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CONDOMINIUM DECLARATION

FOR

DUNLAP CONDOMINIUMS

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**CONDOMINIUM DECLARATION
FOR
DUNLAP CONDOMINIUMS**

THIS CONDOMINIUM DECLARATION FOR Dunlap Condominiums is made this 15th day of November, 2000 (the "Effective Date"), by SHER-JOY LLC, an Arizona limited liability company.

**ARTICLE 1
DEFINITIONS**

1.1 General Definitions. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Condominium Act.

1.2 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:

1.2.1 **"Articles"** means the Articles of Incorporation of the Association, as amended from time to time.

1.2.2 **"Assessments"** means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

1.2.3 **"Assessment Lien"** Unofficial Document means the lien granted to the Association by the Condominium Act to secure the payment of Assessments, monetary penalties and other charges owed to the Association.

1.2.4 **"Association"** means the 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. Declarant intends to incorporate the Association under the name of Dunlap Condominiums, but if such name is not available, Declarant reserves the right to incorporate the Association under such other name as Declarant deems appropriate.

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

1.2.6 **"Building "A"'"** means the area identified as "Building "A" in the Plat, which shall be owned by Declarant.

1.2.7 **"Buildings"** means the structures and buildings designated on the Plat.

1.2.8 **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

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

1.2.10 **"Common Expenses"** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves, including, without limitation: (i) the cost of maintenance, management, operation, repair and replacement of the Common Elements and all Improvements thereon, including, but not limited to, the water features, the pool, spa, club room and appurtenant decks, the gym, lobby, and conference rooms, the administrative, Manager, concierge and other similar offices, the kitchen and catering rooms and other similar facilities, elevators, stairwells, trash chutes,

mechanical rooms and janitor closets, clustered mailboxes, guard gates and entry gates and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of insurance premiums for fire, liability, workers' compensation, errors and omissions and directors, officers and agents liability, and the costs of bonding the members of the Board of Directors and any Association employees; (iii) the costs of management and administration of the Association, including, but not limited to, the cost of materials, services, supplies and other expenses required for such purpose and compensation and wages paid to Managers, accountants, attorneys and other employees; (iv) the cost of all gardening, access control and other services benefiting the Common Elements, including landscaping renovation and maintenance; (v) the amounts paid by the Association for discharge of any lien or encumbrance levied against all or portions of the Condominium; (vi) the cost of services provided by any Community System through the Association and all other costs of providing utility services and trash removal which serve the Units and/or the Common Elements if such services are centrally metered and are not separately metered and billed to each Unit Owner based on actual consumption; (vii) any unpaid share of Common Expenses extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure; (viii) judgments against the Association; (ix) the costs associated with any litigation to which the Association is a party; (x) costs associated with the maintenance, upkeep and management of one (1) or more guest suites located within a Building; (xi) the costs of rendering to the Units Owners all services required to be rendered by the Association under the Condominium Documents, excluding the cost of optional services to be charged directly to the Unit Owners requesting such optional services; (xii) such other funds as may be necessary to provide general operating reserves and reserves for contingencies and replacements deemed appropriate by the Board of Directors; and (xiii) the cost of any other item or items incurred by the Association, for any reason whatsoever in connection with the Condominium, for the common benefit of the Units Owners.

1.2.11 **"Common Expense Assessment"** the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.12 **"Common Expense Liability"** ^{Unofficial Document} means the liability for Common Expenses allocated to each Unit by this Declaration.

1.2.13 **"Condominium"** means the real property located in Maricopa County, Arizona, which is described in Exhibit A attached to this Declaration, together with all buildings and other Improvements located thereon.

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

1.2.15 **"Condominium Documents"** means this Declaration and the Articles, Bylaws, and the Rules.

1.2.16 **"Declarant"** means Sher-Joy LLC, an Arizona limited liability company, and its successors and any person or entity to whom it may transfer any Special Declarant Rights.

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

1.2.18 **"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) Add real estate to the Condominium;

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

(iii) Subdivide or consolidate Units, convert Units into Common Elements or convert Common Elements into Units;

(iv) Withdraw real estate from the Condominium;

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

(vi) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law, or to correct any error or inconsistency in the Declaration provided the amendment does not adversely affect the rights of any Unit Owner; and

(vii) Amend the Declaration during the Period of Declarant Control to comply with the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or the Condominium Documents is required by law or requested by Declarant.

1.2.19 **"Eligible Mortgage Holder"** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

1.2.20 **"First Mortgage"** means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

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

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1.2.22 **"Improvement"** means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, buildings, private drives, walkways, pool, spa and appurtenant decks, paving, fences, walls, hedges, plants, trees and shrubs of every type and kind.

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

1.2.24 **"Manager"** shall mean the Person, who may be an affiliate of Declarant, employed by the Association for the management of the Condominium in accordance with this Declaration.

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

1.2.26 **"Notice of Addition"** shall mean a document recorded pursuant to Article 12 of this Declaration by which real estate is added to the Condominium.

1.2.27 **"Period of Declarant Control"** means the time period commencing on the date this Declaration is recorded with the County Recorder of Maricopa County, Arizona, and ending on the earlier of: (i) ninety (90) days after the conveyance of seventy-five percent (75%) of the Units (other than Building

"A") which may be created to Unit Owners other than Declarant; or (ii) four (4) years after all Declarants have ceased to offer Units for sale in the ordinary course of business.

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

1.2.29 "**Plat**" means the plat which has been recorded in Book _____ of Maps, page ____, records of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

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

1.2.31 "**Rules**" means the rules and regulations adopted by the Association, as amended from time to time.

1.2.32 "**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 Improvements provided for in this Declaration or shown on the Plat;
- (ii) Exercise any Development Right;
- (iii) Maintain sales offices, management offices, models, and signs advertising the Condominium or within real estate which may be added to the Condominium;
- (iv) Use easements through the Common Elements for the purpose of making Improvements within the Condominium; and
- (v) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

1.2.33 "**Taking**" means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain.

1.2.34 "**Unit**" means a portion of the Condominium designated for separate ownership or occupancy the boundaries of which are described in Section 2.5 of this Declaration, including Building "A".

1.2.35 "**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 Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, *et seq.* Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee

pursuant to A.R.S. § 33-801, *et seq.*, the Trustor shall be deemed to be the 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 any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

ARTICLE 2

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

2.1 Submission of Property. Declarant hereby submits the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon and all easements, rights and appurtenances thereto, to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and this Declaration and hereby declares that the real property described on Exhibit A attached to this Declaration, together with all Improvements situated thereon, and all easements, rights and appurtenances thereto, shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is Dunlap Condominiums.

2.3 Name of Association. Subject to Subsection 1.2.4 above, the name of the Association will be Dunlap Condominiums.

2.4 Identifying Numbers of Units. The identifying numbers of the Units are 101 through 198, inclusive.

2.5 Unit Boundaries.

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2.5.1 The boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, perimeter floors, perimeter ceiling, doors and windows of the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the walls, floors and ceilings are part of the Unit, and all other portions of the perimeter walls, perimeter floors and perimeter ceilings are part of the Common Elements.

2.5.2 Any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture, whether located within or outside of the boundaries of a Unit, which serve only that Unit, is a Limited Common Element allocated solely to that Unit, and any portion serving more than one (1) Unit or any portion of the Common Elements is a part of the Common Elements.

2.5.3 Subject to the provisions of Subsection 2.5.2 of this Declaration, all spaces, interior partitions and other fixtures and Improvements within the boundaries of a Unit are part of the Unit.

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

2.5.5 In the event of any inconsistency or conflict between the provisions of this Article 2 and the Plat, this Article 2 shall control.

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

2.5.7 Subject to and in accordance with A.R.S. § 33-1222, 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.

2.6 Allocation of Common Element Interest and Common Expense Liabilities. The allocation of undivided interests in the Common Elements and in the Common Expenses shall be allocated equally among the Units and Building "A" (which shall count as two (2) units for expense purposes), however, if two (2) or more Units are combined into a single Unit as contemplated in Section 4.4 of this Declaration, then the combined Unit will retain the same allocation as existed prior to its being combined into a single Unit. Each Unit's percentage interest in the Common Elements and the Common Expenses of the Association shall be 1/100, unless the Unit is a combined Unit which was originally constructed as two (2) or more Units. By way of illustration, if three (3) Units are combined into a single Unit, the combined Unit's percentage interest in the Common Elements and the Common Expenses of the Association will be 3/100 (i.e., 1/100 x 3). If such combined Unit is subsequently divided into two (2) Units, the percentage interest of each resulting Unit will be 1.5/100.

2.7 Allocation of Votes in the Association. The total votes in the Association shall be equal to the number of Units in the Condominium, plus one (1) vote for Building "A". The votes in the Association shall be allocated equally among all the Units and Building "A", with each Unit having one (1) vote and Building "A" having one (1) vote. By way of illustration, if three (3) Units are combined into a single Unit, the combined Unit will be allocated one (1) vote (even though the combined unit's percentage interest in the Common Elements and the Common Expenses will be 3/99). If such combined Unit is subsequently divided into two (2) Units, the resulting ^{two} Units will each be allocated one (1) vote.

2.8 Allocation of Limited Common Elements.

2.8.1 **Allocation of Existing Common Elements.** The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one (1) Unit as follows:

- (i) Each Unit is allocated the front entry separately serving such Unit and each deck and/or balcony adjoining the Unit, as shown on the Plat;
- (ii) Any air conditioning unit or other utility unit and any chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixtures, whether located within or outside of the boundaries of a Unit, which serve only one (1) Unit is a Limited Common Element allocated solely to the Unit served;
- (iii) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one (1) Unit or a portion of the Common Elements is a part of the Common Elements;
- (iv) Any shutters, awnings, window boxes, stoops, doorsteps, entries or porches and exterior doors and windows or other fixtures designed to serve a single Unit, located outside

the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit; and

(v) Any gas, electric or water meter which serves only one (1) Unit is allocated to the Unit it serves.

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

2.8.3 **Future Allocation of Limited Common Elements.** During the Period of Declarant Control, Declarant, and thereafter, the Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element, including, but not limited to, any parking spaces which are part of the Common Elements and which have not previously been allocated as a Limited Common Element. Any such allocation by Declarant or the Board of Directors, as applicable, shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

2.9 **Parking Spaces.** Parking spaces are not allocated and are open and available for use by any Unit Owner or their guests. Parking spaces are further subject to that certain Reciprocal Easement Agreement ("REA") dated November __, 2000 by and between Declarant and D.J.S. Los/Com. L.L.C., an Arizona limited liability company, recorded on even date herewith. The REA provides for common parking rights, including access, ingress and egress between the Condominium and the adjacent property, as designated on the Plat to the exclusive use of each Unit as a Limited Common Element or, in the event such allocation is not depicted on the Plat, then such parking spaces for which there is no such allocation shall be general Common Elements.

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ARTICLE 3 EASEMENTS

3.1 **Utility Easement.** 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, electricity, gas, water, sewer, telephone, cable television, communications and monitoring systems, and other services in order to serve the Condominium. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed, approved and constructed by Declarant or as approved by the Board of Directors. This easement shall in no way affect any other recorded easements on the Common Elements. No Unit Owner shall do anything that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service facilities or the use of these easements.

3.2 **Easements for Ingress and Egress.** There is hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes except that such easements shall not extend to any Limited Common Elements. Such easements shall run in favor of and be for the benefit of the Unit Owners and occupants of the Units and their guests, families, tenants and invitees.

3.3 Unit Owners' Easements of Enjoyment.

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

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements, including, but not limited to, the right to reasonably restrict access to maintenance and landscaped areas and similar areas of the Condominium;

(ii) The right of the Association to grant easements, leases, licenses and concessions through or over the Common Elements;

(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;

(iv) All rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to Declarant by Sections 3.4 and 3.5 of this Declaration;

(v) Subject to the provisions of this Declaration, the right of each Unit Owner to the exclusive use and occupancy of the Limited Common Elements allocated to each Unit Owner's Unit for the purposes designated in this Declaration;

(vi) The right of the Association to suspend the right of a Unit Owner and any occupant of such Unit Owner's Unit to use the ^{Common}_{Unofficial Document} Elements for any period during which the Unit Owner is in violation of any provision of the Condominium Documents.

3.3.2 Lessees' Easements. If a Unit is leased or rented, the lessee and the members of his or her family residing with the lessee shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease.

3.3.3 Guests' and Invitees' Easements. The guests and invitees of any Member or other person entitled to use the Common Elements pursuant to Subsection 3.3.1 of this Declaration or of any lessee who is entitled to use the Common Elements pursuant to Subsection 3.3.2 of this Declaration may use the Common Elements, subject to the terms of the Rules. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to certain specified times.

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

3.3.5 Scope of Easement. The provisions of this Section 3.3 shall not apply to any of the Limited Common Elements that are allocated to one (1) or more but less than all of the Units.

3.4 Declarant's Use for Sales And Leasing Purposes. For so long as Declarant is selling Units in the Condominium, Declarant expressly reserves for the benefit of Declarant and its affiliates, agents, officers and employees, non-exclusive easements over the Condominium and Declarant and its affiliates, agents, officers and employees shall have the following rights:

3.4.1 **Right to Maintain Offices, Models and Signs.** Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, and models throughout the Condominium and to maintain one (1) or more advertising signs on the Common Elements. 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. Declarant further reserves the right of unlimited access to such offices, models and signs on the Condominium.

3.4.2 **Right to Relocate Offices and Models.** Declarant may from time to time relocate models, management offices and sales and leasing offices to different locations within the Condominium. Upon the relocation of a model, management office or sales or leasing office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

3.4.3 **Right to Show Models, Erect Signs and Restrict Parking.** So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to show models, to erect signs and other promotional material on the Condominium to advertise, among other things, Units for sale or lease, and to restrict the use of parking spaces which are not allocated as Limited Common Elements. Such right shall include reserving such parking spaces for use by prospective Unit purchasers and tenants, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

3.4.4 **Right to Retain Personal Property.** Declarant reserves the right to retain all equipment and all other personal property used in the sales, management, construction and maintenance of the Condominium that has not been listed in the financial statements of the Association as property of the Association. Declarant reserves the right to remove from the Condominium any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.5 Declarant's Rights and Easements.

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

3.5.2 **Drainage.** Declarant and the agents, employees and independent contractors of Declarant shall have the right and an easement on, over and under those portions of the Common Elements not located within the Buildings for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Subsection 3.5.2 expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

3.5.3 **Maintenance and Repair.** Declarant and the agents, employees and independent contractors of Declarant shall have an easement on and over the Common Elements and through the Units for any access necessary to complete any construction, renovations, warranty work, modifications,

maintenance, or repairs to be performed by Declarant to the Units or any Common Element, including any Limited Common Element, for warranty purposes or where Declarant, in its sole discretion, determines that it is required or desires to do so.

3.5.4 Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to a Building, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjacent structure which are necessarily or conveniently located with the Condominium.

3.5.5 Warranty. For as long as Declarant remains liable under any warranty, whether statutory, express or implied, for act or omission of Declarant in the design, development, construction, sale and marketing of all or any part of the Condominium, then Declarant and its contractors, agents and designees shall have the right, in Declarant's sole discretion and from time to time, to enter the Condominium for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Declarant (and any of its contractors) can fulfill its warranty obligations, if any. If access is denied, any such warranty shall automatically terminate. Nothing contained in this Subsection 3.5.5 shall be deemed or construed as Declarant making or offering any warranty.

APPLICABLE WARRANTIES OF DECLARANT, IF ANY, SHALL BE VOIDED BY VIOLATION OF THE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THIS DECLARATION.

3.5.6 General Obligations and Special Declarant Rights. Declarant and the agents, employees and independent contractors of 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} _{Unofficial Document} whether arising under the Condominium Act or reserved in this Declaration.

3.6 Easement for Support. To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the Buildings and the Common Elements, including 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 Buildings and the Common Elements, including the Limited Common Elements.

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

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

(i) 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.

(ii) 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 Buildings or impair or structurally weaken the Buildings.

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

(iv) For the maintenance of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one (1) Unit but which encroach into any part of the Common Elements.

(v) 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 5.2 of this Declaration.

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

3.9.1 **Inspection.** For inspection of the Units and Limited Common Elements at reasonable times and upon reasonable notice to the Unit Owner in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible and to verify that all provisions of the Condominium Documents are being complied with by the Unit Owners, their guests, tenants, invitees and the other occupants of the Unit.

3.9.2 **Construction, Alteration or Removal.** For the construction of additional Improvements on the Common Elements, including the Limited Common Elements, and/or the alteration or removal of any existing Improvements on the Common Elements, including the Limited Common Elements.

3.9.3 **Maintenance and Repair.** For inspection, maintenance, repair or replacement of the Common Elements, including the Limited Common Elements or the Improvements thereon, situated in or accessible from such Units or Limited Common Elements even if such Common Element, Limited Common Element or Improvement does not serve or is not used by the Unit to be entered.

3.9.4 **Emergency.** For correction of emergency conditions in one (1) or more Units or Limited Common Elements or casualties to the Common Elements, including the Limited Common Elements, or the Units.

3.9.5 **Exercising Rights, Powers and Duties.** 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.

Nothing in this Section 3.9 shall be construed to impose any obligation upon the Association to maintain or repair any property or Improvements required to be maintained or repaired by the Unit Owners. Nothing in this Section 3.9 shall in any manner limit the right of a Unit Owner to exclusive occupancy and control over the interior of such Unit Owner's Unit. However, each Unit Owner shall permit a right of entry to the Association or any other person authorized by the Association as required by this Section 3.9.

3.10 **Easement for Unintended Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, shifting or settling, or alteration or restoration authorized by this Declaration or any reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

3.11 **Reciprocal Easement Agreement.** The REA (described in Section 2.9) also includes a grant of an easement for the benefit of D.J.S. Los/Com, L.L.C., its tenants, employees and guests for use of utility lines and to use Building "A", laundry facilities, trash containers, and all Common Areas in the Condominium.

ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS

4.1 **Residential Use.** All Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on ^{any Unit} ~~any Unit~~ or in or from any Unit, except that a Unit Owner or other resident of a Unit may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or 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 does not involve Persons coming on the Unit or the door-to-door-solicitation of Unit Owners or other residents in the Condominium; and (iv) 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 other residents in 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 4.1 shall be construed to have 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. The provisions of this Section 4.1 shall not be applicable to Units used by Declarant for model apartments, sales office, Manager's apartment or for the use of prospective Purchasers. In addition, notwithstanding the provisions of this Section 4.1, Declarant shall have the right to lease all or any portion of Building "A" for business purposes, including the operation of a child care facility.

4.2 **Antennas.** The Board of Directors shall regulate, to the extent permitted under federal, state and local law, any antenna, aerial, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation proposed to be

erected, used or maintained outdoors on any portion of the Condominium whether attached to a Building or structure or otherwise. To the extent permitted by applicable law, the prior approval of the Board of Directors shall be required for the installation, use or maintenance of any such device, which approval the Board of Directors may condition upon the satisfaction of certain conditions, including, but not limited to, the size, placement, height, means of installation and screening of such devices. Notwithstanding the foregoing, a master antenna system or duly franchised cable television service may, but need not, be provided by Declarant or the Association for use, and at the expense, of the Unit Owners. Declarant or the Association may grant easements for maintenance of any such master antenna system or cable television service.

4.3 Utility Service. Except for lines, wires and devices existing on the Condominium as of the Effective Date 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 installed and maintained underground or concealed in, under, or on Buildings or other structures permitted under this Declaration. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Buildings or structures permitted under this Declaration. Utility services for the Condominium may be master metered with adjacent property which is not a part of the Condominium. In such event, allocation of such utility shall be governed by the REA and each Unit which is serviced by such utility shall pay its pro rata share of those costs attributable to the Condominium. Such allocation shall be made by Declarant until after the termination of the Period of Declarant Control, at which time the Association shall make such allocation. Notwithstanding the foregoing, Declarant may, at any time, voluntarily relinquish its right to make such allocations and, upon such relinquishment, the Association shall make all future allocations.

4.4 Improvements and Alterations.

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4.4.1. **Consent of Board of Directors.** Any Unit Owner may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Board of Directors, 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 alterations, additions or improvements. No Unit Owner shall make any structural additions, alterations or improvements within a Unit or to the Limited Common Elements allocated to such Unit and no Unit Owner of two (2) or more adjoining Units may make structural additions, alterations or improvements in order to combine such Units into a single Unit and no Unit Owner of such a combined Unit may make structural additions, alterations or improvements in order to divide such combined Unit into multiple Units (not to exceed the number of Units originally combined to comprise such single combined Unit) unless prior to the commencement of each such addition, alteration or improvement, the Unit Owner receives the prior written approval of the Board of Directors and an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity of the Buildings within which such addition, alteration or improvement is to be made. 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 additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit or within any Limited Common Element allocated to the exclusive use of a Unit, whether structural or not, which would be visible from the exterior of the Buildings in which the Unit is located or from the exterior of the Limited Common Element, shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Unit Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors.

The Board of Directors may condition the approval in any manner, including, without limitation: (i) retaining approval rights of the contractor to perform the work; (ii) restricting the time during which such work may be performed; (iii) requiring the placement of a security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (iv) requiring the provision to the Board of Directors of plans and specifications prepared and sealed by a professional engineer duly licensed by the State of Arizona; and (v) requiring that the Unit Owner requesting the change obtain, prior to commencing any work, and maintain, until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Unit Owner shall be obligated to designate Declarant, the Association, the Board of Directors and any other Person designated by the Board of Directors as additional insureds under the policies. The Unit Owner shall be responsible for all costs incurred by the Board of Directors in connection with the Board of Director's review of the Unit Owner's proposed changes to such Unit Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Board of Directors to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed a Special Assessment.

The proposed additions, alterations and improvements by any Unit Owner shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Unit Owner, and such Unit Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, Declarant and all other Unit Owners harmless from and to indemnify them for, from and against any and all liability or damage to the Condominium and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from ^{and after} ~~and after~~ their date of installation or construction as may be required by the Association.

The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 4.4 or any rules of the Association governing improvements by Unit Owners. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Association nor any of the officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Unit Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans under this Declaration, by the submission of same, and any Unit Owner, by acquiring title to same, agrees not to seek damages or equitable relief from Declarant and/or the Association arising out of the Association's review of any plans under this Declaration. Without limiting the generality of the forgoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Unit Owner (including the successors and assigns) agrees to indemnify and hold Declarant and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association.

4.4.2 **Weight and Sound Restriction.** In addition to the provisions set forth in Subsection 4.4.1 of this Declaration, no Unit Owner, other than Declarant, shall install any hard and/or heavy surface floor coverings on any floor other than a ground floor, including, without limitation, tile, marble, wood and the like, without the prior written approval of the Board of Directors and each Unit Owner must insure a sound control underlayment system is used with all floors other than ground floors, which system must be approved in writing by the Board of Directors prior to installation. Installation of such sound control underlayment system shall include provisions for a perimeter insulation material which will ensure that impact noises are not transmitted into a space below, either directly through the floor or by going around the floor and through the surrounding walls.

4.4.3 **Improvements, Additions or Alterations by Declarant.** Notwithstanding anything to the contrary in this Declaration, the foregoing restrictions of this Section 4.4 shall not apply to Declarant-owned Units. Declarant shall have the unconditional right, without the consent or approval of the Board of Directors or other Unit Owners and at Declarant's own expense, to make alterations or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by Declarant and the Common Elements appurtenant to such Unit (including, without limitation, the removal of walls, floors, ceilings and other structural portions of the Improvements). Any amendment to this Subsection 4.4.3 shall require the prior written consent of Declarant.

4.5 **Trash Containers and Collection.** No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size and style which are approved by the Board of Directors. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Board of Directors shall have the right to require all Unit Owners to place trash and garbage in containers located in areas designated by the Board of Directors. No incinerators shall be kept or maintained in any Unit.

4.6 **Machinery and Equipment.** Unofficial Document No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the uses permitted by this Declaration, and except that which Declarant or the Association may require for the construction, operation and maintenance of the Common Elements.

4.7 **Animals.** No animals, birds, fowl, poultry or livestock shall be maintained or kept in any Units or on any other portion of the Condominium, except that no more than two (2) Permitted Pets (as defined below) may be kept or maintained in a Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. For purposes of this Section 4.7, a "Permitted Pet" shall mean a dog, cat, household bird or fish or other generally recognized household pet. Notwithstanding the foregoing, the Board of Directors is authorized to determine, in its discretion and on a case by case basis, whether any particular animal or pet is to be considered as a "generally recognized household pet," and the Board of Directors may on a case by case basis allow one (1) or more Unit Owners to keep more than two (2) Permitted Pets if in the sole discretion of the Board of Directors, taking into account the size and type of animal or pet, the total number of Permitted Pets of the Unit Owner, the noise of the animal or pet and any other relevant considerations, the increased number of Permitted Pets will not negatively impact other Unit Owners. The approval by the Board of Directors of an increased number of Permitted Pets by a Unit Owner shall not be construed as approval to any other Unit Owner. All dogs shall be kept on a leash when outside a Unit or any Limited Common Elements allocated to the Unit, and all dogs shall be directly under the Unit Owner's control at all times. It shall be the responsibility of all Unit Owners or any lessees or guests of a Unit Owner to remove immediately any droppings from Permitted Pets. Any Unit or Limited Common Element where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition.

No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building in which the Unit is located. Prior to the installation of a fish tank exceeding fifty-five (55) gallons, a Unit Owner must deliver plans for such tank to the Board of Directors for its written approval. The Board of Directors may require a review by a structural engineer at the sole expense of the Unit Owner prior to the approval or disapproval of such plans. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. Upon the written request of any Unit Owner, the Board of Directors shall determine whether, for the purposes of this Section 4.7, a Permitted Pet is a nuisance or is making an unreasonable amount of noise or causing an odor. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Condominium, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets. Violations of the provisions of this Section 4.7 shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners and/or to require, through order of the Board of Directors, any pet, including any Permitted Pet, to be permanently removed from the Condominium. No one other than a Unit Owner or a Unit Owner's lessee is permitted to keep any Permitted Pet in the Condominium.

4.8 Temporary Occupancy. No trailer, basement of any incomplete Building, tent, shack, garage, barn or other structure, and no temporary Improvement of any kind shall be used at any time for a residence, either temporarily or permanently. Temporary buildings or structures used during the construction of Buildings or Improvements and approved by the Board of Directors shall be permitted but must be removed promptly upon completion of the construction of the Building or Improvement.

4.9 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on the Condominium.

4.10 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.

4.11 Diseases and Insects. No Unit Owner shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious plant diseases or noxious insects.

4.12 Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding 3/4 ton truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium or any area where easement rights for parking exist.

4.13 Motor Vehicles; Parking. No Unit Owner shall park, store, or keep anywhere within the Condominium, or any area where easement rights for parking exist, any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board of Directors. Without limiting the generality of the foregoing, except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium or any area where easement rights for parking exist, and no inoperable vehicle may be stored or parked on any portion of the Condominium or any area where easement rights for parking exist. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Condominium or any area where easement rights for parking exist except in such parking spaces as may exist from time to time on the Common Elements. In addition, there shall be no operating of any unlicensed vehicles, including, but not limited to, mopeds, scooters or similar motorized products within the Condominium or any area where

easement rights for parking exist. Except as may be limited by the REA, the Board of Directors may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the parking areas in the Condominium or any area where easement rights for parking exist, including, without limitation, designating "parking," "guest parking" and "no parking" areas thereon, and may allow, on an individually approved basis, for temporary short-term parking for a Unit Owner's guest in such unallocated parking spaces. The Board of Directors and Declarant may, in their sole discretion, designate and redesignate such unallocated parking spaces as handicap parking spaces. Furthermore, if a Unit is sold to a Person who requires a handicap parking space then the Board of Directors or Declarant may, in their sole discretion, designate a handicap parking space to such Unit. All guests, servants, invitees and employees of a Unit Owner must park in areas designated as guest and employee parking spaces, as applicable.

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

4.15 Signs. No signs (including, but not limited to, "For Sale" or "For Rent" signs), posters, billboards, advertising devices or other displays of any kind shall be permitted on the exterior of any Unit or Building or any other portion of the Condominium without the prior written approval of the Board of Directors.

4.16 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. ^{Unofficial Document} Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

4.17 Nuisances and Offensive Activity. No noise or other 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, or is an annoyance, to any portion of the Condominium or any Unit Owner or other occupant of the Condominium. No exterior speakers, horns, whistles, bells or other sound devices (except security or other emergency devices used exclusively for security or emergency purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably disturb other Unit Owners or their lessees shall be located, used or placed on the Condominium.

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

4.19 Basketball Goals and Backboards. No basketball goal, pole, backboard or other similar structure, whether portable or permanent, may be installed on any portion of the Condominium unless installed by Declarant or the Association as a component of the recreational facilities.

4.20 Unsightly Articles. No unsightly articles shall be permitted to remain upon or within any Unit, Limited Common Element or Common Element so as to be visible from any other portion of the Condominium.

4.21 Leasing of Units. No Unit Owner may lease less than such Unit Owner's entire Unit. All leases shall be in writing and shall provide that the terms of such lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the lessee to comply with the terms of the Condominium Documents shall be a default under the lease. Upon leasing a Unit for a period of more than thirty (30) days, a Unit Owner shall promptly deliver to the Association and, if applicable, the Manager a copy of the lease. The Unit Owner shall be responsible for compliance by its lessee or lessees with the Condominium Documents as set forth in Section 13.14 of this Declaration. The provisions of this Section 4.21 shall not apply to Building "A".

4.22 No Timesharing. No Unit shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among owners or members of the program on a fixed or a floating time schedule over a period of time.

4.23 Water and Sewer Systems. No exterior individual water supply system, water softener system, water conditioner system or sewage disposal system shall be permitted unless previously approved in writing by the Board of Directors and such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of the applicable water or sewer district and any applicable governmental health authority having jurisdiction.

4.24 Air Conditioning Units. No window air conditioning unit may be installed in a Unit.

4.25 Terraces. No articles other than barbeque grills, patio-type furniture and suitable plants shall be placed on any terraces, decks or outside balconies. No linens, cloths, clothing, bathing suits or swimwear, curtains, rugs, mops or laundry of any kind, or other articles, shall be shaken or hung from, any of the windows, doors, terraces, decks or balconies or other portions of the Building.

4.26 Effect on Declarant. Notwithstanding anything contained in this Article 4 to the contrary, the restrictions and limitations set forth in this Article 4 shall not apply to Declarant nor to Units owned by or leased to Declarant.

4.27 Relief. The Association shall have the power, but not the obligation, to grant relief in particular circumstances from the provisions of specific restrictions contained in this Article 4 for good cause.

4.28 Declarant Approval Required. After the expiration of the Period of Declarant Control and for so long as Declarant owns any Unit, the Board of Directors shall not take any action which would limit any Development Rights or Special Declarant Rights not yet expired or alter or terminate any easement granted to Declarant under this Declaration.

ARTICLE 5
MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association.

5.1.1 **Maintenance Standards.** The Association shall inspect, maintain, repair and replace all Common Elements, including Limited Common Elements, whether located inside or outside the Units and Building "A", except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2 of this Declaration, to assure maintenance of the Common Elements, including the Limited Common Elements and the Improvements thereon, in a clean, sanitary and attractive condition reasonably consistent with prudent property management practices and the budget for the Association. The Board of Directors shall determine, in its sole discretion, the level and frequency of such maintenance. During the Period of Declarant Control, Declarant reserves the right, without the obligation, to make any alteration of the Common Elements and the Improvements thereon, including, without limitation, the replacement of the Common Elements' landscaping which may have been originally installed, with other shrubs, plants or other landscape material of Declarant's own choice.

5.1.2 **Maintenance Items.** Association maintenance and repairs shall include, without limitation, the right, without the obligation, at any time, and from time to time to: (i) install or construct capital improvements on the Common Elements; (ii) reconstruct, replace or refinish all or any portion of the Improvements located upon the Common Elements; (iii) replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Elements; (iv) perform all corrective janitorial and repair work on or within any Unit if the Unit Owner fails to repair it and if such non-repair affects the Common Elements; (v) perform all snow plowing and snow removal; (vi) repair and pay for all utilities, water charges (including the share of utilities owed pursuant to the REA), and mechanical and electrical equipment serving the Common Elements; and (vii) pay all charges for all utilities which serve individual Units but which are subject to a Common meter. The Association shall be responsible to maintain, repair and/or replace the exterior of the decks, balconies and garage doors and such other Limited Common Elements as required by the Board of Directors and the Association may enter upon the Limited Common Elements and make any necessary repairs and charge the Unit Owner(s) of the appurtenant Unit(s) for all costs involved in making such repairs as a Special Assessment.

5.1.3 **Termite Eradication.** If the Board of Directors adopts an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, upon reasonable notice (which shall be given no less than fifteen (15) days nor more than thirty (30) days before the date of temporary relocation) to each Unit Owner and the occupants of a Unit, may require such Unit Owner and occupants to temporarily relocate from a Unit in order to accommodate efforts by the Association to eradicate such infestation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Unit by such entry by the Board of Directors or by any Person authorized by the Board of Directors shall be repaired by the Board of Directors as a Common Expense of the Association. All costs involved in maintaining the inspection and preventive program as well as repairing and replacing the Common Elements, including Limited Common Elements and Improvements thereon, when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms shall be a Common Expense.

5.1.4 **Manager; Additional Services.** The Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association and may employ such personnel as the Association deems necessary for the effective operation

and maintenance of the Common Elements, including the employment of legal and accounting services. The Association, Declarant, and their respective successors and assigns shall additionally have the power, but not the duty, to enter into contracts with Unit Owners or other Persons, including Declarant or affiliated entities, to maintain and repair Improvements within the Condominium and elsewhere or to provide services which the Association is not otherwise required to provide or maintain pursuant to this Declaration; *provided, however*, that any such contract shall provide for payment to the Association for the costs of providing such services or maintenance or for billing a Unit Owner directly for any such service utilized by such Unit Owner, as the Association deems appropriate from time to time.

Every Unit Owner and occupant of a Unit and all lessees, guests and invitees of any Unit Owner, as applicable, requesting and receiving such services acknowledges that Declarant, its affiliated entities, the Association, and their respective successors and assigns: (A) are not insurers of the Unit Owner's or occupant's property or of the property of others located on the Unit or of other Improvements; and (B) do not make any representations or warranties with regard to the quality or any other matter concerning the repairs made or services provided according to the guidelines established by Declarant, its affiliated entities, the Association or their respective successors and assigns. Each Unit Owner and occupant of any Unit, and each lessee, guest and invitee of a Unit Owner, as applicable, acknowledges and understands that Declarant, its affiliated entities, the Association, the Board of Directors and its committees, and their respective successors and assigns are not insurers and will not be responsible or liable for losses, injuries or deaths resulting from such repairs or use of such services or caused directly or indirectly by such service providers and that each Unit Owner and occupant of any Unit and each lessee, guest and invitee of any Unit Owner assumes all risk for loss or damage to Persons, Units and the contents of Units and further acknowledges that Declarant, the Association, the Board of Directors and its committees, and their respective successors and assigns have made no representations or warranties nor has any Unit Owner, occupant, lessee, guest or invitee relied upon any representation or warranty, expressed or implied, relative to any such repairs or services installed or undertaken within the Condominium or otherwise. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the part of a service provider to perform any of its obligations with respect to repairs and services and, therefore, every Unit Owner or occupant of a Unit receiving repairs or services provided pursuant to this Subsection 5.1.4 agrees that Declarant, its affiliated entities, the Association, and their respective successors and assigns assume no liability for loss or damage to property or for personal injury or death to Persons due to any reason, including, without limitation, negligence, active or otherwise, of the service provider or its officers, agents or employees. Every Unit Owner or occupant of a Unit obtaining repairs or services provided pursuant to this Subsection 5.1.4 further agrees for himself, his grantees, lessees, guests, invitees, licensees and family members that if any loss or damage should result from a failure of performance or operation or from defective performance or operation, or from improper repair or from negligence, active or otherwise, of the service provider or its officers, agents, or employees, the liability, if any, of Declarant, its affiliated entities, the Association, or their respective successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding Two Hundred Fifty Dollars (\$250.00), which limitation applies irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or nonperformance by an officer, agent or employee of Declarant, its affiliate entities, the Association, or their respective successors or assigns. Further, in no event will Declarant, its affiliated entities, the Association, or their respective successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

5.1.5 **Entrygate.** The Association shall be responsible for the maintenance, repair and operation (including, without limitation, the staffing and hours of operation) of any entrygate constructed at the entrance to the Condominium in order to limit access and to provide more privacy for the Unit Owners

and other occupants of the Units. Each Unit Owner and occupant, and their families, guests and invitees acknowledge that the entrygate may restrict or delay entry into the Condominium by the police, the fire department, ambulances and other emergency vehicles or personnel. Each Unit Owner and other occupant and their families, guests and invitees agree to assume the risk that the entrygate will restrict or delay entry to the Condominium by emergency vehicles and personnel. Neither the Association, nor any director, officer, agent or employee of the Association shall be liable to any Unit Owner or other occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of the entrygate.

5.1.6 **Charges to Unit Owners.** Subject to the terms of Subsections 3.5.5 and 5.1.4 of this Declaration, cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association; provided that the Association may assess the cost of any maintenance, repair or replacement of a Limited Common Element that is allocated exclusively to the use of one (1) Unit to the Unit Owner of such Unit.

5.2 **Duties of Unit Owners.**

5.2.1 **The Unit.** Each Unit Owner, at such Unit Owner's own expense, shall maintain in a good clean, sanitary and attractive condition their Unit and repair and shall replace any damaged portion or portions of such Unit Owner's Unit.

5.2.2 **The Limited Common Elements.** Each Unit Owner shall, at such Unit Owner's own expense, be responsible for the maintenance and repair of the Limited Common Elements allocated to such Unit Owner's Unit pursuant to Section 2.5 of this Declaration, including the glass windows allocated to the Unit as Limited Common Elements pursuant to Subsection 2.8.1 of this Declaration and shall keep any Limited Common Element appurtenant to such Unit Owner's Unit free from debris and reasonably protected against damage.

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5.3 **Repair or Restoration Necessitated by Owner.** Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or to the Improvements, landscaping or equipment thereon which is not fully reimbursed to the Association by insurance if the damage results from the negligence, willful conduct or unauthorized or improper installation or maintenance of any Improvement by such Unit Owner, such Unit Owner's family members, guests, lessees or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Common Elements from such Unit Owner. However, the Association reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Unit Owner or the Person for whom the Unit Owner may be liable as described above. In the case of joint ownership of a Unit, the liability of such Unit Owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with such Unit Owners to the contrary. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against such Unit Owner's Unit and may be enforced as provided in this Declaration. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

5.4 **Unit Owner's Failure to Maintain.** If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which such Unit Owner is obligated to maintain under this Declaration then the Board of Directors shall give written notice to the responsible Unit Owner

identifying: (i) the condition or violation complained of; and (ii) the length of time the Unit Owner has to remedy the violation, including, if applicable, the length of time the Unit Owner has to submit plans to the Board of Directors and the length of time the Unit Owner has to complete the work proposed in the plans submitted to the Board of Directors. If a Unit Owner does not perform such corrective action as is required by the Board of Directors within the allotted time, the Board of Directors shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2 of this Declaration, and shall be subject to enforcement and collection by the Board of Directors in accordance with the procedures provided for the enforcement and collection of an Assessment in this Declaration.

5.5 Approval of Litigation. Except for any legal proceedings initiated by the Association to: (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Rules; (iii) enforce the rules of the Architectural Committee (as defined below); collect any unpaid Assessments levied pursuant to this Declaration, the Association shall not incur litigation expenses, including, without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of a majority of the Members of the Association entitled to vote, excluding the vote of any Unit Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds, or use monies collected for other specific Association obligations. Each Unit Owner shall notify prospective Purchasers of such legal proceedings initiated by the Board of Directors and not included in the above exceptions and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with Section 13.7 of this Declaration. Nothing in this Section 5.5 shall preclude the Board of Directors from incurring expenses for legal advice in the normal course of operating the Association to: (i) enforce the Articles, Bylaws or Rules; (ii) comply with the statutes or regulations related to the operation of the Association or the Common Elements; (iii) amend the Articles, Bylaws or Rules as provided in this Declaration; (iv) grant easements or convey Common Elements as provided in this Declaration; or (v) perform the obligations of the Association as provided in this Declaration.

5.6 Schedule of Fines. The Board of Directors may adopt a schedule of reasonable fines or penalties and a policy of administering such fines or penalties, which fines and penalties, in its reasonable discretion, it may assess against a Unit Owner for the failure of such Unit Owner, or the invitees, lessees, guests or family members of such Unit Owner, to comply with any provisions of the Condominium Documents. Such fines or penalties may only be assessed by the Board of Directors against the Unit Owner and the Unit of the violating Unit Owner pursuant to the procedures established by the Association.

5.7 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents ("Notice of Violation"). 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. If, after the recordation of the Notice of Violation, it is determined by the Association that the violation referred to in such notice does not exist or that the actual violation referred to in such notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was recorded, the recording data of the Notice of Violation, and shall state

that the violation referred to in the Notice of Violation has been cured, or if such be the case, that it did not exist.

ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

6.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act and the Association shall have one (1) class of voting membership. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents, together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by levying future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association. 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 of Directors. Notwithstanding anything in this Declaration to the contrary, so long as Declarant owns any Unit, the prior written consent of Declarant shall be required to any decision by the Association to establish self-management when professional management previously had been in place. The Association has the specific duty to make available, during normal business hours, to Declarant, Eligible Mortgage Holders and Unit Owners, current copies of the Declaration, Bylaws, Articles, Rules 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.

6.2 Directors and Officers.

6.2.1 During Period of Declarant Control. Unofficial Document 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, who do not have to be Unit Owners.

6.2.2 After Period of Declarant Control. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three (3) members, at least a majority of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

6.2.3 Voluntary Surrender of Rights by Declarant. Declarant may voluntarily surrender Declarant's right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal Rules. The Rules may, among other things, restrict and govern the use of any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, this Declaration, the Articles, or the 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.

6.4 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. A Unit Owner (including Declarant) shall automatically, upon becoming a Unit Owner, be a Member of the Association and shall remain a Member of the Association until such time as such Unit Owner's ownership ceases for any reason, at which time, such Unit Owner's membership in the Association shall automatically cease.

6.5 Personal Liability. Neither Declarant nor any member of the Board of Directors or of any committee of the Association, any officer of the Association nor any Manager or other 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 of Directors, the Manager, 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 6.5 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.6 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.

6.7 Voting Rights. Subject to Sections 2.7 and 6.8 of this Declaration and to Declarant's right to appoint and remove officers of the Association and members of the Board of Directors during Declarant's Period of Control, each Unit Owner of a Unit, including Declarant, shall be entitled to cast one (1) vote for each Unit owned by such Unit Owner, on any Association matter which is put to a vote of the membership in accordance with this Declaration, ^{the Articles and/or Bylaws.}
Official Document

6.8 Voting Procedures. No change in the ownership of a Unit shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of, and is provided satisfactory proof of, such change. The vote for each such Unit must be cast as a unit, and fractional votes shall not be allowed. In the event that a Unit is owned by more than one (1) Person and such Unit Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that such Unit Owner was acting with the authority and consent of all other Unit Owners of the same Unit unless objection to such vote is made at the time the vote is cast. In the event more than one (1) vote is cast by a Member for a particular Unit, none of the votes shall be counted and all of the votes shall be deemed void.

6.9 Transfer of Membership. The rights and obligations of any Member other than Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Unit Owner's Unit, and then only to the transferee of ownership to the Unit, and every membership shall be appurtenant to and may not be separated from the fee ownership of such Unit. A transfer of ownership to a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may subsequently be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void and will not be reflected on the books and records of the Association. Any transfer of ownership to a Unit shall operate to transfer the membership appurtenant to said Unit to the new Unit Owner of said Unit. Each Purchaser of a Unit shall notify the Association of its purchase within ten (10) days after becoming the Unit Owner of a Unit.

6.10 Suspension of Voting Rights. If any Unit Owner fails to pay any Assessments or other amounts due to the Association under the Condominium Documents within fifteen (15) days after such payment is due or if any Unit Owner violates any other provision of the Condominium Documents and such violation is not cured within fifteen (15) days after the Association notifies the Unit Owner of the violation, the Board of Directors shall have the right to suspend such Unit Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current, and until any other infractions or violations of the Condominium Documents are corrected.

6.11 Architectural Committee. The Board of Directors may establish an Architectural Committee (herein so called) consisting of not less than three (3) members appointed by the Board of Directors to regulate the external design, appearance, use and maintenance of the Condominium and to perform such other functions and duties as are imposed upon it by the Condominium Documents or by the Board of Directors.

6.12 Conveyance or Encumbrance of Common Element. The Common Elements shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of Unit Owners representing at least eighty percent (80%) of the votes allocated to Unit Owners other than Declarant. In addition, any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated also is transferred.

ARTICLE 7 ASSESSMENTS

7.1 Preparation of Budget.

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7.1.1 **Adoption of Budget.** At least sixty (60) days before the beginning of each fiscal year of the Association, commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses, including, but not limited, to: (i) the amount required to pay the cost of inspection, 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 inspecting, 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 may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsection 7.2.4 of this Declaration.

7.1.2 **Notice of Budget.** 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 7.2 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 7.2 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.

7.1.3 **No Ratification.** The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget or amended budget by the Unit Owners shall be required.

7.2 **Common Expense Assessment.**

7.2.1 **Annual Assessments; Amendments.** For each fiscal year of the Association, commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsection 7.2.4 of this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6 of this Declaration. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments. 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.

7.2.2 **Commencement of Common Expense Assessments.** The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association.

7.2.3 **Allocation of Common Expense Assessments.** Except as otherwise expressly provided for in this Declaration, all Common Expenses shall be assessed against all of the Units in accordance with Subsection 7.2.1 of this Declaration. If any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against such Unit Owner's Unit. Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liabilities. So long as any Unit owned by Declarant qualifies for the reduced Common Expense Assessment provided for in this Subsection 7.2.3, Declarant shall be obligated to pay to the Association any deficiency which may occur as a result of Declarant having paid a reduced Common Expense Assessment and necessary for the Association to be able to timely pay all Common Expenses.

7.2.4 **Personal Obligation for Assessments.** All Assessments, monetary penalties and other fees and charges levied against a Unit shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments, monetary penalties or other fees and charges became due. The personal obligation of a Unit Owner for Assessments, monetary penalties and other fees and charges levied against such Unit Owner's Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them; provided, however, that the delinquent Assessment shall still remain a charge against the Purchaser's Unit.

7.3 **Special Assessments.** 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, provided that any Special Assessment shall have first been

approved by Unit Owners representing two-thirds (2/3) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

7.4 Effect of Nonpayment of Assessments; Remedies of the Association.

7.4.1 **Interest.** Any Assessment, or any installment of an Assessment, which is not paid within five (5) days after the Assessment or installment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors. Upon such delinquency, the full amount of the Assessment remaining in any given year (i.e., not simply the delinquent installment) shall become due and payable. The Board of Directors may also require the delinquent Unit Owner to pay a late charge. The Association need not accept any tender of a partial payment of an installment of an Assessment without all costs and attorneys' fees attributable to the collection of such late installment, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter.

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

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

7.5 **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, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other fees and charges against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this Section 7.5 may be reallocated and assessed to all Units as at Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner.

7.6 **Exemption of Unit Owner.** No Unit Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit.

7.7 Certificate of Payment. The Association on written request shall issue or cause to be issued to a lienholder, Unit Owner or Person designated by a Unit Owner a statement setting forth the amount of unpaid Assessments against such Unit Owner's Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. In addition, upon receipt of written notice from a Unit Owner or other interested Person, the Association shall furnish to a purchaser within ten (10) days after receipt of notice of a pending sale of a Unit, a written statement setting forth the amount of the Common Expense Assessment for the Unit and any unpaid Common Expense Assessment, fee or charge currently due from the selling Unit Owner, together with such other information as may be required under the Condominium Act. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

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

7.9 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Unit from Declarant shall pay to the Association, immediately upon becoming the Unit Owner of the Unit, a sum equal to Two Hundred Fifty Dollars (\$250.00). Such amount shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. Declarant may not use any portion of the working capital fund to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficits during the Period of Declarant Control.

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

7.11 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.

7.12 Transfer Fee. Each Purchaser of a Unit shall pay to the Association immediately upon becoming the Unit Owner of the Unit a transfer fee in such amount as is established from time to time by the Board of Directors.

7.13 Reserve Fund. The Association shall establish and maintain, from Common Expense Assessments, an adequate reserve fund to provide for the replacement of Improvements to the Common Elements and those Limited Common Elements the Association is obligated to maintain. In determining and establishing the amount of the Common Expense Assessment to be allocated to the reserve fund, the Association will take into account the amount in the working capital fund acquired pursuant to Section 7.9 of this Declaration, the age of the Buildings and Improvements and the existence or non-existence of new construction warranties, the amounts maintained for reserves for other comparable condominium projects and such other factors as the Association deems appropriate.

ARTICLE 8

INSURANCE; DESTRUCTION OF IMPROVEMENTS

8.1 Scope of Coverage.

8.1.1 **Types of Insurance.** 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 from generally acceptable insurance carriers:

(i) Property insurance on the Common Elements and Units, (exclusive of improvements and betterments installed in Units by Unit Owners and of the personal property of Unit Owners) issued under a standard form "All Risk of Direct Physical Loss Form" in an amount equal to the maximum insurable replacement value of the Common Elements and Units, as determined by the Board of Directors; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy. Restoration of the foregoing will be replacement according to the original plans and specifications. Any improvement to a Unit done at the expense of any Unit Owner, past or present, and all appliances, whether built-in or not, originally provided or not, will be the responsibility of the present Unit Owner to properly insure under such Unit Owner's own policy of insurance. The Association's insurance shall cover all Common Elements up to and including the bare walls, bare exterior floors and bare exterior ceiling in which a Unit is located. Any items beyond the bare exterior walls, floors and ceilings within the Unit shall be the responsibility of the Unit Owner and the Unit Owner shall be obligated to obtain adequate coverage for such items and for any damage which may occur to the Common Elements or Limited Common Elements resulting from an occurrence within such Unit Owner's Unit. Thus, each Unit Owner must arrange individual insurance to supplement the Association's policy to provide for coverage for losses not covered by the Association's policy. It is also not the intent of the Association's blanket policy of insurance to provide coverage for losses of a minor nature Unofficial Document maintenance items, occurrences which fall below the deductible, nor those incidences and properties as outlined above. It is the responsibility of each Unit Owner to properly review such Unit Owner's individual insurance to augment the coverage provided by the Association. Each Unit Owner acknowledges that the Unit Owner is ultimately responsible for damage to such Unit Owner's Unit if such damage is not covered by the Unit Owner's insurance policy.

(ii) Broad Form Comprehensive general liability insurance, for a limit to be determined by the Board of Directors, but not less than One Million Dollars (\$1,000,000.00) for any single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include: (i) a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner; (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles; and (iii) coverage for any legal liability that results from lawsuits 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.

(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) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee of the Board of Directors or the Unit Owners, including, but not limited to, errors and omissions,

plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, and such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.

(vi) "Agreed Amount" and "Inflation Guard" endorsements.

8.1.2 **Insurance Coverage Requirements.** The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

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

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

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

(d) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.

(e) 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.

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

(g) For policies of comprehensive and hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(h) Any insurance trust agreement will be recognized by the insurer.

8.1.3 **Primary Coverage.** If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Association's policy shall provide primary coverage.

8.2 **Payment of Premiums.** Premiums for all insurance obtained by the Association pursuant to this Article 8 shall be Common Expenses and shall be paid for by the Association.

8.3 **Insurance Obtained by Unit Owners.** 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, his personal property and providing personal liability coverage. It is the responsibility of each Unit Owner to provide insurance on such Unit Owner's Unit and the associated interest of the Common Elements and personal property, as provided in Subsection 8.1.1(i) of

this Declaration. Nothing in this Declaration shall preclude any Unit Owner from carrying any public liability insurance as such Unit Owner deems desirable to cover individual liability for damage to Persons or property occurring inside a Unit or elsewhere upon the Condominium. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board of Directors upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable under the Association's policy shall be reduced by reason of insurance carried by any Unit Owner, such Unit Owner shall assign the proceeds of such insurance carried to the Association, to the extent of such reduction, for application by the Board of Directors to the same purposes as the reduced proceeds are to be applied.

8.4 Payment of Insurance Proceeds. 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 lien holders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. § 33-1253.

8.5 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner or First Mortgagee. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner, and each First Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

8.6 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one (1) another, ^{the Board} _{Unofficial Document} of Directors and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said Persons.

8.7 Required Waiver. All policies of physical damage and liability insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) subrogation of claims against the Unit Owners or members of a Unit Owner's household;
- (b) any defense based upon co-insurance;
- (c) any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association or any Unit Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;
- (e) any right of the insurer to repair, rebuild or replace;
- (f) notice of the assignment by any Unit Owner of such Unit Owner's interest in the insurance by virtue of a conveyance of any Unit; and

- (g) any right to require any assignment of any First Mortgage to the insurer.

Each such policy shall also provide, to the extent reasonably available, that: (i) each Unit Owner is an insured Person under the policy with respect to liability arising out of the Unit Owner's allocated interests; and (ii) the policy provides primary coverage in the event a Unit Owner has a policy covering the same risk.

8.8 Destruction of Improvements.

8.8.1 Restoration of the Condominium. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Elements, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant to this Article 8 for reconstruction or repair of the Condominium shall be used for such purpose, unless: (i) the Condominium is terminated; (ii) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety; or (iii) Unit Owners holding at least eighty percent (80%) of the voting interest in the Association vote not to rebuild. The Board of Directors shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Condominium shall be reconstructed or rebuilt substantially in accordance with the Plat and the original construction plans if they are available, unless changes recommended by the Board of Directors have been approved in writing by Unit Owners holding at least sixty-seven percent (67%) of the voting interest in the Association. A Common Expense Assessment shall be levied by the Board of Directors to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the entire Condominium is not repaired or replaced, then the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Condominium. Any insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the Unit Owners of those Units and the Units to which those Limited Common Elements were allocated; provided, however, that such proceeds shall first be applied to the balance then due on any First Mortgages encumbering such Unit Owners' Units. The remainder of the insurance proceeds shall be distributed to the Unit Owners holding an interest in such Common Elements in proportion to the interest held; provided, however, that such proceeds shall first be applied to the balance then due on any First Mortgage encumbering such Unit Owners' Units.

8.8.2 Partition. No Unit Owner shall have the right to partition an interest in the Common Elements and there shall be no judicial partition of all or any part of the Condominium. Nothing in this Declaration shall be deemed to prevent partition of a co-tenancy in any Unit but not an allocated interest. Except as provided above, each Unit Owner and the successors of each Unit Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for their Units and for the benefit of all other Unit Owners, specifically waive and abandon all right, interest and cause of action for a judicial partition of the tenancy in common ownership of the Common Elements of the Condominium and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

8.8.3 Residence Damage. Restoration and repair of any damage to any individual Unit shall be made by and at the individual expense of the Unit Owner of the Unit so damaged, except to the extent such damage is covered by insurance maintained by the Association. In the event of a determination to rebuild the Condominium after partial or total destruction, as provided in this Section 8.8, such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with the original plans for the Unit.

8.8.4 **Notice to Unit Owners and Eligible Mortgage Holders.** The Board of Directors, immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Elements, shall promptly notify all Unit Owners and Eligible Mortgage Holders. The Board of Directors, immediately upon having knowledge of any damage or destruction affecting a Unit, shall promptly notify any Eligible Mortgage Holders.

ARTICLE 9 RIGHTS OF FIRST MORTGAGEES

9.1 **Notification to First Mortgagees.** Upon receipt by the Association of a written request from a First Mortgagee 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 with timely written notice of the following:

9.1.1 **Condemnation or Casualty Loss** 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 by such Eligible Mortgage Holder;

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

9.1.3 **Insurance.** Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and

9.1.4 **Required First Mortgage Approval.** Unofficial Document Any proposed action which requires the consent of a specified percentage of First Mortgagees as set forth in Section 9.3 of this Declaration.

9.2 **Right of Inspection of Records.** Any Unit Owner or First Mortgagee will, upon written request, be entitled to: (i) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours after reasonable notice; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.3 **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 (1) 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:

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

(ii) Except as contemplated in Sections 2.6 and 4.4 of this Declaration, change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or

allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

(iii) Except as contemplated in Sections 2.6 and 4.4 of this Declaration, partition or subdivide any Unit;

(iv) 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 Section 9.3; or

(v) 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 Common Elements.

Nothing contained in this Section 9.3 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 Unit Owner of such Unit. Any partition of a Unit shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as provided under Arizona law.

Any First Mortgagee who receives a written request to approve additions or amendments to this Declaration, Articles or Bylaws, 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, provided the notice to such First Mortgagee was delivered by certified or registered mail, with a return receipt requested. Any addition or amendment to this Declaration, the Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

9.4 Liens Prior to First Mortgage. Unofficial Document 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.

9.5 Condemnation or Insurance Proceeds. No Unit Owner, or any other Person, 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.

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

9.7 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 or between the provisions of this Article 9 and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees or Eligible Mortgage Holders that must consent to: (i) an amendment of this Declaration, the Articles or Bylaws; (ii) a termination of the Condominium; or (iii) certain actions of the Association as specified in Sections 9.2 and 9.5 of this Declaration, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees or Eligible Mortgage Holders shall prevail; provided, however, that Declarant, without the consent of any Unit Owner being required, shall have the right to amend this Declaration, the Articles or the Bylaws during the Period of Declarant Control in order to: (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect

the rights of any Unit Owner; (ii) correct any error or inconsistency in this Declaration, the Articles or the Bylaws if the amendment does not adversely affect the rights of any Unit Owner; or (iii) comply with the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or the Condominium Documents is required by law or requested by Declarant.

ARTICLE 10 EMINENT DOMAIN

The Board of Directors shall represent the Unit Owners in any proceedings, negotiations, settlements, or agreements regarding Takings. All Takings proceeds shall be payable to the Association for the benefit of the Unit Owners and their First Mortgagees, and shall be distributed to such Unit Owners and First Mortgagees as provided in this Article 10.

10.1 Condominium Condemnation. If there is a Taking of an interest in all or part of the Condominium such that the ownership, operation and use of the Condominium in accordance with the provisions of this Declaration is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the Taking, the Unit Owners of the Units: (i) not taken; or (ii) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the Taking (collectively, the "Remaining Units") do not by affirmative vote of at least one-third (1/3) of their voting power approve the continuation of the Condominium and the repair, restoration and replacement to the extent feasible of the Common Elements and the Remaining Units, then the Board of Directors shall proceed with the sale of that portion of the Condominium which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Subsection 8.8.1 of this Declaration.

10.2 Condemnation of Common Elements. If there is a Taking of all or any portion of, or any interest in, the Common Elements (other than Limited Common Elements^{Unofficial Document}) other than the Taking of an undivided interest in the Common Elements taken as a result of the Taking of a Unit, then the award in condemnation shall be paid to the Association.

10.3 Condemnation of Limited Common Elements. If there is a Taking of all or any portion of a Limited Common Element which is not taken in connection with the Taking of all or any portion of the Unit to which it is appurtenant, the award in condemnation shall be paid to the Unit Owner(s) of the Unit(s) to which the taken Limited Common Element was appurtenant; provided, however, that such award shall first be applied to the balance then due on any First Mortgagees encumbering such Unit(s).

10.4 Condemnation of Units. If there is a Taking of a Unit, the award in condemnation shall be paid to the Unit Owner of the Unit; provided, however, that such award shall first be applied to the balance then due on any First Mortgage encumbering such Unit.

10.5 Condemnation of Portions of Units.

10.5.1 Minor Takings Within Limits. If: (i) there is a Taking of one (1) or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected; and (ii) restoration of such Units can be accomplished at a cost less than or equal to the sum of: (x) the amount of the condemnation awards for such Takings, plus (y) any amounts the Unit Owners of the taken Units wish to contribute to restoration, plus (z) an amount less than or equal to five percent (5%) of the gross expenses of the Association in accordance with the budget for that fiscal year (collectively, the "Allowable Cost"), then the Board of Directors shall contract for such restoration and levy a Common Expense Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation

awards and Unit Owners' contributions, and the condemnation awards, Unit Owners' contributions and Common Expense Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards in excess of the restoration costs shall be paid to the Unit Owners of the partially taken Units in proportion to the decreases in the fair market values of their Units; provided, however, that such awards shall first be applied to the balance then due on any First Mortgages encumbering such Units.

10.5.2 **Minor Takings Exceeding Limits.** If: (i) there is a Taking of one (1) or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected; and (ii) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board of Directors shall call a special meeting of the Unit Owners. If more than fifty percent (50%) of the Unit Owners are represented at such special meeting, either in person or by proxy, and a majority of the votes cast at such special meeting are in favor of levying a Common Expense Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Unit Owners of the taken Units wish to contribute to such restoration, then the Board of Directors shall contract for such restoration and levy a Common Expense Assessment, and the condemnation awards, Unit Owners' contributions and Common Expense Assessment shall be applied to such restoration.

10.5.3 **Major Takings.** If the requisite approval is not obtained at the special meeting of the Unit Owners referred to in Subsection 10.5.2 of this Declaration, or if there is a Taking of a portion of one (1) or more Units such that the Units are not capable of being restored, then the award in condemnation shall be paid to the Unit Owners of the taken Units, which award must include compensation to the Unit Owner for such Unit Owner's Unit; provided, however, that such award shall first be applied to the balance then due on any First Mortgage encumbering such Unit. The Board of Directors shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units shall become part of the Common Elements, and the Unit Owners of such taken Units on any lot, by acceptance of the award allotted to them in Taking proceedings, hereby relinquish to the other Unit Owners on such lot, on the basis of their relative ownership of the Common Elements therein, such Unit Owners' undivided interest in the Common Elements. Each Unit Owner relinquishing such Unit Owner's interest in the Common Elements pursuant to this Subsection 10.5.3 shall, at the request of the Board of Directors and at the expense of the Association, execute and acknowledge such deeds and other instruments which the Board of Directors deems necessary or convenient to evidence such relinquishment. Each Unit Owner of a taken Unit shall not be liable for Assessments under this Declaration which accrue on or after the date such Unit Owner accepts a condemnation award.

10.6 Portions of Awards in Condemnation Not Compensatory for Value of Real Property. Those portions of awards in condemnation which do not directly compensate the Unit Owners for Takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Unit Owners whose personal property is taken, or whose relocation is intended to be facilitated.

10.7 Notice to Unit Owners and Eligible Mortgage Holders. The Board of Directors, upon learning of any Taking affecting a material portion of the Condominium or Improvements, or any threat of a Taking, shall promptly notify all Unit Owners and Eligible Mortgage Holders. The Board of Directors, upon learning of any Taking affecting a Unit, or any threat of such a Taking, shall promptly notify any Eligible Mortgage Holder.

ARTICLE 11
CLAIM AND DISPUTE RESOLUTION; LEGAL ACTIONS

11.1 Right to Enforce. The Board of Directors, as provided in Article 5 of this Declaration, any Unit Owner (not at the time in default under this Declaration) or Declarant (so long as Declarant is a Unit Owner) shall be entitled to enforce the Condominium Documents as described in this Declaration. Each Unit Owner shall have a right of action against the Association for the Association's failure to comply with the Condominium Documents. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

11.2 Declarant Responsibilities. It is intended that all disputes and claims regarding Alleged Defects (defined below) will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, Declarant, the Association, the Board of Directors, and all Units Owners shall be bound by the following claim resolution procedures.

11.2.1 Right to Cure Alleged Defect. If the Association, the Board of Directors or any Unit Owner (collectively, the "Claimant") claims, contends, or alleges that any portion of the Common Elements, Limited Common Elements, any Unit and/or Improvements constructed on the property are defective, or that Declarant, its agents, contractors, consultants or subcontractors were negligent in the planning, design, engineering, grading, construction or any other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth in this Section 11.2.

11.2.2 Notice of Alleged Defect. If a Claimant discovers an Alleged Defect, within fifteen (15) days after its discovery, Claimant shall give written Notice of Alleged Defect (herein so called) to Declarant.

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11.2.3 Right to Enter, Inspect, Repair and/or Replace Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by Declarant, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Elements, Limited Common Elements, any Unit and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Declarant at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Declarant shall be entitled to take such actions as it shall deem reasonable and necessary under the circumstances.

11.2.4 No Additional Obligations. Nothing set forth in this Article 11 shall be construed to impose any obligation on Declarant to inspect, test, repair, or replace any item or Alleged Defect for which Declarant is not otherwise obligated under applicable law or any warranty provided by Declarant in connection with the sale of Units and Declarant shall not, under any circumstances, be required to obtain and maintain any bond in connection with Declarant's inspection of, testing for or correction of any Alleged Defect. The right reserved to Declarant to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to Declarant except by a written document executed and recorded by Declarant and recorded.

11.2.5 Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to Section 11.4 and Section 5.5 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against Declarant alleging: (1) damages for Alleged Defect costs; (2) for the diminution in value of any real or

personal property resulting from such Alleged Defect; or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Members prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against Declarant which notice shall include at a minimum: (1) a description of the Alleged Defect; (2) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect costs; (5) the name and professional background of the attorney 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 or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim 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 a majority of the members of the Board of Directors that the action is in the best interests of the Association and its Members.

11.3 Violations by Unit Owners. Failure to comply with any of the terms of the Condominium Documents by a Unit Owner or such Unit Owner's family, guests, employees, invitees or lessees, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination of the foregoing; provided, however, that the procedures established in this Declaration must be followed. In the event that a Unit Owner alleges that another Unit Owner or such Unit Owner's family, guest or lessee, has or is violating the Condominium Documents (other than non-payment of any type of Assessment), all legal actions initiated by the complaining Unit Owner for relief with respect to the alleged violation shall be brought in accordance with and subject to Section 11.4 of this Declaration.

11.4 Alternative Dispute Resolution. Any dispute or claim between or among: (a) Declarant (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Unit Owner or the Association, on the other hand; or (b) any Unit Owner and another Unit Owner; or (c) the Association and any Unit Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to: (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of the Condominium; (iii) or an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment (collectively a "Dispute"), shall be subject first to negotiation, then mediation, and then arbitration as set forth in this Section 11.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

11.4.1 Negotiation. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board of Directors may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board of Directors believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such negotiation.

11.4.2 **Mediation.** If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 11.4.1 above within such time period as may be agreed upon by such parties (the "Termination of Negotiations"), the party instituting the Dispute (the "Disputing Party") shall have thirty (30) days after the termination of negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association ("AAA") or any successor thereto or to any other independent entity providing similar services selected by Declarant or, if Declarant is not a party to the Dispute, any such independent entity upon which the parties to the Dispute may mutually agree. No Person shall serve as a mediator in any Dispute in which such Person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. 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. If the Disputing Party does not submit the Dispute to mediation within thirty (30) days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing in this Subsection 11.4.2 shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

(i) **Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute 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 to the Dispute.

(ii) **Conduct of Mediation.** Unofficial Document 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 to the Dispute 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 to the Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Subsection 11.4.2(v) of this Declaration. The mediator does not have the authority to impose a settlement on any party to the Dispute.

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

(iv) **Parties Permitted at Sessions.** Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) **Expenses of Mediation.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not 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 to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such mediation.

11.4.3 **Final and Binding Arbitration.** If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 11.4.2 of this Declaration, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to arbitration in accordance with the Commercial Arbitration Rules of the AAA, as modified or as otherwise provided in this Subsection 11.4.3. If the Disputing Party does not submit the Dispute to arbitration within thirty (30) days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing in this Subsection 11.4.3 shall release or discharge such party or parties from any liability to Persons not a party to the foregoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. Declarant shall not be required to participate in the arbitration proceeding if all parties against whom Declarant would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Subsection 11.4.3, the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) **Place.** The arbitration proceedings shall be heard in Maricopa County.

(ii) **Arbitration.** A single arbitrator shall be selected in accordance with the rules of the AAA from panels maintained by the AAA with experience in relevant matters which are the subject of the Dispute. 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 service of the initial complaint on all defendants named in such complaint.

(iii) **Commencement and Timing of Proceeding.** Unofficial Document The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) **Pre-hearing Conferences.** The arbitrator may require one (1) or more pre-hearing conferences.

(v) **Discovery.** The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of 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. Declarant shall also be entitled to conduct further tests and inspections as provided in Section 11.2 of this Declaration. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) **Limitation on Remedies/Prohibition on the Award of Punitive Damages.** Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory and consequential damages. 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.

(vii) **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.

(viii) **Expenses of Arbitration.** Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of such party's attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

11.5 Statute of Limitations. Nothing in this Article 11 shall be considered to toll, stay, reduce, or extend any applicable statute of limitations.

11.6 Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Subsection 11.4.1 or Subsection 11.4.2 of this Declaration, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if the parties accept an award of arbitration in accordance with Subsection 11.4.3 of this Declaration, and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or the award without the need to again comply with the procedures set forth in this Article 11. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one (1) non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation or mediation or the award, including, without limitation, attorneys fees and court costs.

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11.7 Conflicts. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article 11 and any other provisions of the Condominium Documents, this Article 11 shall control.

ARTICLE 12 RESERVATION OF DEVELOPMENT AND SPECIAL DECLARANT'S RIGHTS

Pursuant to the Condominium Act, Declarant reserves all of the Development Rights and Special Declarant Rights in the Condominium afforded under A.R.S. § 33-1202(14) and (21), respectively, subject to the expiration deadlines set forth below. Specifically, but without limitation, Declarant reserves the following rights:

12.1 Development Rights. Declarant hereby reserves, for a period of seven (7) years following the recordation of this Declaration (or any lesser period specified by law with respect to any particular Development Right), all Development Rights under A.R.S. § 33-1202(14) and the right to exercise such Development Rights. Declarant must exercise the Development Rights within ninety-nine (99) years following the recordation of this Declaration. The Development Rights may be exercised with respect to different parcels of real estate at different times. Declarant makes no assurances regarding the boundaries of those parcels of real estate to which the Development Rights may apply or the order in which those parcels may be subjected to the Development Rights. If any Development Right is exercised in any portion

of the real estate subject to that Development Right, the Development Right need not be exercised in all or any other portion of the remainder to that real estate.

12.2 Additions by Declarant. Declarant or its successors or assigns shall have the right from time to time to add to the Condominium any real property owned by Declarant and to bring such real estate within the general plan and scheme of this Declaration without the approval of the Association, the Board of Directors or Unit Owners. As certain real estate owned by Declarant is developed, Declarant may record a Notice of Addition which shall have the effect of causing the real estate that is the subject of such Notice of Addition to become subject to each and every covenant, condition, restriction and easement contained within this Declaration and the rights, powers and responsibilities of the Unit Owners, lessees and occupants of Units within such added property, as well as within the property originally subject to this Declaration, shall be the same as if the added property were originally covered by this Declaration. Furthermore, Declarant may supplement this Declaration with such additional covenants, conditions, restrictions, reservations and easements as Declarant may deem appropriate for the added property. From the date upon which Declarant provides written notice, the Unit Owners located in the added property shall share in the payment of Assessments to the Association to meet Common Expenses of the entire Condominium. Voting rights attributable to the Unit Owners for the added property shall not vest until annual Assessments have commenced as to the added property. Declarant makes no assurances regarding the order in which any real property will be added to the Condominium or whether any such real estate will be added to the Condominium.

12.3 Notice of Addition of Territory. The additions authorized under Section 12.2 of this Declaration shall be made by recording a Notice of Addition which shall extend the general plan and scheme of this Declaration to such added property. Any such Notice of Addition shall constitute an amendment to this Declaration. The Notice of Addition for any addition under Section 12.2 of this Declaration shall be signed by Declarant. The recordation of said Notice of Addition shall constitute and effectuate the annexation of the added property described in the Notice of Addition and thereupon such added property shall become and constitute a part of the Condominium, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration, and become subject to the functions, powers and jurisdiction of the Association and the Unit Owners shall automatically become Members of the Association.

12.4 Deannexation and Amendment. Declarant may amend a Notice of Addition or delete all or a portion of the added real property from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the owner of all such added property and provided that: (i) an amending instrument or a notice of deletion, as applicable, is recorded in the same manner as the applicable Notice of Addition was recorded; (ii) Declarant has not exercised any Association vote with respect to any portion of such added property; (iii) Assessments have not yet commenced with respect to any portion of such added property; (iv) close of escrow has not occurred for the sale of any Unit in such added property; and (v) the Association has not made any expenditures or incurred any obligations with respect to any portion of such added property. Such amending instrument or notice of deletion shall constitute an amendment to this Declaration.

12.5 Right to Complete Improvements and Construction Easement. Declarant hereby reserves the right, for a period of seven (7) years following the recordation of this Declaration, to complete the construction of Improvements on the Condominium, or seven (7) years following the recordation of a Notice of Addition to complete the construction of Improvements on the added property, and an easement over the Condominium for the purpose of doing so. Any damage caused to a Unit or the Common

Elements by Declarant or its agents in the use or exercise of such right and/or easement shall be repaired by and at the expense of Declarant.

12.6 Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain offices for sales and management and models as provided in Section 3.4 of this Declaration, and to maintain signs on the Common Elements for so long as Declarant owns any portion of the Condominium. Declarant reserves the right of unlimited access to such offices for sale and management and to the models and to signs on the Condominium during the same time period.

12.7 Use of Easements. Declarant reserves the right to use easements through the Common Elements for the purpose of making Improvements within the Condominium.

12.8 Merger or Consolidation. Declarant reserves the right to merge or consolidate the Association with another common-interest community of the same form of ownership.

12.9 Appointment and Removal of Directors and Officers. Declarant reserves the right to appoint and remove any officer of the Association or any member of the Board of Directors as set forth in Section 6.2 of this Declaration, for the time period set forth in such Section.

ARTICLE 13 GENERAL PROVISIONS

13.1 Enforcement; Waiver. Subject to the terms of Articles 5 and 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 and charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter.

13.2 Severability. Invalidation of any one (1) 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.

13.3 Term; Method of Termination. Unless amended or terminated as provided below, this Declaration shall continue in full force and effect in perpetuity. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Unit Owners representing ninety percent (90%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded a certificate of termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

13.4 Termination of Condominium. The Condominium may be terminated only in the manner provided for in the Condominium Act.

13.5 Amendment.

13.5.1 Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under A.R.S. § 33-1220, by the Association under A.R.S. §§ 33-1206

or 33-1216(D), or by certain Unit Owners under A.R.S. §§ 33-1218(B), 33-1222, 33-1223 or 33-1228(B), this Declaration, including 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.

13.5.2 Except to the extent expressly permitted or required by the Condominium Act, an amendment to this 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.

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

13.5.4 During the Period of Declarant Control, Declarant shall have the right to amend this Declaration, including the Plat, to: (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (ii) correct any error or inconsistency in this Declaration if the amendment does not adversely affect the rights of any Unit Owner; or (iii) comply with the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or the Condominium Documents is required by law or requested by Declarant.

13.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 13.5.1 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the county recorder of each county in which any portion of the Condominium is located. Any such amendment shall certify that the amendment has been approved as required by this Section 13.5. Any amendment made by Declarant pursuant to Subsection 13.5.4 of this Declaration or the Condominium Act shall be executed by Declarant and shall be recorded with the county recorder of each county in which any portion of the Condominium is located.

13.6 Remedies Cumulative. Each remedy provided in this Declaration is cumulative and not exclusive.

13.7 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit Owner 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 to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner. A Unit Owner may change 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 13.7. 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 (3) days after the notice is mailed. If a Unit is owned by more than one (1) person, notice to one (1) 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.

13.8 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, 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 evidences such Person's interest that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. 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.

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

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

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

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

13.13 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.

13.14 Guests and Tenants. Each Unit Owner shall be responsible for compliance by such Unit Owner's agents, lessees, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. A Unit Owner's failure to insure compliance by such Persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

13.15 Attorneys' Fees. In the event Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action.

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

13.17 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one (1) or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

13.18 No Absolute Liability. No provision of the Condominium Documents shall be interpreted or construed as imposing on any Unit Owner absolute liability for damage to the Common Elements or the Units. A Unit Owner shall only be responsible for damage to the Common Elements or Units caused by such Unit Owner's negligence or intentional acts.

13.19 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a residential condominium development and for the maintenance of common elements.

13.20 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Condominium to the public, or for any public use.

13.21 No Representations or Warranties No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with all or any portion of the Condominium or any Improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a Condominium, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with any governmental authority.

13.22 Nonliability and Indemnification.

13.22.1 **General Limitation.** Except as specifically provided in the Condominium Documents or as required by law, no right, power, or responsibility conferred on the Board of Directors by the Condominium Documents shall be construed as a duty, obligation or disability charged upon the Board of Directors or any other officer, employee, agent or committee members of the Association. Such Persons are subject to the insulation from liability provided for directors of corporations by the laws of the State of Arizona to the fullest extent provided by such laws. Members of the Board of Directors are not personally liable to the victims of crimes occurring on the Condominium.

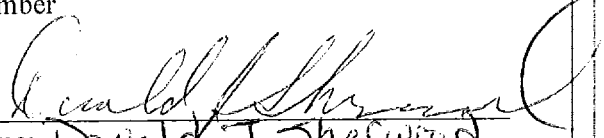
13.22.2 **Indemnification.** When liability is sought to be imposed on a member of the Board of Directors, an officer, committee member, employee or agent of the Association, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, unless and until it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense due to the willful or wanton misfeasance or gross negligence of such Person indemnified by the Association, and the

Association may recover indemnification costs expended from the individual who so acted. Punitive damages may not be recovered against the Association, but may be recovered from Persons whose activity gave rise to the damages. This Subsection 13.22.2 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification under this Subsection 13.22.2 shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

DUNLAP CONDOMINIUMS, INC.,
an Arizona corporation

By: SHER-JOY LLC,
an Arizona limited liability company
Its: President

By: D.J.S. Los/Com Limited Liability Company,
an Arizona limited liability company
Its: Member

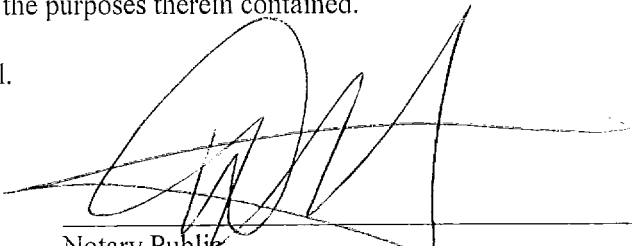
By: 
Name: Donald J. Sherwood
Its: MANAGER

Unofficial Document

STATE OF Arizona)
County of Maricopa) ss.

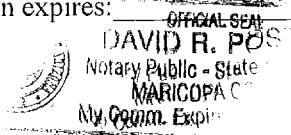
On this 15th day of Nov, 2000, before me, the undersigned Notary Public, personally appeared Donald J Sherwood, known to me or proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

WITNESS my hand and official seal.



Notary Public

My commission expires: _____



Unofficial Document

EXHIBIT A

Legal Description of Property Submitted to Condominium

(to be supplied prior to execution)

Unofficial Document