



**DECLARATION OF CONDOMINIUM AND OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
MONACO CONDOMINIUMS**

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**DECLARATION OF CONDOMINIUM AND OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
MONACO CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MONACO CONDOMINIUMS is made this 27th day of June, 2024 by Case, Huff & Associates, an Arizona corporation (“Receiver”), and is as follows:

**RECITALS**

A. The property subdivided by and subject to the Plat, as defined below (“Property”) was formerly governed by two separate condominium associations, known as The Monaco Condominium Owners’ Association Inc. (“Phase I”) and the Monaco Condominiums (Phase II) Homeowners Association, Inc. (“Phase II”), pursuant respectively to the Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions as Amended and Restated Monaco Condominiums Pima County, Arizona, recorded on June 2, 1982 at Book 6793, page 973 *et seq.* in the Official Records of Pima County, and previously recorded on October 29, 1981 at Docket 6646, page 1082 in the Official Records of Pima County, as amended (“Phase I Declaration”), and the Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Monaco Condominiums (Phase II) Pima County, Arizona, recorded on July 24, 1985 at Docket 7582, page 278 in the Official Records of Pima County, as amended (“Phase II Declaration”).

B. Phase I and Phase II entered into a Reciprocal Easement and Maintenance Agreement, which they recorded on August 7, 1985 at Docket 7592, page 237 in the Official Records of Pima County (“Agreement”), pursuant to which Phase I and Phase II were to share in the expenses of certain shared utilities, recreational amenities, and other facilities within the Property.

C. A dispute arose between Phase I and Phase II arising out of the Agreement and the associations’ separate management of the different portions of the Property, resulting in Case Number C20201512 at the Arizona Superior Court in Pima County (“Litigation”).

D. As a result of the Litigation, Phase I and Phase II reached a settlement in which they stipulated to the appointment of the Receiver to jointly manage the two associations on an interim basis to resolve the underlying dispute and place them on substantially similar financial footing. A copy of the Court Order Approved by Stipulation of the Parties Appointing Joint Receiver entered by the Court on January 14, 2022 is attached hereto as Exhibit “C.” (“Receivership Order”).

E. Pursuant to the Receivership Order, the Arizona Superior Court in Pima County (“Court”) ordered the merger of the condominiums to create a single condominium governed by the newly incorporated Owners Association of Monaco Condominiums, Inc., an Arizona nonprofit corporation (“Association”), which order the Court entered on February 24, 2023 and the Receiver is recording concurrently with this Declaration in the Official Records of Pima County (“Merger Order”).

F. As set forth in the Receivership Order, the Merger Order has the same force and effect as a merger or consolidation agreement pursuant to A.R.S. § 33-1230 without any approval of the members of Phase I or Phase II; the Court reviewed, authorized, and approved the Receiver to record the Merger Order in lieu of any merger or consolidation agreement pursuant to A.R.S. § 33-1230(B) without any approval of the members of Phase I or Phase II; and the merger of the condominiums governed by Phase I and Phase II was effective upon recording of the Merger Order.

G. Pursuant to the Receivership Order, the Court reviewed, authorized and approved Receiver, to incorporate the Association, dissolve Phase I and Phase II, terminate the Agreement, and terminate the Phase I Declaration and the Phase II Declaration: without the approval of Phase I, Phase II, or any of their respective members, whether or not such approval would otherwise be required by the Agreement, the Phase I Declaration, the Phase II Declaration, or Arizona law. Pursuant to the Receivership Order, the Court reviewed, authorized and approved Receiver, to make this Declaration, without the approval of any of the members of Phase I or Phase II, whether or not such approval would otherwise be required by law, which is now binding upon all Property and Owners as defined herein.

H. Pursuant to the Receivership Order and the Merger Order, this Declaration will set forth the new allocation of the Owners’ undivided interests in the Common Elements and their obligation for the Association’s Common Expenses.

I. This Declaration is intended to establish the most effective property use regime for the Condominium based upon the prevailing knowledge and circumstances available at the time of Recording. However, the Declaration is also designed to govern the Condominium in perpetuity, and it cannot anticipate every legal, technological, practical, social, political, governmental, regulatory, cultural, or other consequential development that may come to pass subsequent to the date of its Recording. Accordingly, the Association may over time determine that certain terms of the Declaration have become obsolete, impractical, or otherwise ineffective in the service of the interests of the Association, the Unit Owners, or the Condominium. Therefore, the provisions of this Declaration are expressly subject to the power of the Association, by vote or written consent of the Unit Owners, to amend any language contained herein, wherever located, for any purpose whatsoever as set forth in Article 11, Section 11.6 below. Every Unit Owner, by virtue of his or her ownership of property subject to this Declaration, is deemed to be on reasonable notice of the Association’s power to amend this Declaration as set forth in Article 11, Section 11.6 below, to recognize and acknowledge the power of the Unit

Owners to act collectively for the Association to adopt such amendments with less than unanimous approval pursuant to Article 11, Section 11.6 below, and to acknowledge and agree that any and all such amendments adopted pursuant to that Section will be enforceable against all Unit Owners and property governed by this Declaration whether or not the Unit Owner individually consented to the amendment.

**NOW, THEREFORE**, the Receiver, pursuant to the Receivership Order and the Merger Order, and with the authority and direction of the Court thereunder, hereby declares the Property shall be held, conveyed, encumbered, leased, and used subject to the following covenants, conditions, uses, restrictions, limitations, obligations, easements, equitable and other servitudes, charges, and liens, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. This Declaration runs with the Property; binds all persons having or acquiring any right, title, or interest therein; and inures to the benefit of and is binding on and enforceable by all Owners, the Association, and their successors and assigns.

## ARTICLE 1 DEFINITIONS

**1.0 Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new definition, and this Section 1.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 1.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration, including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

**1.1 General Definitions.** Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Condominium Act, A.R.S. §§ 33-1201 *et seq.*, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration



whether such amendment to any provision thereof is enacted subsequent to the date any Unit Owner became a Unit Owner. (the "Condominium Act").

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

- 1.2.1 **"Articles"** means the Articles of Incorporation of the Association, as they may be amended from time to time.
- 1.2.2 **"Assessments"** means individually or collectively, as the context may require, the Common Expense Assessment, Special Assessments and Enforcement Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.
- 1.2.3 **"Assessment Lien"** means the lien granted to the Association by A.R.S. § 33-1256 of the Condominium Act, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1256 is enacted subsequent to the date any Unit Owner became a Unit Owner, to secure the payment of Common Expense and Special Assessments, and other charges owed to the Association by a Unit Owner, including certain Enforcement Assessments and Collection Costs.
- 1.2.4 **"Association"** means the Owners Association of Monaco Condominiums, Inc., an Arizona nonprofit corporation organized or to be organized by Receiver to administer and enforce the Condominium Documents and to exercise the rights, powers, and duties set forth therein, and its successors and assigns. All references to the Association, acting by and through its Board, in this Declaration shall also mean and refer to any professional management company or Managing Agent (as further described in Section 6.8 below) to the extent any duties of the Board may be so delegated to such Managing Agent, and as the context may so require.
- 1.2.5 **"Board of Directors"** or **"Board"** means the Board of Directors of the Association.
- 1.2.6 **"Building"** means any of the fourteen structures containing residential Units as shown on the Plat.
- 1.2.7 **"Bylaws"** means the Bylaws of the Association, as they may be amended from time to time.

- 1.2.8 **“City”** means the City of Tucson, Arizona.
- 1.2.9 **“Collection Costs”** means all costs, fees, charges, and expenditures (including, without limitation, demand letter fees, attorneys' fees, court costs, filing fees, lien fees, and Recording fees) incurred by the Association in collecting and/or enforcing payment of any Assessments or other amounts payable to the Association pursuant to this Declaration, without regard to whether a lawsuit is filed or legal action otherwise undertaken by or on behalf of the Association.
- 1.2.10 **“Common Elements”** means all portions of the Condominium other than the Units, including, but not limited to, structural portions of Buildings, recreational areas, landscaped areas, walkways, exterior walls, fences and gates, parking areas, and private drives.
- 1.2.11 **“Common Expenses”** means the actual or estimated costs or expenditures incurred or to be incurred by, or financial liabilities of, the Association, together with required allocations to reserves. Common Expenses include, without limitation, the following items: (a) the cost of maintenance, repair and replacement of the Common Elements; (b) the cost of maintenance of other areas of the Condominium which are the responsibility of the Association under this Declaration; (c) the cost of utilities, trash disposal, landscaping, professional management, and other services to the Condominium except for those services separately metered or billed to the Unit Owners; (d) the cost of insurance and surety bonds maintained by the Association pursuant to this Declaration; (e) reserve amounts determined by the Board; and (f) payments for taxes, liens, or encumbrances against the Common Elements, if any, except to the extent directly assessed or allocated to individual Units and their proportionate interest therein.
- 1.2.12 **“Common Expense Assessment”** means the assessment levied against the Units pursuant to Section 7.2.1 of this Declaration.
- 1.2.13 **“Common Expense Liability”** means the total liability for Common Expenses allocated to each Unit pursuant to Section 2.4 of this Declaration.
- 1.2.14 **“Condominium”** means the real property located in Pima County, Arizona, described on Exhibit A attached hereto and incorporated herein by this reference above and on the Plat, together with all Buildings and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto. The legal name of the Condominium created by this Declaration is “Monaco Condominiums”

- 1.2.15 **“Condominium Documents”** means this Declaration, including the Plat, and the Articles, Bylaws, and Rules (including any Architectural Rules and Board Policies).
- 1.2.16 **“Declaration”** means this Declaration of Condominium and of Covenants, Conditions and Restrictions for Monaco Condominiums, as it may be amended from time to time, and, where appropriate by context, the Plat.
- 1.2.17 **“Eligible Insurer or Guarantor”** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 9.1 of this Declaration.
- 1.2.18 **“Eligible Mortgage Holder”** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.
- 1.2.19 **“Enforcement Assessment”** means an Assessment levied pursuant to Section 7.5 of this Declaration.
- 1.2.20 **“First Mortgage”** means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust.
- 1.2.21 **“First Mortgagee”** means the holder of any First Mortgage.
- 1.2.22 **“Improvement”** means all physical structures including, but not limited to, Buildings, parking areas, recreational equipment and areas, private drives, fences, walls and gates, trash receptacles, cluster mailboxes, utility systems, and all landscaping, including, but not limited to, hedges, plantings, trees, and shrubs of every type and kind.
- 1.2.23 **“Invitee”** means any person whose temporary or periodic presence within the Condominium, including any Unit, has been solicited, approved by, or arranged for by a particular Unit Owner, Lessee, or Resident, including without limitation, his or her guests, employees, business invitees, licensees, contractors, and agents.
- 1.2.24 **“Lessee”** means any Person who is the tenant or lessee under a written lease, or as otherwise defined by law, of a Unit.
- 1.2.25 **“Limited Common Elements”** means a portion of the Common Elements specifically designated in this Declaration as a Limited Common Element and/or allocated by this Declaration or by operation of the Condominium Act for the exclusive use of one or more, but fewer than all, of the Units.

- 1.2.26 **“Member”** means any Person who is or becomes a member of the Association pursuant to Section 6.4 of this Declaration.
- 1.2.27 **“Modifications”** means any renovations, additions, alterations, or improvements to a Unit after the date that Unit was first converted to a Purchaser.
- 1.2.28 **“Person”** means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, government subdivision or agency, or other legal or commercial entity, and in the case of a subdivision trust, means the beneficiary of the trust who holds the right to subdivide, develop, or sell the real estate rather than the trust or trustee.
- 1.2.29 **“Plat”** means the condominium plat of The Monaco, Recorded on October 29, 1981, in Book 34 of Maps and Plats, page 83, in the Official Records of Pima County, Arizona.
- 1.2.30 **“Purchaser”** means any Person who becomes a Unit Owner by means of a voluntary transfer.
- 1.2.31 **“Receiver”** means Case, Huff & Associates, an Arizona corporation, appointed by the Court as a receiver authorized to make this Declaration and organize the Association, or its successors or assigns.
- 1.2.32 **“Recording”** means the act of placing an instrument of public record in the Office of the Pima County, Arizona Recorder and **“Recorded”** means having been so placed of public record.
- 1.2.33 **“Resident”** means any Person actually and lawfully residing on a temporary or permanent basis within a Unit, including a Unit Owner or Lessee of that Unit, and their respective family members.
- 1.2.34 **“Rules”** means the rules, regulations, policies, and resolutions adopted by the Association, as they may be amended from time to time. **“Architectural Rules”** means any rules, design guidelines, standards, and procedures adopted by the Architectural Committee or the Board pursuant to Section 4.4 of this Declaration, as amended or supplemented from time to time.
- 1.2.35 **“Single Family”** means a group of one or more persons each related to the other by blood, marriage, or legal adoption or a group comprised of not more than three (3) persons who are not all so related, maintaining a common household in a Unit.

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

1.2.37 **“Unit Owner”** means the record owner, whether one or more Persons of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include (i) Persons having an interest in a Unit merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Unit. The term “Unit Owner” shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title to a Unit under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Unit, whether legal or equitable, upon payment in full of all monies due under the contract. The term “Unit Owner” shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of Units, the fee simple title to which is vested in a trustee pursuant to A.R.S. §§ 33-801 *et seq.*, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to any of the provisions thereof is enacted subsequent to the date any Unit Owner became a Unit Owner, the Trustor shall be deemed to be the Unit Owner. In the case of Units, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of the trust who is entitled to possession or occupancy of the Unit shall be deemed to be the Unit Owner.

## ARTICLE 2 DESCRIPTION OF THE CONDOMINIUM

**2.0 Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this Section 2.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners’ use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that**

**amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 2.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration, including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

2.1 **Submission of Property.** After review and approval by, and with the authority of, the Court, the real property described on Exhibit A, together with all Improvements, easements, rights, and appurtenances thereto, is hereby submitted to the Condominium in accordance with the provisions of the Condominium Act, except as otherwise provided by the Receivership Order, the Merger Order, and the provisions in this Declaration. The Identifying Numbers of the Units submitted to the Condominium are Units 100 through 350, 400 through 402, 431 through 432, 435 through 436, 439 through 442, 445 through 446, 449 through 450, inclusive, as further shown on the Plat. The Condominium consists of all real property shown on the Plat.

2.2 **Unit Boundaries.**

2.2.1 The physical boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors, and windows of the Unit with: (i) the underside of the finished but undecorated ceiling as the top horizontal boundary; (ii) the top of the finished but undecorated flooring shall be the bottom horizontal boundary; and (iii) the interior of the finished but undecorated walls shall be the vertical boundaries. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements. The openings and outlets of all utility installations in the Unit shall be part of the Unit. The structural elements of exterior windows and doors in any perimeter wall forming the vertical boundaries of a Unit shall be Limited Common Elements allocated to that Unit as provided in Section 2.6 below.

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

the Unit serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

- 2.2.3 As applicable, the Private Patio (“Patio”) or Private Balcony (“Balcony”) adjoining or attached to the Unit as shown on the Plat, and any carport allocated to a Unit in Exhibit B (“Carport”), is a Limited Common Element allocated to the Unit to which it is attached. The boundaries of each Patio or Balcony shall be as follows: (i) the lower horizontal boundary shall be the unfinished floor surface of the Patio or Balcony having an elevation equal to the unfinished floor of the Unit to which it adjoins or attaches; (ii) the upper horizontal boundary shall be a horizontal plane parallel to the floor surface having an elevation equal to the elevation of the finished ceiling of the Unit to which it adjoins or attaches; and (iii) the vertical boundaries shall be the vertical planes corresponding to the exterior wall of the Building in which the Unit is located and the interior finished surfaces of the fence, railing, or wall enclosing the Patio or Balcony.
- 2.2.4 All spaces, interior partitions that are a bearing wall, and other fixtures and improvements within the boundaries of a Unit are part of the Unit.
- 2.2.5 Any shutters, awnings, window boxes, doorsteps, stoops, porches, and all exterior doors and glass windows or other fixtures designed to serve a single Unit, but located outside of the Unit’s physical boundaries, are Limited Common Elements allocated exclusively to that Unit. Stairways and second story walkways or landings designed for use by a Unit or Units in a Building, but less than all of the Units in the Condominium, and located outside of the physical boundaries of a Unit, shall be Limited Common Elements allocated to the Unit or Units in the Building served by such entryways, stairways, and walkways. Additional specific Limited Common Elements allocated solely to a particular Unit are described in Section 2.6 below.
- 2.2.6 In the event of an inconsistency or conflict between the provisions of this Section and the Plat, this Section shall control.
- 2.2.7 The existing physical boundaries of a Unit or a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its proper boundaries rather than any description contained in any Recorded deed, plat, plan, or declaration, regardless of the settling, rising, or lateral movement of the Building in which that Unit is located and regardless of any minor variances between the boundaries shown on the Plat and the actual physical boundaries.

2.3 **Allocation of Common Element Interest.** The undivided interests in the Common Elements of the Association shall be allocated proportionally among the Units. Accordingly, each Unit's interest in the Common Elements shall be stated as a percentage interest allocated to each Unit as set forth in the table attached hereto as Exhibit "B," which is incorporated herein by this reference. The percentage of interest of each Unit in the Common Elements shall be an undivided interest and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective Common Element interest. The undivided Common Element interest allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description of the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit.

2.4 **Allocation of Common Expense Liabilities.** The undivided interest in the Common Expense Liability of the Association shall be allocated according to the percentage interest allocated to each Unit set forth in Exhibit B of the total Common Expenses of the Association each fiscal year of the Association.

2.5 **Allocation of Votes in the Association.** The votes in the Association shall be equal to the number of Units in the Condominium from time to time. The votes shall be allocated equally among all the Units with each Unit having one (1) vote and the total number of votes in the Condominium being two-hundred sixty-six (266). The Board of Directors may revoke a Member's right to vote for any period during which the Member is not in good standing, as that term is defined in the Bylaws.

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:

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



- ii. Each Unit is allocated those portions of the Common Elements designated as Limited Common Elements in Section 2.2.2 of this Declaration that serve the Unit. All doors and windows in the perimeter walls of a Unit are Limited Common Elements allocated to the Unit. The glazing, sashes, frames, sills, thresholds, hardware, flashing, and other components of the doors and windows are part of the doors and windows allocated as Limited Common Elements.

2.6.2 A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of A.R.S. § 33-1218(B), as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1218(B) is enacted subsequent to the date any Unit Owner became a Unit Owner.

2.6.3 The Board of Directors has 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

**3.0 Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this Section 3.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 3.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration,**

**including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

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

3.2 **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 created an easement for ingress and egress for pedestrian and vehicular traffic, including, without limitation, emergency access and utility repair vehicles, over, through, and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Unit Owners and Residents and their respective Invitees.

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

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

- i. The right of the Association to adopt reasonable Rules governing the use of the Common Elements;
- ii. The right of the Association to charge reasonable fees for the use of any the facilities located within the Common Elements;
- iii. The right of the Association to suspend the right of a Unit Owner, Lessee, or Resident (and their respective Invitees) to use the Common Elements for any period during which the Unit Owner, Lessee, or Resident is in violation of the Condominium Documents as further provided in Article 10 below;

- iv. The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, subject to the vote or written assent of those Unit Owners representing at least eighty percent (80%) of the votes in the Association, and, in all events, subject to an easement for ingress and egress if access to a Unit is through the Common Elements to be conveyed or mortgaged;
  - v. The right of the Association to grant non-exclusive easements over all or a portion of the Common Elements if the Board of Directors determines that the granting of the easement is necessary for the development or maintenance of the Common Elements or beneficial to the Unit Owners, Lessees, and other Residents;
  - vi. The right and obligation of the Association to assign to every Unit Owner one mailbox space in accordance with U.S. Postal Regulations and to provide an access key thereto. Mailbox number assignments may be changed from time to time as permitted by law; and
  - vii. All rights and easements set forth in this Declaration.
- 3.3.2 If a Unit is leased, the Lessee and all other Residents of the Unit shall have the right to use the Common Elements during the term of the lease, and any non-Resident Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease for such Unit Owner's Unit.
- 3.3.3 The Invitees of any Resident entitled to use the Common Elements pursuant to Sections 3.3.1 or Section 3.3.2 above may use the Common Elements provided they are accompanied by a Member, Lessee, or other person entitled to use the Common Elements pursuant to Section 3.3.1 or Section 3.3.2 above. The Board of Directors shall have the right to reasonably limit the number of Invitees who may use the Common Elements at any one time, the number of times any particular type of Invitee may use the recreational Common Elements, and the times during which Invitees may use the Common Elements.
- 3.3.4 The right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated, or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the common Elements shall be deemed to be conveyed, transferred, alienated, or encumbered upon the sale of any Unit, notwithstanding that the description

in the instrument of conveyance, transfer, alienation, or encumbrance may not refer to such right and easement.

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

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

3.5 **Vehicle Parking Easements.** Subject to Section 4.11 of this Declaration, each Unit Owner has an exclusive (except as to the Association) easement over the portion of the Common Elements that comprises the parking space specifically designated to the Unit Owner's Unit, pursuant to the assignments by Declarant prior to the initial sale of each Unit or as otherwise set forth in a list of assignments maintained at the Association's or its Managing Agent's principal office, which shall be available for inspection by any Unit Owner upon reasonable notice or as otherwise provided in A.R.S. § 33-1258, as the same may be amended from time to time, for the purposes of parking vehicles as permitted under this Declaration. The easements granted by this Section 3.5 are limited only to the parking of vehicles permitted by this Declaration and regularly used by the Unit Owners.

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

3.6.1 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.

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

3.6.3 For driving and removing nails, screws, bolts, and other attachment devices into the Unit side surface of the stone, block, brick, or other masonry walls

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

- 3.6.4 For the maintenance of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles, and similar fixtures which serve only one Unit but which encroach into any part of the Common Elements.
- 3.6.5 For the performance of the Unit Owner's obligation to maintain, repair, replace, and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 5.2.2 of this Declaration.

**3.7 Easements in Favor of Association.**

- 3.7.1 The Units (including interiors of Units unless otherwise indicated herein) and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees, and independent contractors:
- i. For inspection of the exterior of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible.
  - ii. For inspection, maintenance, repair, and replacement of the Common Elements or the Limited Common Elements situated in or accessible from the exterior of Units or Limited Common Elements.
  - iii. For the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents, or other pests, or to eradicate insects, rodents, or other pests from the Condominium.
  - iv. For correction of emergency conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements, or the Units.

- v. For the purpose of enabling the Association, the Board of Directors, or any Committees appointed by the Board of Directors to exercise and discharge their respective rights, powers, and duties under the Condominium Documents.
- vi. For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees, and other Residents, and their respective Invitees.

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

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

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

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

4.0 **Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this Section 4.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for**

**property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 4.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration, including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

4.1 **Use of Individual Units.** No Unit, and any Limited Common Elements allocated thereto from time to time, shall be occupied and used except for single-family residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein. No Unit may be divided or subdivided into a smaller Unit. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on or in any Unit or such Limited Common Element, but a Unit Owner or Resident may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or readily detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (iii) the business activity only results in occasional or minimal time duration visits or contact with non-Residents coming to the Unit and does not involve the door-to-door solicitation of Residents in the Condominium; (iv) the trade or business conducted by the Unit Owner or Resident does not have more than one (1) employee working in or from such Unit who is not also a lawful Resident thereof; (v) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or parking violations; (vi) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; and (vii) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of Residents or Invitees in or to the Condominium, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.2 **Antennas.** No alteration to or modification of a central radio or television antenna system or cable television system, whichever is applicable, shall be permitted, and

no Owner may be permitted to construct, use, or operate his own external radio or television antenna, or other device for the transmission or reception of television or radio signals or any other form of electro-magnetic radiation outside of his or her Unit or visible from the exterior of his Unit, whether attached to a Building or structure or otherwise, without the consent of the Board, unless it is wholly within the exclusive use and control of the Unit Owner's Limited Common Elements. For any antennas, satellite dishes, or other devices, any such antennas, satellite dishes, or other devices installed in a location within the exclusive use or control of the Unit Owner's Limited Common Element, the Board may adopt reasonable rules regarding approval process, location, screening, and protection of Common Elements from potential damage.

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

4.4 **Modifications/Further Restrictions on Use.**

4.4.1 Except as expressly provided in this Section 4.4, no Person shall make any Modifications to a Unit or any Limited Common Element allocated thereto without the prior written consent of the Board. The request for Modification shall be made on a "Modification Approval Request Form" promulgated by the Board. The Modification Approval Request Form may: (A) provide the Association with a written indemnity against liability in accordance with Section 6.5 below in a form provided by the Board of Directors upon request and consistent with said Section 6.5; and (B) may establish any additional conditions, if any, imposed by the Board pursuant to Section 4.4.2 below. Prior to submitting a Modification Approval Request Form, the Unit Owner of the Unit to be modified, at the discretion of the Board, shall retain an architect or engineer licensed in Arizona. Such architect or engineer shall provide sealed plans and specifications to the Board together with the Modification Approval Request Form, unless the delivery of such plans and specifications are otherwise waived by the Board in writing. The architect or engineer shall certify to the Board in connection therewith that such Modification will not impair the structural integrity of the Building or the mechanical systems serving the same within which such Modification is to



be made. Prior to commencing a Modification, the Unit Owner of the Unit to be modified must receive a formal written approval of the Modification from the Board as provided in Section 4.4.2 below. The Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such Modification.

- 4.4.2 The Board of Directors may condition the approval of any proposed Modification to a Unit in any reasonable manner, including, without limitation: (i) restricting the time during which such work may be performed; (ii) requiring the placement of a construction security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (iii) requiring the Unit Owner causing the Modification to obtain and maintain, prior to commencement and during completion of the Modification, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Unit Owner shall designate the Association, the Board of Directors, and any other Person designated by the Board as additional insureds under the policy. If the Board fails to expressly approve the requested Modification in writing within forty-five (45) days after the receipt of a fully complete Modification Approval Request Form, the requested Modification shall be deemed disapproved. If the Board receives an incomplete Form, the Board shall promptly notify the Unit Owner of any deficiencies and the time for approval shall not commence until a completed Application Form is delivered to the Board. The Board may disapprove a proposed Modification even though the plans and specifications may be in substantial compliance with this Declaration and any Architectural Rules if the Board, in its sole and absolute discretion, determines that the proposed Modification, or some aspect or portion thereof, is not in harmony with the external design and location in relation to surrounding structures and topography. Decisions of the Board may be based on purely aesthetic considerations. Each Unit Owner acknowledges that such determinations are necessarily subjective in nature and that the decision of the Board shall be final on all matters submitted to it pursuant to this Section 4.4.
- 4.4.3 Except as provided in Section 4.4.4 below, any Unit Owner may make nonstructural Modifications to the interior of his or her Unit that do not affect mechanical systems within the Building, other than the installation of any tile, wood, or other hard surface flooring in any Unit located above ground floor (first story) level, without the prior written approval of the Board, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such Modifications.

- 4.4.4 Notwithstanding the foregoing, no Modification within a Unit, whether structural or not, which would be visible from the exterior of the Building or from another Unit shall be made without the prior written consent of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed Modification is aesthetically pleasing and in harmony with the surrounding Improvements.
- 4.4.5 Any Unit Owner acquiring an adjoining Unit, and, upon receiving the approval of the Board set forth in this Section 4.4, may remove or alter any non-structural common wall or partition between adjoining Units or create apertures therein even if certain elements therein are part of the Common Elements or Limited Common Elements, if such acts do not impair the structural integrity of the Building or its mechanical systems or lessen the support of any part of the Condominium and as further provided in A.R.S. § 33-1221(3) of the Condominium Act, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1221(3) is enacted subsequent to the date any Unit Owner became a Unit Owner. The fact that a demising wall between adjoining Units is subsequently removed shall not affect the Units' percentage interest in the Common Elements or the Units' Common Expense Liability. Such demising wall may be later constructed or reconstructed with the written approval of the Board as provided in this Section 4.4.
- 4.4.6 The approvals required of the Board pursuant to this Section 4.4 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule, or regulation.
- 4.4.7 The Board shall have the right to charge a reasonable fee for reviewing requests for approval of any Modification, which fee shall be payable at the time the application for approval is submitted to the Board. The Board may establish a schedule of architectural review fees as part of any Rules as may be adopted by the Association.
- 4.4.8 The Association shall have the right to stop any work or Modification that is not in compliance with this Section 4.4 or any Rules of the Association governing Modifications, and, where appropriate, to seek an equitable injunction ordering the removal of a Modification or any portion thereof that does not comply with this Section 4.4. Neither the Association, the Receiver, nor any of their respective officers, directors, employees, agents, contractors, consultants, or attorneys shall be liable to any Unit Owner or other Person by reason of: mistake in judgment; failure to point out or correct deficiencies in

any plans or other submissions relating to, without limitation, structural safety, soundness, workmanship, materials, usefulness, conformity with building, or other codes or industry standards; negligence; or any other misfeasance, malfeasance, or nonfeasance arising out of or in any way connected with or relating to a Modification.

4.4.9 The Board may establish an “Architectural Committee” to perform the architectural design review and related functions of the Board set forth in this Declaration and in this Section 4.4, in particular. If established, all references to “Board” in this Section 4.4 and elsewhere in this Declaration, as the context may require, shall mean and refer to the Architectural Committee. Any such Architectural Committee shall be a committee of the Board and shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The Board, and/or Architectural Committee, if any, may promulgate Architectural Rules to be followed in rendering its decisions. Such Rules may include, without limitation, provisions regarding: (i) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (ii) requirements concerning exterior Improvements; and (iii) signage. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Board may establish such other Committees as the Board may determine in its sole discretion and may establish Rules governing such Committees, including the number of Board members and alternate members as shall serve on such Committee and the function and delegated duties of such Committee.

#### 4.5 **Garbage and Refuse Disposal; Bulk Service Agreements.**

4.5.1 All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Trash, garbage, and other waste shall not be kept except in sanitary containers. The Association shall promulgate rules and regulations concerning the type and mode of containerization of garbage and refuse.

4.5.2 Except as otherwise provided in this Declaration, the Board, acting on behalf of the Association, has the right, power, and authority to enter into one or more bulk service agreements with one or more vendors at such rates and on such other terms and conditions as the Board determines appropriate in its sole discretion to provide services to all property within the Condominium. Without limiting the foregoing, the Board is specifically authorized to enter into bulk service agreements for the provision of garbage collection services, cable or satellite television, internet service, and utilities to the Units and Common Elements; provided, the rates or charges are similar to or less than

the rates that Owners would be charged on an individual basis and the Board determines the bulk service agreement is in the best interests of the Association, in its sole discretion. If the Board decides to enter into any bulk service agreement, then it will have the power to charge the cost thereof to the Unit Owners as part of the Common Expense Assessment pursuant to Article 7 of this Declaration.

4.6 **Machinery and Equipment.** No Unit Owner, Lessee, or other Resident may place, operate, or maintain machinery or equipment of any kind upon the Condominium other than usual and customary machinery and equipment used in connection with the permitted uses of the Unit and Limited Common Elements. This Section 4.6 shall not apply to any such machinery or equipment which the Association may require for the construction, improvement, operation, and maintenance of the Common Elements.

4.7 **Animals.** The Board shall have the power to promulgate rules and regulations concerning the keeping of any animals within the Units, and may restrict the number, kind or size of animals kept by an Owner, so long as the power is not exercised capriciously. Without limiting the foregoing, no animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained in or on the Condominium and then only if such house pets are kept or raised solely as domestic pets (and not for commercial purposes) within a Unit. No more than two (2) dogs may occupy any Unit regardless of size or weight. No pet or other animal shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. All dogs or other house pets permitted hereunder and capable of being walked on a leash shall be kept on a leash not to exceed six (6) feet in length when outside a Unit, and all pets shall be directly under a Resident's control or direction at all times. No Unit Owner, Lessee, or other Resident or their respective Invitees shall permit any such pet being kept in the Unit to relieve itself on any portion of the Common Elements; it being understood that it shall be the responsibility of such person to immediately remove any droppings from pets. No structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the Common Elements. Upon the written request of any Unit Owner or other Resident, the Board of Directors shall determine whether, for the purposes of this Section, a particular animal or bird is a generally recognized house pet, a nuisance, or whether the number of pets in any Unit is reasonable. The foregoing restriction does not prohibit Unit Owners from keeping Assistance Animals in the Units. For the purposes of this Section 4.7, "Assistance Animal" is defined as a service animal or another animal that works, provides assistance, or provides therapeutic emotional support to alleviate one or more identified effects of a person's disability.

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

4.8.1 Each Unit Owner understands and agrees that neither the Association (nor its officers, directors, employees, and agents) is responsible for the acts and

omissions of any third parties or of any other Owner or Owner's family members, guests, tenants, and invitees resulting in damages or injury to person or property. If, and to the extent, any common privacy measures, including any electronic privacy access gates, are installed or undertaken by the Association, the cost of installation and maintenance of such features or facilities will be paid by the Association as a Common Expense Liability. Each Unit Owner understands that any measures or features that are in effect at the time he becomes a Unit Owner may be abandoned, removed and/or modified by a majority vote of the Board. The commencement of any such devices, features, measures, or controls shall not be deemed to be an assumption of any duty on the part of the Association with respect to the Condominium and the Board (or any committee thereof) makes no representation or warranty concerning the efficacy of such devices relating to security or the ease of entry or response time of fire, police, or other emergency personnel onto the Condominium.

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

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

the level of noise emissions from the Units. The use of stereo equipment, televisions, and musical instruments shall be subject to and must be used in accordance with such Rules and any noise reduction ordinance of the City.

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

4.11 **General Restrictions Regarding Parking of Vehicles.** As set forth above in Section 3.5, each Unit has been designated an easement over one (1) specific parking space within the Common Elements for the purpose of parking vehicles permitted within the Condominium by this Declaration. The Board shall have the right to change the designation of any parking spaces in the exercise of its reasonable discretion to reasonably accommodate handicapped Residents upon request. No trailer, camper, mobile home, commercial vehicle, truck (other than standard size pickup truck), inoperable automobile, boat, or similar equipment shall be permitted to remain upon any area within the Condominium, other than temporarily (for purposes of loading and unloading of passengers or personal property), unless placed or maintained within the assigned parking space or carport, or in an area specifically designated for such purpose by the Board. "Commercial vehicles" shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Condominium. No off-road unlicensed motor vehicles shall be maintained or operated upon the Condominium, except as reasonably necessary to the execution of the rights or duties of the Association under this Declaration. Any parking space not designated to a Unit shall remain open for guest or overflow parking so long as such vehicle does not violate this Declaration. Unit Owners are prohibited from using non-designated parking spaces for the storage of any vehicle. The Board has the power to adopt reasonable Rules regulating parking within the Condominium and the use of the parking spaces.

4.12 **Power Equipment and Car Maintenance.** No power equipment, workshops, or car maintenance (other than emergency work or minor repairs requiring less than one (1) day's work) shall be permitted on the Condominium, except with prior written approval of the Board. Approval shall not be unreasonably withheld, and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. Other than such temporary emergency or approved repairs, no vehicle shall be constructed, reconstructed, serviced, or repaired on any portion of the Condominium. The Board of Directors shall have the right to have any vehicle parked, kept, maintained,

constructed, reconstructed, or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. In no event, may any vehicle be parked within the Condominium outside of a parking space in accordance with this Declaration. Parking spaces may not be used for any purpose other than the parking of authorized vehicles. The Board shall have the right to have any vehicle which is parked, stored, kept, maintained, constructed, reconstructed, or repaired in violation of the Condominium Documents and this Article 4 towed away at the sole cost and expense of the owner of the Vehicle. If the owner of a towed vehicle is not a Unit Owner and the Association directly incurs any expense because such towing charges were not collected from the Vehicle owner for any reason, the Association may seek reimbursement for such expenses from the Unit Owner whose Resident or Invitee improperly parked the towed vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand to the Unit Owner as an Enforcement Assessment pursuant to Section 7.5 below. In addition to levying an Enforcement Assessment for towing charges incurred by the Association, the Board may pursue all other remedies set forth in Section 10.3 below, including, without limitation: (i) imposing monetary fines against Unit Owners (and/or their Residents) who are causing recurrent violations of the vehicle parking restrictions of this Declaration in accordance with Rules adopted by the Association for the imposition of monetary fines; (ii) suspending the voting rights of or Association services to an Owner whose Unit and/or the Residents and Invitees therein are in violation of the parking restrictions of this Declaration; (iii) filing a civil suit against a Unit Owner and/or Resident to enjoin actions or behavior relating to the parking of vehicles violative of this Declaration; and (iv) Recording a Notice of Violation against a Unit in the case of continuing vehicle or parking violations pertaining to that Unit.

**4.13 Signs and Flags.** No signs or flags shall be displayed to the public view on any Units or on any portion of the Property, except such signs and flags as are minimally required to be permitted pursuant to A.R.S. § 33-1261, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to any provision of A.R.S. § 33-1261 is enacted subsequent to the date any Unit Owner became a Unit Owner, or as are approved by the Board or architectural committee appointed by the Board.

**4.14 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.

**4.15 Nuisances and Offensive Activity.** No noxious, illegal, or offensive activities shall be carried on in any Unit, or in any part of the Condominium, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or

which may in any way interfere with the quiet enjoyment of each of the Unit Owners, Lessee, Resident, or their respective Invitees, of the respective Unit, or which shall in any way increase the rate of insurance for the Condominium, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building. No exterior speakers, horns, whistles, bells, or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used, or placed on the Condominium without the prior written approval of the Board of Directors.

4.16 **Clothes Lines and Window Coverings.** No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes. Furthermore, no clothing, laundry or other personal items are to be hung out on the patios or balconies of the Units. No kind of foil, or other reflective materials, including, but not limited to, reflective screens or glass, mirrors, or similar items, or darkening screen shall be placed upon the windows of the Units without the prior written approval of the Board, nor shall the patios or balconies of the Units be used for storage purposes. No enclosures, drapes, blinds, shades, screens, or other items affecting the exterior appearance of a Unit shall be constructed or installed in any Unit without the prior written approval of the Board, unless the items so installed are substantially identical in color, texture, and size as previously approved and installed window coverings being so replaced.

4.17 **Leasing of Units.** The respective Units shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days, or (b) any rental if the occupants of the Unit are provided customary hotel service such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Subject to the foregoing restrictions, the Owners of the respective Units shall have the absolute right to lease the Units provided that the lease is subject to the Condominium Documents.

4.18 **Time Sharing.** A Unit may not be divided or conveyed on a time increment basis (commonly referred to as "time sharing") or measurable chronological periods other than pursuant to a written lease as permitted under Section 4.17 of this Declaration. The term "time sharing" as used herein includes any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Unit, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time for thirty (30) consecutive calendar days or less, and includes, without limitation, "home sharing" or other similar arrangements.

4.19 **Variances.** The Board may authorize a variance from compliance with any of the provisions of this Declaration, including this Article 4, from time to time, when circumstances such as hardship, aesthetic, or environmental considerations may require. A variance must be evidenced in writing and, to be deemed valid, must bear the signatures of



at least a majority of the Board of Directors then serving at the time the variance request is decided. If such variance is granted, no violation of the covenants, conditions, and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision hereof covered by the variance, and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Unit Owner's obligation to comply with all governmental laws and regulations affecting the use of his or her Unit. The Board shall have the right to condition the granting of a variance as it may determine in the Board's sole discretion, including, without limitation, making a variance temporary or permanent; or requiring the removal or replacement of a non-permanent or semi-permanent structure upon the sale or other conveyance of a Unit. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one instance or under certain terms and conditions does not mandate the granting of a variance under similar or related circumstances, terms, or conditions if the experiences of the Association and the Condominium as a whole or the differences in circumstances (however slight) of a variance request from a previously approved variance lead the Board, in good faith, to disapprove a variance request in such instance. In no event may the Board grant any variance that would create or cause the Association to be in violation of any insurance policy limitation or restriction issued in favor of the Association and its Members, such as *e.g.*, granting a variance to a Unit Owner to keep a certain breed or type of animal that is expressly prohibited under any applicable insurance policy.

## ARTICLE 5 CONDOMINIUM MAINTENANCE AND REPAIR

**5.0 Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this Section 5.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 5.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration,**

**including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

**5.1 Duties of the Association.**

- 5.1.1 The Association shall maintain, repair, and make necessary improvements to all Common Elements, whether located inside or outside the Buildings, except for the specific portions of the Limited Common Elements or Common Elements which the Unit Owners are obligated to maintain pursuant to Section 5.2 of this Declaration. Without limitation, the Association shall be responsible for maintaining: (i) Building exteriors including, the roofs thereof; (ii) exterior stairways and landings; (iii) the structural elements of the Patios and Balconies, including the walls, ceilings, railings, and unfinished floors thereof; (iv) all walls and fencing on the Condominium or walls between the Condominium and surrounding real property; (v) the private drives, parking areas, covered parking structures, and sidewalks; (vi) all Common Element landscaping and irrigation or landscaping sprinkler systems; (vii) lighting and light fixtures in the Common Elements; and (viii) the private water and sewer lines as provided in Section 5.1.3 below.
- 5.1.2 The cost of all such repairs, maintenance, and improvements shall be a Common Expense and shall be paid for by the Association. The Board shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements and the Condominium. No Unit Owner, Lessee, Resident, or their respective Invitees shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair, and replacement of the Common Elements.
- 5.1.3 As used in this Section 5.1.3, the term "Utility Facilities" shall mean all sewer and water lines and appurtenant facilities within the boundaries of the Condominium except for: (a) any sewer and water lines which serve only one Unit and which are located within the boundaries of the Unit or are part of the Common Elements but are allocated to the Unit as a Limited Common Element by this Declaration; and (b) sewer and water lines and appurtenant facilities which have been accepted by and are the responsibility of the City or a private utility company. The Association shall be responsible for maintaining and repairing the Utility Facilities from the point of connection to each Unit to the point of connection of such lines to the publicly dedicated water and sewer lines maintained by the City in accordance with all applicable federal, state, or local laws, ordinances, or regulations.

## 5.2 Duties of Unit Owners.

- 5.2.1 Each Unit Owner shall maintain, repair, replace, and restore, at his or her sole cost and expense, all portions of his or her Unit, subject to the further provision of the Condominium Documents.
- 5.2.2 Except as provided in Section 5.1.1 above, each Unit Owner, at his sole cost and expense, shall be responsible for the maintenance, repair, and replacement of the Limited Common Elements exclusively allocated to his or her Unit as Limited Common Elements. Such maintenance obligations shall include, without limitation: (i) maintenance, repair, and replacement of all doors and windows of the Unit and Limited Common Elements; (ii) maintenance, repair, and replacement of the air conditioning unit (including compressors and condensers), heater and hot water heater servicing the Unit, and (iii) maintenance, repair, and replacement of the Limited Common Elements of the type described in Section 2.2.2 above that are allocated exclusively to his or her Unit and not otherwise specifically addressed in Section 5.1.1 above or this Section 5.2.2.

5.3 Repair or Restoration Caused by Negligent or Wrongful Acts. Each Unit Owner shall be liable to the Association for any damage to the Common Elements or Limited Common Elements, or the Improvements or equipment thereon, which results from the negligence or willful conduct or omission of the Unit Owner or that Owner's Residents, Invitees, or family pets for whom Owner has responsibility, to the extent permitted by Arizona law. The cost to the Association of any such repair, maintenance, or replacement required by such act or omission of a Unit Owner (or Person for whom the Unit Owner is legally responsible) shall be assessed against the Unit Owner as a Common Expense as provided in A.R.S. § 33-1255(E), as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1255(E) is enacted subsequent to the date any Unit Owner became a Unit Owner, and Section 7.2.5 of this Declaration and such costs shall be secured by the Assessment Lien against his or her Unit.

5.4 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair his or her Unit or any Common Element which he or she is obligated to maintain under this Declaration in the manner set forth in this Declaration and the required maintenance, repair, or replacement is not performed within thirty (30) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair, or replacement. The cost of any such maintenance, repair, or replacement shall be assessed against the nonperforming Unit Owner as a Common Expense pursuant to A.R.S. § 33-1255(E), as the same may be amended from time to time, the terms of which are hereby

incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1255(E) is enacted subsequent to the date any Unit Owner became a Unit Owner, and Section 7.2.5 of this Declaration and such costs shall be secured by the Assessment Lien against his Unit.

## ARTICLE 6 THE ASSOCIATION

**6.0 Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this Section 6.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 6.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration, including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

**6.1 Rights, Powers, and Duties of the Association.** No later than the date this Declaration is Recorded, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers, and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers, and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. Without limiting the foregoing, the Association shall have the right to: (i) establish an architectural committee and delegate such functions of the Board, including those described in Section 4.4 above, as the Board determines in its discretion, to such committee; (ii) finance capital Improvements in the Condominium by encumbering future Assessments; and (iii) finance capital Improvements by encumbering all or a portion of the Common Elements if such action is approved by the written consent or affirmative vote of Unit Owners representing more than sixty seven percent (67%) of the votes in the Association. Unless the Condominium Documents or the Condominium Act, or any of its particular provisions, as the same may be amended from

time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to any of those particular provisions is enacted subsequent to the date any Unit Owner became a Unit Owner, specifically require a vote of the Members, approvals, or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Association has the specific duty to make available to Eligible Mortgage Holders, Unit Owners, and Eligible Insurers or Guarantors during normal business hours, current copies of the Condominium Documents and other books, records, and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expenses.

## 6.2 **Directors and Officers.**

6.2.1 The Board shall consist of at least three (3) but not more than seven (7) members, as provided in the Articles.

6.2.2 The Unit Owners shall elect the Board of Directors, all of whom must be Unit Owners as further provided in the Bylaws. The Board elected by the Unit Owners shall then elect the officers of the Association.

6.3 **Rules.** The Board of Directors may, from time to time, and, subject to the provisions of this Declaration and the Condominium Act, adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of any area within the Condominium subject to the Association's jurisdiction and control, provided, however, that the Rules may not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended, or repealed, shall be mailed, or otherwise delivered or made available to each Unit Owner.

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

6.5 **Personal Liability.** Neither Receiver, any member of the Board, nor committee of the Association, any officer of the Association, nor any Managing Agent, nor

employee of the Association, shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of Receiver, the Association, the Board, the Managing Agent, any representative or employee of the Association, or any committee, committee member, or officer of the Association; provided, however, the limitations set forth in this Section 6.5 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

**6.7 Association Provision of Utility Services.** The Association shall acquire and pay for the following: (a) water, sewer, electrical, and other utility services for the Common Elements; (b) refuse and rubbish collection for the Common Elements and the Units; and (c) any water, sewer, electrical, or other utility service, except for those that are separately metered or charged to the Units. Each Unit will be separately metered for electricity and all charges for electricity service to a Unit shall be paid by the Unit Owner. Water usage of a Unit shall be restricted to water usage commonly associated with the requirements of a Single Family for household purposes. In the event a Unit Owner, Resident or their Invitees fails to limit water usage to ordinary and customary residential use by a Single Family, then the Board, in accordance with Section 7.11 below, shall have the right to levy a monetary penalty against the violating Unit as determined by the Board.

**6.8 Professional Management.** Subject to the further limitations contained in this Declaration and the Condominium Act regarding the terms of a professional management contract, the Board may retain and maintain a "Managing Agent," to operate and maintain the Common Elements, to collect Assessments, and to perform such functions as the Board may reasonably elect to delegate to the Managing Agent in its management contract and as are permitted to be delegated under the Condominium Act and/or under the Condominium Documents. Without limiting the foregoing, the Board may not delegate any of the following functions to a Managing Agent: (i) adopting the annual budget or any amendment thereto or assessing any Common Expenses; (ii) adopting, repealing, or amending Rules; (iii) borrowing money for the Association; (iv) acquiring and mortgaging Units or other real property; (v) designating signatories on Association bank accounts; (vi) allocating Limited Common Elements; and (vii) approving or voting on motions of the Board.

**ARTICLE 7**  
**ASSESSMENTS**

**7.0 Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this Section 7.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 7.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration, including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

**7.1 Preparation of Budget.**

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

are necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Section 7.2.5 below and must include an adequate allocation to reserves as part of the Common Expense Assessment. All Common Expense Assessments shall be deposited into an Association general operating account and all Common Expenses shall be paid out of such account. During each month of the Association's operations, only one month's Common Expense Assessment may be transferred into the operating bank account for any Unit credited with prepaid Common Expense Assessments. By way of illustration only, if a part-time or winter resident Unit Owner chooses to prepay three months of Common Expense Assessments, the Association may only credit one-third of the amount so prepaid each month. The Board may not use funds in excess of the limited amount permitted held in the prepaid assessment account without the written consent or affirmative vote of at least fifty-one percent (51 %) of the Unit Owners.

7.1.2 Within thirty (30) days after the adoption of a budget, the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.2 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his or her allocable share of the Common Expenses as provided in Section 7.2 of this Declaration and each Unit Owner shall continue to pay the Common Expense Assessment against his or her Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

7.1.3 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.

7.2 **Common Expense Assessment.**

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against fewer than all of the Units pursuant to Section 7.2.5 below) shall be assessed against each Unit in the Condominium in proportion to the Unit's Common Expense Liability as set forth in Section 2.4. The amount of the Common



Expense Assessment assessed pursuant to this Section 7.2.1 shall not exceed the maximum Common Expense Assessment for the fiscal year as computed pursuant to Section 7.2.2 below. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors, except that no increase in the Common Expense Assessment assessed pursuant to this Section 7.2.1 exceeding the maximum Common Expense Assessment for such fiscal year shall become effective unless approved by the requisite number of Members provided in Section 7.2.2 below.

7.2.2 The maximum Common Expense Assessment for each fiscal year of the Association after the first full or partial fiscal year thereof shall not be greater than an amount equal to one hundred twenty percent of the previous year's Common Expense Assessment established by the Board and assessed against the Units. From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the Common Expense Assessment for any fiscal year of the Association may be increased by an amount greater than the maximum increase allowed in this Section 7.2.2, only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by absentee or written ballot at a meeting duly called for such purpose. An increase in the Common Expense Assessment for any fiscal year of the Association above the maximum increase otherwise permitted in this Section 7.2.2 may also be approved by written agreement of the Members holding two-thirds (2/3) of the Association votes pursuant to A.R.S. § 10-3704, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 10-3704 is enacted subsequent to the date any Unit Owner became a Unit Owner. The maximum Common Expense Assessment limitations herein contained shall apply only to the amount of the Common Expense Assessment assessed pursuant to Section 7.2.1 and shall not apply to the amount of Common Expenses assessed pursuant to Section 7.2.5 below.

7.2.3 The Common Expense Assessments shall commence as to all Units in the Condominium on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Common

Expense Assessments or Special Assessments be paid in installments. Unless otherwise directed by the Board, Common Expense Assessments shall be paid in monthly installments and shall be due and payable on the first day of each month.

- 7.2.4 Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the maintenance, repair, and replacement of a Limited Common Element, and reserves for Common Expenses shall be assessed against all of the Units in accordance with Section 7.2.1 above, and A.R.S. § 33-1255(C), as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1255(C) is enacted subsequent to the date any Unit Owner became a Unit Owner, will not apply.
- 7.2.5 If any Common Expense is caused by the negligence, omission, or willful misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against his or her Unit.
- 7.2.6 All Assessments and Collection Costs levied against a Unit shall be the personal obligation of the Unit Owner of the Unit at the time the Assessments and Collection Costs became due. The personal obligation of a Unit Owner for Assessments, Collection Costs, and other fees and charges levied against his or her Unit shall not pass to the Unit Owner's successors in title unless expressly assumed by them.

7.3 **Special Assessment.** In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose (a "Special Assessment"). Any Special Assessment that would exceed five percent (5%) of the budgeted gross expenses of the Association for the current fiscal year (other than a Special Assessment levied pursuant to Section 8.6 of this Declaration) shall have first been approved by Unit Owners representing two-thirds (2/3) of the votes in the Association and who are voting in person or by absentee or written ballot at a meeting duly called for such purpose. A Special Assessment may also be approved by written agreement of the Members holding two-thirds (2/3) of the Association votes pursuant to A.R.S. § 10-3704, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 10-3704 is enacted subsequent to the date any Unit Owner became a Unit Owner. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association

and notice of the Special Assessment is given to the Unit Owners. Special Assessments shall be levied against each Unit in proportion to the Common Expense Liability attributable to each Unit. Additionally, the Association may levy Special Assessments against an individual Unit and its Unit Owner without a vote of the members to reimburse the Association for costs incurred in bringing the Unit Owner and his or her Unit into compliance with the provisions of the Condominium Documents.

**7.4 Notice and Quorum for Any Action Under Section 7.2 or 7.3.** Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Sections 7.2 or 7.3 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of Members voting by written or absentee ballot, entitled to cast fifty-one percent (51%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-six percent (26%) of the votes entitled to be cast at the meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

**7.5 Enforcement Assessment.** The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (i) any Collection Costs, including attorneys' fees, incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Unit Owner (whether or not suit is filed); (ii) any costs, including all attorneys' fees incurred by the Association, with respect to any violation of the Condominium Documents by the Unit Owner, his or her Lessee, or any other Resident of his or her Unit and their respective Invitees and/or in enforcing the provisions of the Condominium Documents (whether or not suit is filed); (iii) any monetary penalties and late charges levied against the Unit Owner in accordance with this Declaration and the Rules; or (iv) any amounts which become due and payable to the Association by the Unit Owner or his or her Lessee or any other Resident of his or her Unit and their respective Invitees pursuant to the Condominium Documents, including without limitation, delinquent interest. For purposes of this Section 7.5, the Association shall be deemed to automatically have assessed late charges and delinquent interest accruing against a specific Unit for non-payment of Assessments as provided for in this Declaration and/or adopted by Association Rule as an Enforcement Assessment without the requirement of a formal Board hearing or resolution of assessment against the applicable Unit or Unit Owner.

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

7.6.1 Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent as of the original due date for the missed Assessment and

shall bear interest from the date such payment was due at the rate of twelve percent (12%) per annum. In addition, the Board of Directors may establish a reasonable late charge as part of the Rules to be charged to a Unit Owner and assessed against his or her Unit as part of the Assessment Lien for each installment of an Assessment that is deemed delinquent.

- 7.6.2 All Common Expense and Special Assessments and certain Enforcement Assessments and Collection Costs (including late charges on delinquent Assessments and attorneys' fees and costs incurred to collect the same) shall be secured by the Assessment Lien to the fullest extent provided in A.R.S. § 33-1256 of the Condominium Act, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1256 is enacted subsequent to the date any Unit Owner became a Unit Owner. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien and no further recordation of any claim of lien shall be required. Although not required to perfect the Assessment Lien, the Association shall have the right, but not the obligation, to record a notice setting forth the amount of any delinquent Assessments, Collection Costs, and attorneys' fees and costs imposed or levied against the Unit or the Unit Owner which may be secured by the Assessment Lien. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, Collection Costs, and attorneys' fees and costs lawfully secured thereby have been paid in full.
- 7.6.3 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments and Collection Costs, in any manner allowed by law, including, but not limited to: (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts which came due at the time he was the Owner thereof and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts, provided, however, that the personal obligation to pay delinquent Assessments and Collection Costs which came due prior to the transfer of ownership shall not pass to successors in title; (ii) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage; and (iii) suspending voting and Common Element use rights as provided in this Declaration and/or in the Bylaws. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any and all Units purchased at such sale. The provisions of A.R.S. § 33-1256, as the may be amended from time to time, of the Condominium Act are incorporated herein by this reference solely to the extent such provisions are inconsistent with the intent of this Declaration to secure all Assessments, Collection Costs,

fees, and charges incurred by the Association by the Assessment Lien and such statutory provisions expressly supersede this Declaration or are deemed to be superior to the provisions of this Declaration by operation of law.

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

7.8 **Certificate of Payment/Resale Information Statement**. The Association, on written request, shall furnish a recordable statement or certificate setting forth the amount of all unpaid Assessments and Collection Costs against a Unit to the Unit Owner, a lienholder holding a lien against the Unit, any licensed escrow or title company dealing with the Unit, or any other Person designated by the Unit Owner. The statement shall be furnished within ten (10) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. In addition to the foregoing information, the Association shall also furnish such information and statements for prospective Purchasers as may be reasonably requested in writing by a Member or any escrow or title company or other authorized Person acting on behalf of a Member, for purposes of complying with the provisions of A.R.S. § 33-1260, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1260 is enacted subsequent to the date any Unit Owner became a Unit Owner, in the event of a resale of a Unit. The Association may charge a reasonable fee for any service, certificate, and/or information statement provided pursuant to this Section 7.8 as determined by the Board from time to time.

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

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

7.11 **Monetary Penalties**. In accordance with the procedures set forth in the Bylaws, the Board of Directors shall have the right to levy reasonable monetary penalties

against a Unit Owner for violations of the Condominium Documents. Such monetary penalties shall be secured by the Assessment Lien to the extent permitted by law.

7.12 **Reserves.** The Assessments may include a reasonable amount for reserves as determined by the Board of Directors for the future maintenance, repair, or replacement of all or a portion of the Common Elements, or any other purpose as determined by the Board of Directors. Any amounts collected as reserves, whether pursuant to this Section 7.12, Section 7.10, Section 7.3, or otherwise, must be deposited by the Board of Directors into one or more bank accounts (collectively, the "Reserve Account"). Any funds in the Reserve Account shall be held in trust for the purposes for which they are collected, as provided herein, and are to be segregated from and not commingled with other Association funds. Such reserves shall be deemed a contribution to the capital account of the Association by the Members and, as trust funds segregated from the regular income of the Association, shall be accounted for in such manner as will prevent such funds from being taxed as income of the Association as authorized by Internal Revenue Service regulations.

7.13 **Reserve Contribution Fee.** Upon the transfer of title or other conveyance of a Unit, the Purchaser, immediately upon becoming a Unit Owner, shall pay a fee to the Association in an amount equal to two (2) months' worth of the then-current Common Expense Assessments allocated to the Unit ("Reserve Contribution Fee"). The Reserve Contribution Fee is the Purchaser's personal obligation and is secured by the Association's Assessment Lien against the Unit, collectable by the same procedures and subject to the same remedies and penalties as the Common Expense Assessments. The Association shall deposit the Reserve Contribution Fee only into its Reserve Account, and the Association shall use the Reserve Contribution Fee exclusively for the purposes set forth in this Declaration for the Reserve Account. No portion of the Reserve Contribution Fee shall be passed through to the Receiver or any other third party designated or identifiable by description in any of the Condominium Documents, except to the extent such third party is authorized pursuant to the Condominium Documents to manage real property within the Condominium or was part of an approved development plan. No Reserve Contribution Fee shall be paid with respect to the following transfers of title or other conveyances of a Unit: (i) a gift, devise, other testamentary transfer or intestate succession; (ii) transfer of the Unit by a Unit Owner into a trust for the sole benefit of the Unit Owner or the Unit Owner's family; (iii) transfer of the Unit to a Unit Owner's spouse, siblings, parents, or children for no or nominal consideration; and (iv) transfer of a Unit from a Unit Owner to the Unit Owner's marital community.

## **ARTICLE 8** **INSURANCE**

**8.0 Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this**

**Section 8.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 8.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration, including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

#### **8.1 Scope of Coverage.**

- 8.1.1 Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:
- i. Property insurance on the Common Elements and Units, exclusive of Improvements and betterments which were not part of the original construction and were supplied or installed by Unit Owners and furniture, furnishings, or personal property of the Unit Owners. The policy is to be issued on blanket causes of loss – “Special Form” policy or its equivalent. Such property insurance shall cover the interests of the Association, the Board of Directors, and all Unit Owners and their mortgagees (as their interests may appear) (subject, however, to the loss payment adjustment provisions in favor of the Insurance Trustee) in an amount equal to one hundred percent (100%) of the current replacement cost of the Condominium, exclusive of land, excavations, foundations, and other items normally excluded from such coverage, without deduction for depreciation. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.
  - ii. Broad form Commercial General Liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence and \$2,000,000 general aggregate. Such insurance shall cover all occurrences commonly insured against for death,

bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements. Such policy may include, at the discretion of the Board, medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles and coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

- iii. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and a policy of employer's liability insurance with coverage limits as the Board may determine from time to time, if the Association employs any Persons.
- iv. Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.
- v. Blanket fidelity bond coverage for all officers, directors, trustees, and employees of the Association and all other Persons handling or responsible for funds of or administered by the Association including, without limitation, the Management Agent, whether or not the Management Agent receives compensation for its services. The total amount of the fidelity bonds maintained by the Association shall be based on the best business judgment of the Board, but shall not be less than the estimated funds, including the Reserve Account, in the custody of the Association or management agent, as the case may be, at any given time during the term of the bond or the sum equal to three (3) months' aggregate Common Expense Assessments on all Units plus the Reserve Account amount. Fidelity bonds obtained by the Association shall name the Association as an obligee, shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees" or similar terms or expressions; shall provide that they may not be cancelled or substantially modified without at least ten (10) days' prior notice to the Association and each First Mortgagee named in the bond. Any contract with the Managing Agent shall require the Managing Agent to maintain the fidelity bond required of the Association pursuant to this Section 8.1.1.
- vi. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, or the Unit Owners, including, without limitation, umbrella general liability insurance which would provide general



liability coverage in excess of the coverage provided by the policy to be obtained pursuant to Section 8.1.1.ii.

8.1.2 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 or her ownership of an undivided interest in the Common Elements or his or her membership in the Association.
- ii. There shall be no subrogation with respect to the Association, its agents, servants, its Board of Directors, or officers thereof, and employees against Unit Owners and members of their household.
- iii. No act or omission by any Unit Owner, unless acting within the scope of his or her authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.
- iv. The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.
- v. A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.
- vi. The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).
- vii. For policies of property insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.
- viii. Any Insurance Trust Agreement will be recognized by the insurer.
- ix. Such coverage shall not be contingent upon action by the insurance carrier's board of directors, policyholders, or members or permit claims for contribution or assessments to be made against Unit Owners or their mortgagees, including Eligible Mortgage Holders, or Eligible Insurers or Guarantors.

- x. If the Condominium is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a “blanket policy” of flood insurance on the Condominium in the lesser of one hundred percent (100%) of the current replacement cost of the Buildings and any other property covered on the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.
- xi. “Agreed Amount and Inflation Guard,” and “Building Ordinance or Law” endorsements, except where expressly not applicable or not available.

**8.2 Payment of Premiums/Deductibles/Annual Review.** Premiums for all insurance obtained by the Association pursuant to this Article and all deductibles thereunder shall be Common Expenses and shall be paid for by the Association; provided, however, the Association may assess to a Unit Owner any deductible amount expended as a result of the negligence, misuse, or neglect for which such Unit Owner is legally responsible under this Declaration and Arizona law. The Board of Directors may select deductibles in reasonable amounts applicable to the insurance coverage maintained by the Association pursuant to Section 8.1.1 above to reduce the payments payable for such insurance. The Board shall determine annually whether the amounts and types of insurance the Association has obtained provide adequate coverage in light of increased construction costs, inflation, the custom in the area in which the Condominium is located, or any other factor which leads to a reasonable determination that additional policies or coverage amounts are necessary or desirable to protect the interest of the Unit Owners, First Mortgagees, and/or the Association.

**8.3 Insurance Obtained by Unit Owners/Non-Liability of Association.** The issuance of insurance policies to the Association pursuant to this Article 8 shall not prevent a Unit Owner from obtaining insurance for his or her own benefit and at his or her own expense covering his or her Unit (including all additions, alterations, and Improvements thereto), his or her personal property and providing personal liability coverage and such other coverages as are not provided by the Association pursuant to this Article 8. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither the Association, or their respective officers, directors, employees, and agents, shall be liable to any Unit Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of the insurance is not adequate, and it shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Unit Owner may desire. All policies of property insurance carried by Unit Owners shall be without contribution with respect to the policies of property insurance obtained by the

Board of Directors for the benefit of all Unit Owners pursuant to Section 8.1.1 above. For purposes of this Section 8.3, “additions, alterations, and Improvements” shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including, without limitation, carpeting, flooring, wall coverings, paint, and paneling. Repair of damage to the interior of a Unit not covered by property insurance maintained by the Association shall be made by and at the individual expense of the Unit Owner and shall be completed as promptly as practicable and in a lawful and workmanlike manner.

**8.4 Payment of Insurance Proceeds.** The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed Building or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding on upon all Owners and mortgagees. Any loss covered by property insurance obtained by the Association in accordance with this Article 8 shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. § 33-1253 of the Condominium Act, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1256 is enacted subsequent to the date any Unit Owner became a Unit Owner.

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

**8.6 Automatic Reconstruction.** Any portion of the Condominium for which insurance is maintained by the Association which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the Condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the Unit Owners, including every Owner of a Unit or allocated Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the damaged or destroyed portion of the Condominium in

excess of insurance proceeds and reserves shall be a Common Expense and shall be assessed to the Members as a Special Assessment pursuant to Section 7.3 of this Declaration.

8.7 **Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this Article 8 of the Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a Deed of Trust provided, further, however, that if the insurer charges a fee to the Association for the issuance of such a certificate or memorandum, any reasonable fee so charged shall be paid to the Association by the requesting party in advance. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known address.

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

9.0 **Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this Section 9.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 9.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration, including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

9.1 **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:

- 9.1.1 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;
- 9.1.2 Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any obligation under the Condominium Documents, which delinquency or default remains uncured for the period of sixty (60) days; and
- 9.1.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

9.2 **Prohibition Against Right of First Refusal.** The right of a Unit Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction. This Section 9.2 may not be amended without the consent of all First Mortgagees then of record.

9.3 **Right of Inspection of Records.** Any Unit Owner, any Person designated in writing by the Unit Owner as his authorized representative, and any First Mortgagee or Eligible Insurer or Guarantor shall, upon written request, be entitled to: (i) inspect, during normal business hours, the current copies of the Condominium Documents and the books, records, and any financial statements of the Association as have been prepared or are available, including the most recent annual audit, review, or compilation of the Association prepared and made available by the Association in accordance with the requirements of A.R.S. § 33-1243, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1243 is enacted subsequent to the date any Unit Owner became a Unit Owner; and (ii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Without limiting the foregoing, all First Mortgagees and Eligible Insurers or Guarantors shall be entitled to receive within a reasonable time (not to exceed one hundred twenty (120) days), at the expense of the requesting party, an audited financial statement of the Association for the immediately preceding fiscal year of the Association if one has not been prepared pursuant to A.R.S. § 33-1243, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1243 is enacted subsequent to the date any Unit Owner became a Unit Owner. The Board of Directors may withhold from disclosure such books, records, and documents of the Association, or portions thereof,

designated under A.R.S. § 33-1258, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1258 is enacted subsequent to the date any Unit Owner became a Unit Owner. The Association shall have the right to charge for copying expenses of any information requested under this Section 9.3 or Arizona law.

9.4 **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.

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

9.6 **Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article 9 and any other provision of the Condominium Documents, the provisions of this Article 9 shall prevail; provided, however, that in the event of any conflict or inconsistency between the different sections of this Article 9 and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders, or Eligible Insurers or Guarantors that must consent to: (i) an amendment to any of the Condominium Documents; (ii) a termination of the Condominium; or (iii) certain actions of the Association as specified in Section 9.5 of this Declaration, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders, or Eligible Insurers or Guarantors shall prevail.

## **ARTICLE 10** **ENFORCEMENT**

10.0 **Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this Section 10.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid**

**and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 10.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration, including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

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

10.2 **Items of Construction/Equitable Relief.** As provided in Section 4.4.8 and Section 10.3 of this Declaration, the Association and/or any Unit Owner shall have the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration.

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

- 10.3.1 imposing reasonable monetary penalties after notice and hearing. A Unit Owner shall be responsible for payment of any fine levied or imposed against a Unit Owner as a result of the actions or omissions of the Unit Owner, his or her Lessee or Resident, or their respective Invitees and family pets;
- 10.3.2 suspending a Unit Owner's right to vote for as long as the Unit Owner is in violation of any provision of these Condominium Documents;
- 10.3.3 suspending any Person's right to use any facilities (including recreational amenities) within the Common Elements as provided in Section 3.3 above; provided, however, that nothing shall authorize the Board to limit ingress or egress to or from a Unit. The right of the Board to impose such a suspension shall apply to any Person whose right to use the Common Elements is derived from any Unit Owner, Lessee, or Resident who is determined to be in violation of the Condominium Documents;

- 10.3.4 suspending any services provided by the Association to a Unit Owner or the Unit Owner's Unit if the Unit Owner is more than fifteen (15) days' delinquent in paying any Assessment or other charge owed to the Association;
- 10.3.5 exercising self-help or taking action to abate any violation of the Condominium Documents or to remove any structure of Improvement further subject to any limitations of Arizona law and the provisions of Section 10.2 of this Declaration;
- 10.3.6 without liability to any Person, prohibiting any Invitee of a Unit Owner, Lessee, or other Resident who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities on the Condominium;
- 10.3.7 towing Vehicles that are parked in violation of this Declaration or the Rules as further provided in Section 4.11 of this Declaration;
- 10.3.8 filing a suit at law or in equity to enjoin a violation of the Condominium Documents, to compel compliance with the Condominium Documents, to recover Assessments, Collection Costs, and damages and/or to obtain such other relief as to which the Association may be entitled, including the remedies provided for in Section 7.6 of this Declaration;
- 10.3.9 recording, at the Board's sole discretion, a written Notice of Violation by any Unit Owner of any restriction or provision of the Condominium Documents as further provided in Section 11.19 of this Declaration; and
- 10.3.10 recording, at the Board's discretion, a Notice of Assessment Lien against a Unit as provided in Section 7.6.2 of this Declaration and the Condominium Act.

10.4 **Limited Enforcement Obligation.** The Association shall not be obligated to take any enforcement action if the Board of Directors determines, in its sole discretion, that, because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board of Directors, enforcement action would not be appropriate or in the best interests of the Association. Any such decision of the Board shall not be deemed a waiver of any of the restrictions in this Declaration as provided in Section 10.1 above.

## **ARTICLE 11** **GENERAL PROVISIONS**



**11.0 Association Authority to Amend this Article. Any term in this Article may be amended at any time pursuant to Article 11, Section 11.6 of this Declaration. Such amendments may include any new terms, conditions, or restrictions, and this Section 11.0 serves as notice to all current and future Owners of such possible amendment and that any of the terms in this Article may be altered, amended, modified, and changed in any way, including, but not limited to, by adding terms that further restrict the Unit Owners' use of property in the Condominium or removing a restriction on such use in whole or part, whether or not any individual Unit Owner consented to the amendment. By acceptance of, or by having accepted, a deed for property subject to this Declaration, every Unit Owner acknowledges and agrees that amendments adopted pursuant to Article 11, Section 11.6 of this Declaration are valid and enforceable against all Unit Owners, and Section 11.6 limits the Unit Owner's right to challenge the amendment on the basis of allegations the Unit Owner did not reasonably expect the amendment or any similar theory, that the Unit Owner has had the opportunity to review the recitals to this Declaration, this Section 11.0, and Article 11, Section 11.6 below, prior to accepting title to property subject to the Declaration, including, but not limited, to the terms and conditions referenced in this Section, and that the Unit Owner has knowingly accepted such title subject to those terms and conditions along with all other provisions of this Declaration.**

**11.1 Contract Limitations.**

- 11.1.1 All agreements for professional management of the Condominium entered into by or on behalf of the Association pursuant to Section 6.8 above may not exceed a term of three (3) years and must provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days' or less written notice.
- 11.1.2 Any: (i) employment contract; (ii) lease; and (iii) agreement of any nature with Receiver, or any member, agent, or representative of Receiver or providing for services of Receiver and/or its affiliates, entered into by or on behalf of the Board or the Association must also provide for termination of such contract, lease, or agreement without penalty by any Board elected by the Unit Owners at any time after Receiver has turned over control of the Association to the elected Board upon not less than thirty days' notice. The foregoing limitations shall not apply to: (i) bulk service provider contracts such as, without limitation, telephone, communications, satellite, or cable TV, utility provider and utility monitoring, or other similar service contracts, as long as Receiver, and its affiliates, are not the parties providing such services; or (ii) a lease, which, if cancelled, would result in the termination of the Condominium or the reduction in its size.

11.2 **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.

11.3 **Duration.** Unless terminated as provided in Section 11.5 of this Declaration, the covenants and restrictions of this Declaration, as amended from time to time, shall run with the land and bind the Condominium in perpetuity.

11.4 **Eminent Domain.** Subject to the further provisions of this Declaration regarding Mortgagee notice requirements and priority of First Mortgagees in any award as provided in Article 9 above, any partial or total taking of a Unit or any part of the Common Elements shall be governed by the provisions of A.R.S. § 33-1206, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1206 is enacted subsequent to the date any Unit Owner became a Unit Owner. If all of the Units are acquired by eminent domain, the Condominium is terminated and the provisions of A.R.S. § 33-1228, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1228 is enacted subsequent to the date any Unit Owner became a Unit Owner, apply as further provided in Section 11.5 below. Each Unit 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 of an Owner.

11.5 **Termination of Condominium.** Subject to the further provisions of this Declaration regarding Mortgagee notice and consent requirements, the Condominium may be terminated only in the manner provided for in A.R.S. § 33-1228, as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. § 33-1228 is enacted subsequent to the date any Unit Owner became a Unit Owner.

11.6 **Amendments to Condominium Documents.**

11.6.1 Except in cases of amendments that may be executed by: (1) Receiver pursuant to the Receivership Order, (2) by the Association under A.R.S. §§ 33-1206 or 33-1216(D), as the same may be amended from time to time, the terms of which are hereby incorporated in full and made enforceable as part of this Declaration whether such amendment to A.R.S. §§ 33-1206 or 33-1216(D) is enacted subsequent to the date any Unit Owner became a Unit Owner, or this Declaration, or (3) by certain Unit Owners under A.R.S. §§ 33-1218(B), 33-1222, 33-1223, or 33-1228(B), as the same may be amended from time to time, the terms of which are hereby incorporated in full and

made enforceable as part of this Declaration whether such amendment to A.R.S. §§ 33-1218(B), 33-1222, 33-1223, or 33-1228(B) is enacted subsequent to the date any Unit Owner became a Unit Owner, and except to the extent permitted or required by other provisions of the Condominium Act or this Declaration, both the Declaration and the Plat, may be amended by a vote or the written consent of at least seventy-five percent (75%) of the Unit Owners in the Association. Such amendment pursuant to this Section 11.6.1 may be made at any time and without regard to whether such amendment has uniform application to the Units or the Condominium as a whole. **THIS SECTION 11.6 SERVES AS REASONABLE NOTICE TO ALL UNIT OWNERS AND ALL PERSONS WHO MAY BECOME UNIT OWNERS THAT THE RESTRICTIONS IN EFFECT AS OF THE DATE A PERSON BECOMES A UNIT OWNER OF RECORD MAY BE ALTERED, AMENDED, MODIFIED, AND CHANGED IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, BY ADDING ADDITIONAL RESTRICTIONS ON THE UNIT OWNER'S USE OF PROPERTY IN THE CONDOMINIUM OR BY REMOVING A RESTRICTION ON SUCH USE IN ITS ENTIRETY, EVEN IF THE UNIT OWNER DOES NOT CONSENT TO THE AMENDMENT. BY PURCHASING PROPERTY SUBJECT TO THIS SECTION 11.6, EACH OWNER HEREBY EXPRESSLY AGREES NOT TO CHALLENGE, BY LEGAL PROCEEDING OR OTHER MEANS, THE VALIDITY OF ANY AMENDMENT DULY ADOPTED PURSUANT TO THIS SECTION 11.6, INCLUDING, BUT NOT LIMITED TO, CHALLENGES BASED UPON THE ALLEGATION THE OWNER DID NOT REASONABLY EXPECT ANY SUCH AMENDMENT BASED ON THE EXISTING LANGUAGE OF THE RESTRICTIONS OR ANY SIMILAR THEORY. THE PURCHASE OF PROPERTY SUBJECT TO THIS SECTION 11.6 CONSTITUTES THE UNIT OWNER'S EXPRESS REPRESENTATION THE UNIT OWNER HAS REVIEWED THE RESTRICTIONS, AND THIS SECTION 11.6 IN PARTICULAR, AND THE UNIT OWNER KNOWINGLY AND VOLUNTARILY PURCHASES PROPERTY IN THE CONDOMINIUM WITH THE EXPECTATION AND UNDERSTANDING THE RESTRICTIONS MAY LATER BE AMENDED AS SET FORTH HEREIN.**

- 11.6.2 Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not 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.

- 11.6.3 Pursuant to the Receivership Order, the Receiver has the right to amend the Restrictions as the Receiver determines necessary in its sole discretion to carry out its court-ordered duties until such time as the Receiver's appointment terminates and the Association elects a Board to manage its affairs.
- 11.6.4 Any amendment adopted by the Unit Owners pursuant to Section 11.6.1 above shall be signed by the President or Vice-President of the Association, or the Receiver, and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section.
- 11.6.5 Any provision of the Restrictions that refers to or incorporates any statute or governmental regulations will, in the event of any amendment or other change to any such statute or regulation made by the legislature or other governmental authority, automatically be deemed to have been amended to conform completely to the language of the statute or regulation such that all references and incorporation will at all times refer to and incorporate the most current language of the statute or regulation. All Unit Owners are hereby deemed to be on notice and to reasonably expect that such references to and incorporation of statutes or governmental regulations contractually bind and obligate them to comply with the most current language of such statutes and regulations as though fully set forth in these Restrictions, whether or not any Unit Owner has expressly consented to such changes. In the event the numbering of any statute or regulation changes, the reference in these Restrictions will be deemed to refer to the current numbering of the statute or regulation as context requires.

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

11.8 **Notices**. All notices, demands, statements, or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address which the Unit Owner has designated in writing and filed with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner or (ii) if to the Association, to the last known business address of such Person on file with the Arizona Corporation Commission or, in the case of the Association, its principal place of business, and if such address is no longer valid, then to the address of the statutory agent of such Person. A Unit Owner may change his or her address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association pursuant to this Section. A notice given by mail, whether regular, certified, or registered, shall be

deemed to have been received by the Person to whom the notice was addressed on the earlier of the date the notice is actually received or five days after the notice is mailed. If a Unit is owned by more than one Person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his or her correct mailing address with the Association and shall promptly notify the Association in writing of any subsequent change of address.

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

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

11.11 **Topic Headings.** The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit, or construe the contents of the sections or of this Declaration. The use of the term "Section" in this Declaration shall also mean all subsections grouped under that Section unless the context otherwise requires.

11.12 **Survival of Liability.** The termination of membership in the Association or the cessation of residency by a Resident shall not relieve or release any such former Unit Owner, Member, or Resident from any liability or obligation incurred under, or in any way

connected with, the Association or this Declaration during the period of such ownership, membership, or residency or impair any rights or remedies which the Association may have against such former Unit Owner, Member, or Resident arising out of, or in any way connected with, such ownership, membership, or residency and the covenants and obligations incident thereto.

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

11.14 **Interpretation**. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by this Declaration.

11.15 **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.

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

11.17 **Attorneys' Fees**. In the event Receiver, the Association, or any Unit Owner employs an attorney or attorneys: (i) to enforce an Assessment Lien; (ii) to collect any amounts due from a Unit Owner; (iii) to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents; or (iv) in any other manner arising out of the Condominium Documents or the operations of the Association, the Receiver, the Association, or such Unit Owner is entitled to recover from the other party all of his, her, or its attorneys' fees and costs incurred, whether or not any legal proceeding is filed; provided, nothing in this Section 11.17 shall be construed to limit the Association's right to recover attorneys' fees set forth elsewhere in this Declaration.

11.18 **Number of Days**. In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on

a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or holiday.

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

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

**IN WITNESS WHEREOF**, pursuant to the Receivership Order and Merger Order, and with the authority, direction, and approval of the Court as set forth thereunder, Case, Huff & Associates, an Arizona corporation, as Receiver, has executed this Declaration as of the day and year first above written.

[Signature Page Follows]





**Exhibit A****Legal Description**

The Monaco, Units 100-199, 200-299, 300-350, 400-402, 431-432, 435-436, 439-442, 445-446, and 449-450 and Common Elements C, K, R, and T according to the plat recorded in Book 34, at page 83 of Maps and Plats, Pima County, Arizona, which is a subdivision of a portion of Lot 6, located in Section 6, Township 14 South, Range 15 East, Gila and Salt River Baseline and Meridian, Pima County, Arizona.



**Exhibit C**

**Receivership Order**

FILED  
GARY L. HARRISON  
CLERK, SUPERIOR COURT  
1/14/2022 3:22:01 PM  
CASE C20201512

1 **SMITH & WAMSLEY, PLLC**  
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3 Tucson, Arizona 85715  
4 (520) 230-3838  
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9 *Attorneys for Plaintiff/Counter-defendant*  
10 Client ID: 00153

11 **ARIZONA SUPERIOR COURT**  
12 **IN PIMA COUNTY**

13 The Monaco Condominium Owners’  
14 Association, Inc., an Arizona nonprofit  
15 corporation;

16 Plaintiff/Counter-defendant, vs.

17 The Monaco Condominiums (Phase II)  
18 Homeowners Association, Inc., an Arizona  
19 nonprofit corporation;

20 Defendant/Counter-plaintiff.

Case No.: C20201512

**COURT ORDER APPROVED BY  
STIPULATION OF THE PARTIES  
APPOINTING JOINT RECEIVER**

*Assigned To the Honorable  
Gary J. Cohen*

21 The Court, having reviewed the parties’ Stipulated Application for Appointment  
22 of Joint Receiver, and the supporting declarations submitted therewith, good cause  
23 appearing therefor, and pursuant to this Court’s authority under A.R.S. §§ 12-1241, 33-  
24 2601 *et seq.*, and Rule 66, Ariz.R.Civ.P., **IT IS HEREBY ORDERED:**

- 25 1. The Parties’ Application is granted.
- 26 2. Case, Huff & Associates, Inc. (“Receiver”) is appointed as receiver for  
27 The Monaco Condominium Owners’ Association, Inc. (“Phase I”).

1           3. Receiver is concurrently appointed as receiver for The Monaco  
2 Condominiums (Phase II) Homeowners Association, Inc. ("Phase II").

3  
4           4. The current boards and officers of Phase I and Phase II are removed and  
5 replaced by the Receiver in accordance with the conditions set forth below.

6           5. Subject to this Court's control and supervision and this Order, and for so  
7 long as this Order remains effective, Receiver has the power and obligation to:

8  
9           a. Until such time as the merger is accomplished pursuant to this  
10 Order, operate both parties as the separate condominium associations for  
11 their respective properties pursuant to their respective governing  
12 documents by performing all rights and duties set forth in their respective  
13 governing documents, the Arizona Condominium Act, the Arizona  
14 Nonprofit Corporation Act, Arizona's Uniform Commercial Real Estate  
15 Receivership Act, and other applicable law, including, but not limited to,  
16 exercising the Parties' powers to enforce the governing documents against  
17 their members, assess their members, and foreclose any assessment liens  
18 upon units pursuant to A.R.S. § 33-1256;

19  
20  
21           b. Resolve the dispute underlying this lawsuit by conducting the  
22 necessary accounting and other efforts to determine the outstanding  
23 obligation owed from either party to the other pursuant to their Reciprocal  
24 Easement and Maintenance Agreement, which was recorded on August 7,  
25 1985, in Book 7592, page 237, in the Official Records of Pima County  
26  
27  
28

1 (“Agreement”) and directing the obligated party to pay the other that  
2 outstanding balance as soon as reasonably practicable;

3  
4 c. For the purpose of putting both Parties on substantial similar  
5 financial footing (substantial similar financial footing, means in part that  
6 any outstanding utility bills, such as the Tucson Water bill, or attorney fees  
7 are fully paid), take all necessary and reasonable actions to balance Phase  
8 I’s budget and sufficiently resolve outstanding liabilities owed by Phase I  
9 to third parties, which may include, but are not limited to, with or without  
10 the Phase I members’ approval: raising annual assessments, levying  
11 special assessments, or amending any of Phase I’s governing documents,  
12 regardless of any provisions in the governing documents or the law that  
13 would otherwise require the members’ approval; provided, Receiver will  
14 not increase or levy any assessment against Phase II unit owners or  
15 property, or otherwise utilize Phase II funds or income, to pay expenses  
16 attributable to Phase I property until such time as the condominiums merge  
17 pursuant to this Order;

18  
19  
20  
21  
22 d. For the purpose of putting both Parties on substantial similar  
23 financial footing (substantial similar financial footing, means in part that  
24 any outstanding utility bills, such as the Tucson Water bill, or attorney fees  
25 are fully paid), take all necessary and reasonable actions to ensure Phase  
26 II’s budget remains balanced and outstanding liabilities owed by Phase II  
27  
28

1 to third parties, if any, are sufficiently resolved, which may include, but  
2 are not limited to, with or without the Phase II members' approval: raising  
3 annual assessments, levying special assessments, or amending any of  
4 Phase II's governing documents, regardless of any provisions in the  
5 governing documents or the law that would otherwise require the  
6 members' approval; provided, Receiver will not increase or levy any  
7 assessment against Phase I unit owners or property, or otherwise utilize  
8 Phase I funds or income, to pay expenses attributable to Phase II property  
9 until such time as the condominiums merge pursuant to this Order;  
10  
11

12 e. Upon substantial completion of items (c) and (d) and ensuring that  
13 all outstanding utility bills and attorney fees have been paid, the Receiver  
14 shall, apply to this Court for an order merging the condominiums governed  
15 by the Parties, which order will set forth the reallocation of the allocated  
16 interests among the units in the new, combined condominium pursuant to  
17 A.R.S. § 33-1230(C) and will expressly state: (A) the order has the same  
18 effect as a merger or consolidation agreement pursuant to A.R.S. § 33-  
19 1230 without the approval of the members of the parties; (B) Receiver is  
20 authorized to record the order in lieu of any merger or consolidation  
21 agreement pursuant to A.R.S. § 33-1230(B) without the approval of the  
22 members; and (C) the merger will be effective upon the recording of the  
23 order despite the lack of any approval by the members; (D) before the  
24  
25  
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28

1 merger the Receiver will bill each Party respectively according to the  
2 Receiver's time spent working on each Parties' exclusive issues. Any work  
3 performed which directly affects both Parties, the Receiver will bill the  
4 Parties proportionately as 69% to Phase I and 31% to Phase II. After the  
5 merger the Receiver will bill the new association for its fees.  
6

7 f. Upon merger of the two condominiums, record a new set of  
8 conditions, covenants, and restrictions applicable to all property within the  
9 newly combined condominium ("CC&Rs"), which will, among all other  
10 legally necessary and appropriate terms, state the allocation of interests set  
11 forth in the order provided in (e) above, provide that all unit owners within  
12 the subject property are mandatory members of the new association.  
13 Receiver will incorporate a new association and provide that the new  
14 association is responsible for the maintenance management of all the  
15 common elements, and provide the new association the power to assess the  
16 members and their property with any owner's delinquent assessments  
17 being a lien against the delinquent owner's unit;  
18

19 g. Upon recording the new CC&Rs, terminate the existing restrictive  
20 covenants that respectively governed the formerly separate condominiums  
21 as well as the Agreement without the approval of the members of either  
22 party, regardless of whether such approval would otherwise be required in  
23 any governing documents or the law;  
24  
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1 h. Upon recording the new CC&Rs, incorporate a nonprofit  
2 corporation for the purposes of operating a condominium association  
3 governing the combined condominium pursuant to the new CC&Rs, whose  
4 members will be all unit owners within the combined condominium, and  
5 adopt bylaws for the newly formed association, which among all other all  
6 other legally necessary and appropriate terms, will require as a  
7 qualification that all directors of the new association be unit owners in the  
8 condominium (or the duly appointed representative of a unit owner that is  
9 not an individual);  
10

11  
12 i. On an interim basis, manage the newly formed condominium  
13 association pursuant to the new CC&Rs by performing all rights and duties  
14 set forth in the CC&Rs, the Arizona Condominium Act, the Arizona  
15 Nonprofit Corporation Act, and other applicable law, including, but not  
16 limited to; enforcing the CC&Rs and other newly adopted governing  
17 documents, assessing the members, and foreclosing any assessment liens  
18 upon units pursuant to A.R.S. § 33-1256, until such time as a member-  
19 controlled board of directors for the new association is elected as provided  
20 below;  
21

22 j. Upon incorporation of the new association, concurrently dissolve  
23 Phase I and Phase II, at which time the newly formed corporation will in  
24 all respects be the successor in interest to Phase I and Phase II, holding all  
25  
26  
27  
28

1 their remaining powers, rights, obligations, assets, and liabilities, if any;  
2 and

3 k. Upon the dissolution of Phase I and Phase II, schedule a meeting of  
4 the members of the newly formed association, at which the members will  
5 elect a board of directors to manage the newly formed association, which  
6 directors must be members of the newly formed association; and  
7

8  
9 6. Subject to this Court's control and supervision and the terms and  
10 conditions of this Order, and for so long as this Order remains effective, Receiver also  
11 has the following powers, pursuant to Rule 66(c), Ariz.R.Civ.P., to:  
12

13 a. Commence and defend any actions in the name of either party or  
14 both Parties, the Receiver will continue to prosecute any lien foreclosure  
15 actions that may have been commenced before the Receiver's  
16 appointment.  
17

18 b. Take and keep possession of either party's property to the extent  
19 necessary to perform Receiver's duties pursuant to this Order or applicable  
20 law;  
21

22 c. Collect any debts owed to either party, except as set forth above in  
23 6(a);  
24

25 d. Perform such other duties respecting the Parties' properties as this  
26 Court may deem necessary or just.  
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1           7.       Receiver will at all times carry out its duties with the intent to preserve the  
2 nature of the properties subject to this order as condominiums and not to convert them  
3 into multi-family rentals, commercial properties, or some other use.  
4

5           8.       As allowed by A.R.S. § 33-2614, Receiver may retain the services of  
6 outside counsel and a reputable third-party professional managing agent of its choosing  
7 to assist in the management of either party or the newly formed condominium  
8 association. Costs and fees incurred by the Receiver in this regard shall be timely paid  
9 and accounted for as set forth in Paragraph 12 below.  
10

11           9.       Upon the election of the member-controlled board of directors as set forth  
12 above, Receiver will file a notice to the Court with the election results along with  
13 Receiver's final account and report, and Receiver's power and authority pursuant this  
14 Order will terminate, unless and to the extent this Court orders otherwise for the purpose  
15 of winding up any outstanding affairs prior to dismissal as set forth below.  
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18           10.      Upon receipt of the foregoing notice and final account and report, the  
19 Court will order this case dismissed being the final appealable order, unless in its  
20 discretion this Court orders Receiver must wind up any other matters prior to such  
21 dismissal.  
22

23           11.      Receiver will make its best efforts to complete all its obligations pursuant  
24 to this Order as soon as practicably possible, but in no event later than three (3) years  
25 after the entry of this Order, unless Receiver receives a reasonable extension of time  
26 from the Court by application showing good cause exists for the extension.  
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1           12. Receiver will file with the Court, on a quarterly basis, an account and  
2 report setting forth the status of its efforts to complete the foregoing duties, its other  
3 actions with respect to the Parties and their properties, pertinent financial information  
4 about the parties, and a statement of the Receiver's fees and expenses. Receiver shall be  
5 compensated as follows: (a) at the rate of \$150.00 per hour for his time in acting as  
6 Receiver; (b) at the rate of \$50.00 per hour for services performed by paralegals working  
7 for the Receiver; (c)  
8 at the rate of \$25.00 per hour for services performed by the Receiver's general office  
9 staff; and (d) for all reasonable out-of-pocket and travel expenses incurred by the  
10 Receiver in performing all actions in accordance with the terms of this Order.  
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14           13. In accordance with A.R.S. § 33-2617, Receiver is entitled to all defenses  
15 and immunities provide by law.  
16

17           14. Nothing in this Order will be construed as limiting the Court's authority  
18 pursuant to A.R.S. § 12-1241 and Rule 66, Ariz.R.Civ.P.  
19

20           15. Based upon the parties' stipulation, the Court enters this Order without a  
21 hearing on the Application and without any requirement of bond pursuant to Rule  
22 66(a)(1).  
23

DATED: January 14, 2022

  
HON. GARY J. COHEN

(ID: a45799f7-c99d-4d3f-bf9d-e64fb2c6c858)

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27           COURT NOTICE  
28           THE ORIGINAL FILER MUST SERVE A COPY OF THIS ORDER  
              ON ALL PARTIES HAVING APPEARED IN THIS CASE

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