

**AMENDED AND RESTATED
CONDOMINIUM DECLARATION
FOR
THE OVERLOOK AT SCOTTSDALE MOUNTAIN II, A CONDOMINIUM**

This Amended and Restated Condominium Declaration for The Overlook at Scottsdale Mountain II, a Condominium ("**Declaration**"), is adopted per the vote of the Unit Owners as set forth below.

ARTICLE 1

DEFINITIONS

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

"**Act**" means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time, or any successor statute that governs the creation and management of **condominiums in Arizona**.

"**Additional Property**" means the real property located in Maricopa County, Arizona, described on Exhibit B attached to this Declaration together with all buildings and other Improvements located thereon and all easements, rights and appurtenances belonging thereto.

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

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

"**Assessments**" means the Regular Assessments, Special Assessments, Individual Expense Assessments and Enforcement Assessments levied pursuant to Article 7.

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

"**Association**" means the Arizona nonprofit corporation organized to administer and enforce the Community Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. The Association is named "The Overlook at Scottsdale Mountain II Owners Association, Inc."

"Balcony" means a non-ground level portion of the Common Elements designated as a balcony on the Plat.

"Board" or "Board of Directors" means the Board of Directors of the Association.

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

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

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

"Common Elements" means all portions of the Community other than the Units.

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

(a) The cost of maintenance, management, operation, repair and replacement of the Common Elements and all other areas within the Community that are maintained by the Association.

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

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

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

(e) Reasonable reserves as deemed appropriate by the Board or required by the Community Documents;

(f) The cost of bonding of the directors, officers and employees of the Association, any professional managing agent or any other person handling the funds of the Association;

(g) Taxes paid by the Association;

(h) Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements or portions thereof;

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

"Common Expense Liability" means the percentage of undivided interests in the Common Expenses allocated to each Unit by this Declaration.

"Community" means the Parcel, together with the Buildings and all other Improvements located thereon, and any part of the Additional Property that is annexed by the Declarant pursuant to Article 2 together with all Buildings and other Improvements located thereon.

"Community Documents" means this Declaration (including the Plat), and the Articles, Bylaws, Rules, and any other policies, rules and regulations concerning the Community adopted by the Association or the Board of Directors or any committee thereof.

"Declarant" means Mirage Mountain. LLC, an Arizona limited liability company.

"Declaration" means this entire document, as it may be amended from time to time, together with the Exhibits, and where appropriate by context, the Plat.

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

"Eligible Mortgage Holder" means a First Mortgagee who has requested notice of certain matters in accordance with this Declaration.

"Enforcement Assessment" means an assessment levied pursuant to Section 7.5.

"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.

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

"Improvement" means any physical structure, fixture, or facility existing or constructed, placed, erected or installed on any portion of the Common Elements included in the Community, including, but not limited to, buildings, private streets, private underground utilities, drainage and retention facilities, parking areas, recreational amenities, fences, walls, sculptures, poles, signs, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type, and kind.

"Individual Expense Assessment" means an assessment levied by the Association pursuant to Section 7.4.

"Invitee" means any person whose presence within the Community is approved by or is at the request of a particular Owner, Lessee or Occupant, including, without limitation, family members, guests, employees and contractors.

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

"Limited Common Elements" means any portion of the Common Elements specifically designated in this Declaration as a Limited Common Element, or specifically designated on the Plat as a "limited common element", and allocated by this Declaration or the Plat or by operation of the Act for the exclusive use of one or more, but fewer than all, of the Units.

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

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

"Owner" or "Unit Owner" means the owner of record, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. "Unit Owner" shall not include (i) Persons having an interest in a Unit merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Unit. "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 contract intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of a Unit, the fee simple title to which is vested in a trustee pursuant to a deed of trust pursuant to A.R.S. § 33-801, et seq., the trustor shall be deemed to be the "Unit Owner." In the case of a Unit the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar arrangement, the beneficiary of the trust who is entitled to possession of the Unit shall be deemed to be the "Unit Owner."

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

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

"Patio" means a ground-level portion of the Common Elements designated as a patio or deck on the Plat.

"Person" means a natural person, corporation, Limited Liability Company, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity, and in the case of a subdivision trust, means the beneficiary of the trust who holds the right to subdivide, develop or sell the real estate rather than the trust or trustee.

"Plat" means the plat for the Community, which plat has been recorded in the Official Records of Maricopa County in which this Declaration is recorded, and any amendments, supplements, or corrections thereto.

"Purchaser" means any Person, other than Declarant, who becomes a Unit Owner.

"Recording" means placing an instrument of public record in the office of the county recorder of the Maricopa County in which the Parcel is located, and **"Recorded"** means having been so placed of public record.

"Regular Assessment" means the assessment levied against the Units pursuant to Section 7.2.

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

"Special Assessment" means an assessment levied pursuant to Section 7.3.

"Unit" means a portion of the Community designated for separate ownership or occupancy, the boundaries of which are describe in Article 2 and shown on the Plat. No Unit shown on the Plat (other than the Units described in Section 2.2) shall be subject to this Declaration, until such Unit has been annexed and subjected to this Declaration in accordance with the provisions of Article 2. Any designation of a garage as a "unit" on the Plat shall be for conveyance purposes only, and such "garage unit" shall not constitute a Unit for purposes of this Declaration.

ARTICLE 2

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

2.1 Submission of Property. Declarant was the owner of the Parcel and submitted the Parcel to the provisions of the Act for the purpose of creating a condominium in accordance with the provisions of the Act and hereby declares that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. Declarant further declared that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Parcel and shall be binding upon and inure to the benefit of the Declarant and all Unit Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Community or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Community, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents, or as to the compliance of any of the provisions of the Community Documents with public laws, ordinances and regulations applicable thereto.

2.2 Identifying Numbers of Units. The Identifying Numbers of the Units are 1037, 1038, 2037 and 2038.

2.3 Unit Boundaries.

2.3.1 The boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floor, ceiling, doors and windows of the Unit. Each Unit shall include all doors and windows within a perimeter wall of the Unit and the openings and outlets of all utility installations in 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, floor or ceiling are part of the Unit, and all other portions of the walls, floor or ceiling are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements (including, but not limited to, chutes, flues, wires, conduits, heating and air conditioning unit, hot water heaters and gas, cable television, water and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the boundaries of a Unit but which serve more than one Unit are part of the Common Elements. In the event of any inconsistency or conflict between the provisions of this Subsection 2.3.1 and the Plat in regard to the description of the boundaries of the Unit, this Subsection shall control.

2.3.2 The location and dimensions of the boundaries of the Units as shown on the Plat are based on architectural drawings and are approximate. The actual location and dimensions of the boundaries of the Units may vary from the location and dimensions of the boundaries as shown on the Plat. The actual physical location and dimensions of the boundaries of a Unit, as

initially constructed, or as reconstructed following the damage or destruction of such boundaries, shall be considered the location and dimensions of the boundaries of the Units for purposes of this Declaration regardless of any variances from the location and dimensions of the boundaries as shown on the Plat.

2.3.3 For purposes of this Declaration, a Unit Owner's Unit includes any garage, as shown on the Plat that is designated for separate ownership and has been conveyed to such Unit Owner. The boundaries of any such garage shall be the same as though the garage were a Unit. The right to own any garage shall be restricted to the Unit Owner of the Unit to which the garage is appurtenant. A Unit Owner is permitted to sell and convey a garage only simultaneous with the sale and conveyance of the Unit to which it is appurtenant. No garage may be subdivided, and no additional voting or other rights shall be allocated to any Unit Owner on account of ownership of one or more garages.

2.4 Allocation of Common Element Interest and Common Expense Liabilities. The undivided interests in the Common Elements and in the Common Expenses are allocated equally among the Units. Thus, each Unit's fraction of undivided interests in the Common Elements and in the Common Expenses is the fraction the numerator of which is one and the denominator of which is the total number of Units, subject to this Declaration. The fraction of undivided interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective fractions of undivided interest. The ownership of each Unit shall not be conveyed separate from the fraction of undivided interest in the Common Elements allocated to the Unit. The undivided fraction of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

2.5 Allocation of Votes in the Association. The total votes in the Association shall be equal to the number of Units. The votes in the Association shall be allocated equally among all the Units with each Unit having one (1) vote.

2.6 Allocation of Limited Common Elements.

2.6.1 The following portions of the Common Elements are Limited Common Elements and are allocated to the exclusive use of one Unit as follows:

- (a) The sidewalk, if any, shown on the Plat as adjoining the Unit and which is designed for the exclusive use of the Unit;

(b) Any Patio or Balcony adjoining the Unit as shown on the Plat. The boundaries of each Patio or Balcony shall be as follows: (i) the lower boundary shall be the unfinished floor; (ii) the upper boundary shall be the unfinished ceiling, if any, otherwise a horizontal plane having an elevation equal to the elevation of the finished ceiling of the Unit to which the Patio or Balcony is allocated; and (iii) the vertical boundaries shall be vertical planes corresponding to the exterior wall of the Building in which the Unit is located and the inside unfinished surfaces of any wall, railing, fence or other structure enclosing the Patio or Balcony extended to the upper and lower boundaries;

(c) Any utility meter that serves only one Unit;

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways, courtyards, decks, or patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside of the Unit's boundaries;

(e) If a Unit Owner owns or has been allocated a garage, the space immediately in front of such garage lying between such garage and any common drive or roadway;

(f) All parking shown on the Plat and not designated as a Limited Common Element pursuant to this Declaration or the Plat shall be a general Common Element;

(g) In the event a Unit does not have appurtenant to it a garage at the time of such Unit's initial conveyance from Declarant, then any covered parking space and/or storage space designated on the Plat and assigned by the Declarant or Association to such Unit, is allocated to such Unit as a Limited Common Element;

(h) If any chute, flue, duct, wire, conduit, heating or air conditioning unit, apparatus or system or other fixtures lies partially within and partially outside the designated boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit;

(i) Any chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture (including, but not limited to, heating and air conditioning units and related equipment and

natural gas, cable television, water and electric pipes, lines or meters) located outside of the boundaries of a Unit, which serve only one Unit, are a Limited Common Element allocated solely to the Unit served;

(j) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture (including, but not limited to, hot water heaters, heating and air conditioning units and related equipment and natural gas, cable television, water and electric pipes, lines or meters) lies partially within and partially outside the designated boundaries of a Unit, the portion outside the boundaries of the Unit which serve only the Unit is a Limited Common Element allocated solely to the Unit, the use of which is limited to the Unit served, and the portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

2.6.2 Each Owner shall have the right to the exclusive use a Limited Common Elements allocated to such Owner's Unit, subject to the rights granted to the Association by the Community Documents. All Limited Common Elements must be used in accordance with the Declaration and the Rules.

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

2.6.4 The Board of Directors shall have the right, with the approval of Members holding at least fifty percent (50%) plus one (1) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration.

2.7 **Relocation of Boundaries between Adjoining Units.** The boundaries between Or among adjoining Units may be relocated by an amendment to this Declaration. The Owners of the Units affected by the relocation of boundaries shall prepare an amendment to this Declaration and the Plat that identifies the Units involved, specifies the outer boundaries of the Units and their dimensions and include the Units' Identifying Numbers. If the Owners of the adjoining Units have specified a reallocation between their Units of the allocated interests in the Common Elements and in the Common Expenses, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the Owners of those Units, shall contain words of conveyance between or among them and, before recording the amendment, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the

proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment

2.8 Subdivision of Units. A Unit may be subdivided into two or more Units. A Unit Owner shall prepare an amendment to the Declaration and the Plat which identifies the Unit involved, specifies the boundaries of each Unit created and the dimensions, assigns an Identifying Number to each Unit created and allocates the allocated interest in the Common Elements and in the Common Expenses formerly allocated to the subdivided Unit to the new Units in a reasonable manner. The amendment shall be executed by the Owner of the Unit to be subdivided and, before recording, submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and shall specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

2.9 Access Gate. In the event the Community now has or in the future has an electronically activated access gate(s) located at the entrance to the Community in order to limit access and provide more privacy for the Owners, Lessees and Occupants of the Units, such gate(s) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. Each Owner, Lessee and Occupant acknowledges and agrees that the access gate does not guarantee the safety or security of the Owners, Lessees, Occupants or Invitees or guarantee that no unauthorized person will gain access to the Community. Further, all such parties acknowledge that the existence of an access gate(s) does not mean that the Community is completely enclosed or that its existence makes the Community any more secure than a community without an access gate(s). Each Owner, Lessee and Occupant, and their Invitees, acknowledge that the access gate may restrict or delay entry into, or access within, certain areas by police, fire department, ambulances and other emergency vehicles or personnel and agree to assume the risk that the access gate will restrict or delay entry into, or access within, such areas by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Association nor any director, officer, agent or employee of the Association shall be liable to any Owner, Lessee, Occupant or Invitees for any claims or damages resulting, directly or indirectly, from the existence, operation or maintenance of the access gate.

2.10 Disclaimer. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Community can or will be carried out, or that the real property subject to the Plat is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.

ARTICLE 3

EASEMENTS AND DEVELOPMENT RIGHTS

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

3.2 Easements for Ingress and Egress There is hereby granted and created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, stairs, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also granted and 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 Owners, Lessees, Occupants and Invitees.

3.3 Unit Owners' Easements of Enjoyment

3.3.1 Every Owner, Lessee and Occupant 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:

(a) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements.

(b) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least sixty-seven percent (67%) of the votes in the Association. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Act.

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

(d) All rights and easements set forth in this Declaration.

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

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

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

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

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

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

3.5 **Easements and Rights of the Association for Pest Control.** Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Community by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Community. The Association may cause the temporary removal of any Owner, Lessee or Occupant for such periods and at such times as necessary for prompt, effective treatment of wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than thirty (30) days nor more than sixty (60) days'

notice of the need to temporarily vacate shall be given to occupants and to the Owner of the Unit affected. The notice shall state: (a) the reason for the temporary relocation; (b) the date and time of the beginning of the treatment; (c) the anticipated date and time of termination of treatment; and (d) that the Owner, Lessee or Occupant will be responsible for their own accommodations during the temporary relocation.

3.6 Common Elements Easement in Favor of Unit Owners.

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

- (a) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve and Unit and which pass across or through a portion of the Common Elements
- (b) For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building
- (c) For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under this Declaration

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

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

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

- (b) For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements.
- (c) For correction of conditions (including, without limitation, broken or leaking water pipes, broken hot water heaters or obstructed sewer lines) in one or more Units or Limited Common Elements which have damaged or if left uncorrected could damage, the Common Elements, the Limited Common Elements or other Units.
- (d) For the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Community Documents.
- (e) For inspection of the Units and the Limited Common Elements in order to verify that the provisions of the Community Documents are being complied with by the Unit Owners, Lessees and Occupants of the Unit.
- (f) For entry in case of an emergency.

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

3.8 Easement for Unintended Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, reconstruction, shifting, settlement or movement of any improvement or alteration or restoration authorized by this Declaration or any reason other than an encroachment created by the intentional conduct of a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted and created.

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

including, without limitation, for U.S. Mail distribution and collection and private or municipal refuse collection, without the joinder or consent of any First Mortgagee or other Person.

ARTICLE 4

USE AND OCCUPANCY RESTRICTIONS

4.1 Residential Use. All Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Unit, except that an Owner, Lessee or Occupant of a Unit may conduct a business activity within a Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements applicable to the Community; (c) the business activity is conducted solely in the Unit; (d) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Owners, Lessees or Occupants; and (e) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners, Lessees or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section 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: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.2 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be installed, used or maintained on any portion of the Community whether attached to the Building or otherwise without the prior written approval of the Board of Directors, unless applicable law prohibits the Board of Directors from requiring such prior approval. Even if applicable law prohibits the Board of Directors from requiring prior approval for the installation or use of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with such rules and regulations as the Board of Directors may adopt.

4.3 Improvements and Alterations.

4.3.1 Any Owner, Lessee or Occupant may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Board of Directors, but the Owner of the Unit shall be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements. No Owner, Lessee or Occupant shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the

Owner, Lessee or Occupant receives the prior written approval of the Board of Directors and an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of a Building or lessen the support of any portion of the Community.

4.3.2 Notwithstanding Subsection 4.3.1, no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of a Building shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors. Except as expressly permitted by this Section 4.3, no wall, partition, fixture or other Improvement situated within a Unit shall be constructed, installed or modified without the prior written approval of the Board of Directors.

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

4.3.4 The Board of Directors may condition the approval of any proposed additions, alterations or improvements to a Unit or the Common elements in any manner, including, without limitation: (a) retaining approval rights of the contractor to perform the work (b) restricting the time during which such work may be performed; (c) 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; (d) requiring the provision to the Board of Directors of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Arizona; and (e) requiring that the Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Owner shall be obligated to designate the Association, the Board of Directors and any other Person designated by the Board of Directors as additional insureds under the policies. The Owner shall be responsible for all costs incurred by the Board of Directors in connection with the Board of Director's review of proposed changes to the Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals that may be retained by the Board of Directors to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed an Individual Expense Assessment.

4.3.5 Proposed additions, alterations and improvements to a Unit or the Common Elements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are

made shall defend, indemnify and hold harmless the Association, and all other Owners, Lessees or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Association.

4.3.6 The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 4.3 or any rules of the Association governing additions, alterations or improvements to the Units or the Common Elements. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Association nor any of the officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold the Association and their respective directors, officers, agents and employees 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, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Lessee or Occupant of the Owner's Unit.

4.3.7 Notwithstanding anything to the contrary in the foregoing, no Unit Owner shall add any additional, or modify any existing, hard surface flooring (e.g., tile, linoleum, wood) without the prior written approval of the Board of Directors, which approval may be withheld if in the sole judgment of the Board of Directors such flooring change may create sound transfer issues with respect to any adjacent Unit.

4.4 Trash Containers and Collection. No rubbish, trash or garbage shall be placed or kept on the Common Elements except in covered containers of a type, size, style and location approved by the Board of Directors. All rubbish, trash and garbage shall be regularly removed from the Units by the Owners, Lessees or Occupants thereof. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash chutes or receptacles. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Community. The Board of Directors shall have the right, but not the obligation, to subscribe to a trash removal service for the use and benefit of the Association and all Unit Owners.

4.5 Animals. Except as expressly permitted by this Section, no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Community. No more than two Permitted Pets may be kept or maintained in a Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. For purposes of this Section, a "Permitted Pet" shall mean a dog, cat, fish or bird of a variety commonly kept as a household pet. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause

an odor that is detectable outside the Unit, or be an annoyance to a person of ordinary sensibilities. All dogs shall be kept on a leash when outside a Unit and all dogs shall be directly under the Unit Owner's control at all times. Any person bringing a Permitted Pet onto the Common Elements shall immediately remove any feces deposited on the Common Elements by the Permitted Pet. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building or any other Unit. Upon the written request of any Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet makes an unreasonable amount of noise, causes an odor which is detectable outside the Unit or is an annoyance to a person of ordinary sensibilities. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Community, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets; provided, however, that any rule placing limitations on the height and/or weight of a Permitted Pet must be approved by the affirmative vote of Members having more than fifty percent (50%) of the votes cast with respect to such proposed rule at a meeting of the Members.

4.6 Diseases and Insects. No Owner, Lessee or Occupant shall permit anything or condition to exist upon the Community that could induce, breed or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Association, each Owner shall perform such pest control activities in his Unit as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

4.7 Motor Vehicles. Except for moving vans, delivery trucks, service vehicles or other similar large vehicles, trucks or equipment temporarily in the Community, the only types of vehicles permitted in the Community are private, non-commercial, passenger automobiles, sport utility vehicles, vans, golf carts, motorcycles or pickup trucks not exceeding one (1) ton in carrying load or cargo capacity. No other vehicle (including, but not limited to, motor homes, boats, recreational vehicles, all-terrain vehicles, trailers, trucks, machinery, equipment, campers, permanent tents, or similar vehicles or equipment, commercial vehicles, or pickup trucks exceeding one (1) ton in carrying load or cargo capacity or similar vehicles or equipment) shall be kept, placed or maintained within the Community or any roadway adjacent thereto, except: (i) within a fully- enclosed garage; or (ii) if permitted by the Board of Directors, in such areas and subject to such rules and regulations as the Board of Directors may designate and adopt in its sole discretion (and the Board of Directors in its sole discretion may prohibit such other vehicles and equipment completely). Except for emergency repairs that can be completed within 3 hours, no vehicle (including, but not limited to, those enumerated in the preceding sentences) shall be constructed, reconstructed or repaired in the Community or any roadway therein or adjacent thereto except within a fully enclosed garage with the garage door closed. No permitted vehicle shall make an unreasonable amount of noise or emit other than an ordinary amount of fumes. All permitted vehicles shall be parked only in designated Parking Spaces. If a Parking Space is assigned to a Unit as a Limited Common Element, then no Owner, Lessee or Occupant may park any permitted vehicle owned or leased by such Unit Owner, Lessee or Occupant in any Parking Spaces other than the Parking Space assigned to the Unit as a Limited Common Element. Guest parking may be provided in certain portions of the Common Elements; if so provided, then guests (but not Unit Owners) may park in those designated areas on a temporary basis (not exceeding 72 consecutive hours or seven (7) calendar days in any month). No motor vehicles of any kind that are not in operating condition shall be parked in any unenclosed parking areas in the Community. The Association may establish speed limits, speed bumps, directional limitations, and such other traffic rules as it may determine to be in the best interest of the Community.

4.8 Towing of Vehicles. The Board of Directors shall have the right to have any vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Community Documents towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle.

4.9 Garages. Garages shall be used for parking permitted vehicles and for residential storage only, and shall not be used or converted for living, recreational or vocational activities. Garage doors shall be kept close at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons.

4.10 Signs. Unit Owners shall be permitted to display "For Sale" or "For Rent" or "Open House" signs) as provided for in A.R.S. §33-1261(c), or as thereafter amended.

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

4.12 Nuisances and Offensives Activity. No nuisance shall be permitted to exist or operate upon the Community, and no activity shall be conducted upon the Community that is offensive or detrimental to any portion of the Community or any Owner, Lessee or Occupant or which interferes with the quiet enjoyment of a Unit by the Owner, Lessee or Occupant thereof. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Community without the prior written approval of the Board of Directors. The Board of Directors shall have the right to determine, in its sole discretion, whether the provisions of this Section have been violated. Any decision rendered by the Board of Directors shall be conclusive and shall be enforceable in the same manner as other restrictions in this Declaration

4.13 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed without the prior written consent of the Board of Directors. Except for tinting which is part of the original construction of the Building, window tinting is prohibited. The exterior facing portion of any interior window covering shall be white or cream in color, except as may otherwise be permitted by the Board of Directors.

4.14 Patios and Balconies. Furniture, furnishings, and umbrellas kept and maintained on any Patio or Balcony shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior walls of the Building in which the Unit is located and must be approved in writing by the Board of Directors unless expressly permitted by the Rules. A reasonable number of plants may be maintained on a Patio or Balcony. No Astroturf, carpet or other floor covering shall be installed in any Patio without the prior written approval of the Board of Directors. No Patio or Balcony shall be used as a storage area for items or materials that are not customarily intended for use on a Patio or Balcony, such as the use of a Patio or Balcony to store bicycles or exercise equipment. No linens, blankets, rugs, towels, swimsuits, clothing or similar

articles may be hung from any Patio or Balcony. The use of barbeques and related accessories and equipment on a Patio or Balcony may be limited or prohibited by local law, but to the extent permitted shall in any event be subject to rules and regulations adopted by the Board of Directors. Barbecues, if permitted, shall be appropriately screened when not in use so they are not visible from any other Unit, Common Element, street, other part of the Community or any adjacent property, and shall be operated with appropriate safety measures.

4.15 Rental of units. No Owner may lease less than his entire Unit. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other Occupants shall be a default under the lease. There shall be no subleasing of Units or assignments of leases. No Unit may be leased for less than thirty (30) days. At the commencement of the lease term, the Owner shall provide the Association the following information: (a) the commencement date and expiration date of the lease term; (b) the names and contact information of each of the Lessees and other adults who will reside in the Unit during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; (d) the name, address and telephone number of a person whom the Association can contact in the event of an emergency involving the Unit; and (e) the name and home and work telephone numbers of the Lessee and any other adult Occupants of the Unit. Any Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. The Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other persons residing in the Unit and their guests or invitees and, in the event of any such violation, the Unit Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

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

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

4.18 Noise Reduction. In order to maintain the highest level of acoustical privacy possible, the Board of Directors may, from time to time, adopt rules and regulations to reduce levels of noise emission from Units. Additionally, no loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernable between Units. Stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules. All Owners, Lessees and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the rules and regulations of the Association and any local noise reduction ordinance.

ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall maintain, repair and replace all Common Elements. If it so elects (without obligation to do so), or is required to do so by any governmental authority, the Association shall maintain landscaping located on public rights of way adjacent to, or within, the Community. The cost of all such maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements or any components of the Units which the Association is obligated to maintain, repair or replace. The Association shall maintain, repair and replace the Common Elements and the components of the Units which the Association is obligated to maintain, repair and replace. Neither the city nor the county in which the Community is located shall be responsible for or will accept maintenance of any private drives, private facilities, landscaped areas or any other part of the Community.

5.2 Duties of Unit Owners. Each Owner shall maintain in a good, clean and sanitary condition, repair and replace, at his own expense, all portions of his Unit. In addition, each Owner shall maintain in a good, clean and sanitary condition the interior of any Patio or Balcony allocated to the Unit as a Limited Common Element, the interior of any garage associated with the Unit and any permitted Improvement that an Owner makes on any Limited Common Element. Without limiting the generality of the foregoing, and for the purpose of clarification as to commonly questioned items, each Unit Owner shall, at his own expense, maintain, repair, replace and restore, all doors, window glass, floor coverings, wall coverings, Patio or Balcony deck and ceiling coatings; any heating, cooling and air conditioning, stems and equipment exclusively serving his Unit; all electrical and plumbing fixtures and appliances exclusively serving his Unit, including, but not limited to, dishwashers, laundry equipment, ranges, ovens, water heaters and other built-in appliances; and any fountain, spa, pool, landscaping or other Improvement installed by Owner on any portion of the Limited Common Elements allocated exclusively to his Unit as approved by the Board of Directors.

5.3 Repair or Restoration Necessitated by Owner. Each Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Owner or of the Owner's Lessees, Occupants or Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of an Owner or of the Owner's Lessees, Occupants or Invitees shall be assessed against the Owner as provided in Subsection 7.2.4.

5.4 Owner's Failure to Maintain. If an Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this

Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4.

5.5 Sprinkler System. In the event the Unit is equipped with a sprinkler system, the heads of the system will intrude into the Unit. All pipes, heads and other parts of any such sprinkler system (whether located within or outside of the Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. If an Owner, Lessee or Occupant or their Invitees causes any sprinkler system to be activated (except in the case of an actual fire) or damages or destroys any part of a sprinkler system, the Owner of the Unit shall be responsible for the cost of any repairs to such sprinkler system made by the Association and for all other losses or damages resulting from such actions.

5.6 Duty to inspect. It shall be the duty of the Board of Directors to inspect the Community at least once each year for the purpose of determining the condition of the Community (excluding the interior of Units). The scope of the inspection shall include the Common Area and structural Common Area including, but not limited to, the exterior of all buildings and structures, roofs, walkways, irrigation, landscaping, drainage, and recreation facilities. Structural components of any building or structure, foundations and soils shall be inspected if the inspection otherwise required hereby would place a reasonable person on notice of any defect or need to maintain, repair or refurbish such item. The Board of Directors may inspect the interior of any Unit if required to do so in order to fulfill its obligations pursuant to this Article. The purpose of the inspection shall be to determine the condition of the Community including, but not limited to, the state and adequacy of maintenance, the need for additional maintenance, and the need for any refurbishment, replacement or repair. The Board of Directors may employ such experts and consultants as are deemed necessary to perform the inspection set forth in this Article and to report and recommend to the Board of Directors any correction action necessary. The Board of Directors shall prepare an annual report of the inspection of the Community required by this Article. The report shall be furnished to Owners within the time set forth for furnishing Owners with the Association Budget. The report shall include at least the following:

- (A) A description of the condition of the Community, including matters inspected, and the status of maintenance, repair and need for replacements of all such matters;
- (B) A description of all maintenance repair and replacement planned for the ensuing fiscal year and included in the Association Budget;
- (C) If any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (D) A summary of all reports of inspections performed by any expert or consultant employed by the Board of Directors to perform inspections;
- (E) A report of compliance with the maintenance, replacement and repair needs set forth in the report for the immediately preceding years;

(F) Such other matters, as the Board of Directors deems appropriate;

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

ARTICLE 6

THE ASSOCIATION

6.1 Rights, Powers and Duties of the Association. The Association is organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Community Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Act. The Association shall have the right to finance capital improvements in the Community by encumbering future Assessments if such action is approved by the affirmative vote of Unit Owners holding more than fifty percent (50%) plus one of the votes in the Association. Unless the Community Documents or the Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

6.2 Directors and Officers. The affairs of the Association shall be conducted by and through a Board of Directors and such officers and committees as the Board of Directors may elect and appoint, all in accordance with the Article and the Bylaws. The Unit Owners shall elect the Board of Directors, which must consist of at least three members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Act, may adopt, amend, and repeal rules and regulations. The Rules may,

among other things, restrict and govern the use of the Units and the Common Elements. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered by the Association to each Unit Owner; provided, however, that failure to do so shall not invalidate the existence of such Rules; and provided further that certain rules may exist only in the context of signs placed by the Board of Directors within the Community.

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

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

6.6 Utility Service. The Association shall acquire and pay for the following: (a) water, sewer, electric, natural gas and other utility services for the Common Elements; and (b) water, sewer and refuse collection for the Common Elements and the Units. Each Unit will be separately metered for electricity and natural gas service and all charges for electricity and natural gas service to a Unit (and all other elected services, such as cable television and telephone) shall be paid by the Owner of the Unit.

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budget.

7.1.1 At least thirty (30) days before the beginning of each fiscal year of the Association, 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: (a) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (b) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Community; (c) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Community Documents; and (d) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units. The Board of Directors is

expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

7.1.2 At least ten (10) days before the beginning of each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Owner a summary of the budget and a statement of the amount of the Regular Assessment assessed against the Owner's Unit in accordance with Section 7.2. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2, and each Owner shall continue to pay the Regular Assessment for his Unit as established for the previous fiscal year until notice of the Regular Assessment for the new fiscal year has been given to the Owners by the Board of Directors.

7.2 Regular Assessment.

7.2.1 For each fiscal year of the Association, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.4. The amount of the Regular Assessment assessed pursuant to this Subsection shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board of Directors may increase the Regular Assessment for that fiscal year and the revised Regular Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Board of Directors may require that the Regular Assessments or Special Assessments be paid in installments.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 7.2.1.

7.2.4 If any Common Expense is caused by the misconduct of any Owner, the Association shall assess that Common Expense exclusively against such Owner's Unit. Assessments to pay a judgment against the Association may be made only against the Units in the Community at the time the judgment was entered, in proportion to their Common Expense Liabilities.

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

7.3 Special Assessments. The Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment (other than a Special Assessment levied pursuant to Section 9.1 as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by Owners representing fifty percent (50%) plus one of the votes in the Association who are voting in person or by absentee ballot at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Owners.

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

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

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

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

7.7.1 Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors. If any Assessment, or any installment thereof, is not paid within fifteen (15) days after the Assessment first became due, the Association may assess against the delinquent Unit Owner a late fee in the amount established from time to time by the Board of Directors.

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

7.7.3 The Assessment Lien shall have priority over all liens, other interest and encumbrances except for: (a) liens and encumbrances Recorded before the recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges; and (c) the lien of any First Mortgage seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person. Any assessments and charges against the Unit that accrue prior to such sale or transfer shall remain the personal obligation of the defaulting Unit Owner.

7.7.4 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: (a) 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 (b) bringing an action to foreclose the 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.

7.8 Certificate of Payment. The Association on written request shall furnish to a lienholder, Unit Owner or person designated by Unit Owner a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of

Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

7.9 No Exemption or Offsets. No Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Community Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Community Documents or the Act.

7.10 Reserve Contribution.

7.10.1 Except as provided in Subsection 7.10.2, each Person who purchases or otherwise becomes the Owner of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.12. The amount of the initial Reserve Contribution shall be set by the Board of Directors. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

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

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

7.11 Transfer Fee. Each Person who purchases or otherwise becomes the Owner of a Unit shall pay to the Association immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Unit. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement that the Association is required to mail or deliver to a purchaser under A.R.S. § 33-

1260A and, therefore, the transfer fee shall be in addition to the fee that the Association is entitled to charge pursuant to A.R.S. § 33-1260C.

7.12 Reserves.

7.12.1 The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements that the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.10 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two (2) members of the Board of Directors; or (b) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. The Board of Directors shall obtain a reserve study at least once every three years, which study shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

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

ARTICLE 8

INSURANCE

8.1 Scope of Coverage.

8.1.1 The Association shall maintain, to the extent reasonably available, the following insurance coverage;

(a) A special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the Common Elements. The Board of Directors, in its discretion, may elect to have the property insurance also cover the Units, except for: (i) additions, alterations and improvements supplied or installed by the Unit Owners; and (ii) furniture, furnishings or other personal property of the Unit Owners. Such property insurance shall

cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of an Insurance Trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Community (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. The replacement cost shall be reviewed annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

(b) Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence with an aggregate of \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include (i) a cross liability clause to cover liabilities of the Owners as a group to an Owner, (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles, (iii) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party, and (iv) a waiver of the contractual liability exclusion for personal injury.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and a policy of employer's liability insurance with coverage limits determined by the Board of Directors.

(d) Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering all the directors and officers of the Association.

(e) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Unit Owners, including, without limitation, umbrella general liability insurance that would provide general liability coverage in excess of the coverage provided by the policy to be obtained pursuant to Subsection 8.1.1(b).

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

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

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

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

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

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

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

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

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

(g) If applicable, pressured, mechanical and electrical equipment coverage on a comprehensive form in an amount not less than \$500,000 per accident per location.

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

8.1.2 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.

8.1.3 The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 8.1 in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit

Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

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

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

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

8.2 Fidelity Bonds.

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

- (a) The fidelity bonds shall name the Association as an obligee;

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

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

8.2.2 The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Subsection 8.2.1. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

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

8.4 Insurance Obtained by Unit Owners. To the extent not covered by the policies of insurance obtained by the Board of Directors pursuant to Section 8.1, each Unit Owner shall be responsible for: (a) property insurance on all fixtures, furnishings and cabinets within the Unit and all personal property of the Owner; and (b) comprehensive general liability insurance covering the Unit. All policies of property insurance carried by an Owner shall be without contribution with respect to the policies of property insurance obtained by the Board of Directors for the benefit of all of the Unit Owners. No Owner shall separately insure his Unit against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of other insurance will be chargeable to the Owner who acquired other insurance.

8.5 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 lienholder as their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Act.

8.6 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, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust who a certificate or memorandum of insurance has been issued at their respective last known addresses.

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

9.1 Automatic Reconstruction. Any portion of the Community for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the Community is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or allocated Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Community in excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.3.

9.2 Determination not to reconstruct Without Termination. If eighty percent (80%) of the Unit Owners (including every Owner of a Unit or an allocated Limited Common Element which will not be rebuilt) vote not to rebuild, and the Community is not terminated in accordance with the Act, the insurance proceeds shall be distributed in proportion to their interests in the Common Elements to the Owners of those Units and the Owners to which those Limited Common Elements were allocated and to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to Common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit that Unit's allocated interests in the Common Elements and in the Common Expenses shall be automatically reallocated as if the Unit had been condemned under A.R.S. § 33-1206A, and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

9.3 Distribution of Insurance Proceeds in the Event of Termination of the Community. Notwithstanding any provisions of this Article 9 to the contrary, the distribution of insurance proceeds resulting from the damage or destruction of all or any part of the Common Elements shall be distributed as provided in the Act in the event of a termination of the Community.

9.4 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Community covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 9.1 and 9.2, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds

after the damaged or destroyed Common Elements have been completely repaired or restored or the Community is terminated.

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

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

ARTICLE 10

EMINENT DOMAIN

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

10.2 Partial Taking of a Unit. Except as provided in Section 10.1, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in the value of his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. On acquisition, unless the decree otherwise provides, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be reduced in proportion to the reduction in size of the Unit and the portion of the allocated interests divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced interest.

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

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

10.5 Priority and Power of Attorney. Nothing contained in this Article 10 shall entitle an Owner to priority over any First Mortgagee under a lien encumbering his Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Elements, or any part thereof. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns or an Owner.

ARTICLE 11

DISPUTE RESOLUTION

11.1 Defined Terms. As used in this Article 11, the following terms shall have the meaning set forth below:

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

(b) **“Bound Parties”** means: (i) the Declarant; (ii) all Unit Owners (including their tenants, occupants and guests); (iii) the Association (including its officers and directors, agents, employees and independent contractors, including property manager); (iv) the entity that platted the Community if different from but affiliated with Declarant; (v) the general contractor for the Community subdivision improvements and Common Elements; (vi) the general contractor for the Buildings and the Units; or (vii) the subcontractors, material suppliers, labor suppliers, architects, engineers and consultants, etc., of any of the said contractors, including but not limited to the members, managers, directors, officers, partners, employees, agents and independent contractors of the foregoing.

(c) **“Claim”** is broadly and comprehensively defined as encompassing all manner whatsoever of disputes, controversies, causes of action, liabilities, damages, and injuries (personal, economic or to property) alleging or based upon any legal or equitable theory of recovery regardless of the name of the cause of action, including without limitation breach of contract, breach of warranty (express or implied), negligence in construction, construction defects, statutory negligence, strict liability in tort,

breach of fiduciary duty, fraud, misrepresentation, nuisance, based upon or arising out of or related in any way to (i) the planning, design, engineering, grading, drainage, construction or maintenance of the Common Elements, the Units or any other part of the Community or subdivision of which the Community is a part, (ii) Alleged Defects in the Units, Buildings, or other part of the Common Elements, (iii) allegations that the Declarant, the entity that platted the Community if different from but affiliated with the Declarant, the general contractor for the Community subdivision improvements and the Common Elements, the general contractor for the Buildings and the Units (as well as the subcontractors, material suppliers, labor suppliers, architects, engineers and consultants, etc., of any of the said contractors), breached contracts, breached warranties (express or implied), breached fiduciary duties, or were negligent in the planning, design, engineering, grading, construction, sale or marketing of the Common Elements and the Units or development thereof, (iv) allegations that Declarant or any of its members, managers, directors, officers, partners, employees, agents or independent contractors, breached contracts, breached the Declaration, breached warranties (express or implied), breached fiduciary duties, or were negligent in the management or operation of the Association, or the discharge of their duties as directors, officers, or agents of the Association (including, without limitation, the maintenance of the Common Elements and the establishment of appropriate reserves), and (v) allegations of damages for personal injury, damage to a Unit, Building or part of the Common Elements itself, damage to property other than a Unit itself, a Building itself, or a part of the Common Elements itself, loss of use, incidental or consequential damages or punitive damages (to the extent the right to seek punitive damages has not been waived), based upon, arising out of or pertaining to any of the foregoing.

11.2 Agreement to Resolve Certain Disputes Without Litigation. All Bound Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 11.

11.3 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such

Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interest of the Association and its Members.

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

11.5 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 11.5. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 11.5. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 11.5, the arbitration shall be conducted in accordance with the following rules:

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

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 11.5, the provisions of this Section 11.5 shall govern

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with Subsection (c) is referred to in this Section 11.5 as the "Arbitrator".

(d) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 11.5.(c).

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

(g) **Preliminary Hearing.** Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be

required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

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

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

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

(k) **Final Award.** The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

11.6 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon

reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 11.6 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Units. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

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

11.8 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 11.3.

11.9 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 11.5. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

11.10 Conflicts. In the event of any conflict between this Article 11 and any other provision of the Community Documents, this Article 11 shall control.

NOTICE

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO SUBMIT AND RESOLVE ALL CLAIMS ACCORDING TO THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 11

(WHICH REFER CERTAIN CLAIMS TO THE OTHER DISPUTE RESOLUTION PROCEDURES SET FORTH BELOW), AND WAIVES THE RIGHT TO PURSUE CLAIMS AGAINST ANY DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN THROUGH THE DISPUTE RESOLUTION PROCEDURES DESCRIBED IN THIS ARTICLE 11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM

OTHER DISPUTE RESOLUTION PROCEDURES.

IN THE EVENT ORIGINAL UNIT OWNERS IN THIS CONDOMINIUM SUBDIVISION WERE, AT THE TIME OF PURCHASE, PROVIDED WITH A WRITTEN LIMITED WARRANTY, SUCH WARRANTY TRANSFERS AUTOMATICALLY TO EACH SUBSEQUENT BUYER OF THE UNIT. ALL ALLEGED DEFECTS AND CLAIMS MUST BE FIRST SUBMITTED TO THE WARRANTY NOTICE PROCEDURES FOR A DETERMINATION OF COVERAGE. IF COVERED BY THE WARRANTY, AN ALLEGED DEFECT OR CLAIM MUST BE SUBMITTED TO AND RESOLVED PURSUANT TO THE BINDING ARBITRATION PROVISIONS CONTAINED IN THE WARRANTY.

ALL ALLEGED DEFECTS AND CLAIMS WHICH ARE NOT COVERED BY ANY SUCH LIMITED WARRANTY MUST BE SUBMITTED TO AND RESOLVED PURSUANT TO THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 11.

THE ORIGINAL UNIT OWNER'S PURCHASE CONTRACT ALSO CONTAINS CERTAIN EXCLUSIVE DISPUTE RESOLUTION PROVISIONS WHICH MAY APPLY TO CLAIMS OF SUBSEQUENT PURCHASERS. ALL ALLEGED DEFECTS AND CLAIMS WHICH ARE NOT COVERED BY THE LIMITED WARRANTY OR THIS ARTICLE 11 MUST BE SUBMITTED TO AND RESOLVED PURSUANT TO THE EXCLUSIVE DISPUTE RESOLUTION PROVISIONS IN THE PURCHASE CONTRACT OF THE ORIGINAL UNIT OWNER.

IN THE EVENT THAT A CLAIM IS COVERED BY BOTH THE LIMITED WARRANTY AND THIS ARTICLE 11, THE PROVISIONS OF THE LIMITED WARRANTY SHALL APPLY AND CONTROL. IN THE EVENT THAT A CLAIM IS COVERED BY BOTH THIS ARTICLE 11 AND THE PROVISIONS IN THE PURCHASE CONTRACT OF THE ORIGINAL UNIT OWNER, THE PROVISIONS OF THIS ARTICLE 11 SHALL APPLY AND CONTROL. IN THE EVENT THAT THE DECLARATION IS AMENDED BY OTHER THAN ANY DECLARANT OR ASSIGNEE OF ANY DECLARANT RIGHTS TO REDUCE THE SCOPE AND

LIMITATIONS OF, OR ELIMINATE THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 11 ALTOGETHER, THEN THE PROVISIONS OF THE PURCHASE CONTRACT OF THE ORIGINAL UNIT OWNER SHALL APPLY AND CONTROL AND THEREAFTER ALL ALLEGED DEFECTS AND CLAIMS NOT COVERED BY THE LIMITED WARRANTY SHALL BE SUBMITTED TO AND RESOLVED PURSUANT TO THE EXCLUSIVE DISPUTE RESOLUTION PROVISIONS IN THE SAID PURCHASE CONTRACT.

ENFORCEMENT

IF A UNIT OWNER, THE ASSOCIATION, OR ANY OTHER BOUND PARTY FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT OR ANY OTHER BOUND PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 11 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE COUNTY SUPERIOR COURT WITHIN WHICH THE PARCEL IS LOCATED FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

ARTICLE 12

RIGHTS OF FIRST MORTGAGEES

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

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

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

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

(d) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 12.2.

12.2 Approval Required for Amendment to Declaration, Articles or Bylaws. Any amendments to the Declaration, Articles or Bylaws of a material adverse nature to the Eligible Mortgage Holders must be agreed to by the Eligible Mortgage Holders that represent at least fifty percent (50%) plus one (1) of the votes in the Association allocated to Units that are subject to First Mortgages. Such material provisions of the Declaration include any of the following:

12.2.1 Any action to terminate the legal status of the Community after substantial destruction or condemnation occurs must be agreed to by the Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders that represent at least fifty percent (50%) plus one (1) of the votes of Units subject to mortgages held by Eligible Mortgage Holders or Eligible Insurers or Guarantors.

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

12.2.3 Any Eligible Mortgage Holder who receives a written proposal for an amendment to the Declaration, Articles or Bylaws who does not deliver or mail to the requesting party a negative response within thirty (30) days after the Eligible Mortgage Holder receives proper notice of the proposal shall be deemed to have approved the proposed amendment; provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

12.3 Prohibition against Right of First Refusal. The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

12.4 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer Or Guarantor will, upon written request, be entitled to: (a) inspect the current copies of the Community Documents and the books, records and financial statements of the Association during normal business hours; and (b) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Any existing or prospective First Mortgagee or Eligible Insurer or Guarantor will, upon written request, be entitled to 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. The Association, upon request, shall make available for inspection during normal business hours to prospective purchasers of a Unit, copies

of the Community Documents and the most recent annual audited financial statement, if one has been prepared.

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

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

(b) Change the prorate 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 and its Common Elements;

(c) Partition or subdivide any Unit;

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

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

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

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

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

12.8 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.

Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Community Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Community Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (a) an amendment of the Declaration, Articles or Bylaws, (b) a termination of the Community, or (c) certain actions of the Association as specified in Sections 12.2 and 12.5, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors shall prevail.

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

ARTICLE 13

GENERAL PROVISIONS

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

(a) Imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Unit Owner or other violator. A Unit Owner shall be responsible for payment of any monetary penalty levied or imposed against a Lessee or Occupant of the Owner's Unit or by any Invitee of the Unit Owner or any Lessee or Occupant;

(b) Suspending a Unit Owner's right to vote;

(c) Suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

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

(e) Exercising self-help of taking action to abate any violation of the Community Documents in a non-emergency situation;

(f) Requiring a Unit Owner, at the Unit Owner's expense, to remove any Improvement installed or constructed in such Owner's Unit or in any Limited

Common Element allocated to the Owner's Unit in violation of this Declaration and to restore the Unit or the Limited Common Element to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) Without liability to any person, prohibiting any contractor, subcontractor, agent, employee or other invitee of a Unit Owner who fails to comply with the terms and provisions of the Community Documents from continuing or performing any further activities of the Community;

(h) Towing vehicles which are parked in violation of this Declaration or the Rules;

(i) Filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover monetary penalties or money damages or to obtain such other relief as to which the Association may be entitled;

(j) Recording a written notice of a violation of any restriction or provision of the Community Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the legal description of the Unit against which the notice is being recorded; (ii) a brief description of the nature of the violation; and (iii) 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 Community Documents.

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

Any Unit Owner may enforce the Community Documents in any manner provided for in this Declaration or at law or in equity, except that a Unit Owner may not exercise any remedy provided to the Association by this Declaration or enforce payment of any Assessments or other amounts payable to the Association pursuant to the Community Documents.

All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the

future. Whether or not any lawsuit is filed by the Association or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the Association shall be entitled to recover from the other party all attorney fees, expert fees and other costs incurred by the Association.

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

13.3 Duration. The covenants and restrictions of this Declaration, as amended from time to time, shall run with and bind the Community in perpetuity unless the Community is terminated as provided in Section 13.4.

13.4 Termination of Community. Except in the case of a taking of all the Units by eminent domain, the Community may be terminated only by the agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. An agreement to terminate the Community must be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed by the requisite number of Unit Owners.

13.5 Amendment.

13.5.1 Except in cases of amendments that may be executed by the Association under Section 33-1206 or 33-1216(D) of the Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Act, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least fifty percent (50%) plus one(1) of the votes in the Association were allocated.

13.5.2 Except to the extent expressly permitted or required by the 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. After the expiration of the Period of Declarant Control, an amendment to this Declaration shall not amend or delete any provisions of Article 11 in the absence of the unanimous consent of the Unit Owners

13.5.3 Any amendment adopted by the Unit Owners pursuant to Subsection 13.5.1 shall be signed by the President or Vice President of the Association and shall be recorded within thirty (30) days after the adoption of the amendment. Any such amendment shall certify that the amendment has been approved as required by this Section.

13.6 Notices. All notices, demands, statements or other communications required or permitted to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address at 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; or (ii) if to the Association, or the Board of Directors, to address of record with Arizona Corporation Commission or such other address shall be designated by notice in writing to the Unit Owners pursuant to this Section. 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. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Owners shall constitute notice to all 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.

13.7 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.

13.8 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration. Unless otherwise specified, all references in this Declaration to Articles of Sections refer to Articles and Sections of this Declaration.

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

13.10 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.

13.11 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 Community Documents shall be joint and several.

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

13.13 Attorneys' Fees. In the event 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 Community Documents, the Association or Unit shall be entitled to recover his attorney fees, expert costs and other costs regardless of whether a lawsuit is filed or not.

EXHIBIT A

**LEGAL DESCRIPTION OF
PROPERTY SUBMITTED TO CONDOMINIUM**

Units 1001-1044, Units 2001-2018, 2021, 2022, 2025, 2026, 2029, 2030, 2033, 2034, 2037-2044 and Garage Buildings A1, B1, C1, D1, E1, F1, G1, H1, I1, T1, U1 and V1 as shown on the Condominium Plat of Mirage Mountain-Phase II, A Condominium, recorded September 27, 2004, in Book 707, Page 2, Instrument #2004-1128711, records of Maricopa County, Arizona,

EXCEPT FOR Buildings A-Rand T-V, inclusive, and Garage Buildings A1, B1, C1, D1, E1, F1, G1, H1, I1, T1, U1 and V1, as shown on the Condominium Plat of Mirage Mountain-Phase II, A Condominium, recorded September 27, 2004, in Book 707, Page 2, Instrument #2004-1128711, records of Maricopa County, Arizona.

EXHIBITB

LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

Buildings A-R and T-V, inclusive, and Garage Buildings AI, BI, CI, DI, EI, FI, GI, HI, IJ, TI, UI and VI, as shown on the Condominium Plat of Mirage Mountain-Phase II, A Condominium, recorded September 27, 2004, in Book 707, Page 2, Instrument #2004-1128711, records of Maricopa County, Arizona.