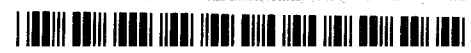


Michael Tenney / ICP 020  
6900 E Camelback Rd  
Scottsdale AZ 85251



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Document

**DECLARATION OF CONDOMINIUM  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
VERITAS AT MCCORMICK RANCH**

**DATED**  
**October 1, 2007**

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**DECLARATION OF CONDOMINIUM AND OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
VERITAS AT MCCORMICK RANCH**

THIS DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VERITAS AT MCCORMICK RANCH ("Declaration") is made as of this 1st day of October, 2007, by ICP D200, LLC, a Delaware limited liability company ("Declarant").

**RECITALS**

A. Declarant owns certain real property located in Scottsdale, Maricopa County, Arizona, described on Exhibit A attached hereto and made a part hereof, together with all improvements thereon and appurtenances thereto (the "Property").

B. Declarant desires and intends that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) are for the purpose of creating a condominium under the Condominium Act; (ii) are for the purpose of protecting the value, desirability, attractiveness and character of the Property (iii) shall run with all of the real property comprising the Property; (iv) shall be binding on all parties having any right, title, or interest in the Property, or any part thereof; and (v) shall inure to the benefit of the aforementioned parties and their successors and assigns.

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C. Declarant has formed an Arizona nonprofit corporation known as "Veritas at McCormick Ranch Condominium Association," for the purposes of, among other things, (i) the efficient preservation of the values and amenities of the Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Elements and enforcing this Declaration and Rules adopted pursuant hereto; and (ii) establishing, collecting, disbursing and enforcing the Assessments created herein.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

**ARTICLE I**

**DEFINITIONS**

Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Condominium Act. As used in this Declaration, the following terms shall have the following meanings:

1.1 "Annexation Land" means as defined in Section 15.1 of this Declaration.

1.2 "Applicable Laws" means the Condominium Act and all other laws, statutes, ordinances, rules and regulations of all federal, state, county, city and other governmental agencies having jurisdiction over the Condominium.

- 1.3 “A.R.S.” means the Arizona Revised Statutes, as now or hereafter amended.
- 1.4 “Articles” means the Articles of Incorporation of the Association, as they may be amended from time to time.
- 1.5 “Assessments” means the Common Expense Assessments, Special Assessments, Individual Assessments and Enforcement Assessments levied or assessed pursuant to ARTICLE X of this Declaration.
- 1.6 “Assessment Lien” means the charge and continuing servitude and lien against a Unit for payment of Assessments, including monetary penalties and other charges pursuant to this Declaration, as more particularly described in Section 10.1 of this Declaration.
- 1.7 “Association” means “Veritas at McCormick Ranch Condominium Association,” organized by Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.
- 1.8 “Board” or “Board of Directors” means the Board of Directors of the Association.
- 1.9 “Building” or “Buildings” means any structure or structures so designated on the Plat.
- 1.10 “Bylaws” means the Bylaws of the Association, as they may be amended from time to time.
- Unofficial Document
- 1.11 “Claim” or “Claims” means as defined in Exhibit B of this Declaration.
- 1.12 “Commercial Vehicles” means as defined in Section 7.9 of this Declaration.
- 1.13 “Common Elements” means all portions of the Condominium other than the Units, including, without limitation, Limited Common Elements and any recreational amenities, walkway areas, streets, parking areas and private drives.
- 1.14 “Common Expenses” means expenditures made by, or financial liabilities incurred or to be incurred by the Association, together with required allocations to reserves, including but not limited to expenditures incurred in the enforcement of provisions of the Condominium Documents. Common Expenses shall include all annual and special assessments and maintenance charges due the Master Association pursuant to the Master Declaration.
- 1.15 “Common Expense Assessments” means any Assessments levied or assessed pursuant to Section 10.4 of this Declaration.
- 1.16 “Common Expense Liability” means the liability for Common Expenses allocated to each Unit by this Declaration.
- 1.17 “Condominium” means the real property located in the City of Scottsdale, Arizona, submitted to the Declaration together with all Buildings and other Improvements

located thereon and all easements, rights, and appurtenances belonging thereto. The name of the Condominium created by this Declaration is "Veritas at McCormick Ranch."

1.18 "Condominium Act" means the Arizona Condominium Act, A.R.S. §§33- 1201 to 33-1270, as now or hereafter amended or supplemented from time to time.

1.19 "Condominium Documents" means this Declaration, including the Plat, and the Articles, Bylaws, and Rules of the Association.

1.20 "Declarant" means ICP D200, LLC, a Delaware limited liability company, and its successors or assigns who have in writing been designated as a successor to the rights of Declarant hereunder. As the context may require, each entity, if any, separately constituting the Declarant shall separately enjoy all special rights, privileges, exemptions, powers and immunities hereunder.

1.21 "Declaration" means this Declaration of Condominium and of Covenants, Conditions and Restrictions for Veritas at McCormick Ranch, as it may be amended from time to time, together with the exhibits, and where appropriate by context, the Plat.

1.22 "Development Rights" means as defined in the Condominium Act, including without limitation any right or combination of rights reserved by or granted to the Declarant in this Declaration as permitted by the Condominium Act.

1.23 "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of <sup>Unofficial Document</sup> matters in accordance with ARTICLE XIII of this Declaration.

1.24 "Eligible Mortgage Holder" means a First Mortgagee who has in writing requested that the Association furnish it with specific written notice of amendments or other material actions in relation to this Declaration.

1.25 "Enforcement Assessments" means the costs, charges, fees, interest and other amounts described in Section 10.10 of this Declaration.

1.26 "First Mortgage" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust.

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

1.28 "Governmental Agency" means the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Association, or other quasi-public or similar agency or regulated entity which has given approval to the legal documents for the Properties, or which contemplates such approval in connection with the insuring, guaranteeing, sale or purchase of loans for the Property.

1.29 "Hazardous Substances" means any flammables, explosives, radioactive materials, hazardous wastes, hazardous and toxic substances or related materials, asbestos or any material containing asbestos (including, without limitation, vinyl asbestos tile), or any other

substance or material, defined as a "hazardous substance" by any federal, state or local environmental law, ordinance, rule or regulation including, without limitation, the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Hazardous Materials Transportation Act, as amended, the Federal Resource Conservation and Recovery Act, as amended, and the rules and regulations adopted and promulgated pursuant to each of the foregoing.

1.30 "Improvements" means all physical structures including, but not limited to, residential Buildings, garages, parking areas, driveways, drainage systems, recreational amenities (including pool areas, ramada and clubhouse Building, if any), fences and walls, mailboxes, fountains, planters, privacy gates, if any, trash receptacles, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

1.31 "Individual Assessments" means any Assessments levied or assessed pursuant to Subsection 10.4(D) of this Declaration.

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

1.33 "Maintenance Program" means as defined in Section 8.2 of this Declaration.

1.34 "Master Association" means the McCormick Ranch Property Owners' Association, Inc. created pursuant to the <sup>Unofficial Document</sup> provisions of the "Master Declaration" which is the Declaration of Condominium and of Covenants, Conditions and Restrictions for McCormick Ranch recorded at Docket 9148, Pages 706-757.

1.35 "Member" means a Unit Owner who, by reason of ownership of a Unit, is entitled to automatic membership in the Association as set forth in the Bylaws.

1.36 "Occupant" means any Person, other than a Unit Owner, occupying a Unit, or any portion thereof, as a resident, tenant, licensee or otherwise, other than on a merely transient basis.

1.37 "Official County Records" means the Official Records of Maricopa County, Arizona.

1.38 "Period of Declarant Control" means the time period commencing on the date this Declaration is recorded in the Official County Records, and ending on the earlier of:

(A) Ninety (90) days after the conveyance of seventy-five percent (75%) of the Units which may be created in the Condominium to Unit Owners other than the Declarant; or

(B) Four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

1.39 "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.

1.40 "Plat" means the condominium plat for Veritas at McCormick Ranch, recorded in Book 948 of Maps at Page 39, Official County Records, and any amendments, supplements, or corrections thereto.

1.41 "Property" means as defined in Recital A above.

1.42 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit Owner except for: (i) a Person who purchases a Unit and then leases it to the Declarant for use as a model, sales or leasing office, fitness facility or business support center in connection with the sale of other Units, or (ii) a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.

1.43 "Reserve Fund Contribution" means as defined in Section 10.16 of this Declaration.

1.44 "Rules" means the rules and regulations adopted by the Association, as they may be amended from time to time.

1.45 "Single Family" means a group of one or more persons, whether or not related by blood, marriage or legal adoption, living together and maintaining a common single nonprofit housekeeping unit, together with their domestic Unofficial Document units, which does not exceed a maximum of two adults per bedroom in the Unit.

1.46 "Special Assessments" means any assessment levied or assessed pursuant to Section 10.5 of this Declaration.

1.47 "Special Declarant Rights" means as defined in the Condominium Act, including without limitation any right or combination of rights reserved by or granted to the Declarant in this Declaration as permitted by the Condominium Act.

1.48 "Unit" means a portion of the Condominium designated for separate ownership and occupancy, as shown on the Plat and more particularly described in Article III of this Declaration, and which has not been withdrawn from the Property.

1.49 "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. 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., §§ 33-501 et seq., the trustor shall be deemed to be the Unit Owner.

1.50 “Vehicle” or “Vehicles” means as defined in Section 7.8 of this Declaration.

## ARTICLE II

### CREATION AND DECLARATION OF CONDOMINIUM

2.1 Creation. This Condominium is created by Declarant pursuant to the Condominium Act, as the same may be amended from time to time. This Declaration is executed by the Owners of all Units.

2.2 Applicable Law. All provisions of the Condominium Act shall apply to this Condominium, its organization, rights of Declarant, management, and, unless a permitted contrary provision is expressly specified in this Declaration.

2.3 Name and Description of Condominium. The name of the Condominium is Veritas at McCormick Ranch, an Arizona condominium. The legal description of the Condominium is Units 1 to 36, Common Elements and Limited Common Elements recorded in Book \_\_\_\_\_ of Maps at Page \_\_\_\_\_, Official County Records. The Identifying Numbers of the Units submitted to the Condominium are those Units consecutively numbered 1001 through 1036 inclusive, as shown on the Plat. Unofficial Document

2.4 Name of Association. The name of the Unit Owners Association is Veritas at McCormick Ranch Condominium Association, Inc.

## ARTICLE III

### DESCRIPTION OF UNITS AND UNIT BOUNDARIES

3.1 Description of Units. The Units initially created by and subject to this Declaration are located in several residential Buildings depicted on the Plat. The Buildings have two or three floors. The Units are two-story or three-story Units and are shown by boundary and wall separations. The location and identifying numbers of Units are shown and described on the Plat.

3.2 Unit Boundaries. The Unit boundaries are as follows:

(A) The boundaries of each Unit are the interior unfinished surfaces of the exterior perimeter walls, middle of interior Unit demising walls, floor, ceilings, doors, and windows of the Unit, including the attached two-car garage and garage door, all as originally constructed. Except as provided in the foregoing sentence, all lath, furring, wallboard, drywall, plasterboard, plaster, paneling, tiles, wallpaper, interior paint, finished flooring, and any other materials constituting any part of the finished surfaces of the interior walls, floor, and ceiling are part of

the Unit, and all other portions of the walls, floor, and ceiling/attic are part of the Common Elements.

(B) 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 serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

(C) Subject to the provisions of Subsection 3.2(B) of this Declaration, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit.

(D) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways, or enclosed courtyards, 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.

(E) In the event of an inconsistency or conflict between the provisions of this Section and the Plat, this Section shall control.

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

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(G) Owners shall have the right to relocate the boundaries between adjoining Units owned by the participating Owners and to reallocate each such Unit's Common Element interest, votes in the Association and Common Expense liabilities subject to and in accordance with A.R.S. § 33-1222.

## ARTICLE IV

### ALLOCATION OF INTERESTS AND VOTING RIGHTS; ALLOCATION OF GARAGES AND PARKING SPACES

4.1 Allocation of Common Element Interest. The undivided interests in the Common Elements of the Association shall be allocated equally among the Units. The fraction of undivided interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective fractions of undivided interest. The ownership of each Unit shall not be conveyed separate from the fraction of undivided interest in the Common Elements allocated to the Unit. The undivided fraction of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even if the legal description in the instrument conveying or encumbering the Unit refers only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

4.2 Allocation of Common Expense Liabilities. The Common Expense Liability of the Association shall be allocated equally among the Units.

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

(A) Any electric meter that serves only one Unit is allocated to the Unit it serves.

(B) Each Unit is allocated those portions of the Common Elements designated as Limited Common Elements in Subsections 3.2(B) and 3(D) of this Declaration that serve the Unit.

4.4 Reallocation of Limited Common Elements.

(A) A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with A.R.S. § 33-1218(B) of the Condominium Act. During the Period of Declarant Control, all such proposed reallocations must be submitted to the Declarant, and the Declarant shall have authority to approve or reject any and all reallocations of a Limited Common Element sought to be accomplished by amendment to the Declaration.

(B) The Association shall have the right, 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 Association shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

4.5 Allocation of Parking Spaces. The Vehicle parking areas not allocated as Limited Common Elements are Common Elements and shall be maintained by the Association. The Association shall have the ability but not the obligation to assign such parking spaces to designated Units, for use by guests, invitees, and other merely transient visitors to such Unit. The Association may reallocate the use of such uncovered vehicle parking spaces and may impose and receive payments, fees or charges for the use of parking spaces. The Association may adopt regulations governing such parking spaces and, in the event of conflicts, Declarant may convert some or all of the parking spaces to Limited Common Elements. Declarant shall have the authority during the Period of Declarant Control to assign and reallocate parking spaces.

4.6 Membership and Voting Rights. Each Unit Owner within the Condominium shall automatically be a Member of the Association and shall be entitled to one (1) vote for each Unit owned in all matters concerning the administration of the Association and management of the Condominium. In the event that a Unit is owned of record by more than one person, the vote attributed to that Unit shall be cast as a single vote as the Owners of that Unit shall among themselves determine, and said vote shall not be apportioned.

4.7 Change in Number of Units. To add or withdraw Units from the Condominium, Declarant shall, if required by law, prepare, execute, and record an amendment to the Declaration which shall comply with the Condominium Act and which reallocates the Common Element Interest equally among all Units.



## ARTICLE V

### DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

5.1 Development Rights. Declarant reserves to itself, its successors and assigns, all Development Rights, including without limitation the following:

(A) To annex real estate into the Condominium, including any property previously withdrawn;

(B) To create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(C) To subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(D) To withdraw real estate, including Units and Common Elements, from the Condominium;

(E) To amend the Condominium Documents during the Period of Declarant Control to comply with applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner in any material respect. An amendment will be deemed not to affect adversely any Unit Owner who purchases with actual or constructive notice of the amendment or who fails to object to the amendment within thirty (30) days after recording thereof; and Unofficial Document

(F) To amend the Condominium Documents during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any Governmental Agency.

(G) To purchase any Unit from any Unit Owner in the event such Unit Owner has claimed that Declarant is liable for any defects of whatever nature and the parties are unable to resolve their dispute within thirty (30) days. Such right shall be exercised in the sole discretion of Declarant and if exercised, the purchase price for such transaction shall represent fair market value as determined by an MAI appraiser as selected by the agreement of Declarant and Unit Owner. Should Declarant and Unit Owner be unable to reach agreement on the identity of an appraiser, then each party shall choose and appraiser and those two appraisers shall choose the appraiser whose valuation will be used to establish the purchase price.

5.2 Special Declarant Rights. Declarant reserves to itself, its successors and assigns, all Special Declarant Rights, including without limitation the following:

(A) To construct Improvements provided for in this Declaration or shown on the Plat;

(B) To exercise any Development Right;

(C) To maintain sales offices, management offices, model Units and signs advertising the Condominium;

(D) To use easements through the Common Elements for the purpose of making Improvements within the Condominium; and

(E) To appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

If a Unit or Units subject to this Declaration are withdrawn from this Declaration in accordance with a Development Right of Declarant, then Declarant shall reallocate the Common Element interests among all Units on a ratable basis as provided in ARTICLE IV above. Declarant shall, in such event, reserve appropriate parking spaces and Common Elements necessary for the construction and use of the buildings not so withdrawn, and easements for ingress, egress and utilities and any other matter required to be done to serve the purpose of the retained building or buildings, in Declarant's sole discretion, so long as zoning and other pertinent laws are observed.

5.3 Transfer of Special Declarant Rights. A Special Declarant Right created or reserved by this Declaration may be transferred pursuant to the provisions set forth in A.R.S. § 33-1244 of the Condominium Act.

5.4 Legal Description. The legal description of the real estate subject to each of the Development Rights and other Special Declarant Rights reserved in this Declaration to Declarant is shown and depicted on the Plat and consists of all <sup>Unofficial Document</sup> Units and Common Elements subject to the Declaration.

5.5 Time Limits. Exercise of Development Rights and Special Declarant Rights by Declarant are not limited in any manner as to time and extend beyond the Period of Declarant Control unless otherwise limited by the Condominium Act. Moreover, nothing herein shall be construed to limit Declarant's right or that of Declarant's general contractor to attend and participate in any and all meetings of the Association so long as the time period has not expired within which any Unit Owner might have a viable claim against Declarant or its general contractor for latent defects, and Declarant hereby reserves such right for itself and its general contractor.

## ARTICLE VI

### EASEMENTS

6.1 Existing Easements. If any Unit or Common Elements are encumbered by access, utility or other easements as may be shown on the Plat, the Owner hereby acknowledges and consents to such easement by accepting a deed to such Unit and an undivided interest in the Common Elements.

6.2 Utility Easements. In addition to those special easements shown on the Plat, there is hereby created an easement upon, across, over and under the Common Elements, including the Limited Common Elements, for reasonable ingress, egress, installation, replacing, repairing or

maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the utility company providing such service to erect and maintain the necessary equipment on the Common Elements, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed 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. In no event shall any portion of the above mentioned easements for utilities be construed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Property.

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

6.4 Unit Owners' Easements of Enjoyment.

(A) Every Unit Owner shall have a right and easement of enjoyment in and to the Common Elements, except for the Limited <sup>Unofficial Document</sup> Common Elements, which 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 suspend a Unit Owner's voting rights and the right to use the Common Elements for any period during which any Assessment against such Owner's Unit remains unpaid more than fifteen (15) days after its due date, subject to provisions of law concerning notice and hearing. Such rights may also be suspended after notice and hearing for a period not to exceed sixty (60) days for any other infraction or violation of the Condominium Documents, unless such infraction is continuing in which case such suspension may continue until the infraction is cured;

(iii) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, subject to the vote or written assent of those Unit Owners representing at eighty percent (80%) of the votes in the Association, and with the consent of Declarant during the Period of Declarant Control; and, in all events, subject to a Unit Owner's easement for ingress and egress if access to such Owner's Unit is through the Common Elements to be conveyed or mortgaged;

(iv) The right of the Association, in the event of withdrawal of any units from the Condominium, to convey easements over the Common Elements for ingress, egress, utilities and parking reasonably necessary for use by the owners of the units withdrawn; and

(v) All rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to Declarant by Sections 6.5 and 6.6 of this Declaration.

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

(C) The guests and invitees of any Member or other person entitled to use the Common Elements pursuant to Subsection 6.4(A) above or of any lessee who is entitled to use the Common Elements pursuant to Subsection 6.4(B) 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 Subsections 6.4(A) or (B) above. The Board of Directors shall have the right to limit the number of guests and invitees who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests and invitees to specific times.

(D) A Unit Owner's right and easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment <sup>Unofficial Document</sup> 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.

(E) 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.

#### 6.5 Declarant's Use for Sales and Leasing Purposes.

(A) Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and model Units throughout the Condominium (including in any Building designated as a clubhouse or recreational amenity) and to maintain one or more advertising, model and directional signs on the Common Elements while Declarant is selling or preparing to sell Units in the Condominium. Declarant reserves the right to place models, management offices and sales and leasing offices in any Units owned by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

(B) Declarant may from time to time relocate model Units, management offices and sales and leasing offices to different locations within the Condominium. Without limiting the foregoing, during Declarant's pre-sale and sales period, Declarant may relocate any recreational and business facilities including the fitness center, sales center, business office and the like on any portion of the Condominium, including on the Common Elements or within any

Unit owned by Declarant. Upon the relocation of a model Unit, management, business, sales or leasing office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

(C) So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to reserve parking spaces in the Condominium not allocated as Limited Common Elements or otherwise assigned to particular Units for use by any prospective Unit Purchaser, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(D) Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Condominium that has not been represented as property of the Association. Declarant reserves the right to remove from the Condominium any and all goods and Improvements used in development, marketing and construction, whether or not they have become fixtures.

#### 6.6 Declarant's Easements.

(A) Declarant shall have the right, and an easement on and over the Common Elements, to alter or improve the Common Elements and the Units shown on the Plat and all other Buildings and Improvements as Declarant may deem necessary, and to use the Common Elements and any Units owned by Declarant for construction or renovation-related purposes, including for the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures and for the performance of work respecting the Condominium.

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(B) Declarant shall have the right and an easement on, over and under those portions of the Common Elements not located within the Buildings for the purpose of maintaining and collecting drainage of surface, roof or storm water. The easement created by this subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

(C) Declarant shall have an easement through the Units, including Units owned by Purchasers, at reasonable times and upon reasonable notice for any access necessary to complete any renovations, warranty work or modifications or improvements to be performed or constructed by the Declarant.

(D) Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.

6.7 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.

6.8 Common Elements Easement in Favor of the Association. The Common Elements shall be subject to an easement in favor of the Association, its Board and officers and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements.

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

(A) For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements;

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

(C) 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 <sup>Unofficial Document</sup> 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;

(D) 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; and

(E) 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 8.2 of this Declaration.

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

(A) 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;

(B) 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;

(C) 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;

(D) 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; and

(E) 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, their guests, tenants, invitees and the other occupants of the Unit.

6.11 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 intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

## ARTICLE VII

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### USE AND OCCUPANCY RESTRICTIONS

In addition to the restrictions set forth in the Master Declaration, the following use restrictions shall apply to the Property:

7.1 Approval Required. All Improvements, or other alteration of the Property shall require prior approval of the Master Association pursuant to the Master Declaration, and prior written approval of the Board, which approval by the Board shall be evidenced in writing and submitted to the Master Association with any request for approval. All action or activity requiring approval by the Master Association shall, in addition, require the prior approval of the Board, which approval by the Board shall be evidenced in writing and submitted to the Master Association with any request for approval.

7.2 Plat Notes. In addition to the use restrictions contained herein, the Property is subject to any restrictions and limitations set forth on the Plat.

7.3 Single Family Residential Use.

(A) All Units and Limited Common Elements shall be used, improved and devoted exclusively to residential use by a Single Family. In cases of joint ownership, resulting in the ownership and use of a Unit by more than one Single Family, only one Single Family shall reside in the Unit at a time.

(B) No gainful occupation, profession, trade or other nonresidential use shall be conducted on or in any Unit or Limited Common Element, but a Unit Owner or other 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 detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (iii) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Unit Owners or other residents in the Condominium; (iv) the trade or business conducted by the Unit Owner or resident shall not require more than one (1) employee working in or from such Unit who is not 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 Unit Owners or other residents in the Condominium, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section 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 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.

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(C) Notwithstanding the foregoing provisions of this Section, Declarant may maintain sales offices, management offices and models in Units or on Common Elements for the purpose of promotion and sales of Units in the Condominium.

7.4 Improvements and Alterations. Any Unit Owner may make nonstructural additions, alterations and improvements within such Owner's Unit 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 alterations, additions or improvements. No Person shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Unit Owner receives the prior written approval of the Board and the Owner retains an architect or engineer licensed in Arizona and approved by the Board who certifies that such addition, alteration or improvement will not impair the structural integrity of the Building within which such addition, alteration or improvement is to be made. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of the Building in which the Unit is located, shall be made without the prior written approval of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements.

Any structural addition, alteration or improvement, and any addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior



of the Building in which the Unit is located, shall also require the prior written approval of the Master Association, as provided in Section 7.1.

7.5 No Partition and Subdivision. No Unit shall be partitioned or subdivided.

7.6 Machinery and Equipment. No Unit Owner 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 Owner's permitted uses of such Owner's Unit and Limited Common Elements. This Section shall not apply to any such machinery or equipment which Declarant or the Association may require for the construction, improvement, operation and maintenance of the Common Elements.

7.7 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 or other resident may dispose of, transport, or store Hazardous Substances in his Unit or elsewhere in the Condominium other than small amounts of ordinary household non-combustible cleaning agents maintained in the Unit or Limited Common Element storage areas, and in no event may any Unit Owner or resident dispose of any Hazardous Substances, including without limitation, motor oil, hydrocarbons, or other petroleum products, in or down a dry well on or adjacent to the Condominium, or in trash receptacles located within the Condominium.

7.8 General Restrictions Regarding Parking of Vehicles. Other than is allowed pursuant to A.R.S. Section 33-1809, no Unit Owner or other Occupant may park any vehicle, including any domestic or foreign car, station wagon, sport wagon, pick-up truck of less than one ton capacity with camper shells not exceeding eight (8) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle and similar non-commercial and non-recreational vehicles (each a "Vehicle" or collectively the "Vehicles"), anywhere within the Condominium other than in the enclosed garage(s) allocated to such Unit Owner's Unit. Any extra or excess Vehicles must be kept and maintained away from the Condominium. Vehicles of guests, invitees, and other merely transient visitors of a Unit Owner, if not parked within an enclosed garage, may be parked only in designated parking spaces or on those portions of the streets within the Condominium that are expressly signed and labeled to permit parking.

7.9 Commercial Vehicles. No mobile home, mini or standard size motor home, travel trailer, tent trailer, trailer, all-terrain vehicle, bus, camper shell, detached camper, recreational vehicle, boat, boat trailer, pick-up truck of more than one-ton capacity, business vehicle with signs or logos of any kind, or other similar equipment or vehicle ("Commercial Vehicles") may be parked, kept, or maintained at any time on any part of the Condominium other than in an enclosed garage.

Notwithstanding the above, the foregoing restriction shall not apply to Commercial Vehicles of contractors and others working on the Condominium, nor to Vehicles of vendors, business invitees and others in the process of temporarily serving the Condominium.

7.10 Parking Spaces. No parking space in the Condominium may be used for storage or for any purpose other than the parking of Vehicles.

7.11 Motor Vehicle Repair and Towing of Vehicles. Other than temporary emergency repairs, no Vehicle shall be constructed, reconstructed, serviced or repaired, and no inoperable Vehicle may be stored 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. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessments.

7.12 Signs. Other than an approved Unit Owner name and address identification sign on the door of a Unit, no emblem, logo, sign or billboard of any kind, including, but not limited to, "For Sale" or "For Rent" signs, shall be displayed so that it is visible from the exterior of any Unit or Building or any other portion of the Condominium without the prior written approval of the Board, except (i) signs used by Declarant to advertise the Units for sale or lease; (ii) signs on the Common Elements as may be placed or approved by Declarant during the Period of Declarant Control, or by the Board thereafter; (iii) any signs as may be required by legal proceedings; and (iv) such signs as may be approved by the Board.

The foregoing sign restrictions shall be subject to Applicable Laws, including those pertaining to the placement of flags, political signs and signs of candidates for political office.

7.13 Lawful Use. No offensive or unlawful use shall be made of any part of the Condominium. All Applicable Laws shall be observed. Any violation of Applicable Laws shall be a violation of this Declaration.

7.14 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium. Each Unit Owner understands and acknowledges that in any multi-family dwelling, sound may be audible between Units. Each Unit Owner hereby agrees to accept sounds from adjacent Units and to accept responsibility for minimizing noise transmission from the Unit. The Association in its discretion may adopt rules and regulations that are designed to minimize noise transmission between Units.

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

7.16 Limitation on Leasing of Units. No Unit Owner may lease less than such Owner's entire Unit. All leases shall be in writing, shall have a minimum term of three (3) months, and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents and that any failure by the lessee to comply with the terms of the Condominium Documents shall be a default under the lease. Upon leasing its Unit, a Unit Owner shall promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will be occupying the Unit during the term of the lease. Declarant shall have the right to limit or prohibit leasing activities for the initial one (1) year period after an Owner other than Declarant first purchases a Unit. Nothing contained in this Section 7.16 shall be construed as limiting or in any way affecting any leasing program operated by Declarant in the Condominium with regard to its Units.

7.17 Community Privacy Measures. Each Unit Owner understands and agrees that neither the Association (nor its officers, directors, employees, and agents) nor the Declarant (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. Any entry/privacy gate features or common privacy measures that may be used in the Condominium (as installed by Declarant, at its option, or by the Board on behalf of the Association) will be maintained by the Association, and each Unit Owner understands that any entry/privacy gate features that are in effect at the time he becomes a Unit Owner may be abandoned, terminated and/or modified by a majority vote of the Board. The commencement of any such devices or controls shall not be deemed to be an assumption of any duty on the part of the Association or the Declarant with respect to the Condominium and neither Declarant or the Board (nor any committee thereof) makes any representation or warranty concerning the efficacy of such devices relating to security or the ease of entry of fire, police or other emergency personnel.

7.18 Savings Clause. The provisions of this Declaration shall be construed to be consistent with Applicable Laws, and should any provision violate Applicable Laws and be unenforceable as a result thereof, then Applicable Laws shall govern. Without limitation, no provision hereof shall prohibit the placement of the American Flag or the parking of public service Vehicles as permitted by Applicable Laws, subject to rules and regulations of the Association not in conflict with such Applicable Laws.

7.19 Variances. The Board may, at its sole discretion, grant variances from the restrictions set forth in this ARTICLE VII if the Board determines:

(A) Either that (i) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; (ii) a change of circumstances has rendered the particular restriction obsolete; or (iii) other circumstances warrant a variance in the Board's sole and absolute discretion; and

(B) The activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants.

7.20 Pets. No animals of any kind shall be raised, bred or kept in any Unit, Common Elements or Limited Common Elements, except that dogs, cats, gerbils, guinea pigs, rabbits,

ferrets and/or fish may be kept in the Units, in any reasonable number subject to the rules and regulations as adopted by the Association, and provided that they are not kept, bred or maintained for any commercial purpose. Any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon five (5) days written notice from the Association of its decision to require such removal. Notwithstanding anything herein to the contrary, no such removal shall be required until such time as the owner of the Unit in which the animal is housed is afforded the opportunity to be heard consistent with all other hearing provisions herein.

## ARTICLE VIII

### MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

8.1 Duties of the Association. The Association shall maintain, repair and make necessary improvements to all Common Elements (including without limitation all structural elements of Limited Common Elements) whether located inside or outside the Buildings, except for the specific portions of the Limited Common Elements which the Unit Owners are obligated to maintain pursuant to Section 8.2 of this Declaration. Without limitation, the Association shall be responsible for maintaining residential Building exteriors, all portions of the parking areas, mailboxes, fountains, planters, the private streets and drives, sidewalks, landscaping, irrigation systems, lighting and light fixtures in the Common Elements, and recreational areas. The Board shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements and the Condominium.

8.2 Duties of Unit Owners.

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(A) Each Unit Owner shall maintain, repair, replace and restore, at such Owner's own expense, all portions of such Owner's Unit, subject to the Condominium Documents and any and all rules of the Master Association.

(B) Except for the structural elements, which shall be maintained by the Association pursuant to Section 8.1, each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to such Owner's Unit pursuant to this Declaration as Limited Common Elements, including, without limitation: maintenance, repair and replacement of all doors and windows of the Unit, the air conditioning unit (including compressors and condensers), and heater and hot water heater servicing the Unit; and maintenance and repair of the garage allocated to the Unit (except for repair to the structural portions thereof). No Unit Owner may alter any landscaping, paint or change the exterior color scheme or surfacing materials of such Owner's garage, courtyard walls or any portion of the Limited Common Elements allocated to such Owner's Unit visible from the Common Elements or any other Unit without the prior written consent of the Board of Directors. Likewise, no Unit Owner may take action that will serve to in any manner modify the drainage of water within, into or away from the Property.

(C) Any Owner or Occupant who leaves his or her Unit unoccupied for more than seven (7) consecutive days shall turn off the water to all toilets and the clothes washer in the Unit. If Declarant provides a maintenance program for the Units ("Maintenance Program"), each

Unit Owner shall obtain from the Board of Directors (and provide to any other Occupants) the Maintenance Program applicable to the Unit and utilize the Maintenance Program for the maintenance, upkeep, repair, inspection, and replacement of the Unit and all Limited Common Elements that the Owner is obligated to maintain, repair and replace pursuant to this Section. Each Unit Owner (other than Declarant) shall maintain detailed and complete records of all maintenance, repairs and replacements to the Owner's Unit or the Limited Common Elements made by the Unit Owner. The failure to maintain, repair and replace the Unit and the Limited Common Elements in accordance with the Maintenance Program shall void all express and implied warranties by Declarant or by any contractor, subcontractor, supplier or manufacturer, and the maintenance obligation of each Owner under this Section shall be a condition precedent to the assertion of any claim of an alleged defect or any other Claim against Declarant by an Owner under ARTICLE XIV hereof. No Person other than a licensed contractor performing repairs, maintenance or replacement of an HVAC system, or the Association's or Declarant's employees, agents or contractors shall be permitted on the roof of any Building without the prior written approval of the Board of Directors. Each Owner shall be strictly liable to the Association and the other Owners, lessees and Occupants for any damage to the Common Elements or other Units caused by water intrusion into the Common Elements or other Units from the Owner's Unit.

(D) Each Unit Owner shall take all necessary action to keep the Limited Common Elements such Owner is obligated to maintain under this Section 8.2 clean and free from unsightly accumulations of trash, furniture in weathered or poor condition, and litter. No Unit Owner shall allow a parking space (whether garage or surface parking) to be used for storage or for the accumulation of trash or junk.

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8.3 Repair or Restoration Necessitated by Unit Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Applicable Laws, for any damage to the Common Elements or the Improvements, or equipment thereon, which results from the negligence or willful misconduct, by act or omission, of the Unit Owner or that Owner's family members, tenants, guests, invitees and pets. The cost to the Association of any such repair, maintenance or replacement required by such act or omission of a Unit Owner shall be assessed against the Unit Owner pursuant to Subsection 10.4(D) of this Declaration. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

8.4 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair such Owner's Unit or any Limited Common Element which the Owner is obligated to maintain under this Declaration and the Maintenance Manual, 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 Association's cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 10.4(D) of this Declaration. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

8.5 Right to Reasonable Access. On reasonable notice, each Unit Owner shall afford the Association and other Unit Owners, and to their agents or employees, access through such Owner's Unit reasonably necessary for purposes required under this Article.

## ARTICLE IX

### THE ASSOCIATION; RIGHTS AND DUTIES; MEMBERSHIP

9.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by Applicable Laws 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. The Association shall have the right to finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Association has the specific duty to make available to the Declarant, 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, <sup>Unofficial Document</sup> and the Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of the information requested.

#### 9.2 Directors and Officers.

(A) During the Period of Declarant Control, the Declarant shall have the right to appoint and remove members of the Board of Directors and officers of the Association, whom need not be Unit Owners.

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

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

9.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner, or by any Occupant, of any area within the Condominium subject to the Association's jurisdiction and control; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, the applicable federal and state Fair Housing Acts, 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 to each Unit Owner and may be recorded.

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

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### 9.5 Non-Liability of Officials and Indemnification.

(A) To the fullest extent permitted by Applicable Laws, neither Declarant, the Board, nor any committees of the Association nor any member thereof, nor any officers, directors, employees or direct agents of Declarant or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board or such committees, officers, employees or direct agents reasonably believed to be within the scope of their respective duties or rights.

(B) To the fullest extent permitted by Applicable Laws, Declarant and every director, officer or committee member of the Association and or Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal or control over members of the Board or its control over the Association or any committee thereof) shall be indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, and at the request of, the Association, may, in the discretion of the Board, be indemnified by the Association. Any such indemnification shall be limited to all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of Declarant by reason of having appointed, removed, controlled or failed to control members of the Board, or controlled or failed to control the Association), or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity <sup>Unofficial Document</sup> at the time such expenses are incurred.

9.6 Master Association. The Condominium is in the vicinity of and has been annexed into the master planned community known as McCormick Ranch. The terms and provisions of this Declaration and the Condominium shall be subordinate and subject to the terms and conditions of the Master Declaration and the Articles of Incorporation, Bylaws and Rules of the Master Association (collectively, the "Master Association Documents"), as such documents may from time to time be amended. Each Unit Owner shall be obligated to pay its share of assessments and other charges to the Master Association in accordance with the Master Association Documents. All assessments and other charges due to the Association under the Condominium Documents shall be in addition to the assessments and other charges payable to the Master Association. All consents required by this Declaration of the Board shall be in addition to any consents required under the terms of the Master Declaration or the Master Association Documents for architectural approval or any other approvals.

## ARTICLE X

### ASSESSMENTS

10.1 Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any Unit, whether or not it shall be so expressed in such deed, agrees



and is deemed to covenant and agree to pay to the Association as Assessments: (i) Common Expense Assessments, (ii) Special Assessments, (iii) Individual Assessments, and (iv) Enforcement Assessments. Such Assessments, together with interest and costs, including without limitation any demand fees or lien fees, and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each of such Assessments is made pursuant to A.R.S. § 33-1256. Delinquent Assessments, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessments were levied. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by them. The sale or transfer of a Unit shall not relieve the prior Owner thereof from personal liability to pay delinquent Assessments, plus interest, costs and attorney's fees. Such obligation shall remain the personal obligation of the defaulting Owner. The new Owner, except a First Mortgagee as set forth herein, shall take title to such Unit subject to the lien of the full amount of the delinquent Assessments.

10.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Common Elements and for all purposes set forth in the Articles, Bylaws and this Declaration. The Board of the Association may provide that Assessments include a reserve fund for maintenance, repairs and replacement of those elements of the Common Elements and of property and equipment owned by the Association for the common use and enjoyment of the Members.

10.3 Preparation of Budget.

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(A) 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 first Unit is conveyed to a Purchaser 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 Subsections 10.4(D) and (E) of this Declaration and shall include an adequate allocation to reserves as part of the Common Expense Assessment.

(B) 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 10.4 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 10.4 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.

(C) 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.

#### 10.4 Common Expense Assessments.

(A) For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections (D) and (E) of this Section) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability, except that (i) any Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element shall be equally assessed against the Unit(s) to which the Limited Common Element is assigned; and (ii) at the discretion of the Board of Directors from time to time, any Common Expenses or portions of Common Expenses benefiting fewer than all of the Units may be assessed exclusively against the Units benefited. 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 Unofficial Document by Members, the Board of Directors may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessments shall commence on the date designated by the Board of Directors.

(B) The Common Expense Assessments shall commence as to all Units sold to Purchasers 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.

(C) 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 Limited Common Elements, and reserves for Common Expenses shall be assessed against all of the Units in accordance with Subsection 10.4(A) of this Declaration.

(D) Any Common Expenses (including without limitation, any Benefited Assessments or other charges assessed by the Master Association) caused by the negligence or willful conduct, whether by act or omission, of any Unit Owner, and any costs to the Association pursuant to Sections 8.3 or 8.4 of this Declaration, shall be levied or assessed by the Association exclusively against that Owner's Unit as an Individual Assessment.

(E) Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liability.

10.5 Special Assessments. In addition to Common Expense Assessments, the Association may levy or assess, in any fiscal year of the Association, Special Assessments applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been (i) approved by Unit Owners representing two-thirds (2/3) of the votes in the Association and who are voting in person or by absentee ballot at a meeting duly called for such purpose, and (ii) approved by Declarant during the Period of Declarant Control. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied or assessed by the Association and notice of the Special Assessment is given to the Unit Owners.

10.6 Notice and Quorum for Any Action Authorized Under Section 10.5. 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 Section 10.5 of this Declaration shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) 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 one-half (1/2) of the required quorum at the preceding meeting. Unofficial Document No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

10.7 Assessments for Incomplete Units. The Common Expense Assessments for any Unit on which construction has not been substantially completed shall be twenty-five percent (25%) of the Common Expense Assessments for Units which have been substantially completed. Declarant shall be responsible to pay to the Association any deficiency in monies due to Declarant having paid reduced Common Expense Assessments and necessary for the Association to be able to timely pay all Common Expenses.

#### 10.8 Fines and Penalties.

(A) If any Unit Owner, his or her family, or any Occupant, licensee, invitee, tenant or lessee violates the provisions hereof or other rules of the Association, the Board, after providing the Unit Owner with notice of the violation and an opportunity for a hearing as required by Applicable Laws, may levy a fine upon the Unit Owner, may suspend the violator's right to use the Common Elements and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including reasonable attorneys' fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Owner and its family members, guests and invitees.

(B) The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Unit Owner which are not paid within fifteen (15) days of notice of the due date, may be charged to the Unit Owner of the Unit in question, and may be collected as permitted by Applicable Laws.

(C) In no event shall any fine be imposed for a default or violation, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for hearing.

10.9 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments. The failure of the Association to send a bill or invoice to a Unit Owner shall not relieve such Unit Owner of the Unit Owner's liability for any Assessments. It shall be the responsibility of the Unit Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Unit changes during an Assessment period. Any successor Unit Owner shall be given credit for any non-refunded prepayments made by a prior Unit Owner.

10.10 Enforcement Assessments. Any delinquent Assessment amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the delinquent Assessment amount if such delinquent Assessment amount is not paid within fifteen (15) days after the due date. Any delinquent Assessment amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, the then prevailing interest rate on loans insured by FHA or VA, or such rate as is determined from time to time by the Board. The Unit Owner obligated for any delinquent Assessments shall be liable and assessed by the Association for all costs, including but not limited to demand fees, lien fees, attorneys' fees and collection agency fees, which may be incurred by the Association in collecting any delinquent Assessments, and such amounts, to the extent permitted by Applicable Laws, shall be deemed a part of the Assessment Lien.

10.11 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other charges and fees against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this Section may be reallocated and assessed to all Units as a Common Expense. Any Assessments, monetary penalties and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the personal obligation of the defaulting Unit Owner.

10.12 Exemption of Unit Owner. No Unit Owner shall be exempt from liability for payment of Assessments, including without limitation monetary penalties and other fees and charges levied pursuant to the Condominium Documents, by waiver and/or nonuse of any of the Common Elements or by the vacating or abandonment of such Owner's Unit.

10.13 Certificate of Payment. The Association, or its designated agent, on written request, shall furnish to a lienholder, Unit Owner or Person designated by a Unit Owner, a recordable statement setting forth the amount of unpaid Assessments against such Owner's Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement. In addition, the Association shall furnish such statements as may be required under A.R.S. §33-1260 within the time frames set forth therein for compliance.

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

10.15 Surplus Funds. The Association shall not be obligated to spend in any year all monies received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of Assessments in the succeeding year if a surplus exists from a prior year. The Association shall be under no obligation to refund any surplus balance, and may transfer surpluses to the reserve account or other account at the Board's discretion, subject to Applicable Laws.

10.16 Reserve Fund. Upon the closing of the sale of each Unit, each Purchaser shall pay to the Association an amount equal to one-sixth (1/6) of the Common Expense Assessments then in effect for the Unit, which shall be based upon the <sup>Unofficial Document</sup> Unit being owned by the Purchaser and not by Declarant (the "Reserve Fund Contribution") to establish a reserve fund to meet unforeseen expenditures, to purchase any additional equipment or services by or for the Association, or, on a temporary basis, to pay Association expenses such as insurance as they come due in the ordinary course in the event there are not sufficient funds in the Association's general accounts at the time of the due date to pay such expenses; provided, that the Board in its discretion may reimburse the reserve fund for such expenses incurred from Common Expense Assessments as they are paid by Members. A Reserves Fund Contribution shall continue to be payable upon each subsequent sale of a Unit. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Condominium Documents. The amounts paid to the Association pursuant to this Section shall be nonrefundable and shall not be considered an advance payment of any Assessments levied or assessed by the Association pursuant to this Declaration.

10.17 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Unit from Declarant shall pay to the Association, immediately upon becoming the Unit Owner of the Unit, a sum equal to one-sixth (1/6th) of the Common Expense Assessments for the Unit then in effect, which shall be based upon the Unit being owned by the Purchaser and not by Declarant. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted hereunder or pursuant to the Articles or Bylaws. Payments made pursuant to this Section shall be non-refundable and shall

not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

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

## ARTICLE XI

### INSURANCE

#### 11.1 Scope of Coverage.

(A) 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 coverages:

(i) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against, in an amount determined by the Board of Directors; provided, however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a master or blanket hazard and multi-peril property insurance policy;

(ii) Property insurance Unofficial Document Units or portions thereof, as determined by the Board to be included in the insurance maintained under Subsection 11(A)(i), which may exclude improvements installed by Unit Owners or the personal property of Unit Owners;

(iii) Comprehensive general liability insurance in amounts to be determined by the Board, but not less than One Million Dollars (\$1,000,000.00) for any single occurrence and Two Million Dollars (\$2,000,000.00) general aggregate. Such insurance shall cover all occurrences commonly insured against for personal injury, death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements;

(iv) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(v) Directors' and officers' liability insurance covering all the directors and officers of the Association in such amounts as the Board of Directors may determine from time to time;

(vi) Blanket fidelity bonds for all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association; and

(vii) 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, and/or the Unit Owners.

(B) 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 such Owner's undivided interest in the Common Elements or 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/or employees against Unit Owners and members of their household.

(iii) No act or omission by any Unit Owner, unless acting within the scope of such Owner's 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 Unofficial Document use 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 hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least 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 insurer's board of directors, policyholders or members or permit claims for contribution or assessments to be made against Unit Owners or their mortgagees or beneficiaries of deeds of trust, 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 "Building Ordinance or Law" endorsements, except where expressly not applicable or not available.

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

11.3 Insurance Obtained by Unit Owners/Non-Liability of Association. The issuance of insurance policies to the Association pursuant to this Article shall not prevent a Unit Owner from obtaining insurance for such Owner's own benefit and at such Owner's own expense covering his or her Unit, such Owner's personal property and providing personal liability coverage. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant nor 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.

11.4 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article 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.

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11.5 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this ARTICLE XI shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel nor 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 XII

### EMINENT DOMAIN

12.1 Taking. If a Unit, Units, the Common Elements, or any portion thereof is taken or acquired by eminent domain, the provisions of the Condominium Act shall govern and control. To the extent not inconsistent therewith, if proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Elements, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Elements and improvements thereof), as reasonably determined by the Association in excess of Ten Thousand Dollars (\$10,000), the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Elements or improvement thereon sought to be so condemned, to all First Mortgagees of Units, all Members, and to Declarant. The Association shall have full power and authority to defend in



such proceedings, and to represent the Owners in any negotiations, settlements, and agreements with a condemning authority for acquisition of the Common Elements or part thereof, but the Association shall not enter into any such proceedings, settlement, or agreements, pursuant to which the Common Elements or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein is relinquished, without giving all First Mortgagees of Units, all Members, and Declarant at least fifteen (15) days' prior written notice thereof.

12.2 Award. If, following such condemnation or eminent domain proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Elements, the award made for such taking shall be applied by the Association to repair and restoration of the remaining Common Elements. If the full amount of such award is not expended to repair and restore the Common Elements, the Association shall disburse the net proceeds of such award to the Owners, the Owner of each Unit to receive one (1) equal share, except that any portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Owners to which the Limited Common Element was allocated at the time of the acquisition, and provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on such Owner's Unit in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Condominium shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an owner of insurance proceeds or condemnation award for losses to or taking of Units or Common Elements or any combination thereof.

### ARTICLE XIII

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#### RIGHTS OF FIRST MORTGAGEES

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

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

(B) Any delinquent Assessments which remain uncured for the period of sixty (60) days 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;

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

(D) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in this Declaration.

13.2 Approval Required for Amendment to Condominium Documents.

(A) The approval of Eligible Mortgage Holders holding First Mortgages on Units the Unit Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Condominium Documents which establish, provide for, govern or regulate any of the following, but only if the Federal National Mortgage Association has in writing approved the provisions hereof in connection with an application by Declarant for project approval:

- (i) Voting rights;
- (ii) Assessments, Assessment Liens, or subordination of Assessment Liens;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Condominium, or the addition of property to the Condominium;
- (vii) Boundaries of any Unit;
- (viii) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (ix) Convertibility of Units into Common Elements or of Common Elements into Units;
- (x) Leasing of Units;
- (xi) Imposition of any restriction on a Unit Owner's right to sell or transfer his Unit;
- (xii) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (xiii) Restoration or repair of the Condominium (after hazard damage or partial condemnation) in a manner other than specified in the Condominium Documents;
- (xiv) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- (xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

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

(C) Any First Mortgagee who receives a written request to approve immaterial additions or amendments to any of the Condominium Documents, and who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request. Any addition or amendment to the Condominium Documents shall be deemed immaterial if it is only for the purpose of correcting technical errors or for clarification.

(D) The approvals required by this Section shall not apply to amendments that may be executed by Declarant in the exercise of its Development Rights, nor to minor or technical amendments, nor to amendments to correct ambiguities or to conform to the regulations of a Governmental Agency.

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

13.4 Right of Inspection of Records. <sup>Unofficial Document</sup> Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor shall, upon written request, be entitled to (i) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (ii) receive, within one hundred eighty (180) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Notwithstanding the foregoing, 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 of the Condominium Act.

13.5 Liens Prior to First Mortgagee. 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.

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

13.7 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the

provisions of this Article shall prevail; provided, that in the event of any conflict or inconsistency between the different sections of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment to any of the Condominium Documents; (ii) a termination of the Condominium; or (iii) other actions of the Association specified in 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; and, provided further, that Declarant, without the consent of any Unit Owner or First Mortgagee being required, shall have the right to amend the Condominium Documents to comply with (i) the Condominium Act; (ii) the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or (iii) the rules or requirements of any federal, state or local governmental agency whose approval of the Condominium or the Condominium Documents is required by Applicable Laws or requested by the Declarant.

## ARTICLE XIV

### DISPUTE RESOLUTION

14.1 Agreement to Resolve Certain Claims Without Litigation. Exhibit B hereto and incorporated herein by this reference provides alternative dispute resolution procedures for certain "Claims" as defined therein. The Declarant, the Association, all Unit Owners, and any person or entity who agrees to submit to the <sup>Unofficial Document</sup> procedures (collectively, the "Bound Parties") agree that the procedures set forth therein are commercially reasonable and shall apply to all Claims as defined therein.

14.2 Amendment of Article. Any amendment to this Article XIV and Exhibit B shall require the approval of 100% of the Unit Owners.

## ARTICLE XV

### ANNEXATION AND WITHDRAWAL OF PROPERTY

15.1 Annexation. Declarant may, at its sole discretion and without the approval, assent or vote of the Association or other Owners, from time to time, annex to the Condominium additional property ("Annexation Land") during the Period of Declarant Control unless and until Declarant earlier relinquishes in writing its power to annex additional property. To effect such annexation, a plat reflecting the Annexation Land shall be recorded in accordance with A.R.S. § 33-1219, unless such Annexation Land is already platted, and a Declaration of Annexation shall be executed by Declarant and the owner of the Annexation Land, if other than Declarant. The recordation of such Declaration of Annexation and Plat shall constitute and effectuate the annexation of the Annexation Land described therein, making such Annexation Land and the Owners thereof subject to this Declaration and the jurisdiction of the Association.

15.2 Withdrawal. Declarant may, at its sole discretion and without the approval, assent or vote of the Association or other Owners, from time to time, withdraw property from the Condominium during the Period of Declarant Control, unless Declarant earlier relinquishes in writing its power to withdraw property from the Condominium. To affect such withdrawal, Declarant shall execute and record a Notice of Withdrawal, making reference to this Declaration and specifically describing the withdrawn property. The property so described shall be deemed completely excluded from this Declaration and shall no longer be a part of the Condominium nor subject to any of the provisions herein, including provisions regarding Assessments. It is specifically understood that this right of withdrawal may be exercised in Declarant's sole and absolute discretion, and that once withdrawn, none of the provisions hereof shall apply to or encumber the withdrawn property. Further, Declarant may cause the Association to grant and convey such easements as may be necessary to benefit such withdrawn property, including easements for ingress, egress and utilities, all on terms deemed by Declarant in its sole and absolute discretion to be proper.

Any property withdrawn pursuant to this Section 15.2 may be later annexed with the consent of the owner thereof and Declarant, in accordance with the provisions of Section 15.1.

## ARTICLE XVI

### MASTER ASSOCIATION

The Condominium has been annexed into the master planned community known as McCormick Ranch, pursuant to the Master Declaration, the Master Association shall have the right of initial approval of the Condominium <sup>Unofficial Document</sup> Documents. The approval, in writing, of the Master Association shall be required to add, amend, delete or terminate any material provisions of the Condominium Documents that establish, provide for, govern or regulate payment of assessments to the Master Association, voting rights in the Master Association or any other matter materially involving the Master Association or the Master Declaration.

## ARTICLE XVII

### GENERAL PROVISIONS

17.1 Enforcement. Subject to the dispute resolution provisions of ARTICLE XIV above, Declarant, 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 Declarant, 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. To the extent this Declaration grants Declarant, the Association or any Unit Owner the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, judicial proceedings must be instituted before any items of construction can be altered or demolished. Each Unit Owner shall be subject to all rights and duties assigned to Unit Owners under this Declaration.

17.2 Severability. Invalidation of any provision in this Declaration by judgment or court order shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.

17.3 Termination of Condominium. Subject to Subsection 13.2(B) and the provisions of this Declaration regarding First Mortgagee notice and consent requirements, the Condominium may be terminated only in the manner provided for in the Condominium Act.

17.4 Amendment.

(A) This Declaration may, at any time, be amended by the Association; provided, however, that except as provided elsewhere in this Declaration or in the Condominium Act, any such amendments made by the Association shall be approved by at least sixty-seven percent (67%) of the total votes held by Owners and shall be made only by an instrument in writing signed by the President and Secretary of the Association and recorded in the Official Records within thirty (30) days after adoption of the amendment. During the Period of Declarant Control, any amendment or attempted revocation hereof shall be first approved in writing by the Declarant.

(B) Any amendment to this Declaration shall not terminate or decrease any unexpired Development Rights, Special Declarant Rights or Period of Declarant Control without Declarant's prior written approval.

(C) Notwithstanding the above, during the Period of Declarant Control, Declarant shall have the right, without any vote or consent whatsoever, to amend this Declaration of its own volition and to make such changes as Declarant shall in its sole and absolute discretion deem proper, including changes to Common Elements.

(D) Declarant also reserves the absolute right to amend this Declaration of its own volition, and without the necessity of any vote or consent whatsoever, if such amendment shall, in Declarant's sole and absolute discretion, be deemed necessary to achieve compliance with the regulations of a Governmental Agency.

(E) Unless otherwise provided in the Condominium Act, an amendment of this Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

(F) If required by Subsection 13.2(A), an amendment of this Declaration shall also have the approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders.

(G) An amendment of the Declaration shall have the approval of the Master Association if required by Article XVI.

17.5 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

17.6 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 at which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner; or (ii) if to the Association or Declarant, to 6900 East Camelback Road, Suite 300, Scottsdale, Arizona 85251, or such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association 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 three (3) days after the notice is deposited in the United States mail as aforesaid. 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 correct mailing address with the Association and shall promptly notify the Association in writing of any subsequent change of address.

17.7 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself and his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, easements, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments Unofficial Document 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 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. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Unit Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Units, the membership in the Association, the Common Elements, any Limited Common Elements, 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.

17.8 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 either entities or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

17.9 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.

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

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

17.12 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.

17.13 Guests and Tenants. Each Unit Owner shall, to the extent permitted by Applicable Laws, be responsible for compliance by his agents, tenants, guests, invitees, licensees and their respective servants, agents, and employees with the provisions of the Condominium Documents. A Unit Owner's failure to ensure compliance by such persons shall be grounds for the same action available to the Association or any other Unit Owner by reason of such Unit Owner's own noncompliance.

17.14 Attorneys' Fees. Except as provided in Exhibit B, if Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce an Assessment Lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents, the prevailing party in any such action shall be entitled to recover his reasonable attorneys' fees incurred in the action from the other party.

17.15 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.

17.16 Declarant's Disclaimer of Representations. While Declarant has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any provisions of this Declaration. Any Unit Owner acquiring a Unit in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Unit agrees to release and hold Declarant harmless therefrom.

17.17 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 Unit Owners' negligence or intentional acts or omissions.

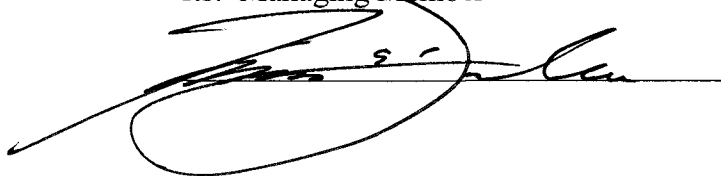
IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year first above written.

**DECLARANT:**

ICP D200 LLC, a Delaware Limited Liability Company

By: International Capital Partners LLC, an Arizona Limited Liability Company,  
Its: Manager

By: Thomas E. Donahue  
Its: Managing Member

A handwritten signature in black ink, appearing to read "Thomas E. Donahue", written over a horizontal line. The signature is stylized and includes a large loop at the end.

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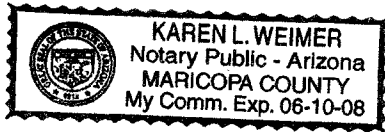
STATE OF ARIZONA )  
 ) ss.  
County of MARICOPA )

The foregoing instrument was acknowledged before me this 16<sup>TH</sup> day of OCTOBER 2007, by THOMAS E. DONAHUE, the MANAGING MEMBER of ICP D200 LLC, a DELAWARE LIMITED LIABILITY COMPANY, on behalf of the DECLARANT

Karen L. Weimer  
Notary Public

My commission expires:

06-10-08



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LENDER CONSENT OF MidFirst Bank  
a federally Chartered Savings association

The undersigned lender hereby consents to the foregoing Declaration and agrees that such Declaration shall continue in effect following the foreclosure of its mortgage, deed of trust or any other acquisition of the Property by the undersigned.

DATED: October 23, 2007.

MidFirst Bank  
a federally Chartered Savings association

By: Scott Willits  
Name: Scott Willits  
Title: Vice President

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EXHIBIT "A"

VERTIAS AT MCCORMICK RANCH

Legal Description

TRACT H, PASEO VILLAGE AMENDED, according to Book 154 of Maps, page 13, records of Maricopa County, Arizona;

EXCEPT all groundwaters underlying the surface of said land as reserved in instrument recorded in Docket 12350, page 232, records of Maricopa County, Arizona

**EXHIBIT "B"****VERITAS AT MCCORMICK RANCH****AGREEMENT TO RESOLVE CERTAIN CLAIMS WITHOUT  
LITIGATION****1.0 SCOPE OF AGREEMENT.**

1.1 PURSUANT TO A.R.S. § 12-1366, THESE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES SHALL APPLY IN LIEU OF THOSE SET FORTH IN A.R.S. §§ 12-1361 THROUGH 12-1364. THE DECLARANT, THE ASSOCIATION, ALL UNIT OWNERS, AND ANY PERSON OR ENTITY WHO AGREES TO SUBMIT TO THESE PROCEDURES (COLLECTIVELY, THE "BOUND PARTIES") AGREE THAT THE PROCEDURES SET FORTH HEREIN ARE COMMERCIALY REASONABLE AND SHALL APPLY TO ALL CLAIMS AS DEFINED HEREIN.

1.2 FOR PURPOSES OF THIS EXHIBIT, THE TERM "CLAIM" SHALL MEAN: (A) ANY DEMAND, CLAIM OR CAUSE OF ACTION, BROUGHT BY THE ASSOCIATION OR BY ONE OR MORE UNIT OWNERS, AGAINST ONE OR MORE BOUND PARTIES, ARISING OUT OF OR RELATING IN ANY WAY TO THE PLANNING, DEVELOPMENT, DESIGN, OR CONSTRUCTION OF THE CONDOMINIUM OR ANY PART THEREOF ("DEFECT CLAIM"); OR (B) ANY DEMAND, CLAIM OR CAUSE OF ACTION, BROUGHT BY THE ASSOCIATION OR BY ONE OR MORE UNIT OWNERS, AGAINST THE DECLARANT OR ANY EMPLOYEE, AGENT, DIRECTOR, MEMBER OR OFFICER OF DECLARANT ARISING OUT OF OR RELATING IN ANY WAY TO THE DEVELOPMENT OF THE CONDOMINIUM, NOT A DEFECT CLAIM, AND/OR THE MANAGEMENT AND/OR OPERATION OF THE ASSOCIATION, INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR NEGLIGENCE, FRAUD, INTENTIONAL MISCONDUCT OR BREACH OF FIDUCIARY DUTY.

1.3 FOR PURPOSES OF THIS EXHIBIT, THE TERM "ASSOCIATION" SHALL MEAN ONLY THE ASSOCIATION ORGANIZED FOR THE VERITAS AT MCCORMICK RANCH CONDOMINIUM AND NOT ANY MASTER ASSOCIATION WHICH INCLUDES ANY CONDOMINIUMS OR SUBDIVISIONS IN ADDITION TO THE VERITAS AT MCCORMICK RANCH CONDOMINIUM.

**2.0 PROCEDURES FOR CLAIMS BY ONE OR MORE UNIT OWNERS.**

2.0.1 A UNIT OWNER SHALL NOT HAVE STANDING TO ASSERT A DEFECT CLAIM INVOLVING AN ALLEGED DEFECT IN THE COMMON ELEMENTS OR LIMITED COMMON ELEMENTS; SUCH DEFECT CLAIM SHALL BE ASSERTED SOLELY BY THE ASSOCIATION AND NO OTHER PERSON.

## 2.1 NOTICE OF CLAIM.

2.1.1 THE PARTY ASSERTING THE CLAIM (THE "CLAIMANT") SHALL, AS A CONDITION PRECEDENT TO MEDIATION AND ARBITRATION DESCRIBED IN THIS EXHIBIT, SUBMIT A WRITTEN CLAIM NOTICE ("CLAIM NOTICE") TO THE BOUND PARTY AGAINST WHOM THE CLAIM IS ASSERTED (THE "RESPONDENT"). THE CLAIM NOTICE SHALL CONTAIN FACTS SUFFICIENT FOR THE RESPONDENT TO UNDERSTAND THE BASIS UPON WHICH LIABILITY IS CLAIMED. THE CLAIM NOTICE SHALL ALSO CONTAIN A SPECIFIC AMOUNT FOR WHICH THE CLAIM CAN BE SETTLED AND THE FACTS SUPPORTING THAT AMOUNT.

2.1.2 IF THE CLAIM IS A DEFECT CLAIM, THE CLAIM NOTICE SHALL ALSO CONTAIN THE FOLLOWING ADDITIONAL INFORMATION: (1) THE SPECIFIC ALLEGED DEFECT; (2) THE DATE THE CLAIMANT DISCOVERED THE ALLEGED DEFECT; (3) THE REPAIR OR REPLACEMENT REQUESTED, IF ANY, OF THE ALLEGED DEFECT; (4) ANY AND ALL OTHER ALLEGED DEFECT(S) OF WHICH THE CLAIMANT IS AWARE AT THE TIME OF THE CLAIM NOTICE; (5) THE DATE(S) THE CLAIMANT DISCOVERED THE OTHER ALLEGED DEFECT(S); AND (6) THE REPAIR OR REPLACEMENT REQUESTED, IF ANY, FOR SUCH OTHER ALLEGED DEFECT(S).

## 2.2 RESPONDENT'S ACTION FOLLOWING NOTICE OF CLAIM.

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2.2.1 THE RESPONDENT SHALL RESPOND TO THE CLAIMANT IN WRITING (THE "CLAIM RESPONSE") WITHIN THIRTY (30) DAYS OF RECEIPT OF THE CLAIM NOTICE.

2.2.2 IF THE CLAIM IS A DEFECT CLAIM, THE RESPONDENT SHALL HAVE THE RIGHT AND OPPORTUNITY TO INSPECT THE ALLEGED DEFECT(S) UPON REASONABLE NOTICE TO THE CLAIMANT.

2.2.3 IF THE CLAIM IS A DEFECT CLAIM AND THE CLAIM RESPONSE CONTAINS AN OFFER TO REPAIR OR REPLACE, THE RESPONDENT SHALL HAVE THE RIGHT AND OPPORTUNITY TO MAKE REPAIRS OR REPLACEMENTS TO THE ALLEGED DEFECT(S), AND SHALL HAVE SIXTY (60) DAYS FOLLOWING THE DATE OF THE CLAIM RESPONSE TO EFFECT SUCH REPAIRS OR REPLACEMENTS, OR SUCH ADDITIONAL TIME AS IS NECESSARY UNDER THE CIRCUMSTANCES. FOR EACH ALLEGED DEFECT, UPON COMPLETION OF THE REPAIR OR REPLACEMENT REQUESTED BY THE CLAIMANT, CLAIMANT RELEASES THE RESPONDENT FOR ANY LIABILITY ARISING OUT OF OR RELATING TO THE ALLEGED DEFECT. FOR PURPOSES OF THIS SECTION, EACH ALLEGED DEFECT SHALL BE TREATED SEPARATELY FOR RESPONSE, REPAIR, REPLACEMENT AND RELEASE OF LIABILITY.

**2.2.4 IF THE CLAIM IS A DEFECT CLAIM AND RESPONDENT IS THE DECLARANT, THE DECLARANT SHALL HAVE THE RIGHT AND OPPORTUNITY TO PURCHASE THE UNIT FROM THE UNIT OWNER IN LIEU OF ANY REPAIR AND/OR REPLACEMENT. DECLARANT MAY EXERCISE THIS RIGHT AT THE TIME OF THE DEFECT CLAIM RESPONSE. THE PURCHASE PRICE SHALL BE THE TOTAL PURCHASE PRICE SET FORTH IN THE CONTRACT BETWEEN DECLARANT AS SELLER AND UNIT OWNER AS BUYER, OR, IF THE UNIT OWNER IS NOT AN ORIGINAL PURCHASER, THE TOTAL PURCHASE PRICE SET FORTH IN THE UNIT OWNER'S PURCHASE CONTRACT, AND, IN EITHER SITUATION, SHALL NOT BE ADJUSTED BY APPRECIATION OR DEPRECIATION IN THE FAIR MARKET VALUE OF THE UNIT. DECLARANT SHALL BE ENTITLED TO SPECIFIC PERFORMANCE OF THIS RIGHT AND OPPORTUNITY TO PURCHASE.**

### **2.3 MEDIATION.**

**2.3.1 ANY CLAIM NOT RESOLVED FOLLOWING THIRTY (30) DAYS AFTER RESPONDENT'S RECEIPT OF THE CLAIM NOTICE OR, IN THE EVENT OF A DEFECT CLAIM AND RESPONDENT'S REPAIR OR REPLACEMENT OF THE DEFECT(S) IN THE TIME SET FORTH IN SECTION 2.2.3, MAY PROCEED TO MEDIATION. THE CLAIMANT SHALL SUBMIT A DEMAND FOR MEDIATION ("MEDIATION DEMAND") TO RESPONDENT AND THE AMERICAN ARBITRATION ASSOCIATION ("AAA") PHOENIX, ARIZONA OFFICE IN ACCORDANCE WITH THE AAA CONSTRUCTION INDUSTRY ARBITRATION RULES AND MEDIATION PROCEDURES.**

**2.3.2 THE MEDIATION SHALL OCCUR IN PHOENIX, ARIZONA. THE MEDIATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE AAA CONSTRUCTION INDUSTRY ARBITRATION RULES AND MEDIATION PROCEDURES EXCEPT AS SET FORTH IN THIS EXHIBIT. RESPONDENT MAY JOIN OTHER BOUND PARTIES IN THE MEDIATION, AND JOINED BOUND PARTIES MAY JOIN ADDITIONAL BOUND PARTIES IN THE MEDIATION. BOUND PARTIES AGREE TO BE SO JOINED.**

**2.3.3 THE MEDIATION SHALL CONCLUDE UPON WRITTEN NOTICE FROM THE MEDIATOR THAT ALL CLAIMS IN THE MEDIATION HAVE BEEN RESOLVED OR THAT THOSE CLAIMS THAT HAVE NOT BEEN RESOLVED IN THE MEDIATION CANNOT BE RESOLVED DESPITE THE BEST EFFORTS OF THE CLAIMANT, RESPONDENT AND MEDIATOR (THE "MEDIATOR'S CONCLUSION NOTICE").**

### **2.4 ARBITRATION.**

**2.4.1 ANY CLAIM NOT RESOLVED BY MEDIATION MAY PROCEED TO ARBITRATION. THE CLAIMANT SHALL SUBMIT A DEMAND FOR ARBITRATION ("ARBITRATION DEMAND") TO RESPONDENT AND THE**

AMERICAN ARBITRATION ASSOCIATION ("AAA") PHOENIX, ARIZONA OFFICE IN ACCORDANCE WITH THE AAA CONSTRUCTION INDUSTRY ARBITRATION RULES AND MEDIATION PROCEDURES. THE ISSUANCE OF THE MEDIATOR'S CONCLUSION NOTICE IS A CONDITION PRECEDENT TO ARBITRATION.

2.4.2 EACH CLAIMANT SHALL SUBMIT ITS OWN DEMAND FOR ARBITRATION. THERE SHALL BE NO JOINDER OF CLAIMANTS OR CLASS ARBITRATION.

2.4.3 IF THE CLAIM IS A DEFECT CLAIM, THE ARBITRATION DEMAND MUST ALSO CONTAIN THE FOLLOWING INFORMATION: (1) THE IDENTITY OF A PERSON OR PERSONS WHO IS OR ARE QUALIFIED BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR EDUCATION TO EXPRESS AN OPINION REGARDING THE RESPONDENT'S LIABILITY FOR THE CLAIM (THE "EXPERT"); (2) THE EXPERT'S QUALIFICATIONS TO EXPRESS AN OPINION ON THE RESPONDENT'S LIABILITY FOR THE CLAIM; (3) THE RESPONDENT'S ALLEGED ACTS, ERRORS OR OMISSIONS THAT THE EXPERT CONSIDERS TO BE A VIOLATION OF THE APPLICABLE STANDARD RESULTING IN LIABILITY; AND (4) THE MANNER IN WHICH THE RESPONDENT'S ACTS, ERRORS OR OMISSIONS CAUSED OR CONTRIBUTED TO THE DAMAGES OR OTHER RELIEF SOUGHT BY THE CLAIMANT.

2.4.4 THE ARBITRATION SHALL OCCUR IN PHOENIX, ARIZONA. THE ARBITRATION SHALL BE CONDUCTED Unofficial Document IN ACCORDANCE WITH THE AAA CONSTRUCTION INDUSTRY ARBITRATION RULES AND MEDIATION PROCEDURES, EXCEPT AS SET FORTH IN THIS EXHIBIT. RESPONDENT MAY JOIN OTHER BOUND PARTIES IN THE ARBITRATION, AND JOINED BOUND PARTIES MAY JOIN ADDITIONAL BOUND PARTIES IN THE ARBITRATION. BOUND PARTIES AGREE TO BE SO JOINED.

2.4.5 THE DECISION AND AWARD OF THE ARBITRATOR MAY BE CONFIRMED AS A JUDGMENT BY ANY COURT OF COMPETENT JURISDICTION. THE PARTY SEEKING CONFIRMATION OF THE DECISION AND AWARD MAY SEEK TO RECOVER ONLY THOSE COSTS AND ATTORNEYS' FEES INCURRED IN THE CONFIRMATION ACTION.

## 2.5 WAIVERS OF BOUND PARTIES AND LIMITATIONS ON CLAIMS.

2.5.1 EACH BOUND PARTY WAIVES THE RIGHT TO RECOVER INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY AND/OR PUNITIVE DAMAGES AGAINST ANY OTHER BOUND PARTY.

2.5.2 EACH BOUND PARTY WAIVES THE RIGHT TO TRIAL BY A JUDGE AND/OR JURY, AND EACH PARTY WAIVES THE RIGHT TO APPEAL THE DECISIONS OF THE ARBITRATOR.



**2.5.3 EACH BOUND PARTY SHALL PAY ITS OWN ATTORNEYS' FEES, EXPERTS' FEES, AND OTHER COSTS OF DISPUTE RESOLUTION, EXCEPT AS SET FORTH IN SECTION 2.4.5.**

**2.5.4 WITH RESPECT TO DEFECT CLAIMS, THE CLAIMANT SHALL NOT BE ENTITLED TO RECOVER ANY DAMAGES CAUSED BY THE CLAIMANT'S FAILURE TO MITIGATE ITS DAMAGES. THE CLAIMANT'S DAMAGES, IF ANY, SHALL BE LIMITED TO THE COST OF REPAIR OF THE DEFECT(S), UNLESS REPAIR WOULD CONSTITUTE ECONOMIC WASTE, IN WHICH CASE THE CLAIMANT'S DAMAGES SHALL BE LIMITED TO THE DIMINUTION IN VALUE OF THE CONDOMINIUM OR APPLICABLE PART THEREOF RESULTING FROM THE DEFECT(S).**

**2.5.5 AS TO ACTS OR FAILURES TO ACT OCCURRING PRIOR TO THE DATE OF SUBSTANTIAL COMPLETION OF THE CONDOMINIUM OR APPLICABLE PART THEREOF, ANY APPLICABLE STATUTE OF LIMITATIONS SHALL COMMENCE TO RUN AND ANY ALLEGED CAUSE OF ACTION SHALL BE DEEMED TO HAVE ACCRUED IN ANY AND ALL EVENTS NOT LATER THAN SUCH DATE OF SUBSTANTIAL COMPLETION REGARDLESS OF THE DATE ON WHICH THE CLAIMANT DISCOVERS OR REASONABLY SHOULD HAVE DISCOVERED THE ACT OR FAILURE TO ACT AND REGARDLESS OF THE THEORY ON WHICH THE CLAIM IS ASSERTED.**

**2.5.6 AS TO ACTS OR FAILURES TO ACT OCCURRING AFTER THE DATE OF SUBSTANTIAL COMPLETION OF THE CONDOMINIUM OR APPLICABLE PART THEREOF, ANY APPLICABLE STATUTE OF LIMITATIONS SHALL COMMENCE TO RUN AND ANY ALLEGED CAUSE OF ACTION SHALL BE DEEMED TO HAVE ACCRUED IN ANY AND ALL EVENTS NOT LATER THAN THE ACTUAL COMMISSION OF THE ACT OR FAILURE TO ACT REGARDLESS OF THE DATE ON WHICH THE CLAIMANT DISCOVERS OR REASONABLY SHOULD HAVE DISCOVERED THE ACT OR FAILURE TO ACT AND REGARDLESS OF THE THEORY ON WHICH THE CLAIM IS ASSERTED.**

**2.5.7 NO ARBITRATION OF A DEFECT CLAIM ARISING OUT OF CONTRACT MAY BE COMMENCED MORE THAN FOUR YEARS FOLLOWING SUBSTANTIAL COMPLETION OF THE CONDOMINIUM OR APPLICABLE PART THEREOF, PROVIDED, HOWEVER, THAT THIS PERIOD SHALL BE TOLLED FROM THE DATE THE CLAIM NOTICE DESCRIBED IN SECTION 2.1 IS SUBMITTED THROUGH THE DATE OF THE MEDIATOR'S CONCLUSION NOTICE DESCRIBED IN SECTION 2.3.3 FOR PURPOSES OF THIS SECTION 2.5.7, DEFECT CLAIMS ARISING OUT OF CONTRACT INCLUDE ANY DEFECT CLAIM BASED ON IMPLIED WARRANTY ARISING OUT OF CONTRACT OR CONSTRUCTION, INCLUDING IMPLIED WARRANTIES OF HABITABILITY, FITNESS OR WORKMANSHIP. NOTHING IN THIS SECTION 2.5.7 APPLIES TO ACTIONS FOR PERSONAL INJURY OR DEATH NOR SHALL THIS SECTION 2.5.7 OPERATE TO SHORTEN THE PERIOD OF WARRANTY PROVIDED IN AN EXPRESS WRITTEN**

WARRANTY. THIS SECTION 2.5.7 SHALL NOT BE CONSTRUED TO EXTEND THE PERIOD PRESCRIBED BY THE LAWS OF ARIZONA FOR BRINGING ANY ACTION, WHICH, FOR PURPOSES OF THIS EXHIBIT, MEANS ANY ARBITRATION. IF A SHORTER PERIOD OF LIMITATION IS PRESCRIBED FOR A SPECIFIC CLAIM, THE SHORTER PERIOD GOVERNS.

### **3.0 PROCEDURES FOR CLAIMS BY THE ASSOCIATION.**

3.0.1 THE ASSOCIATION SHALL NOT HAVE STANDING TO ASSERT A DEFECT CLAIM INVOLVING AN ALLEGED DEFECT WITHIN A UNIT OR DWELLING; SUCH DEFECT CLAIM SHALL BE ASSERTED SOLELY BY THE UNIT OWNER AND NO OTHER PERSON.

### **3.1 NOTICE OF CLAIM.**

3.1.1 THE ASSOCIATION SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 2.1.1 AND, IF THE CLAIM IS A DEFECT CLAIM, SECTION 2.1.2.

3.1.2 IN ADDITION, IF THE CLAIM IS A DEFECT CLAIM AND THE CLAIMANT IS THE ASSOCIATION, THE FOLLOWING EVENTS MUST OCCUR AS A CONDITION PRECEDENT TO THE ASSOCIATION'S SUBMISSION OF A CLAIM NOTICE: (1) THE BOARD OF DIRECTORS HAS PROVIDED A COPY OF THE PROPOSED CLAIM NOTICE TO EACH OF THE MEMBERS PRIOR TO THE MEETING OF THE MEMBERS DESCRIBED IN (2) BELOW; (2) THE ASSOCIATION HAS HELD A MEETING OF ITS MEMBERS AND BOARD OF DIRECTORS FOR WHICH REASONABLE AND ADEQUATE NOTICE WAS PROVIDED TO ALL MEMBERS IN THE MANNER PRESCRIBED IN A.R.S. § 33-1248; (3) THE BOARD OF DIRECTORS AUTHORIZES THE SUBMISSION OF THE CLAIM NOTICE; AND (4) THE BOARD OF DIRECTORS' ACTION IS SUPPORTED BY AN AFFIRMATIVE VOTE OF AT LEAST FIFTY PERCENT (50%) OF THE MEMBERS.

3.1.3 THE ASSOCIATION SHALL SUBMIT TO THE RESPONDENT, WITH THE CLAIM NOTICE, DOCUMENTATION EVIDENCING THE ASSOCIATION'S COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SECTION 3.1.2.

### **3.2 RESPONDENT'S ACTION FOLLOWING NOTICE OF CLAIM.**

3.2.1 THE PROVISIONS OF SECTIONS 2.2.1, 2.2.2, AND 2.2.3 SHALL APPLY ALSO TO CLAIMS BY THE ASSOCIATION.

### **3.3 MEDIATION.**

3.3.1 THE PROVISIONS OF SECTION 2.3 SHALL APPLY ALSO TO CLAIMS BY THE ASSOCIATION.

**3.3.2 IF THE CLAIM IS A DEFECT CLAIM, THE FOLLOWING EVENTS MUST OCCUR AS A CONDITION PRECEDENT TO THE ASSOCIATION'S SUBMISSION OF A MEDIATION DEMAND: (1) THE BOARD OF DIRECTORS HAS PROVIDED A COPY OF THE CLAIM RESPONSE AND THE PROPOSED MEDIATION DEMAND TO EACH OF THE MEMBERS, PRIOR TO THE MEETING OF THE MEMBERS DESCRIBED IN (2) BELOW; (2) THE ASSOCIATION HAS HELD A MEETING OF ITS MEMBERS AND BOARD OF DIRECTORS FOR WHICH REASONABLE AND ADEQUATE NOTICE WAS PROVIDED TO ALL MEMBERS IN THE MANNER PRESCRIBED IN A.R.S. § 33-1248; (3) THE BOARD OF DIRECTORS AUTHORIZES THE SUBMISSION OF THE MEDIATION DEMAND; AND (4) THE BOARD OF DIRECTORS ACTION IS SUPPORTED BY AN AFFIRMATIVE VOTE OF AT LEAST SEVENTY FIVE PERCENT (75%) OF THE MEMBERS.**

**3.3.3 THE ASSOCIATION SHALL SUBMIT TO THE RESPONDENT, WITH THE MEDIATION DEMAND, DOCUMENTATION EVIDENCING THE ASSOCIATION'S COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SECTION 3.3.2.**

#### **3.4 ARBITRATION.**

**3.4.1 THE PROVISIONS OF SECTIONS 2.4 AND 2.5 SHALL APPLY ALSO TO CLAIMS BY THE ASSOCIATION, PROVIDED, HOWEVER, THAT FOR PURPOSES OF APPLYING SECTION 2.5.7 TO THE ASSOCIATION, PURSUANT TO A.R.S. § 33-1251(B) A STATUTE OF LIMITATIONS Unofficial Document CTING ANY RIGHT OF ACTION OF THE ASSOCIATION AGAINST THE DECLARANT IS TOLLED UNTIL THE PERIOD OF DECLARANT CONTROL TERMINATES.**

**3.4.2 IF THE CLAIM IS A DEFECT CLAIM, THE FOLLOWING EVENTS MUST OCCUR AS A CONDITION PRECEDENT TO THE ASSOCIATION'S SUBMISSION OF A ARBITRATION DEMAND: (1) THE BOARD OF DIRECTORS HAS PROVIDED A COPY OF THE MEDIATOR'S CONCLUSION NOTICE AND THE PROPOSED MEDIATION DEMAND TO EACH OF THE MEMBERS, PRIOR TO THE MEETING OF THE MEMBERS DESCRIBED IN (2) BELOW; (2) THE ASSOCIATION HAS HELD A MEETING OF ITS MEMBERS AND BOARD OF DIRECTORS FOR WHICH REASONABLE AND ADEQUATE NOTICE WAS PROVIDED TO ALL MEMBERS IN THE MANNER PRESCRIBED IN A.R.S. § 33-1248; (3) THE BOARD OF DIRECTORS AUTHORIZES THE SUBMISSION OF THE ARBITRATION DEMAND; AND (4) THE BOARD OF DIRECTORS' ACTION IS SUPPORTED BY AN AFFIRMATIVE VOTE OF AT LEAST NINETY PERCENT (90%) OF THE MEMBERS.**

**3.4.3 THE ASSOCIATION SHALL SUBMIT TO THE RESPONDENT, WITH THE ARBITRATION DEMAND, DOCUMENTATION EVIDENCING THE ASSOCIATION'S COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SECTION 3.4.2.**

**3.5 USE OF RESERVES FOR AND RECOVERY OF CLAIMS.**

**3.5.1 THE ASSOCIATION MAY NOT USE RESERVES TO FUND THE PROCEDURES SET FORTH IN SECTIONS 3.3 OR 3.4. THE ASSOCIATION MUST PAY FOR MEDIATION AND/OR ARBITRATION WITH MONIES THAT ARE SPECIFICALLY COLLECTED FOR THAT PURPOSE.**

**3.5.2 THE ASSOCIATION SHALL USE MONIES RECOVERED PURSUANT TO THIS SECTION 3 FIRST FOR THE REPAIR OF DEFECTS, AND SECOND TO PAY INTO RESERVES.**

**-end-**

Unofficial Document