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**AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM FOR CASA BELLA II CONDOMINIUMS, A  
CONDOMINIUM PROJECT**

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
CASA BELLA II CONDOMINIUMS  
A CONDOMINIUM PROJECT**

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM for CASA BELLA II CONDOMINIUMS, A CONDOMINIUM PROJECT ("Declaration") is made and entered into as of the day hereinafter set forth, by CASA BELLA II CONDOMINIUMS MASTER OWNERS ASSOCIATION, INC. ("Association) and supersedes and restates in its entirety that certain Declaration of Condominium for Casa Bella II Condominiums recorded in the Official Records of Maricopa County, Arizona at Instrument No. 1998-0193430, the Declaration of Annexation for Casa Bella II recorded at Instrument No. 2000-0153809, the Declaration of Restrictions regarded at Instrument No. 2005-0424311, the Second Amendment to Declaration of Condominium Casa Bella II Condominiums recorded at Instrument No. 2007-0995453, as well as any other amendments recorded thereafter (collectively referred to herein as the "Original Declaration").

WHEREAS, the Association, by and through its Owners, wishes to completely amend and restate the Original Declaration.

1. **RECITALS.**

1.1 The covenants, conditions and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

1.2 Recorded simultaneously herewith is a Map of the Project as required by the Act (as hereinafter defined).

1.3 All terms used in this Declaration shall have the definitions as set forth herein.

1.4 The Project shall be known as Casa Bella II Condominiums and is intended to be a condominium project pursuant to the Act (as hereinafter defined).

2. **DEFINITIONS.**

2.1 Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Section 2.

2.2 Act shall mean the Arizona Condominium Act (Title 33, Chapter 9, Arizona Revised Statutes).

2.3 Allocated Interests shall mean the interests allocated to each Unit as more fully set forth in Section 7 herein and on Exhibit "A" hereto.

2.4 Assessment(s) shall mean the Regular Assessments, Special Assessments, Enforcement Assessments or any other Assessment imposed pursuant to this Declaration.

2.5 Association shall mean Casa Bella II Condominiums Master Owners Association, Inc., an Arizona non-profit corporation, organized for the purposes set forth in this Declaration.

2.6 Articles shall mean the Articles of Incorporation of Casa Bella II Condominiums Master Owners Association, Inc.

2.7 Board of Directors or Board shall mean the Association's Board of Directors appointed or elected in accordance with this Declaration and the Bylaws.

2.8 Bylaws shall mean the Bylaws of the Association.

2.9 Common Elements shall mean portions of the Project other than the Units, as described in Section 6.1 hereof. The undivided interest in the Common Elements appurtenant to each Unit is described in Section 6.2 hereof.

2.10 Common Expenses shall mean all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, including but not limited to all expenses of the administration, maintenance, repair, or replacement of the Common Elements and all expenses denominated as Common Expenses by this Declaration or by the Act.

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

2.12 Governing Documents shall mean the documents of the Association including but not limited to this Declaration, the Bylaws, Articles, Map, and Rules.

2.13 Identifying Number shall mean a symbol or address that identifies only one Unit in the Project and consists of the number of the Unit as set forth in Exhibit A.

2.14 Limited Common Elements shall mean a portion of the Common Elements allocated to a Unit Owner in this Declaration, the Map, or the Act for the exclusive use of one or more but fewer than all of the Units.

2.15 Map shall mean the plat or record of survey map recorded in the office of the County Recorder for Maricopa County, State of Arizona at Instrument No. 1997-0896328, as supplemented, a reduced copy of which is attached hereto as Exhibit "B", as it may be amended pursuant to this Declaration and the Act.

2.16 Mortgage shall mean any mortgage, deed of trust or other security instrument (including the seller's rights under a contract of sale) by which a Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

2.17 Mortgagee shall mean any person or entity named as the mortgagee, beneficiary or holder of the seller's interest under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First

Mortgagee shall mean any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage.

2.18 Owner or Unit Owner shall mean any person or entity at any time owning a Unit or an interest in a Unit within the Project (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed). The term "Owner" or "Unit Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

2.19 Project shall mean the Property, the Units, the Common Elements and all improvements submitted by this Declaration to the provisions of the Act.

2.20 Property shall mean that certain real property situated in the County of Maricopa, State of Arizona, more particularly described in Section 3 hereinafter on which the Units and other improvements are located.

2.21 Rules shall mean any and all rules and regulations adopted by the Association pursuant to this Declaration and amended from time to time.

2.22 Unit shall mean a physical portion of the Project denominated as a Unit under the Act and as more fully described in Section 5 hereof.

### **3. DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS.**

3.1 The Property on which the Units and improvements are located is particularly described as follows:

Resubdivision of Lot 3A, Block 4, Fountain Hills Arizona Final Plat 207, as recorded in Book 444 of Plats, Page 37, Records of Maricopa County, as shown on the Plat of Casa Bella II Condominiums dated December 19, 1997 and recorded December 22, 1997, Book 457 of Plats, Page 46, Records of Maricopa County, Arizona. The last named plat is herein referred to and defined as "the Map".

3.2 The initial improvements will consist of 6 freestanding, two level buildings containing 8 Units each for a total of 48 Units, constructed of various building materials and which will be supplied with telephone, cable television, electricity, water, and sewer service ("Buildings"). The Project also includes an outdoor swimming pool, spa, surface parking, and other common amenities.

### **4. SUBMISSION TO ACT**

The Association hereby submits the Property and the Buildings and all other improvements thereon to the provisions of the Act. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and Improved as a residential ownership condominium project. All of said Project is and shall be subject to the



covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for Improvement of said Project and division thereof into Residential Units; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Association, the successors and assigns of the Association, and any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

**5. DESCRIPTION OF UNITS.**

The boundary lines of each Unit are as set forth on the Map and consist of the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Each Unit shall include both the portions of a Building that are not Common Elements within such boundary lines and the space so encompassed, excepting Common Elements. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; non-supporting interior walls; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents; ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. Exhibits A & B hereto both contain the Identifying Number of each Unit in the Project.

**6. DESCRIPTION AND OWNERSHIP OF COMMON ELEMENTS.**

6.1 The Common Elements shall mean and include the Property on which all Units are located and all portions of the Project not contained within any Unit, including, but not by way of limitation, the foundation, columns, girders, beams, supports, exterior and bearing walls, roofs, halls, corridors, lobbies, fire escapes and entrances and exits of the Buildings; the grounds, all recreational facilities (such as the swimming pool and spa), the parking areas and storage spaces; the areas used for storage of janitorial supplies and maintenance equipment and materials; installations of all central services, including power, light, gas, hot and cold water, heating, air conditioning and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use; all utility pipes, lines or systems servicing the Units; all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Elements on the Map or any amended Map; and all repairs and replacements of any of the foregoing. In the event of a conflict between this Declaration and the Map, the provisions of the Declaration shall control.

6.2 The undivided interest in the Common Elements appurtenant to each Unit in the Project shall be equal. Except as otherwise provided in this Declaration, such undivided interest shall have a permanent character and shall not be altered. The sum of the undivided interests in the Common Elements allocated to all the Units shall equal one hundred percent.

7. **DESCRIPTION OF LIMITED COMMON ELEMENTS.**

Limited Common Elements shall mean a portion of the Common Elements reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways, patios, and parking spaces as allocated herein on Exhibit A or by the Act for the exclusive use of one or more but fewer than all of the Units. The Limited Common Elements are as designated as such on the Map or as provided for by the Act. The use and occupancy of designated Limited Common Elements shall be reserved to the Units as shown on the Map and on Exhibit A. Owners may not reallocate Limited Common Elements between or among Units in which they have an interest.

8. **NATURE AND INCIDENTS OF UNIT OWNERSHIP INTEREST.**

8.1 Each Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

8.2 Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Elements and the exclusive right to occupy and use a Unit and any Limited Common Elements designated for exclusive use by such Owner subject to the any Rules created pursuant to Section 12.1.2.1 herein.

8.3 Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of his or her Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall maintain, repair and replace, at his own expense, all portions of his Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. Subject to the Section 13.1 herein, each Owner shall be responsible to maintain, repair and replace, at his own expense, the air conditioning unit appurtenant to the Unit as well as all accompanying components. Each Owner shall also be responsible for the maintenance, repair and replacement of the Limited Common Elements allocated to his Unit (except for the portions thereof to be maintained by the Association as set forth in Section 13.1). In the event that any such Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right at the expense of the Owner and without liability to the Owner for trespass or otherwise to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. Owners of adjoining Units may not reallocate or change the boundaries of such Units. No Owner may subdivide his or her Unit.

8.4 Each Owner shall be liable to the Association for any damage to the Common Elements, including the Limited Common Elements allocated to his Unit, 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 and secured by the Association's Assessment lien.

8.5 The Association, as appropriate, shall have the right to enter into any Unit for the purpose of cleaning, maid service, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity.

8.6 The persons or entities who are at the time of reference Owners shall be members of the Association, the characteristics and nature of which are determined by the Act, the Declaration, the Bylaws, the Articles and other applicable Arizona law.

## **9. VOTING.**

The votes of the Association shall be allocated equally among all the Units with each Unit having one (1) vote.

## **10. TITLE TO UNITS.**

10.1 Title to a Unit within the Project may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Arizona.

10.2 Title to no part of a Unit within the Project may be separated from any other part thereof during the period of ownership, and each Residential Unit and the undivided interest in the Common Elements appurtenant to each shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit or, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Association as herein set forth.

10.3 The Common Elements shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

10.4 Each Owner shall have the right to encumber his or her interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Elements or any part thereof except the undivided interest therein appurtenant to his or her interest in a Unit. Any Mortgage of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

10.5 No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Project or any other Unit, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto.

10.6 Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Identifying Number. Such description will be construed to describe the Unit or, together with the appurtenant undivided interest in the Common Elements, and to incorporate all the rights incident to ownership of a Unit or within the Project and all of the limitations on such ownership as described in this Declaration.

## **11. RESTRICTIONS ON USE.**

11.1 The Units, except as otherwise permitted in writing by the Association as applicable, shall be used and occupied only as follows:

11.1.1 The Units within the Project shall be used exclusively for long and short term residential use.

11.1.2 No Unit shall be used to accommodate more persons than is allowed in accordance with any state, county, or local occupancy laws.

11.1.3 No Unit shall be used for business or commercial activity; provided, however, that nothing in this Subsection shall be deemed to prevent (a) any Owner or his or her duly authorized agent from renting or leasing his or her Unit.

11.2 The Units and Common Elements, including but not limited to the Limited Common Elements, except as otherwise permitted in writing by the Association, shall be used in accordance with the following restrictions:

11.2.1 No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners.

11.2.2 No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

11.2.3 No signs, flags or advertising devices of any nature, including, without limitation, political, informational or directional signs or devices, shall be erected or



maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger or as may be allowed by Arizona law.

11.2.4 Except for birds or fish maintained by the Association in the Common Elements, and guide animals for the unsighted or for similar purposes, no animals, birds, fish or pets of any kind shall be kept or allowed to remain on any part of the Project.

11.2.5 The draperies, shades and other interior window coverings in Units shall present a uniform appearance from the outside of the Units. All draperies, shades or other interior window coverings shall be installed or employed in each Unit with the prior inspection and written approval of the Association. The Board shall have the right to establish Rules requiring window coverings to present a uniform appearance from the exterior of the Building.

11.2.6 Except as otherwise provided in the Declaration, no Unit, or portion thereof, may be further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common, or other form of joint undivided ownership).

11.2.7 No Owner shall do any act that would impair the structural soundness or integrity of the buildings or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Elements.

11.2.8 There shall be no obstruction of the Common Elements by any Owner. Owners shall neither store nor leave any of their property in the Common Elements, including the Limited Common Elements appurtenant to their Unit, except with the prior consent of the Association. No Owner shall be entitled to park more than two vehicles on the designated parking areas included within the Common Elements.

11.2.9 Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Project or any part thereof over what the Association as applicable, but for such activity, would pay, without the prior written consent of the Association as applicable. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his or her guests, lessees, licensees or invitees.

11.2.10 No Owner shall violate the Rules for the use of Units and Common Elements as adopted from time to time by the Association.

**12. THE ASSOCIATION AND THE BOARD.**

12.1 The Association shall be governed by the following provisions:

12.1.1 The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Board consisting of three (3) or five (5) natural persons as provided in the Bylaws. The Board shall be elected as provided in this Declaration and in the Bylaws.

12.1.2 Except as otherwise provided herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

12.1.2.1 To adopt and amend the Bylaws and to make and enforce all Rules and regulations covering the operation and maintenance of the Project and the Units. The Rules may, among other things, restrict and govern the use of the Units, Common Elements and Limited Common Elements.

12.1.2.2 To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore.

12.1.2.3 To operate, maintain, repair, improve and replace the Common Elements.

12.1.2.4 To determine and pay the Common Expenses.

12.1.2.5 To assess and collect the proportionate share of Common Expenses from the Owners, *as provided in Section 20 hereinafter.*

12.1.2.6 To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery hereof by the appropriate officers.

12.1.2.7 To open bank accounts on behalf of the Association and to designate the signatories therefore.

12.1.2.8 To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Association or its designee.

12.1.2.9 To bring, prosecute and settle litigation for itself, the Association and the Project, provided that it shall make no settlement which results in a liability against the Board, the Association or the Project in excess of \$30,000 (as measured in 1996 dollars and thereafter adjusted by the Cost of Living Index) without the prior approval of a majority of the votes in the Association at a meeting or by written ballot distributed to Owners by

mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Association's insurance carrier and which in either case results in no actual liability of funds of the Association in excess of \$30,000 shall not require Association approval.

12.1.2.10 To obtain insurance for the Association with respect to the Units and the Common Elements, as well as worker's compensation insurance.

12.1.2.11 To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

12.1.2.12 To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

12.1.2.13 To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws.

12.1.2.14 To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

12.1.2.15 To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

12.1.2.16 The Board may delegate to a manager by written agreement all of the foregoing powers, duties and responsibilities referred to in Section 12.1 above except the final determination of estimated expenses, annual budgets and assessments based thereon; the promulgation of rules and regulations; the power to enter into any contract involving more than \$25,000 (as measured in 1996 dollars and thereafter adjusted by the Cost of Living Index) in any one fiscal year; the opening of bank accounts; the power to purchase, hold, sell, convey, mortgage or lease any Units in the name of the Association or the authority to bring, prosecute and settle litigation.

12.1.2.17 The Board may convey or subject to a Mortgage the Common Elements of the Project if Owners entitled to cast at least eighty percent (80%) of the votes in the Association, including a majority of the Mortgagees of the Units of such Owners, agree to that action by execution



in the same manner as a deed, of an agreement or by ratification of an agreement. However, all Owners of Units to which any Limited Common Element is allocated must agree to convey that Limited Common Element or subject same to the Mortgage. The agreement shall comply with the provisions of the Act.

12.1.2.18 To the fullest extent permitted by law, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Association, by reason of the fact that he is or was a Member, director, officer, employee or agent of the Association or was serving at the request of the Association as a member, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorney fees, and against judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted, or failed to act, in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had not reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction or upon a plea of no contest or its equivalent shall not of itself create a presumption that the person acted or failed to act other than in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

12.1.2.19 To the extent that a Member, director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 12.1.2.18 or in defense of any claim, issue or matter therein, he shall be indemnified to the fullest extent permitted by law against expenses, including attorney fees, actually and reasonably incurred by him in connection therewith.

12.1.2.20 Any indemnification referred to in Section 12.1.2.18, unless ordered by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of a Member, director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth above. Such determination shall be made by any of the following:

12.1.2.20.1 By the Board by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding;

12.1.2.20.2 If such quorum is not obtainable, in a written opinion of independent legal counsel appointed by a majority of the disinterested directors for that purpose;

12.1.2.20.3 If there are no disinterested directors, by the court or the other body before which the action, suit or proceeding was brought or any court of competent jurisdiction upon the approval of an application by any person seeking indemnification, in which case indemnification may include the expenses, including attorney fees, actually and reasonably paid in connection with such application;

12.1.2.20.4 By act of the members.

12.1.2.21 Expenses, including attorney fees, incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the Member, director, officer, employee or agent to repay the amount if it is ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Section.

12.1.2.22 The indemnification and other benefits provided by these sections or otherwise provided by law are not exclusive of any other rights to which those benefited may be entitled under any bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

12.1.2.23 The Association shall have power to purchase and maintain insurance on behalf of or insure or cause to be insured any person who is or was Member, director, officer, employee or agent of the Association or is or was serving at the request of the Association as a member, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under this Section. As used in this paragraph, "insurance" includes retrospectively rated and self-insured programs.

12.1.2.24 No retrospectively rated or self-insured program under paragraph 12.1.2.23 providing coverage for directors and officers shall include coverage for any of the following:

12.1.2.24.1 An action based on or attributable to the person gaining in fact any personal profit or advantage to which he was not legally entitled;

12.1.2.24.2 An action for the return of any remuneration paid to the person without the previous approval of the Owners which is held by the Courts to have been illegal;

12.1.2.24.3 An action brought about or contributed to by the dishonesty of the person. A person is protected under the terms of this Section as to any claims on which suit may be brought against him by reason of any alleged dishonesty on his part, unless a judgment or other final adjudication establishes that acts of active and deliberate dishonesty committed by the person with actual dishonest purpose and intent were material to the cause of action adjudicated.

12.1.2.25 The indemnification and other benefits provided by or granted herein, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and inure to the benefit of the heirs, executors and administrators of the person.

12.1.2.26 To grant easements, leases, licenses and concessions through or over the Common Elements.

12.1.2.27 To assign the Association's right to future income, including the right to receive assessments, for purposes reasonably related to the operation of the Project.

12.1.3 Neither the Board nor the Manager shall sell any property of the Association except as permitted by the Act.

12.1.4 The Association shall enter into a contract with a manager or management company for the management of the Project

### **13. MAINTENANCE, ALTERATION AND IMPROVEMENT.**

13.1 The Association shall maintain, repair and make necessary improvements to all Common Elements, whether located inside or outside the Buildings, except for the specific portions of the Limited Common Elements or Common Elements which the Unit Owners are obligated to maintain pursuant to Section 8.3 and the cost thereof shall be a Common Expense. The Association shall also maintain, replace and repair all parking areas, the exterior s and all structural elements of the Buildings, and all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Elements or utility services shall be repaired promptly and the cost thereof charged as a Common Expense.

13.2 Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Elements from time to time during such

reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Elements or for making any emergency repairs at any time and when necessary to prevent damage to the Common Elements or to any Unit. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association.

13.3 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

#### **14. INSURANCE.**

14.1 Commencing not later than the time of the first conveyance of a Unit to an Owner, the Association shall maintain, to the extent reasonably available insurance as follows:

14.1.1 The Association shall maintain property insurance on the Common Elements Insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than ninety percent of the actual replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

14.1.2 The Association shall maintain liability insurance in an amount determined by the Board but not less than \$1,000,000 for any one person injured in any one occurrence and not less than \$300,000 for property damage in each occurrence covering 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 Units and the Common Elements.

14.2 The insurance maintained under Section 14.1 shall include the Units but need not include improvements and betterments installed by Owners or the personal property of Owners.

14.3 If the insurance described in Section 14.1 is not reasonably available, the Association as applicable promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States Mail to the relevant Owners. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Owners.

14.4 Where applicable and when available at a reasonable cost, insurance policies carried pursuant to Sections 14.1 and 14.3 shall provide the following:

14.4.1 Each Owner, or the Association, as applicable, as agent for each of the Owners, shall be an insured person under the policy with respect to liability arising out of his or her interest in the Common Elements or membership in the Association as applicable.

14.4.2 The insurer waives its right to subrogation under the policy against any Owner or members of his or her household.

14.4.3 No act or omission by any Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or operate as a condition to recovery under the policy by another person.

14.4.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy as applicable, provides primary insurance,

14.4.5 All Owners as a class shall be named as additional insureds in any policy issued to the Association.

14.5 An insurance policy issued to the Association shall not prevent an Owner from obtaining insurance for his or her own benefit.

14.6 Any loss covered by the property policy under Sections 14.1 and 14.3 shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to an insurance trustee designated for that purpose by the Association, but not to any Mortgagee. The insurance trustee and Association shall hold any insurance proceeds in trust for Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 15 of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Project is terminated as a condominium.

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

14.8 This Section does not prohibit the Board from acquiring additional or greater amounts of coverage as it reasonably deems appropriate.



14.9 The applicable executive board shall require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time.

14.10 To the extent reasonably possible the Association shall cooperate with respect to obtaining insurance policies and shall coordinate coverage where and as needed to avoid overlap and duplicative coverage.

## **15. DESTRUCTION OR DAMAGE.**

15.1 Any portion of the Project for which property insurance is required under this Declaration which is damaged or destroyed shall be repaired or replaced promptly by the Association unless any of the following apply:

15.1.1 The Project is terminated;

15.1.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

15.1.3 Eighty percent of the Units' Owners, including every Owner of a Unit or of an interest in the Common Elements which will not be rebuilt, vote not to rebuild.

15.2 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Project is not repaired or replaced:

15.2.1 The insurance proceeds attributable to the damaged Common Elements, In proportion to their interest in the Common Elements, shall be used to restore the damaged area to a condition compatible with the remainder of the Project;

15.2.2 The Insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to Mortgagees as their interests may appear in proportion to their interests in the Common Elements of the Project;

15.2.3 The remainder of the proceeds shall be distributed to all Owners or Mortgagees as their interests may appear in proportion to their interests In the Common Elements of the Project.

15.3 If the Owners vote not to rebuild any Unit, the Unit's Interest in the Common Elements shall be automatically reallocated upon the vote as if the Unit had been condemned under Section 17 of this Declaration, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

14.4 Notwithstanding the provisions of Sections 15.1, 15.2, and 15.3 hereof, Section 16 of this Declaration governs the distribution of insurance proceeds if the Project is terminated.

## **16. TERMINATION.**

16.1 Except in the case of a taking of all the Units by eminent domain, the Project may be terminated as a condominium only by agreement of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated.

16.2 An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications of a termination agreement shall be recorded In Maricopa County, Arizona and are effective only on recordation.

16.3 A termination agreement may provide that all the Common Elements and Units of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

16.4 The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 16.1 and 16.2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, in proportion to the respective interests of Owners as provided in Sections 16.6 and 16.7. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her Unit in accordance with the terms of this Declaration. During the period of that occupancy, each Owner and his or her successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

16.5 If the real estate constituting the Project is not sold following termination, title to all the real estate in the Project shall vest in the Owners on termination as tenants in common in proportion to their respective interests as provided in Section 16.7 and liens on the Units shall shift accordingly. While the tenancy in common exists, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her Unit in accordance with the terms of this Declaration.

16.6 Following termination of the Project as a common interest community, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following



termination, creditors of the Association holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder. All other creditors of the Association are to be treated as if they had perfected liens on the Units immediately before termination.

16.7 The respective interests of Owners referred to in Sections 15.2, 16.4, 16.5 and 16.6 are as follows:

16.7.1 Except as provided in 16.7.2, the respective interests of Owners are the fair market values of their Units and their Allocated Interests immediately before the destruction or termination, as determined by an independent appraiser selected by the Association. The determination of the independent appraiser shall be distributed to the Owners and becomes final unless disapproved within thirty days after distribution by Owners of Units to whom fifty percent of the votes in the Association are allocated. The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Unit and its Common Element interest by the total fair market values of all the Units and the Common Elements.

16.7.2 If any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value of the Unit or Limited Common Element before destruction cannot be made, the interests of all Owners are their respective Allocated Interests immediately before the termination.

## 17. EMINENT DOMAIN.

17.1 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 practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Owner for his or her Unit and its interest in the Common Elements, regardless of whether any Common Elements are acquired. On acquisition, unless the decree otherwise provides, that Unit's Allocated Interests shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units in the Common Elements before the taking, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Section becomes a Common Element.

17.2 Except as provided in Section 17.1 of this Section, if part of a Unit is acquired by eminent domain the award must compensate the Owner for the reduction in value of the Unit and its interest in the Common Elements, regardless of whether any Common Elements are acquired. On acquisition, unless the decree otherwise provides:

17.2.1 That Unit's Allocated Interests are reduced; and

17.2.2 The portion of the Allocated Interests divested from the partially acquired Unit shall be automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with a partially

acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

17.3 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 Owners. 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 acquisition.

17.4 The court decree shall be recorded in every county in which any portion of the Project is located.

17.5 If all of the Units of the Project are acquired by eminent domain, the Project shall terminate and the provisions of Section 16 hereof shall apply.

17.6 This Section does not restrict the rights of lessees, Mortgagees, or any other person holding an interest in a Unit or its Common Elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this Section.

## 18. **MORTGAGEE PROTECTION.**

18.1 The Board shall maintain a roster of Owners, which roster shall include the mailing addresses of all Owners. The Board will also maintain a roster containing the name and address of each First Mortgagee of a Unit if the Board is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgagee is a First Mortgagee. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Board of a certified copy of a recorded release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee.

18.2 The Board shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Units in the performance of such mortgagor's obligations under the Declaration which is not cured within thirty (30) days.

18.3 Except as otherwise required by the Act, a First Mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such First Mortgagee comes into the possession of the Unit except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all Units, including the mortgaged Unit. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Unit which have been suspended with respect to the defaulting Owner shall be reinstated.

18.4 Except as otherwise required by the Act, any liens created under the Act or pursuant to this Declaration upon any Unit shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Unit made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Act and/or the Declaration.

18.5 No amendment to this paragraph shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

**19. AMENDMENT.**

19.1 Except as otherwise provided in this Declaration, by the Act, the provisions of this Declaration may be amended by the affirmative vote or written assent of at least sixty-seven percent of the votes in the Association. Within thirty (30) days after the adoption of any amendment pursuant to this Section, the Association shall prepare, execute and record a written instrument setting forth the amendment. Any such amendment shall contain a certification from an officer of the Association designated for that purpose, or in the absence of such designation, by the President of the Association that the appropriate consent has been obtained, and shall be duly recorded in the Office of the Maricopa County Recorder. The percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required to be taken under that clause.

19.2 In addition to the vote required by Section 19.1, except as otherwise provided in this Declaration or by the Act, the written consent of Mortgagees holding First Mortgages on Units having at least 67% of the votes of the Association allocated to Units encumbered by First Mortgages shall be required to do any of the following:

19.2.1 Abandon or terminate the legal status of the Project (whether by act or omission);

19.2.2 Sell or otherwise dispose of the Project;

19.2.3 Add or amend any material provision of the Declaration, Master Articles, Vacation Articles, Master Bylaws, Vacation Bylaws, or Map, which establishes, provides for, governs or regulates any of the following:

19.2.3.1 Voting;

19.2.3.2 Right to use of Common Elements;

19.2.3.3 Any provisions which are for the express benefit of First Mortgagees.

19.2.4 Except as otherwise provided in the Declaration, change the pro rata interest or obligations of any individual Unit for the purpose of determining the ownership interest of each Unit in the Common Elements.

19.2.5 By act or omission, seek to abandon, partition, subdivide, sell or transfer the Common Elements (the granting of easements by the Association for public utilities or other public purposes consistent with the intended use of the Common Elements by the Owners shall not be deemed a transfer within the meaning of this clause).

19.2.6 Use hazard insurance proceeds for losses to any portion of the Project (whether to Units or to Common Elements) for other than repair, replacement or reconstruction of the Project.

## 20. ASSESSMENT.

### 20.1 Preparation of Budget.

20.1.1 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 rendered by the Association under the Governing 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 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.

20.1.2 At least ten (10) days before the beginning of each fiscal year of the Association, 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 20.2. 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 6.2, 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.

### 20.2 Regular Assessment

20.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for

the Common Expenses which may be assessed against less than all of the units pursuant to this Declaration and or Arizona law) shall be assessed against each Unit in proportion to the Unit's Common Expenses liability. 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 Owners, 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.

20.2.2 The Regular Assessments shall commence as to all Units upon the conveyance of the first Unit to a Purchaser. The first Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Regular Assessments or Special Assessments be paid in installments.

20.2.3 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 Section 20.2.1.

20.2.4 If any Common Expense is caused by the misconduct of any Owner, the Association shall assess that Common Expense exclusively against such Owners' 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.

20.2.5 All Assessments, monetary penalties, late charges, and all attorney's fees, costs and collection costs incurred by the Association and 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 became levied against his Unit shall not pass to the Owner's successors in title unless expressly assumed by them.

20.3 Special Assessment. 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 shall have first been approved by Owners representing two-thirds (2/3) 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.

20.4 Enforcement Assessment. The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (a) any collection costs or attorney fees (whether or not a lawsuit is filed) incurred by the Association in attempting to collect



Assessments or other amounts payable to the Association by the Owner; (b) any attorney fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Governing 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 Governing Documents.

20.5 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 Governing Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Governing 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 Project and the Owners, Lessees and Occupants; (d) contracting for services (including, without limitation, trash collection, sewer or cable television) to be provided to Owners, Lessees and Occupants; and (e) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Project.

#### 20.6 Effect of Nonpayment of Assessments; Remedies of the Association.

20.6.1 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.

20.6.2 All Assessments, monetary penalties, late fees, attorney's fees and costs (whether or not a lawsuit is filed), 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.

20.6.3 The Assessment lien shall have priority over all liens, other interests 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 or 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 that accrue prior to such sale or transfer shall remain the personal obligation of the defaulting Unit Owner.

20.6.4 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 at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

20.7 Impound Account. To ensure that the Association will have adequate funds for capital improvement reserves or to purchase necessary equipment or services, in addition to the Assessments set forth herein, effective as of the date of the recording of this Declaration, each new Owner of any Unit acquired by voluntary sale or transfer (including buyers under agreements for sale), shall immediately pay to the Association an impound account payment in an amount equal to two (2) monthly installments of the current Regular Assessment as established herein. The impound account payment shall be the personal obligation of the new owner as well as a lien upon the Unit, together with related charges as set forth in this Declaration and Arizona law. If the impound account payment is not made within thirty (30) days of the recording date of the deed or agreement for sale, late charges and other remedies of the Association shall apply according to Section 20 of the Declaration and Arizona law. Any amounts paid pursuant to this Section may be used for the funding of reserves, payment of current expenses or such other purposes as the Board may determine to be desirable and appropriate. All amounts so paid shall be nonrefundable and shall not be considered as an advance payment of any assessments levied by the Association pursuant to this Declaration.

20.8 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. § 33-1260(A) and, therefore, the transfer fee shall be in addition to the fee that the Association is entitled to charge pursuant to A.R.S. § 33-1260(C).

## **21. EASEMENTS.**

21.1 If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon an adjoining Unit or Units, an easement for such encroachment and for the



maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

21.2 Each Owner shall have the right to ingress and egress over upon and across the Common Elements as necessary for access to the Unit he or she is occupying and to any Limited Common Elements appurtenant to his or her Unit, and shall have the right to the horizontal, vertical and lateral support of his or her Unit.

21.3 The Association shall have an easement to make such use of the Common Elements as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Elements, facilities for use by the Owners and the Association, other than Limited Common Elements reserved for the use of specific Owners.

21.4 All conveyances of Units within the Project hereafter made, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## **22. NOTICES.**

Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Association as applicable for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Association. Notice shall be deemed given when actually received if personally delivered; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid.

## **23. NO WAIVER.**

The failure of the Association or their agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or Bylaws or as applicable, to exercise any right or option herein contained or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Association or their agents or designees of the payment of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such

breach, and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association's Board of Directors.

#### **24. ENFORCEMENT.**

All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Declaration, the Bylaws, and the Rules and decisions issued pursuant thereto. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Association, or in an appropriate case, by an aggrieved Owner; (ii) the Association to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Elements, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to be heard, or (iii) the Association taking any other action permissible by law to bring the Owner into compliance with the provisions of the Declaration. The Association shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Association. The Association may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed.

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 Governing 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 Governing Documents.

All rights and remedies of the Association under the Governing 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 Governing Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Governing Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Governing Documents or in any other manner arising out of the Governing Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney's fees incurred by the prevailing party in the action.

#### **25. SEVERABILITY.**

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

26. CAPTIONS.

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

27. LAW CONTROLLING.

This Declaration and, tile Map shall be construed and controlled by and under the laws of the State of Arizona.

28. EFFECTIVE DATE. This Declaration shall take effect when recorded.

IN WITNESS WHEREOF, the Casa Bella II Condominiums Master Owners Association, Inc., an Arizona nonprofit corporation, has executed this Declaration as of the day and year set forth below. The President of the Association hereby certifies that pursuant to Section 23 of the Original Declaration, the Association is in receipt and possession the written consent of at least sixty seven percent (67%) of the Owners within the Association approving this Declaration.

DATED this 19 day of October, 2017

**CASA BELLA II CONDOMINIUMS MASTER OWNERS ASSOCIATION, INC.**  
an Arizona nonprofit corporation

By: Warren Reid Jr.  
Its: President

State of Arizona )  
 )ss.  
County of Maricopa )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 19th day of Oct, 2017, by Warren Reid Jr., Casa Bella II Condominiums Master Owners Association, Inc., an Arizona nonprofit corporation, for and on behalf of the corporation.

Traci Moss  
Notary Public

My Commission Expires:  
Nov 30, 2020



**EXHIBIT A****CLUB AT FOUNTAIN HILLS  
COVERED PARKING**

UNIT #	PARKING	UNIT #	PARKING	UNIT #	PARKING
101	1	208	96	Open	79
102	2	108	95	Open	78
109	3	107	94	217	77
209	4	207	93	117	76
110	5	113	92	218	75
210	6	213	90	118	74
201	7	214	89	119	73
202	8	216	88	219	72
104	9	116	87	120	71
203	10	215	86	220	70
103	11	115	85	212	69
204	12	114	84	112	68
106	13	124	83	211	67
206	14	224	82	111	66
105	15	123	81	121	65
205	16	223	80	221	64
Covered open	17			122	63
Covered open	18			222	62
Covered open	19			Covered open	61
Covered open	20			Covered open	60
Covered open	21			Covered open	59
Covered open	22			Covered open	58
Covered open	23			Covered open	57
				Covered open	56

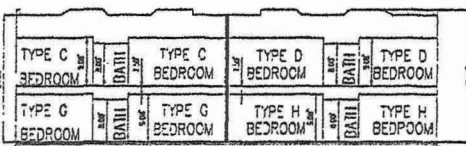
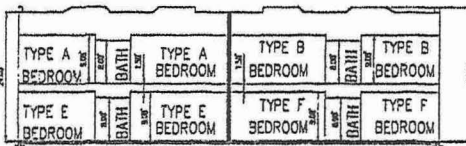
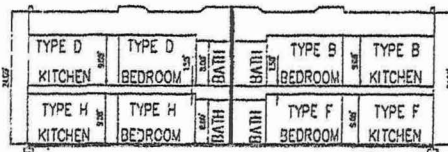
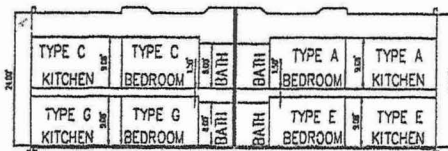
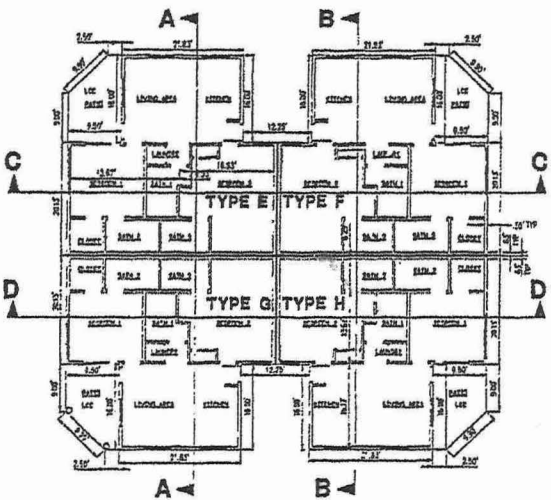
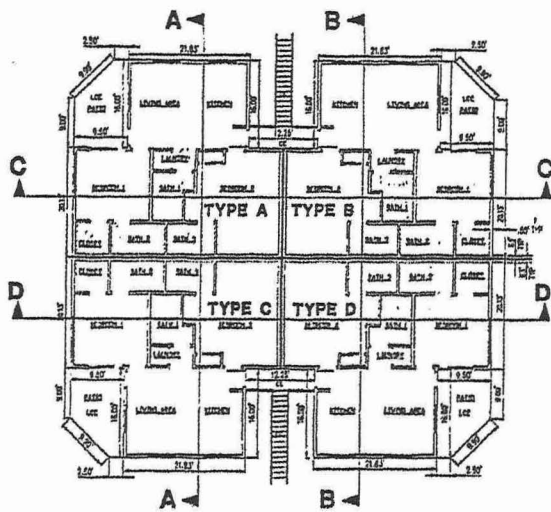
Uncovered parking numbers 24 through 55 are available on a daily first serve basis. Long term parking and storage is prohibited and subject to tow at owners' expense.

REV 5/22/2003





BOOK 457 PAGE 46  
 OFFICIAL RECORDS OF  
 MARICOPA COUNTY RECORDS  
 WELSH PURCELL  
 97-0896328  
 12/21/97 06137



LEGEND  
 INDICATES AREA OF 8' CEILING

UNIT TYPE	AREA SQ. FT.	UNIT NO.
A	9,090 C.F.	202,206,210,214 218,222
B	9,090 C.F.	201,205,209,213 217,221
C	9,090 C.F.	203,207,211,215 219,223
D	9,090 C.F.	204,208,212,216 220,224
E	9,090 C.F.	102,108,110,114 118,122
F	9,090 C.F.	101,105,109,113 117,121
G	9,090 C.F.	103,107,111,115 119,223
H	9,090 C.F.	104,108,112,116 120,124



**MONTGOMERY ENGINEERING & MANAGEMENT**  
 1684 AVENUE OF THE FOUNTAINS, SUITE 201  
 FOUNTAIN HILLS, ARIZONA 85268  
 (602) 857-1915

DATE: 9-18-97  
 DRAWN BY: E.K.J.  
 CHECKED BY: JRM  
 PROJECT NO: 98177  
 SHEET NO: 2 OF 2  
 SCALE: AS SHOWN  
 PLANS & SPECIFICATIONS

CASA BELLA II CONDOMINIUMS  
 PLAT 207 BLOCK 4 LOT 3A  
 16545 F CLINGSIGHT