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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS**

**FOR**

**QUAIL RUN CONDOMINIUMS**

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
QUAIL RUN CONDOMINIUMS**

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**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
QUAIL RUN CONDOMINIUMS**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Quail Run Condominiums is made as of the date of its recording.

**RECITALS**

A. The Condominium Declaration for Quail Run Condominiums was initially recorded at Document No. 2006-0532589, in the Maricopa County Recorder's Office (the "Original Declaration")

B. A First Amendment to the Original Declaration was recorded at Document No. 2006-60811794, in the Maricopa County Recorder's Office.

C. A Second Amendment to the Original Declaration was recorded at Document No. 2007-0487049, in the Maricopa County Recorder's Office.

D. Pursuant to Section 14.8 of the Original Declaration, the vote of Owners holding at least sixty-seven percent (67%) of the votes in the Association is necessary to amend the Original Declaration.

E. Pursuant to the above-referenced provision, Owners holding at least sixty-seven percent (67%) of the votes in the Association have approved this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Quail Run.

F. This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Quail Run Condominiums is intended to supersede and replace the Original Declaration and subsequent amendments thereto.

**ARTICLE 1**

**DEFINITIONS**

As used in this Declaration, the terms defined in this Article shall have 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.

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

**1.2 "Assessments"** means the Regular Assessments and Special Assessments, levied pursuant to Article 7.

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

**1.4 "Association"** means Quail Run Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

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

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

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

**1.8 "City"** means the Town of Fountain Hills, Arizona, a municipal corporation.

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

**1.10 "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 cost of maintenance, management, operation, repair and replacement of the Common Elements and all other areas within the Condominium which are maintained by the Association.

**1.11 "Common Expense Liability"** means the fraction of undivided interests in the Common Expenses allocated to each Unit by Section 2.4.

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

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

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

**1.15 "Declaration"** means this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Quail Run Condominiums.

**1.16 "Eligible Insurer or Guarantor"** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 11.1.

**1.17 "Eligible Mortgage Holder"** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 11.1.



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

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

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

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

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

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

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

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

**1.26 "Owner" or "Unit Owner"** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the Trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

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

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

**1.29 "Plat"** means the plat for Quail Run Condominiums recorded in Book 831 of Maps, Page 41, in the Maricopa County Recorder's Office, including any amendments, supplements or corrections thereto.

**1.30 "Purchaser"** means any Person who becomes a Unit Owner.

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

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

**1.33 "Rules"** means the rules and regulations adopted by the Board of Directors, as amended from time to time.

**1.35 "Unit"** means a portion of a Condominium subject to this Declaration and designated as a Unit on the Plat. The boundaries of each Unit are described in Section 2.3 and are shown on the Plat.

## ARTICLE 2

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

**2.1 Submission of Property.** The Property shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. Each Unit is designated for separate ownership or occupancy. All of the easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Unit Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Condominium, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association.

**2.2 Number of Units.** The Condominium contains a total of 88 Units.

**2.3 Unit Boundaries.** 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 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 or floor are part of the Unit, and all other portions of the walls and floor 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 Section and the Plat in regard to the description of the boundaries of the Unit, this Section shall control.

**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 eighty-eight (88) Units. The identifying numbers of the Units are set forth in Exhibit B. The ownership of each Unit shall not be conveyed separate from the fraction of undivided interest in the Common Elements allocated to the Unit. The undivided fraction of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of 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) Any chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, heating and air conditioning units and related equipment and natural gas, cable television, water and electric pipes, lines or meters, or dryer vent cover), located outside of the boundaries of a Unit, which serve only one Unit are a Limited Common Element allocated solely to the Unit served;

(b) If a chute, flue, pipe, duct, wire, conduit 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 or dryer vent cover) 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 served.

(c) All doors and windows in the perimeter walls of a Unit are Limited Common Elements allocated to the Unit. The

glazing, sashes, frames, sills, thresholds, hardware, flashing, screens, and other components of the doors and windows are part of the doors and windows allocated as Limited Common Elements.

(d) Any balcony, patio or entryway allocated to a Unit or that serves a Unit.

(e) Any parking space allocated to the Unit.

2.6.2 Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his Unit, subject to the rights granted to the Association by the Condominium 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 sixty-seven percent (67%) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

## ARTICLE 3

### EASEMENTS AND DEVELOPMENT RIGHTS

**3.1 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 and 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 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, 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 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 eighty percent (80%) of the votes in the Association. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Condominium Act;

(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 Condominium Documents.

3.3.2 Notwithstanding the provisions of Subsection 3.3.1 to the contrary, if a Unit is leased or rented, the Lessee and the members of his 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 Section 3.3 may use the Common Elements provided they are accompanied by a Member, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3. 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 Common Elements Easement in Favor of Unit Owners.**

3.5.1 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 any Unit and which pass across or through a portion of the Common Elements.

(b) For the installation, repair, maintenance, use, removal or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element; 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 Section 5.2.

3.5.2 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 of the Units.

**3.6 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 Condominium Documents.

(e) For inspection of the Units and the Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees and Occupants of the Unit.

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

**3.7 Easement for Unintended Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, 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 gross negligence of a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted and created.

**3.8 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 Condominium in connection therewith, and (b) for ingress to and egress from the Condominium for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Condominium and the Owners, Lessees and Occupants including, without limitation, 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 by a single-family. 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 for the Condominium; (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 Condominium 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 Condominium whether attached to the Building or otherwise without the prior written approval of the Board of Directors, unless applicable law (the OTARD Rule) prohibits the Board of Directors from requiring 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 and no wiring of any kind may be exposed on the exterior of the Unit or Buildings.

**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 Condominium.

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 which may be retained by the Board of Directors to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed an Individual Expense Assessment.

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, may only be made once all required permits (including any permits necessary for electrical, plumbing and HVAC work) 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. The Association, nor any of their respective 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.

**4.4 Trash Containers and Collection.** No rubbish, trash or garbage shall be placed or kept on the Common Elements except in covered containers of a type, size and style which are approved by the Board of Directors. All rubbish, trash and garbage shall be regularly removed from the Units by the Owners, Lessees or Occupants thereof. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash chutes or receptacles. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium.

**4.5 Animals.** Except as expressly permitted by this Section no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium. A reasonable number of Permitted Pets (as determined by the Board) 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 cat, dog, fish, bird or other commonly kept household pet. No more than two (2) dogs or cats per Unit and no dog shall exceed 50 pounds in weight. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Unit, or be an annoyance to a person of ordinary sensibilities Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. Any Permitted Pet shall be on a leash (or held) when outside the Unit and the Owner shall promptly clean up any waste.

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.

**4.6 Diseases and Insects.** No Owner, Lessee or Occupant shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Association, each Owner shall perform such pest control activities in 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 emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Condominium, except in the 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 automobile, motorcycle, motor bike or other motor vehicle owned or leased by such Unit Owner, Lessee or Occupant in that assigned parking space. Notwithstanding anything to the contrary herein, no mobile homes, campers, trailers, storage containers, recreational vehicles, commercial vehicles or boats shall be parked upon any part of the Condominium, except with the prior written approval of the Board of Directors.

**4.8 Towing of Vehicles.** The Board of Directors shall have the right to have any automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, trailer or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle.

**4.9 Signs.** Except for signs permitted by Arizona law (including, but not limited to, "For Sale" or "For Rent" or "Political" signs permitted by A.R.S. 33-1261), no signs shall be permitted on the exterior of a Building or in the interior of a Unit if the signs would be visible from the exterior of the Building, or on any other portion of the Condominium without the prior written approval of the Board of Directors.

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

**4.11 Nuisances and Offensive Activity.** No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Owner, Lessee or Occupant or which interferes with quiet enjoyment of a Unit by the Owner, Lessee or Occupant thereof. No exterior speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

**4.12 Window Coverings.** No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. 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.

**4.13 Balconies and Patios.** No floor coverings shall be installed on any balcony, patio, or entryway without the prior written approval of the Board of Directors. No balcony, patio, or entryway shall be used for the storage of items or materials. No open flame grills or barbeques are permitted on a balcony or patio.

**4.14 Rental of Units.** No Owner may lease less than his/her entire Unit. No Unit shall be leased or rented or advertised for lease or rent for a term of less than thirty days. No Unit may be used for timeshare purposes. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of the Condominium Documents and that any violation of the Condominium Documents 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. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with all information requested by the Association, unless prohibited under Arizona law. At least ten (10) days before commencement of the lease term, the Owner, even in the absence of a request or tenant registration form that may be utilized by the Association, shall provide the Association with the following information: (i) the commencement date and expiration date of the lease term; (ii) the names and contact information of each of the Lessees and each other adult person who will reside in the Unit during the lease term; (iii) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (iv) a description and license plate numbers of the Lessees' vehicles. Any Owner who leases his/her Unit must provide the Lessee with copies of the Condominium Documents. The Owner shall be liable for any violation of the Condominium Documents by the Lessees or other persons residing in the Unit and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations. The Association reserves the right to charge a fee of not more than \$25.00, or such higher amount as may be allowed by law, for each new tenancy (but not continuations or renewals of existing tenancies).

**4.15 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.

**4.16. Noise Reduction.** Any hard floor coverings installed in a Unit must use a sound control underlayment system (to be approved in writing by the Board of Directors prior to installation) which must include perimeter insulated material that will insure that impact noise will not be transmitted into the Unit below the floor either directly through the floor or by going

around the floor and through the surrounding walls. In order to maintain the highest level or acoustical privacy possible, the Board of Directors may, from time to time, adopt rules and regulations to reduce levels of noise emissions from units. Additionally, no loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernable between Units. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules. All Owners, Lessee and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the reasonable precautions to lower noise transference between Units and to abide by the rules and regulations of the Association and noise reduction ordinance of the City. Each Owner, Lessee and Occupant acknowledges that the Association has not made any written or oral representation or warranty concerning the sound insulation capabilities of the Units and that in any multi-family dwelling sound may be audible between Units, particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Unit is very low.

## 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, except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2. 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.

**5.2 Duties of Unit Owners.** Each Owner shall maintain, repair and replace, at his own expense, all portions of his Unit in a good, clean and sanitary condition. In addition, each Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to Subsections 2.6.1(a), (b) and (c) and the interior of the balcony or patio adjoining the Unit in a good, clean and sanitary condition. Provided however, the Owner shall not be responsible for the maintenance of the dryer vent cover that is attached to the outside unit wall; this dryer vent cover shall be maintained by the Association. The Association shall be responsible for maintaining the Limited Common Element balconies, patios and entryways (except for cleaning/sweeping). All exterior doors, windows, screens and light fixtures shall be compatible (e.g., color, style, etc.) with the Condominium and must be 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.

## ARTICLE 6

### THE ASSOCIATION

**6.1 Rights, Powers and Duties of the Association.** The Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the affirmative vote of Unit Owners holding more than two-thirds (2/3) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

**6.2 Directors.** The Unit Owners shall elect the Board of Directors in accordance with the provisions in the Bylaws.

**6.3 Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of the Units and the Common Elements.

**6.4 Identity of Members.** 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 Condominium Documents provided such person acted in good faith and without intentional misconduct.

**6.6 Utility Service.** The Unit Owners shall pay for any utilities services that are separately billed or metered to the respective Units.

## ARTICLE 7

### ASSESSMENTS

#### **7.1 Preparation of Budget.**

7.1.1 At least thirty (30) days before the beginning of each fiscal year (which is the calendar 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 Condominium; (c) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (d) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. 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 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 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 7.2.1 shall be in the sole discretion of the Board of Directors; however, to the extent the Board of Directors desires to increase the Regular Assessment in an amount that is greater than twenty percent (20%) more than the prior year's Regular Assessment, Owners representing two-thirds (2/3) of the votes in the Association must approve in increase at a meeting duly called for such purpose. 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 Regular Assessments shall be due on the first day of the month 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 Condominium 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 two-thirds (2/3) of the votes in the Association who are voting in person or 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 Purposes for which Association's Funds May be Used.** The Association may use the funds and property collected and received by the Association (including, but not limited to, all Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Condominium Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Condominium Documents or applicable law; (c) providing or promoting activities and services the Board of Directors deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Condominium and the Owners, Lessees and Occupants; (d) contracting for services (including, without limitation, trash collection) to be provided to Owners, Lessees and Occupants; and (e) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Condominium.

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

7.5.1 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 and/or as allowed by law.

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

7.5.3 Subject to the Condominium Act, 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 by the First Mortgagee or other Person. Any assessments and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner.

7.5.4 Subject to the Condominium Act, 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.

**7.6 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 Condominium 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 Condominium Documents or the Condominium Act.

**7.7 Resale Working Capital Fee.** Each Purchaser of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a working capital fee in an amount to be determined by the Board (the "Working Capital Fee"), but not to exceed three (3) times the regular monthly assessment per Unit in effect at the time of purchase. This fee shall ensure that the Association will have adequate funds to establish operating, maintenance, or to meet its expenses or to purchase necessary equipment or services. The fee shall be added to the working capital of the Association and shall not be considered as an advance payment of any Assessments levied by the Association under the Declaration. Notwithstanding the foregoing, the following purchasers or transferees shall be exempt from payment of the Working Capital Fee:

(i) the transfer or conveyance of a Unit by devise or intestate succession; (ii) a transfer or conveyance of a Unit to a family trust, family limited partnership or other person for bona fide estate planning purposes; (iii) 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 fund payment; or (iv) the transfer or conveyance of a Unit as a result of a trustee's sale under a deed of trust; (v) the transfer or conveyance of a Unit as the result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest by a deed-in-lieu of foreclosure; (vi) a transfer or conveyance whereby the mortgage is assigned to the Secretary of Housing and Urban Development pursuant to 24 C.F.R. § 203.41; or (vii) the transfer or conveyance of a Unit as a result of the forfeiture or foreclosure of a purchaser's interests under a recorded contract for the conveyance of real property subject to A.R.S. § 33-741 et. seq.

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 of Directors may determine to be desirable and appropriate for the preservation of the property within the Association for the benefit of the Association and Owners. 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.

The Working Capital Fee shall be secured by the lien for assessments as set forth in this Declaration and shall burden the Unit after conveyance of ownership rights in the Unit. The Association shall collect the Working Capital Fee through the close of escrow if the Association is notified of the conveyance and if a title company is used to facilitate a particular conveyance of a Unit. The failure of the Association to be notified of a conveyance shall not affect the obligation to pay the entire Working Capital Fee and shall not be in derogation of the lien against the Unit for the Working Capital Fee.

**7.8 Reserves.** The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments or any other revenue of the Association. The Board of Directors shall obtain a reserve study when necessary.

**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 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 insured property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. The replacement cost shall be reviewed annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

(b) Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000 for any single occurrence and Umbrella or Excess Liability Coverage in an amount not less than \$2,000,000. 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.

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

(d) Directors' and officers' liability insurance in an amount not less than \$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 which 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 an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.

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

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

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

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

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

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

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

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

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 Condominium is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association.

## **8.2 Fidelity Bonds or Insurance.**

8.2.1 The Association shall maintain blanket fidelity bonds or fidelity insurance 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 or fidelity insurance 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 insurance policy, or the sum equal to three months aggregate Regular Assessments on all Units plus reserve funds

8.2.2 The Association shall require any management agent of the Association to maintain its own fidelity bond or fidelity insurance in an amount equal to or greater than the amount of the fidelity bond or fidelity insurance to be maintained by the Association pursuant to Subsection 8.2.1. The fidelity bond or fidelity insurance 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 or an insured.

**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 liability insurance obtained by the Board of Directors for the benefit of all of the Unit Owners, each Unit Owner shall be responsible for obtaining: (a) property insurance on the Unit and all fixtures, furnishings, cabinets and appliances and all personal property of the Owner located in the Unit; and (b) comprehensive general liability insurance covering the Unit.

**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 its their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Condominium 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 at deed of trust. The insurer



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

## ARTICLE 9

### DESTRUCTION OF IMPROVEMENTS

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

**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 Condominium is not terminated in accordance with the Condominium Act, the insurance proceeds shall be distributed in proportion to their interests in the Common Elements to the Owners of those Units and the Owners to which those Limited Common Elements were allocated, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to the undivided interest in the Common Element 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 Condominium.** 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 Condominium Act in the event of a termination of the Condominium.

**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 Condominium covered by property insurance maintained by the Association shall be paid to

the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 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 Condominium 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 Condominium 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 Condominium.** In the event the Condominium in its entirety is acquired by eminent domain, the Condominium is terminated and the provisions of A.R.S. § 33-1228 apply.

**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

### RIGHTS OF FIRST MORTGAGEES

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

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor;
- (b) Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor, 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.

## **11.2 Approval Required for Amendment to Declaration.**

11.2.1 The approval of fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Increases in Assessments that raise the previously assessed amount by more than 20%, assessment liens or the priority of assessment liens;
- (c) Reductions in reserves for maintenance, repair and replacement of Common Elements;
- (d) Hazard or fidelity insurance requirements;
- (e) Responsibility for maintenance and repairs;
- (f) Expansion or contraction of the Condominium, or the addition, annexation of property to the Condominium;
- (g) Redefinition of any Unit boundaries;
- (h) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (i) Convertibility of Units into Common Elements or of Common Elements into Units;
- (j) Imposition of any restrictions on the leasing of Units;
- (k) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- (l) A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;

(n) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

11.2.2 Any action to terminate the legal status of the Condominium must be approved by fifty-one percent (51%) of the Eligible Mortgage Holders, unless a great percentage is required by law.

11.2.3 Any Eligible Mortgage Holder who receives a written proposal for an amendment to the Declaration 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 shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

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

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

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

(c) Partition or subdivide any Unit;

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

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

Nothing contained in this Section or any other 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.

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

**11.5 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.

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

**11.7 Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium 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 Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (a) an amendment of the Declaration, Articles or Bylaws, (b) a termination of the Condominium, or (c) certain actions of the Association as specified in Sections 12.2 and 12.4, 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.

**11.8 Restoration or Repair of Condominium.** Any restoration or repair of the Condominium after a partial condemnation or change due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless at least fifty-one percent (51%) of the Eligible Mortgage Holders approve.

## ARTICLE 12

### GENERAL PROVISIONS

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

- (a) imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Unit Owner
- (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) exercising self-help or taking action to abate any violation of the Condominium Documents provided, however, that judicial proceedings must be instituted before any items of construction can be altered or demolished;

(e) 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;

(f) towing vehicles which are parked in violation of this Declaration or the Rules;

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

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 Condominium 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 Condominium Documents.

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

**12.2 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.

**12.3 Duration.** The covenants and restrictions of this Declaration, as amended from time to time, shall run with and bind the Condominium in perpetuity unless the Condominium is terminated as provided in Section 12.4.

**12.4 Termination of Condominium.** Except in the case of a taking of all the Units by eminent domain, the Condominium 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 Condominium 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.

**12.5 Amendment.**

12.5.1 Except in cases of amendments that may be executed by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the Declaration, may be amended by the vote or written consent of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

12.5.2 Except to the extent expressly permitted or required by the Condominium Act, an amendment to this Declaration shall not create or increase special declarant rights as defined in the Condominium Act, 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.

12.5.3 Any amendment adopted by the Unit Owners pursuant to Subsection 12.5.1 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.

**12.6 Notices.** All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Owner. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association. 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.

**12.7 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.

**12.8 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.

**12.9 Survival of 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 covenants and obligations incident thereto.

**12.10 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.

**12.11 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 Condominium Documents shall be joint and several.

**12.12 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 Condominium 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 noncompliance.

**12.13 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 Condominium Documents, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action.

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**Quail Run Condominium Association, an  
Arizona non-profit corporation**

By: Sally Lloyd  
Its: President

Signature: Sally Lloyd

Date: January 27, 2022

STATE OF ARIZONA  
COUNTY OF MARICOPA

On this 27 day of JANUARY 2022, before me personally appeared Sally Lloyd, who acknowledged and executed the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Quail Run Condominiums as President of Quail Run Condominium Association.

Donna M Evans  
Notary Public

My Commission expires: 06/29/2022



**EXHIBIT A**

**[LEGAL DESCRIPTION OF PROPERTY]**

QUAIL RUN CONDOMINIUMS, a condominium, according to the original Declaration of Condominium recorded in Recording No. 2006-0532589, as amended, and according to the Plat of record in Book 831 of Maps, Page 41, in the Office of the County Recorder of Maricopa County, Arizona.

**EXHIBIT B****[Unit Numbers]**

101	141	181
201	241	281
102	142	182
202	242	282
103	143	183
203	243	283
104	144	184
204	244	284
111	151	191
211	251	291
112	152	192
212	252	292
113	153	193
213	253	293
114	154	194
214	254	294
121	161	195
221	261	295
122	162	196
222	262	296
123	163	197
223	263	297
124	164	198
224	264	298
131	171	
231	271	
132	172	
232	272	
133	173	
233	273	
134	174	
234	274	