units is subsequently removed shall not affect the Units' percentage interest in the Common Elements or the Units' Common Expense Liability. Such demising wall may be later constructed or reconstructed with the written approval of the Board as provided in this Section 4.3. Any removal, construction, or reconstruction of a demising wall, shall be subject to all reasonable conditions imposed by the Board pursuant to Section 4.3(B) above, including allowing a structural engineer to inspect the progress at specified stages of construction or demolition and to make additional requirements or specifications based on such findings.

**(G)** The approvals required of the Board and/or Declarant pursuant to this Section 4.3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

**(H)** The Board shall have the right to charge a reasonable fee for reviewing requests for approval of any Modification, which fee shall be payable at the time the application

for approval is submitted to the Board. The Board may establish a schedule of architectural review fees as part of any Rules as may be adopted by the Association.

**(I)** The Association shall have the right to stop any work or Modification that is not in compliance with this Section 4.3 or any Rules of the Association governing Modifications, and, where appropriate, to seek an equitable injunction ordering the removal of a Modification or any portion thereof that does not comply with this Section 4.3. Neither Declarant, the Association, nor any of their respective officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Unit Owner or other Person by reason of: mistake in judgment; failure to point out or correct deficiencies in any plans or other submissions relating to, without limitation, structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards; negligence; or any other misfeasance, malfeasance or nonfeasance arising out of or in any way connected with or relating to a Modification.

**(J)** Declaring is exempt from the provisions of this Section 4.3 and need not seek nor obtain the Board's approval of any Improvements or Modifications constructed on the Condominium by Declarant.

**(K)** The Board may establish an "*Architectural Committee*" to perform the architectural design review and related functions of the Board set forth in this Declaration and in this Section 4.3, in particular. If established, all references to "Board" in this Section 4.3 and elsewhere in this Declaration, as the context may require, shall mean and refer to the Architectural Committee. Any such Architectural Committee shall be a committee of the Board and shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The Board, and/or Architectural Committee, if any, may promulgate Architectural Rules to be followed in rendering its decisions. Such Rules may include, without limitation, provisions regarding: (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) requirements concerning exterior Improvements; and (iii) signage. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Board may establish such other Committees as the Board may determine in its sole discretion and may establish Rules governing such Committee, including the number of Board members and alternate members as shall serve on such Committee and the function and delegated duties of such Committee.

**4.4 *Trash Containers and Collection.*** Except for small amounts of household trash or recyclable materials kept within a Unit and discarded as provided herein on a regular basis, no garbage or trash or recyclable materials shall be placed or kept within a Unit or other portion of the Condominium, except within designated trash collection areas (dumpsters) supplied by the City and located on the Common Elements. The Board of Directors shall have the right to subscribe to a private trash service as a Common Expense Liability for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate Rules regarding garbage, trash, trash containers and collection. No incinerators shall be kept or maintained in any Unit or Limited Common Element allocated thereto.

**4.5 Machinery and Equipment.** No Unit Owner, Lessee or other Resident may place, operate or maintain machinery or equipment of any kind upon the Condominium other than usual and customary machinery and equipment used in connection with the permitted uses of the Unit and Limited Common Elements. This Section 4.5 shall not apply to any such machinery or equipment which Declarant or the Association may require for the construction, improvement, operation and maintenance of the Common Elements.

**4.6 Animals.** No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained in or on the Condominium and then only if such house pets are kept or raised solely as domestic pets (and not for commercial purposes) within a Unit. No more than two (2) dogs may occupy any Unit regardless of size or weight. No pet or other animal shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. All dogs or other house pets permitted hereunder and capable of being walked on a leash shall be kept on a leash not to exceed six (6) feet in length when outside a Unit, and all pets shall be directly under a Resident's control or direction at all times. No Unit Owner, Lessee, or other Resident or their respective Invitees shall permit any such pet being kept in the Unit to relieve itself on any portion of the Common Elements; it being understood that it shall be the responsibility of such person to immediately remove any droppings from pets. No structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the Common Elements. Upon the written request of any Unit Owner or other Resident, the Board of Directors shall determine whether, for the purposes of this section, a particular animal or bird is a generally recognized house pet, a nuisance, or whether the number of pets in any Unit is reasonable. The right of Unit Owners, Lessees and other Residents to maintain a reasonable number of house pets in or on the Condominium pursuant to this section is expressly subject to the right of the Board of Directors to adopt Rules prospectively further restricting the size and/or number of dogs or other pets which may be maintained or kept in the Units while "grandfathering" pets in compliance with this Section 4.6 and then current pet Rules.

**4.7 Temporary Occupancy.** Temporary buildings, trailers, or structures used during the construction of the Improvements within the Condominium by Declarant and/or approved by the Board shall be permitted but must be removed promptly upon completion of the construction. In no event shall such temporary buildings, trailers or structures be used at any time as a residence.

**4.8 Community Privacy Measures/Unit Security Alarms.**

(A) Each Unit Owner understands and agrees that neither the Association (nor its officers, directors, employees, and agents) nor Declarant (nor its officers, directors, employees and agents) is responsible for the acts and omissions of any third parties or of any other Owner or Owner's family members, guests, tenants and invitees resulting in damages or injury to person or property. If, and to the extent, any common privacy measures, including any electronic privacy access gates, are installed or undertaken by Declarant or the Association, the cost of installation and maintenance of such features or facilities will be paid by the Association as a Common Expense Liability. Each Unit Owner understands that any measures or features that are in effect at the time he becomes a Unit Owner may be abandoned, removed and/or modified by a majority



vote of the Board. The commencement of any such devices, features, measures or controls shall not be deemed to be an assumption of any duty on the part of the Association or Declarant with respect to the Condominium and neither Declarant, the Board (nor any committee thereof) make any representation or warranty concerning the efficacy of such devices relating to security or the ease of entry or response time of fire, police or other emergency personnel onto the Condominium.

**(B)** If any Unit Owner elects to install a private alarm system monitored by a private security company or outside third Person (including any police or fire department) in his Unit, no later than completion of the installation, the Unit Owner shall provide to the Association the name and telephone number of the monitoring party and a contact Person for purposes of promptly addressing emergencies and false alarms as they may affect the Condominium as a whole and the safety of the Residents. Notwithstanding the providing of such information, in no event shall the Association, or any Board member, Managing Agent, or any other agent of the Association, have any liability whatsoever in connection with the alarm system or the alarm. Without limiting the foregoing, the Association, the Board, and its agents, including the Managing Agent, shall have no obligation to notify the police department, fire department or any monitoring company of the activation of any alarm within a Unit except to the extent of reasonably prudent actions required of such Person who comes into actual and direct knowledge of a life threatening event or risk of substantial damage or destruction to the real property comprising the Condominium.

**4.9 *Mineral Exploration.*** No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

**4.10 *Environmental Restrictions.*** All Residents of the Condominium shall be responsible for complying with all federal and state environmental and health laws. Without limiting the foregoing, no Unit Owner, Resident or any other Person may dispose of, transport, or store "hazardous materials" in his Unit or elsewhere in the Condominium other than small amounts of ordinary non-combustible cleaning agents or like chemicals used for household purposes and maintained in the Unit. In no event may any Unit Owner, Resident or any other Person dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons, or other petroleum products, in or down a dry well on or adjacent to the Condominium. The Board may, from time to time, adopt Rules to reduce the level of noise emissions from the Units. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with such Rules and any noise reduction ordinance of the City.

**4.11 *Diseases and Insects.*** No Unit Owner, Resident or any other Person shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious plant or animal diseases or noxious insects. Each Unit Owner and/or Resident shall be responsible to periodically perform or cause to be performed such pest control activities in their Unit as may be necessary to prevent insects, rodents and other pests from infesting the Unit.

**4.12 General Restrictions Regarding Parking of Vehicles.** No truck, automobile, mobile home, mini or standard size motor home, travel trailer, tent trailer, trailer, all-terrain vehicle, bus, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle of any sort or nature (collectively, “*Vehicle*”) may be parked, kept, or maintained on any part of the Condominium except within an enclosed garage of a Unit and except for temporary loading or unloading of a Vehicle not exceeding four (4) consecutive hours or six (6) hours in any 24 hour period. At no time may any Person block the Common Elements roadway or ingress or egress of any other Person to his Unit. Garage doors are to be kept closed at all times except when the Resident is entering or exiting his the garage. Vehicles belonging to Invitees of Unit Owners or Residents may be parked in any designated guest Common Element parking spaces for a period not to exceed twelve (12) consecutive hours or in the garage of the Unit if such Vehicle fits completely within the garage and does not extend into the Common Element drive.

**4.13 Vehicle Repair; Additional Parking Restrictions; Enforcement and Towing.** Other than temporary emergency repairs, no Vehicle shall be constructed, reconstructed, serviced or repaired, and no inoperable Vehicle may be stored, on any portion of the Condominium. A Vehicle shall be deemed “inoperable” if it is covered by a tarp or car cover for more than seventy-two (72) consecutive hours or if it is not moved under its own power for any period exceeding three (3) consecutive weeks. In no event, may any Vehicle be parked along the private drives or roads within the Condominium outside of a designated parking stall. Parking stalls may not be used for any purpose other than the parking of authorized Vehicles. The Board of Directors shall have the right to have any Vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. If the owner of a towed Vehicle is not a Unit Owner and the Association directly incurs any expense because such towing charges were not collected from the Vehicle owner for any reason, the Association may seek reimbursement for such expenses from the Unit Owner whose Resident or Invitee improperly parked the towed Vehicle. Any expense incurred by the Association in connection with the towing of any Vehicle shall be paid to the Association upon demand to the Unit Owner as an Enforcement Assessment pursuant to Section 7.4 below. In addition to levying an Enforcement Assessment for towing charges incurred by the Association and filing a civil suit to collect the same, the Board may pursue all other remedies set forth in Section 10.2 below, including, without limitation: (i) imposing monetary fines against Unit Owners (and/or their Residents) who are causing recurrent violations of the Vehicle parking restrictions of this Declaration in accordance with Rules adopted by the Association for the imposition of monetary fines; (ii) suspending the voting rights of or Association services to an Owner whose Unit and/or the Residents and Invitees therein are in violation of the parking restrictions of this Declaration; (iii) filing a civil suit against a Unit Owner and/or Resident to enjoin actions or behavior relating to the parking of Vehicles violative of this Declaration; and (iv) Recording a notice of violation against a Unit in the case of continuing Vehicle or parking violations pertaining to that Unit.

**4.14 Signs.** No emblem, logo, sign or billboard of any kind, including, but not limited to, “For Sale” or “For Rent” signs, (other than a Unit Owner name and address identification sign not exceeding 6 x 12 inches in size on the door of a Unit) shall be displayed so

that it is visible from the exterior of any Unit or Building or any other portion of the Condominium without the prior written approval of the Board; except for: (i) signs used by Declarant to advertise the Units for sale or lease; (ii) signs on the Common Elements as may be placed or approved by Declarant during the Period of Declarant Control, or by the Board, thereafter; (iii) any signs as may be required by legal proceedings; and (iv) such signs as are approved by the Board.

**4.15 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.

**4.16 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 Unit Owner, Lessee, Resident or their respective Invitees. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

**4.17 Window Coverings; Balcony Restrictions.**

**(A)** No reflective materials, including, 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. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed in any Unit without the prior written approval of the Board, unless the items so installed are substantially identical in color, texture and size as previously approved and installed window coverings being so replaced.

**(B)** Furniture, furnishings, umbrellas and potted plants kept and maintained on any Balcony Limited Common Element shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior walls of any Building in which the Unit is located. No astroturf, artificial grass covering, carpet or other floor covering shall be installed on any Balcony without the prior written approval of the Board of Directors. No Balcony shall be used for a storage area for items or materials that are not customarily intended for use on a Balcony, such as the use of a Balcony to store bicycles or exercise equipment. No linens, blankets, rugs, swimsuits or similar articles may be hung from any Balcony. Barbeques, woks and related accessories and cooking equipment may not be used on Balconies at any time.

**4.18 Leasing of Units.** No Unit Owner may lease less than his entire Unit and no subleases shall be permitted. All leases shall: (i) be in writing; (ii) provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the Lessee and the other Residents of the Unit pursuant to the Lease to comply with the terms of the Condominium Documents shall be a default under the lease; and (iii) be of a

duration of not less than ninety (90) days. At least ten (10) days prior to the commencement date of the lease of his Unit, a Unit Owner shall provide the Association with a signed copy of the Lease. The Unit Owner must also provide the following information if such information is not readily ascertainable from the Lease: (i) the commencement date and termination date of the lease and the names of each Lessee or other Resident who will be occupying the Unit during the term of the lease; (ii) the address and telephone number of the Unit Owner while the Lease is in effect. Any Unit Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. The Unit Owner shall be liable for any violation of this Declaration or the Rules caused by the Lessee, any other Resident of the Unit under the Lease, and their Invitees and family pets and, upon demand of the Association, shall immediately take all necessary actions to correct any such violations. Among other remedies, the Association may fine any Unit Owner who leases his Unit without complying with the provisions of this Section 4.18; it being understood and agreed by each Unit Owner that compliance with this Section 4.18 is material to maintaining pride of ownership and quality of life of the Project.

**4.19 Time Sharing.** A Unit may not be divided or conveyed on a time increment basis (commonly referred to as “time sharing”) or measurable chronological periods other than pursuant to a written lease as permitted under Section 4.18 of this Declaration. The term “time sharing” as used herein includes any agreement, plan, program, or arrangement under which the right to use, occupy or possess the 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 for thirty (30) consecutive calendar days or less.

**4.20 Variances.** The Board may authorize a variance from compliance with any of the provisions of this Declaration, including this Article 4, from time to time, when circumstances such as hardship, aesthetic or environmental considerations may require. A variance must be evidenced in writing and, to be deemed valid, must bear the signatures of at least a majority of the Board of Directors then serving at the time the variance request is decided. If such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision hereof covered by the variance, and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Unit Owner’s obligation to comply with all governmental laws and regulations affecting the use of his Unit. The Board shall have the right to condition the granting of a variance as it may determine in the Board’s sole discretion, including, without limitation; making a variance temporary or permanent; or requiring the removal or replacement of a non-permanent or semi-permanent structure upon the sale or other conveyance of a Unit. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one instance or under certain terms and conditions does not mandate the granting of a variance under similar or related circumstances, terms or conditions if the experiences of the Association and the Condominium as a whole or the differences in circumstances (however slight) of a variance request from a previously approved variance lead the Board, in good faith, to disapprove a variance request in such instance. In no

event, may the Board grant any variance that would create or cause the Association to be in violation of any insurance policy limitation or restriction issued in favor of the Association and its Members as e.g. granting a variance to a Unit Owner to keep a certain breed or type of animal that is expressly prohibited under any applicable insurance policy.

**4.21**        **Declarant Approval Required.** After the expiration of the Period of Declarant Control or at any time after Declarant has waived its right to appoint members to the Board and officers of the Association as provided in Section 6.1(C) below, and, for so long as Declarant owns any Unit, any action for which the consent or approval of the Board is required under this Declaration may be taken only if such action is also consented to or approved by Declarant.

## ***ARTICLE 5 CONDOMINIUM MAINTENANCE AND REPAIR***

### **5.0 Duties of the Association.**

**(A)**        The Association shall maintain, repair and make necessary improvements to all Common Elements, whether located inside or outside the Buildings, except for the specific portions of the Limited Common Elements or Common Elements which the Unit Owners are obligated to maintain pursuant to Section 5.1 of this Declaration. Without limitation, the Association shall be responsible for maintaining: (i) Building exteriors including, the roofs thereof; (ii) structural portions of the Limited Common Element Patio, Yard, Balcony and Entrance, including the slab or unfinished flooring and railing or walls forming the boundaries thereof; (iii) all other walls and fencing on the Condominium or walls between the Condominium and surrounding real property; (iv) the sprinkler system within Yard Limited Common Elements; (v) the private drives, parking areas, and sidewalks; (vi) the pool and recreational amenities; (vii) all Common Element landscaping and irrigation or landscaping sprinkler systems; (viii) lighting and light fixtures in the Common Elements; and (ix) the private water and sewer lines as provided in Section 5.0(C) below.

**(B)**        The cost of all such repairs, maintenance and improvements shall be a Common Expense and shall be paid for by the Association. The Board shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements and the Condominium. No Unit Owner, Lessee, Resident or their respective Invitees shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

**(C)**        As used in this Section 5.0(C), the term "***Utility Facilities***" shall mean all sewer and water lines and appurtenant facilities within the boundaries of the Condominium except for: (a) any sewer and water lines 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 as a Limited Common Element by this Declaration; and (b) any sewer and water lines and appurtenant facilities which have been accepted by and are the responsibility of the City or a private utility company. The Association shall be responsible for maintaining and repairing the

Utility Facilities from the point of connection to each Unit to the point of connection of such lines to the publicly dedicated water and sewer lines maintained by the City in accordance with all applicable federal, state or local laws, ordinances or regulations. If the Utility Facilities have a design flow of more than 10,000 gallons per day, then the Association shall operate and maintain the Utility Facilities in accordance with the operation and maintenance plan approved by the Maricopa County Environmental Services Department in connection with the approval of the Utility Facilities. In the case of an emergency repair to the water or sewer lines, Unit Owners may call Declarant at Declarant's telephone number stated in their purchase documents; currently (602) 264 2510 for instructions on emergency contact personnel. After the Period of Declarant Control has expired, the Unit Owners should contact the Managing Agent retained by the Board to manage the affairs of the Association or, if no such company has been retained, the Board's specified contact person for emergency matters as specified at the meeting in which Board control is turned over to the Unit Owners.

### **5.1 Duties of Unit Owners.**

**(A)** Each Unit Owner shall maintain, repair, replace and restore, at his sole cost and expense, all portions of his Unit, subject to the further provision of the Condominium Documents.

**(B)** Except as provided in Section 5.0(A) above, each Unit Owner, at his sole cost and expense, shall be responsible for the maintenance and repair of the Limited Common Elements exclusively allocated to his Unit as Limited Common Elements. Such maintenance obligations shall include, without limitation: (i) maintenance, repair and replacement of all doors and windows of the Unit (including garage doors and garage door openers); (ii) maintenance, repair and replacement of the air conditioning unit (including compressors and condensers), heater and hot water heater servicing the Unit; (iii) maintenance of all landscaping within the Yard Limited Common Elements to the extent a Yard is so allocated to the Unit as a Limited Common Element; and (iv) maintenance repair and replacement of all other Limited Common Elements and Improvements thereon that are allocated exclusively to his Unit pursuant to the provisions of Section 2.5 above, the maintenance for which is not otherwise specifically delegated to the Association pursuant to Section 5.0(A) above.

**5.2 Repair or Restoration Caused by Negligent or Wrongful Acts.** Each Unit Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, or equipment thereon, which results from the negligence or willful misconduct or omission of the Unit Owner or that Owner's Residents, Invitees or family pets for whom Owner has responsibility, to the extent permitted by Arizona law. The cost to the Association of any such repair, maintenance or replacement required by such act or omission of a Unit Owner (or Person for whom the Unit Owner is legally responsible) shall be assessed against the nonperforming Unit Owner as a Common Expense pursuant to Section 7.1(E) of this Declaration and such costs shall be secured by the Assessment Lien.

**5.3 Unit Owner's Failure to Maintain.** If a Unit Owner fails to maintain in good condition and repair his Unit or any Common Element which he is obligated to maintain under

this Declaration in the manner set forth in this Declaration and the required maintenance, repair or replacement is not performed within thirty (30) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner as a Common Expense pursuant to Section 7.1(E) of this Declaration and such costs shall be secured by the Assessment Lien.

**5.4 Sprinkler System.** In accordance with the requirements of the City, each Unit is equipped with a sprinkler system. The sprinkler system is an integrated system that serves all of the Units within a Building. The heads of the sprinkler system will intrude into the Unit. All pipes, heads and other parts of the sprinkler system (whether located within or outside of the Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. If a Unit Owner or Resident and/or their Invitees cause the sprinkler system to be activated (except in the case of a fire) and/or damage or destroy any part of the sprinkler system, the Unit Owner of the Unit where the sprinkler was improperly activated shall be responsible for the cost of any repairs to the sprinkler system made by the Association and for all other losses or damages resulting from such actions.

**5.5 No Responsibility of the City.** The City is not responsible for and will not accept maintenance of any private drives, private facilities, or landscaped areas, within this Condominium.

## **ARTICLE 6 THE ASSOCIATION**

**6.0 Rights, Powers and Duties of the Association.** No later than the date the first Unit is conveyed to a Purchaser, the Association shall be organized 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 to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. Without limiting the foregoing, the Association shall have the right to: (i) establish an architectural committee and delegate such functions of the Board, including those described in Section 4.3 above, as the Board determines in its discretion, to such committee, and (ii) finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than sixty seven percent (67%) of the votes in the Association and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Association has the specific duty to make available to Declarant, Eligible Mortgage Holders, Unit Owners, and Eligible Insurers or Guarantors during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the

Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of the information requested.

**6.1 Directors and Officers.**

(A) The Board shall consist of at least three (3) members after the Period of Declarant Control expires, as provided in the Articles. 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. Declarant-appointed officers and directors do not need to be Unit Owners.

(B) Upon the termination or expiration of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors, all of whom must be Unit Owners as further provided in the Bylaws. The Board elected by the Unit Owners shall then elect the officers of the Association.

(C) Declarant may voluntarily surrender its right to appoint and remove the members of the Board of Directors and the officers of the Association in writing before termination of the Period of Declarant Control. Notwithstanding such surrender, nothing contained in this Section 6.1(C) shall be deemed to limit Declarant's Special Declarant Rights reserved pursuant to Section 4.21 above to approve actions of the Board while Declarant owns any Unit although Declarant no longer has any representatives or appointees serving on the Board.

**6.2 Rules.** The Board of Directors may, from time to time and, subject to the provisions of this Declaration and the Condominium Act, adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of any area within the Condominium subject to the Association's jurisdiction and control, such as, e.g. limiting access to the mechanical room to Invitees of the Board or Managing Agent; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium 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.

**6.3 Composition of Members.** Each Unit Owner shall automatically, upon becoming a Unit Owner, be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association is mandatory and such Membership and the Allocated Common Element, Common Expense Liability and voting Interests of the Unit are appurtenant thereto, and may not be assigned, separated or conveyed away from, ownership of the Unit; provided, however, such Allocated Common Element, Common Expense Liability and voting Interests of Units from time to time may be modified or changed as expressly permitted in this Declaration and authorized under the Condominium Act. No Owner during his ownership of a Unit shall have the right to relinquish or terminate his membership in the Association; provided however that at such time as a Unit



Owner's ownership ceases for any reason, his Membership in the Association shall also automatically cease.

**6.4 Personal Liability.** Neither Declarant, any member of the Board or committee of the Association, any officer of the Association, nor any Managing Agent or employee of the Association, shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of Declarant, the Association, the Board, the Managing Agent, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 6.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**6.5 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Condominium Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Condominium Documents or reasonably necessary to effectuate any such right or privilege.

**6.6 Association Provision of Utility Services.** The Association shall acquire and pay for the following: (a) water, sewer, electrical and other utility services for the Common Elements; (b) refuse and rubbish collection for the Common Elements and the Units; and (c) water and sewer service for the Units. Each Unit will be separately metered for electricity and all charges for electricity service to a Unit shall be paid by the Unit Owner. Water usage of a Unit shall be restricted to water usage commonly associated with the requirements of a Single Family for household purposes. In the event a Unit Owner, Resident or their Invitees fails to limit water usage to ordinary and customary residential use by a Single Family, then the Board, in accordance with Section 7.12 below, shall have the right to levy a monetary penalty against the violating Unit as determined by the Board.

## ***ARTICLE 7 ASSESSMENTS***

### ***7.0 Preparation of Budget.***

**(A)** At least sixty (60) days (or soon thereafter as feasible) before the beginning of the first full fiscal year of the Association after the first Unit is conveyed to a Purchaser and each fiscal year thereafter, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium

Documents; and (iv) such amounts as are 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 pursuant to Section 7.1(E) or Section 7.1(F) below and must include an adequate allocation to reserves as part of the Common Expense Assessment.

**(B)** Within thirty (30) days after the adoption of a budget, the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.1 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.1 of this Declaration and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

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

### **7.1 Common Expense Assessment.**

**(A)** For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against fewer than all of the Units pursuant to Section 7.1 (E) and Section 7.1(F) below) shall be assessed against each Unit in the Condominium in proportion to the Unit's Common Expense Liability as set forth in Section 2.3 (subject to reduction regarding Units owned by Declarant as provided in Subsection (G) below). The amount of the Common Expense Assessment assessed pursuant to this subsection (A) shall not exceed the maximum Common Expense Assessment for the fiscal year as computed pursuant to Section 7.1(B) below. 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, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors, except that no increase in the Common Expense Assessment assessed pursuant to this subsection (A) exceeding the maximum Common Expense Assessment for such fiscal year shall become effective unless approved by the requisite number of Members provided in Section 7.1(B) below.

**(B)** The maximum Common Expense Assessment for each fiscal year of the Association after the first full or partial fiscal year thereof shall not be greater than an amount equal to one hundred twenty percent of the previous year's Common Expense Assessment established by the Board and assessed against the Units. From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the Common Expense

Assessment for any fiscal year of the Association may be increased by an amount greater than the maximum increase allowed in this Section 7.1(B), only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. The maximum Common Expense Assessment limitations herein contained shall apply only to the amount of the Common Expense Assessment assessed pursuant to subsection (A) of this section and shall not apply to the amount of Common Expenses assessed pursuant to Section 7.1 (E) or 7.1(F) below.

**(C)** The Common Expense Assessments shall commence as to all Units in the Condominium on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments. Unless otherwise directed by the Board, Common Expense Assessments shall be paid in monthly installments and shall be due and payable on the first day of each month.

**(D)** Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, and reserves for Common Expenses shall be assessed against all of the Units in accordance with Section 7.1(A) above.

**(E)** If any Common Expense is caused by the negligence, omission or willful misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against his Unit.

**(F)** 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 Liability.

**(G)** The Common Expense Assessment for any Unit in the Condominium on which construction has not been "*substantially completed*" shall be an amount equal to twenty-five percent (25%) of the Common Expense Assessment for Units which have been substantially completed. So long as any Unit owned by Declarant qualifies for the reduced Common Expense Assessment provided for in this subsection (G), and, only if Declarant elects to pay such reduced Assessment, Declarant shall be obligated to pay to the Association any deficiencies in the monies resulting from Declarant having paid a reduced Common Expense Assessment and necessary for the Association to be able to timely pay all Common Expenses. Without limiting the foregoing, "*substantial completion*" of a Unit shall mean a Unit that is ready for immediate occupancy by a Resident and a certificate of occupancy has been issued for that Unit (including the Building in which the Unit is located).

**(H)** All Assessments and Collection Costs levied against a Unit shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments and Collection Costs became due. The personal obligation of a Unit Owner for Assessments, Collection Costs,

and other fees and charges levied against his Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them.

**7.2 Special Assessment.** In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a special assessment applicable to that fiscal year only 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 (a "**Special Assessment**"). Any Special Assessment (other than a Special Assessment levied pursuant to Section 8.5 of this Declaration) shall have first been approved by Unit Owners representing two-thirds (2/3) of the votes in the Association and who are voting in person or by proxy at a meeting duly called for such purpose and approved by Declarant, while Declarant owns any Units. 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 Unit Owners.

**7.3 Notice and Quorum for Any Action Under Section 7.1 or 7.2.** Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Sections 7.1 or 7.2 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

**7.4 Enforcement Assessment.** The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (i) any Collection Costs, including attorneys' fees, incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Unit Owner (whether or not suit is filed); (ii) any costs, including attorneys' fees incurred by the Association, with respect to any violation of the Condominium Documents by the Unit Owner, his Lessee or any other Resident of his Unit and their respective Invitees and/or in enforcing the provisions of the Condominium Documents (whether or not suit is filed); (iii) any monetary penalties and late charges levied against the Unit Owner in accordance with this Declaration and the Rules; or (iv) any amounts which become due and payable to the Association by the Unit Owner or his Lessee or any other Resident of his Unit and their respective Invitees pursuant to the Condominium Documents, including without limitation, delinquent interest. For purposes of this Section 7.4, the Association shall be deemed to automatically have assessed late charges and delinquent interest accruing against a specific Unit for non-payment of Assessments as provided for in this Declaration and/or adopted by Association Rule as an Enforcement Assessment without the requirement of a formal Board hearing or resolution of assessment against the applicable Unit or Unit Owner.

**7.5**      **Effect of Nonpayment of Assessments; Association Remedies.**

**(A)**      Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent as of the original due date for the missed Assessment and shall bear interest from the date such payment was due at the rate of eighteen percent (18%) per annum. In addition, the Board of Directors may establish a reasonable late charge as part of the Rules to be charged to a Unit Owner and assessed against his Unit as part of the Assessment Lien for each installment of an Assessment that is deemed delinquent.

**(B)**      All Common Expense and Special Assessments and certain Enforcement Assessments and Collection Costs (including late charges on delinquent Assessments and attorneys fees and costs incurred to collect the same) shall be secured by the Assessment Lien to the fullest extent provided in A.R.S. §33-1256 of the Condominium Act. The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien and no further recordation of any claim of lien shall be required. Although not required 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 and Collection Costs imposed or levied against the Unit or the Unit Owner which may be secured by the Assessment Lien. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments and Collection Costs lawfully secured thereby have been paid in full.

**(C)**      The Association shall have the right, at its option, to enforce collection of any delinquent Assessments and Collection Costs, in any manner allowed by law, including, but not limited to: (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts which came due at the time he was the Owner thereof and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts, provided, however, that the personal obligation to pay delinquent Assessments and Collection Costs which came due prior to the transfer of ownership shall not pass to successors in title; (ii) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage; and (iii) suspending voting and Common Element use rights as provided in this Declaration and/or in the Bylaws. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale. The provisions of A.R.S. §33-1256 of the Condominium Act specifically limiting the types of Assessments and Collection Costs that may be secured by the Assessment Lien and the limitations on enforcement by the Association of its Recorded civil judgments against a Unit are specifically incorporated herein by this reference.

**7.6**      **Subordination of Assessment Lien to Mortgages.**      The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale of a First Mortgage, or through any equivalent

proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure of a First Mortgage, shall acquire title free and clear of any claims for unpaid Assessments and Collection Costs against the Unit which became payable prior to such sale or transfer, whether or not secured by a Recorded Assessment Lien or a Recorded civil judgment against the Unit Owner or Unit. Any Assessments or Collection Costs which accrue against a Unit prior to the sale or transfer of such Unit shall remain the obligation of the defaulting Unit Owner.

**7.7 Exemption of Unit Owner.** No Unit Owner may exempt himself from liability for payment of Assessments or Collection Costs by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit.

**7.8 Certificate of Payment/Resale Information Statement.** The Association, on written request, shall furnish a recordable statement or certificate setting forth the amount of all unpaid Assessments and Collection Costs against a Unit to the Unit Owner, a lienholder holding a lien against the Unit, any licensed escrow or title company dealing with the Unit, or any other Person designated by the Unit Owner. 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. In addition to the foregoing information, the Association shall also furnish such information and statements for prospective Purchasers as may be reasonably requested in writing by a Member or any escrow or title company or other authorized Person acting on behalf of a Member, for purposes of complying with the provisions of A.R.S. §33-1260 of the Condominium Act, as amended from time to time, in the event of a resale of a Unit. However, the Member or third Person acting on behalf of a Member who requested that information shall be solely responsible for providing the required information and statements to prospective Purchasers within the time frames set forth in A.R.S. §33-1260. The Association may charge a reasonable fee for any service, certificate and/or information statement provided pursuant to this Section 7.8 as determined by the Board from time to time.

**7.9 No Offsets.** All Assessments and Collection Costs, and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, Collection Costs 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 Working Capital Fund.** Upon the closing of the sale of each Unit by Declarant, the Purchaser from Declarant shall pay to the Association an amount equal to one-sixth (1/6) or two months of the Common Expense Assessment for the Unit to establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services by or for the Association. Notwithstanding the foregoing, however, after the Period of Declarant Control has expired or terminated, Declarant shall have established and paid the working capital fund for each Unit in the Condominium from time to time regardless of whether such Unit has been conveyed to a Purchaser; provided, further, however, that Declarant may reimburse itself from closing proceeds for each such unsold Unit's share of working capital funds paid in advance by Declarant. Amounts paid to the Association pursuant to this Section 7.11 shall be nonrefundable and shall not be considered as an advance payment of any Assessments

levied by the Association pursuant to this Declaration. During the Period of Declarant Control, such funds shall not be used to defray Association expenses, Reserve Contributions or reserves, or construction costs or to make up budget deficits. All working capital funds shall be transferred to a segregated fund maintained by the Board no later than the expiration or earlier termination of the Period of Declarant Control.

**7.11 Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year or to reduce the amount of the Common Expense Assessment in the succeeding year if a surplus exists from a prior year. The Association may carry forward from year to year such surplus as the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

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

**7.13 Transfer Fee.**

**(A)** Except as expressly provided in Section 7.13(B) below, each Purchaser of a Unit shall pay to the Association immediately upon becoming a Unit Owner a transfer fee (the "**Transfer Fee**") in such amount as is established from time to time by the Board of Directors, which fee may be paid to the Managing Agent of the Association, other than Declarant, as partial compensation for maintaining the books and records of the Association. Any Transfer Fee established pursuant to this Section 7.13 is in addition to and not part of or in lieu of the fee which the Association is entitled to charge for any certificate or statement provided pursuant to Section 7.8 of this Declaration and/or A.R.S. §§33-1256(I) and 33-1260(A) of the Condominium Act.

**(B)** No Transfer Fee shall be payable with respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (e) 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.; (f) the conveyance of a Unit to a mortgagee pursuant to a deed in lieu of foreclosure executed by the mortgagor Unit Owner; and (g) the conveyance of a Unit by a Unit Owner who acquired title by trustee's deed, foreclosure of a realty mortgage, forfeiture or foreclosure of a Recorded contract pursuant to A.R.S. §33-741 et seq., or deed in lieu of foreclosure to a Purchaser. If the Board determines, in its sole discretion, that a material purpose of a transfer or conveyance was to avoid payment of the Transfer Fee (or any other fee due that would otherwise be due to the Association), the Board may choose to charge such a Transfer Fee as a result of an otherwise apparently exempt transfer or conveyance.

**7.14**     **Reserve Contributions/Reserves.**

**(A)**       After Declarant has conveyed the last Unit in the Condominium to a Purchaser, the Board may, in its discretion, establish a contribution to be collected from each Purchaser of a Unit at the time of transfer or conveyance (the “**Reserve Contribution**”) to the reserves to be established pursuant to Section 7.14(C) below. The amount of the initial Reserve Contribution, if any is so established, shall be based upon the recommendations contained in any professionally prepared reserve study obtained by the Board as to the amount of reserves required for the Condominium after taking into consideration the amount of Reserves then held by the Board in a segregated account. The Board of Directors may, from time to time, increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board by more than ten percent (10%) during any Assessment Period without the approval of the Members holding more than fifty percent (50%) of the votes in the Association. Reserve Contributions, if established by the Board, are non-refundable and are shall not be considered as an advance payment of the Common Expense Assessment.

**(B)**       No Reserve Contribution shall be payable with respect to any transfer of a Unit exempt from the Transfer Fee Pursuant to Section 7.13(B) above.

**(C)**       The Board shall establish reserves for the future periodic maintenance, repair or replacement of the Common Elements, or any other purpose as determined by the Board of Directors. The reserves may be funded from Common Expense Assessments, remaining balances from unused Special Assessments, the Reserve Contributions pursuant to Section 7.14(A) above, and from any other revenues of the Association. All amounts collected as reserves, whether pursuant to this Section 7.14 or otherwise, shall be deposited by the Board of Directors in a separate bank account (the “**Reserve Account**”) no later than the termination of the Period of Declarant Control. All funds in the Reserve Account shall be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with other Association funds. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds from the Reserve Account for any other purpose other than those purposes for which they are collected. Withdrawal of funds from the Reserve Account shall require the signatures of two members of the Board of Directors or one member of the Board and an officer of the Association who is not also a Board member. After the termination of the Period of Declarant Control, the Board of Directors shall obtain a reserve study at least once every ten years, which study shall at a minimum include: (i) identification of the major components of the Common Elements having a remaining useful life of less than thirty (30) years as of the date of the study and their estimated probable remaining useful life; (ii) an estimate of the cost of maintenance, repair, replacement, restoration of such Common Elements during and at the end of their useful life; (iii) an estimate of the annual contribution to the Reserve Account necessary to defray such costs, after subtracting the funds in the Reserve Account as of the date of the study. The Board of Directors shall modify the budget in accordance with the findings of the reserve study.



**(D)** Unless the Association is exempt from federal or state income 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.

## ***ARTICLE 8 INSURANCE***

### ***8.0 Scope of Coverage.***

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

**(i)** Property insurance on the Common Elements and Units, exclusive of Improvements and betterments which were not part of the original construction and were supplied or installed by Unit Owners and furniture, furnishings or personal property of the Unit Owners. The policy is to be issued on blanket causes of loss - "Special Form" policy or its equivalent. 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 the Insurance Trustee) in an amount equal to one hundred percent (100%) of the current replacement cost of the Condominium, exclusive of land, excavations, foundations and other items normally excluded from such coverage, without deduction for depreciation. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

**(ii)** Broad form Commercial General Liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence and \$2,000,000 general aggregate. 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 may include, at the discretion of the Board, medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles and coverage for any legal liability that results from law suits related to employment contracts in which the Association is a party.

**(iii)** Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and a policy of employer's liability insurance with coverage limits as the Board may determine from time to time, if the Association employs any Persons.

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

(v) Blanket fidelity bond coverage for all officers, directors, trustees and employees of the Association and all other Persons handling or responsible for funds of or administered by the Association including, without limitation, the Management Agent, whether or not the Management Agent receives compensation for its services. The total amount of the fidelity bonds maintained by the Association shall be based on the best business judgment of the Board, but shall not be less than the estimated funds, including the Reserve Account, in the custody of the Association or management agent, as the case may be, at any given time during the term of the bond or the sum equal to three (3) months' aggregate Common Expense Assessments on all Units plus the Reserve Account amount. Fidelity bonds obtained by the Association shall name the Association as an obligee, shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees" or similar terms or expressions; shall provide that they may not be cancelled or substantially modified without at least ten (10) days' prior notice to the Association and each First Mortgagee named in the bond. Any contract with the Managing Agent shall require the Managing Agent to maintain the fidelity bond required of the Association pursuant to this Section 8.0(A).

(vi) 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, 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 Section 8.0(A)(ii).

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

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

(ii) There shall be no subrogation with respect to the Association, its agents, servants, its Board of Directors or officers thereof, and employees against Unit Owners and members of their household.

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

(iv) 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.

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

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

(vii) 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.

(viii) Any Insurance Trust Agreement will be recognized by the insurer.

(ix) Such coverage shall not be contingent upon action by the insurance carrier's board of directors, policyholders or members or permit claims for contribution or assessments to be made against Unit Owners or their mortgagees, including Eligible Mortgage Holders, or Eligible Insurers or Guarantors.

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

(xi) "Agreed Amount and Inflation Guard," and "Building Ordinance or Law" endorsements, except where expressly not applicable or not available.

**8.1 Payment of Premiums/Deductibles/Annual Review.** Premiums for all insurance obtained by the Association pursuant to this Article and all deductibles thereunder shall be Common Expenses and shall be paid for by the Association; provided, however, the Association may assess to a Unit Owner any deductible amount expended as a result of the negligence, misuse or neglect for which such Unit Owner is legally responsible under this Declaration and Arizona law. The Board of Directors may select deductibles in reasonable amounts applicable to the insurance coverage maintained by the Association pursuant to Section 8.0(A) above to reduce the payments payable for such insurance. The Board shall determine annually whether the amounts and types of insurance the Association has obtained provide adequate coverage in light of increased construction costs, inflation, the custom in the area in which the Condominium is located, or any other factor which leads to a reasonable determination that additional policies or coverage amounts are necessary or desirable to protect the interest of the Unit Owners, First Mortgagees and/or the Association.

**8.2 Insurance Obtained by Unit Owners/Non-Liability of Association.**

(A) The issuance of insurance policies to the Association pursuant to this Article 8 shall not prevent a Unit Owner from obtaining insurance for his own benefit and at his own expense covering his Unit (including all additions, alterations and Improvements thereto), his

personal property and providing personal liability coverage and such other coverages as are not provided by the Association pursuant to this Article 8. All policies of property insurance carried by Unit Owners shall be without contribution with respect to the policies of property insurance obtained by the Board of Directors for the benefit of all Unit Owners pursuant to Section 8.0(A) above. For purposes of this Section 8.2, "additions, alterations and Improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including, without limitation, carpeting, flooring, wall coverings, paint and paneling. Repair of 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 Unit Owner and shall be completed as promptly as practicable and in a lawful and workmanlike manner.

**(B)** Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither Declarant nor the Association, or their respective officers, directors, employees and agents, shall be liable to any Unit Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of the insurance is not adequate, and it shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Unit Owner may desire. Without limiting the foregoing, the Association, its directors and officers and the Managing Agent, shall have no liability to any Unit Owner, First Mortgagee or other Person if, after a good faith effort, the Association: (i) is unable to obtain insurance required under this Article 8 because the insurance is no longer available or (ii) cannot obtain any required insurance at a cost, the Board determines is reasonable under the circumstances and the Members fail to approve any increase in the Common Expense Assessment necessary to pay for the insurance premiums.

**8.3** **Payment of Insurance Proceeds.** 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. Any settlement made by the Association in good faith shall be binding on upon all Owners and mortgagees. Any loss covered by property insurance obtained by the Association in accordance with this Article 8 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 §33-1253 of the Condominium Act.

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

execution of all documents; and (iv) the performance of all other acts necessary to accomplish such purposes.

**8.5 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 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 7.2 of this Declaration.

**8.6 Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this Article 8 of the Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a Deed of Trust. 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 or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known address.

## ***ARTICLE 9 RIGHTS OF FIRST MORTGAGEES***

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

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

**(B)** Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any obligation under the Condominium Documents, which delinquency or default remains uncured for the period of sixty (60) days;

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

**(D)** Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 9.1 of this Declaration.

### **9.1 Approval Required for Amendment to Condominium Documents.**

**(A)** The approval of Unit Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association and of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Condominium Documents which establish, provide for, govern or regulate any of the following:

(i) voting rights; (ii) Assessments, Assessment Liens, or subordination of Assessment Liens; (iii) reserves for maintenance, repair and replacement of Common Elements; (iv) insurance or fidelity bonds; (v) responsibility for maintenance and repairs; (vi) expansion or contraction of the Condominium, or the addition of property to Condominium; (vii) boundaries of any Unit; (viii) reallocation of interests in the Common Elements or Limited Common Elements or rights to their use; (ix) convertibility of Units into Common Elements or of Common Elements into Units; (x) leasing of Units; (xi) imposition of any restriction on a Unit Owner's right to sell or transfer his Unit; (xii) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder and/or decision to amend Section 6.7 of this Declaration to eliminate the requirement of professional management; (xiii) restoration or repair of the Condominium (after hazard damage or partial condemnation) in a manner other than specified in the Condominium Documents or Arizona law; (xiv) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; and (xv) any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

**(B)** Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Unit Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

**(C)** Any First Mortgagee who receives a written request to approve additions or amendments to any of the Condominium Documents, which additions or amendments are not material, who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. Any addition or amendment to the Condominium Documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

**(D)** The approvals required by this section shall not apply to amendments that may be executed by Declarant in the exercise of its Development Rights.

**9.2 Prohibition Against Right of First Refusal.** The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or

similar restriction. This Section 9.2 may not be amended without the consent of all First Mortgagees then of record.

**9.3 Right of Inspection of Records.** Any Unit Owner, any Person designated in writing by the Unit Owner as his authorized representative, and any First Mortgagee or Eligible Insurer or Guarantor shall, upon written request, be entitled to: (i) inspect, during normal business hours, the current copies of the Condominium Documents and the books, records and any financial statements of the Association as have been prepared or are available, including the most recent annual audit, review or compilation of the Association prepared and made available by the Association in accordance with the requirements of A.R.S. §33-1243; and (ii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Without limiting the foregoing, all First Mortgagees and Eligible Insurers or Guarantors shall be entitled to receive within a reasonable time (not to exceed one hundred twenty (120) days), at the expense of the requesting party, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, if one has not been prepared pursuant to A.R.S. §33-1243. The Board of Directors may withhold from disclosure such books, records and documents of the Association, or portions thereof, designated under A.R.S. §33-1258 of the Arizona Nonprofit Corporation Act. The Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of any information requested under this Section 9.3 or Arizona law.

**9.4 Prior Written Approval of First Mortgagees.** Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least two-thirds (2/3) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Unit Owners (other than Declarant or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

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

**(B)** Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

**(C)** Partition or subdivide any Unit;

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

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

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

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

**9.6** **Condemnation or Insurance Proceeds.** No Unit Owner, or any other party, shall have priority over any rights of any First Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements. Subject to the foregoing, the allocation of awards for the exercise of eminent domain, or deeds in lieu thereof, shall be governed by the provisions of §33-1206 of the Condominium Act as further provided in Section 12.3 below.

**9.7** **Limitation on Partition and Subdivision.** No Unit shall be partitioned or subdivided without the prior written approval of any First Mortgagee of that Unit. This Section 9.7 may not be amended without the consent of all First Mortgagees then of record.

**9.8** **Restoration or Repair of Condominium.** Any restoration or repair of the Condominium after a partial condemnation or change due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of Eligible Mortgage Holders holding mortgages on Units to which at least fifty one percent (51%) of the votes in the Association allocated to Units subject to First Mortgages held by Eligible Mortgage Holders is obtained.

**9.9** **Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article 9 and any other provision of the Condominium Documents, the provisions of this Article 9 shall prevail; provided, however, that in the event of any conflict or inconsistency between the different sections of this Article 9 and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment to any of the Condominium Documents; (ii) a termination of the Condominium; or (iii) certain actions of the Association as specified in Sections 9.1 and 9.4 of this Declaration, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail.



## **ARTICLE 10 ENFORCEMENT**

**10.0 General Right of Enforcement.** Subject to the further provisions of Article 11, the Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter.

**10.1 Items of Construction/Equitable Relief.** As provided in Section 4.3(I) and Section 10.2 of this Declaration, Declarant, the Association, and/or any Unit Owner shall have the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, provided, however, a judicial decree authorizing such action must be obtained before any items of construction or any Modification can be altered or demolished by any Person other than the Unit Owner who caused the Modification to be made. Each Unit Owner shall be subject to all rights and duties assigned to Unit Owners under this Declaration.

**10.2 Enforcement by Association.** The Association may enforce the Condominium Documents in any manner provided for in the Condominium Documents or by law or in equity, including, but not limited to:

(A) imposing reasonable monetary penalties after notice and hearing as provided in the Bylaws. A Unit Owner shall be responsible for payment of any fine levied or imposed against a Unit Owner as a result of the actions or omissions of the Unit Owner, his Lessee or Resident or their respective Invitees and family pets;

(B) suspending a Unit Owner's right to vote for as long as the Unit Owner is in violation of any provision of these Condominium Documents;

(C) suspending any Person's right to use any facilities (including recreational amenities) within the Common Elements as provided in Section 3.2 above, provided, however, that nothing shall authorize the Board to limit ingress or egress to or from a Unit;

(D) suspending any services provided by the Association to a Unit Owner or the Unit Owner's Unit if the Unit Owner is more than fifteen (15) days' delinquent in paying any Assessment or other charge owed to the Association;

(E) exercising self-help or taking action to abate any violation of the Condominium Documents or to remove any structure of Improvement further subject to any limitations of Arizona law and the provisions of Section 10.1 of this Declaration;

(F) without liability to any Person, prohibiting any Invitee of a Unit Owner, Lessee or other Resident who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities on the Condominium;

(G) towing Vehicles which are parked in violation of this Declaration or the Rules as further provided in Section 4.13 of this Declaration;

(H) filing a suit at law or in equity to enjoin a violation of the Condominium Documents, to compel compliance with the Condominium Documents, to recover Assessments, Collection Costs, and damages and/or to obtain such other relief as to which the Association may be entitled, including the remedies provided for in Section 7.5 of this Declaration;

(I) Recording a written notice of violation by any Unit Owner of any restriction or provision of the Condominium Documents as further provided in Section 12.17 of this Declaration; and

(J) Recording an Assessment Lien against a Unit as provided in Section 7.5(B) of this Declaration and the Condominium Act.

**10.3 Limited Enforcement Obligation.** The Association shall not be obligated to take any enforcement action if the Board of Directors determines, in its sole discretion, that, because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board of Directors, enforcement action would not be appropriate or in the best interests of the Association.

## **ARTICLE 11 CONSTRUCTION CLAIMS AND CONDOMINIUM DISPUTE RESOLUTION PROCEDURES**

### **11.0 Dispute Notification and Resolution Procedure.**

(A) It is Declarant's intent that the Common Elements and any Limited Common Elements allocated to a Unit or Units, each Unit and all other Improvements constructed within the Condominium, be built in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all Disputes and Claims (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, Board and all Unit Owners shall be bound by the following Dispute resolution procedure set forth in this Article 11.

(B) All actions or claims (i) by the Association against any one or more of Declarant, its builders, general contractors or brokers or their agents, employees or representatives (collectively, the "**Declarant Parties**"), (ii) by any Unit Owner(s) against any one or more of the Declarant Parties, or (iii) by both the Association and any Unit Owner(s) against anyone or more of the Declarant Parties, relating to or in any way arising out of the

Condominium, including but not limited to, any provision of the Declaration or construction of or any condition on or affecting the Condominium including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties relating to the condition of the Condominium or any Improvements or financial matters relating to the Condominium or the Association (collectively, "*Dispute(s)*") shall be subject to the provisions of this Article 11. Declarant and each Unit Owner acknowledge that the provisions set forth in this Article 11 shall be binding upon current and future Unit Owners and upon the Association, whether acting for itself or on behalf of any Unit Owner(s).

**11.1 Notice.** Any Person (including the Association) with a Dispute claim shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "*Claim Notice*").

**11.2 Right to Inspect and Right to Corrective Action.** If the Dispute relates to an alleged construction defect, Declarant and the claimant shall meet at a mutually acceptable place within the Condominium to discuss the claim within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days. At such meeting or at such other mutually agreeable time, the Declarant and the Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Article 11. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Condominium and the property which is the subject of the Claim Notice to take and complete corrective action.

**11.3 No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this Article 11 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Condominium for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of the condominium and/or the improvements constructed thereon. The right of the Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form executed and recorded by Declarant in the Official Records of Maricopa County, Arizona.

**11.4 Mediation.** If the parties to the Dispute cannot resolve the Claim pursuant to the procedures described in Section 11.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Article 11) or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action

shall be commenced against the Declarant without complying with the procedures described in this Section 11.4.

**11.5 Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in Maricopa County or such other place as is mutually acceptable by the parties.

**11.6 Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

**11.7 Exclusion Agreement.** Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

**11.8 Parties Permitted at Sessions.** Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties or by witnesses in the course of the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

**11.9 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorney's fees and costs in connection with such mediation.

**11.10 Arbitration.** Should mediation pursuant to Section 11.4 above not be successful in resolving any Dispute which is the subject of a Claim Notice, such Dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Article 11. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this Article 11, the arbitrator shall have the authority to try all issues, whether of fact or law.

**11.11 Place.** The arbitration proceedings shall be heard in Maricopa County.

**11.12 Arbitrator.** A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Condominium. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after the service of the initial complaint on all defendants named therein.

**11.13 Commencement and Timing of Proceeding.** The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all the facts and circumstances and shall conduct the proceeding without undue delay.

**11.14 Pre-hearing Conferences.** The arbitrator may require one or more pre-hearing conferences.

**11.15 Discovery.** The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Section 11.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

**11.16 Limitation on Remedies/Prohibition on the Award of Punitive Damages.** The arbitrator shall not have the power to award punitive or consequential damages. As further provided below, the right to punitive and consequential damages is waived by the parties. The arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages in the proceeding.

**11.17 Motions.** The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

**11.18 Arbitration Award.** The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

**11.19 Waivers.** NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH PERSON, FOR HIMSELF OR HERSELF, HIS OR HER HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 11. THE ASSOCIATION,

EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

**11.20 Statutes of Limitation.** Nothing contained in this Article 11 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

**11.21 Required Consent of Declarant to Modify.** Neither this Section 11.21 nor Section 11.22 below may be amended except in accordance with Section 12.5 of this Declaration **and** with the express written consent of the Declarant.

**11.22 Required Consent of Unit Owners for Legal Action.** Notwithstanding anything to the contrary contained in this Declaration: (i) any action or Claim instituted by the Association against any one or more of the Declarant Parties, relating to or arising out of the Condominium, the Declaration or any other Condominium Documents, the use or condition of the Condominium or the design or construction of or any condition on or affecting the Condominium, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of improvements (including, but not limited to, Units) or (ii) disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any improvements; and for which the claimed or alleged damages or the current economic value of other available remedies would exceed \$25,000 in the aggregate shall have first been approved by Unit Owners representing not less than seventy-five percent (75%) of the votes allocated in the Membership (other than votes allocated to Declarant or any other Unit Owner who would be a defendant in such proceedings) who are voting in person or by proxy at a meeting duly called for such purpose. The foregoing restriction shall not apply to: (i) actions to enforce the collection of Assessments (including Collection Costs) or an Assessment Lien; (ii) actions to challenge ad valorem taxation or condemnation proceedings; (iii) actions to defend claims filed against the Association or to assert mandatory counterclaims therein; (iv) actions to enforce any specific covenant hereunder; or (v) or claims brought by a Unit Owner in his individual capacity concerning his Unit and Improvements located solely within his Unit; provided, further that each Unit Owner shall be bound by the mandatory arbitration provisions set forth herein and in any contract of purchase. In the event of any conflict between the arbitration provisions of this Article 11 and any applicable contract of purchase, the arbitration provisions of the contract of purchase, if any, shall prevail. Otherwise, all provisions of this Article 11 shall be binding upon the Unit Owner. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies that are collected for specific Association obligations other than legal fees.

**11.23 Notice to Unit Owners.** Prior to obtaining the consent of the Unit Owners in accordance with Section 11.22 above, the Association must provide written notice to all Unit Owners which notice shall (at a minimum) include (1) a description of the nature of any action or claim (the "**Claim**"), (2) a description of the attempts of Declarant to correct such Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant 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 arrangements between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against Declarant 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 against Declarant, and (9) an affirmative statement from the Board of Directors that the action is in the best interest of the Association and its Members. In the event the Association recovers any funds from Declarant (or any other Person) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

**11.24 Notification to Prospective Purchasers.** In the event that the Association commences any action or Claim or has notified the Unit Owners that it has delivered a Claim Notice of a Dispute to any of the Declarant Parties, all Unit Owners must notify prospective Purchasers of a Unit of the existence of such action, Claim or Claim Notice of a Dispute and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 11.23 above or any other notice so received from the Association.

**11.25 Arizona Statutory Compliance.** In the event a court of competent jurisdiction invalidates all or part of this Article 11 regarding the resolution of Disputes and Claims regarding construction defects and litigation unfortunately becomes necessary, Declarant, the Association, and all Unit Owners shall be bound by the applicable Arizona construction defect statute presently codified at A.R.S. §12-1361 et seq. and A.R.S. §33-2001 et seq.

## **ARTICLE 12 GENERAL PROVISIONS**

### **12.0 Contract Limitations.**

**(A)** Any agreement for professional management of the Condominium with a Managing Agent entered into by or on behalf of the Association at any time may not exceed a term of three (3) years and must also provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days' or less written notice.

**(B)** During the Period of Declarant Control, any: (i) employment contract; (ii) lease; and (iii) or agreement of any nature with Declarant, or any member, agent or representative of

Declarant or providing for services of Declarant and/or its affiliates, entered into by or on behalf of the Board or the Association must also provide for termination of such contract, lease or agreement without penalty by any Board elected by the Unit Owners at any time after the Period of Declarant Control has expired or is terminated, subject to the further provisions of A.R.S. §33-1245 upon not less than thirty days' notice. The foregoing limitations shall not apply to: (x) bulk service provider contracts such as, without limitation, telephone, communications, satellite or cable TV, utility provider and utility monitoring, or other similar service contracts, as long as Declarant, and its affiliates, are not the parties providing such services; or (y) a lease, which, if cancelled, would result in the termination of the Condominium or the reduction in its size.

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

**12.2 Duration.** Unless terminated as provided in Section 12.4 of this Declaration, the covenants and restrictions of this Declaration, as amended from time to time, shall run with the land and bind the Condominium in perpetuity.

**12.3 Eminent Domain.** Subject to the further provisions of this Declaration regarding Mortgagee notice requirements and priority of First Mortgagees in any award as provided in Article 9 above, any partial or total taking of a Unit or any part of the Common Elements shall be governed by the provisions of A.R.S. § 33-1206 of the Condominium Act. If all of the Units are acquired by eminent domain, the Condominium is terminated and the provisions of Section A.R.S. §33-1228 of the Condominium Act applies as further provided in Section 12.4 below. Each Unit Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with 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.

**12.4 Termination of Condominium.** Subject to the further provisions of this Declaration regarding Mortgagee notice and consent requirements, the Condominium may be terminated only in the manner provided for in A.R.S. § 33-1228 of the Condominium Act.

**12.5 Amendments to Condominium Documents.**

(A) Except in cases of amendments that may be executed by Declarant in the exercise of its Development Rights under this Declaration or under §33-1220 of the Condominium Act, by the Association under §§ 33-1206 or 33-1216(D) of the Condominium Act or this Declaration, or by certain Unit Owners under §§ 33-1218(B), 33-1222, 33-1223 or 33-1228(B) of the Condominium Act, and except to the extent permitted or required by other provisions of the Condominium Act or this Declaration, both the Declaration and the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Such amendment pursuant to this Section 12.5(A) may be made at any



time and without regard to whether such amendment has uniform application to the Units or the Condominium as a whole.

**(B)** Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

**(C)** No amendment to Article 11 of this Declaration or purporting to terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control shall be effective during the initial term of this Declaration unless Declarant approves the amendment in writing, regardless of whether Declarant owns any Units at the time of such amendment, Declarant's interest being deemed coupled with an interest; provided, further, however, that if Declarant is deemed by any court of applicable jurisdiction not to have such an interest, then, in no event may Article 11 of this Declaration be amended without the consent of one hundred percent (100%) of the then Unit Owners.

**(D)** During the Period of Declarant Control, Declarant shall have the right to amend the Declaration, including any Recorded Plat, to comply with: (i) the Condominium Act; (ii) the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, FHA and VA; or (iii) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or any other Condominium Document is required by law or requested by Declarant.

**(E)** During the Period of Declarant Control, Declarant shall have the right to amend the Condominium Documents to: (i) comply with applicable law or correct any error or inconsistency therein if the amendment does not adversely affect the rights of any Unit Owner or (ii) to exercise any Development Right or Special Declarant Right reserved herein in the manner provided in A.R.S. §33-1220 of the Condominium Act.

**(F)** Any amendment adopted by the Unit Owners pursuant to subsection (A) above shall be signed by the President or Vice-President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this section. Any amendment made by Declarant pursuant to subsection (D) or (E) of this section or the Condominium Act shall be executed by Declarant and shall be Recorded.

**12.6 Remedies Cumulative.** Each remedy provided in Article 10 and elsewhere in this Declaration is cumulative and not exclusive and the exercise of one right or remedy shall not waive the right to exercise another right or remedy.

**12.7 Notices.** All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been

duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address which the Unit Owner has designated in writing and filed with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner or (ii) if to the Association or Declarant, to the last known business address of such Person on file with the Arizona Corporation Commission or, in the case of the Association, set forth in a Recorded notice pursuant to A.R.S. §33-1256(J), and if such address is no longer valid, then to the address of the statutory agent of such Person. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this section. A notice given by mail, whether regular, certified or registered, shall be deemed to have been received by the Person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one Person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

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

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

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

contents of the sections or of this Declaration. The use of the term "**Section**" in this Declaration shall also mean all subsections grouped under that Section unless the context otherwise requires.

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

**12.12 Construction.** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the provisions of any other Condominium Document, the provisions of this Declaration shall prevail.

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

**12.14 Third Party Compliance.** To the extent permitted by law, each Unit Owner shall be responsible for the compliance with the Condominium Documents by all Residents of his Unit. In addition, each Unit Owner and all Residents of a Unit shall, to the extent permitted by Arizona law, be responsible for compliance with the provisions of the Condominium Documents by each of his Invitees with the provisions of the Condominium Documents. A Unit Owner's or Resident's failure to ensure compliance by such Persons shall be grounds for the same action of enforcement to be available to the Association or any other Unit Owner desiring to enforce this Declaration against such Persons.

**12.15 Attorneys' Fees.** In the event Declarant, the Association or any Unit Owner employs an attorney or attorneys: (i) to enforce an Assessment Lien; (ii) to collect any amounts due from a Unit Owner; (iii) to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents; or (iv) in any other manner arising out of the Condominium Documents or the operations of the Association, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action, subject to any limitation on the enforcement of Collection Costs set forth in A.R.S. §33-1256, as amended from time to time.

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

**12.17 Notice of Violation.** The Association shall have the right to record a written notice of a violation ("**Notice of Violation**") by any Unit Owner of any restriction or provision of the Condominium Documents. The Notice of Violation shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent Purchaser of the Unit that there is a violation of the provisions of the Condominium Documents; provided, further, however, that such Notice of Violation shall not constitute an Assessment Lien unless otherwise expressly permitted by this Declaration, the Condominium Act or other applicable law. If, after the recordation of such Notice of Violation, it is determined by the Association that the violation referred to in the Notice has been cured, the Association shall record a notice of compliance (the "**Notice of Compliance**"), upon written request of the Unit Owner of the Unit to which the Notice of Violation pertains. The Notice of Compliance shall state the legal description of the Unit against which the Notice of Violation was recorded, the Recording data of the Notice of Violation, and shall state that the violation referred to in the Notice of Violation has been cured or is no longer applicable to the Unit. Failure by the Association to record a Notice of Violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Unit or constitute a waiver of any right of the Association to enforce the Condominium Documents.

**12.18 Declarant's Disclaimer of Representations.** While Declarant has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any provisions of this Declaration. Any Unit Owner acquiring a Unit in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Unit agrees to hold Declarant harmless therefrom.

**12.19 No Absolute Liability.** No provision of the Condominium Documents shall be interpreted or construed as imposing on Unit Owners absolute liability for damage to the Common Elements or the Units. Unit Owners shall only be responsible for damage to the Common Elements or Units caused by the negligence or intentional acts of the Unit Owners or other Persons or pets for whom they are legally responsible under Arizona law.

**12.20 FHA/VA Approval.** During the Period of Declarant Control, the following actions shall require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication, conveyance or mortgaging of Common Elements, amendment of this Declaration, amendment of the Articles or Bylaws of the Association, or dissolution, merger or consolidation of the Association with any other non-profit or other entity.

**12.21 References to VA and FHA.** In various places throughout the Condominium Documents, references are made to the Department of Veterans Affairs or Veterans Administration (“VA”) and the Federal Housing Administration (“FHA”) and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Condominium Documents to meet certain requirements of such agencies should Declarant request approval of the Condominium by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Condominium by either or both of such agencies. Unless and until the VA or the FHA have approved the Condominium as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, cancelled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Unit to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no further force and effect.

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

***IN WITNESS WHEREOF,*** Declarant has executed this Declaration on the day and year first above written.

***DECLARANT:***

**SEDONA CONSULTANTS, LLC,**  
an Arizona limited liability company

By *Gerald A. Maurer, Manager*  
Gerald A. Maurer, Manager

**EXHIBIT A**

**Legal Description of Property Submitted to Condominium**

Units 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, and 131, inclusive, according to the Declaration of Condominium and of Covenants, Conditions and Restrictions to which this Exhibit is attached and according to the FINAL PLAT OF GREENWAY ESTATES CONDOMINIUM Recorded in Book 745 of Maps, page 20; both of which are Recorded in the Official Records of the Maricopa County, Arizona;

TOGETHER WITH an undivided interest in the Common Elements as set forth in said Declaration and as designated on said Plat.

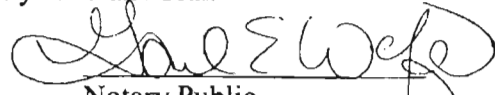
Also legally described as:

a resubdivision of Lot 2, WALGREENS CAVE CREEK, recorded in Book 497 of Maps, page 25, in the Official Records of the Maricopa County, Arizona Recorder.

STATE OF ARIZONA     )  
  )ss.  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this <sup>24<sup>th</sup></sup> ~~21~~ day of ~~May~~ April, 2005, before me, the undersigned notary public in and for said county and state, by GERALD A. MAURER, the Manager of Sedona Consultants, L.L.C., an Arizona limited liability company, for and on behalf of said limited liability company.

IN WITNESS WHEREOF, I hereunto place my hand and seal.

  
Notary Public

My Commission Expires:  
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