

Unofficial Document

WHEN RECORDED RETURN TO:

Jennings Strouss & Salmon, PLC
16427 North Scottsdale Road, Suite 300
Scottsdale, AZ 85254-1597
Attn: Janet G. Betts, Esq.

CONDOMINIUM DECLARATION

FOR

MITCHELL LOFTS CONDOMINIUMS, a condominium

**CONDOMINIUM DECLARATION
FOR
MITCHELL LOFTS CONDOMINIUMS, a condominium**

THIS CONDOMINIUM DECLARATION is made this 8th day of November, 2007, by MITCHELL LOFTS, LLC, an Arizona limited liability company (the "Declarant").

ARTICLE 1

DEFINITIONS

1.1 General Definitions. Capitalized terms not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Condominium Act, A.R.S. §33-1201, et seq.

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

(A) **"Architectural Committee"** means the committee established pursuant to Section 6.4 of this Declaration.

Unofficial Document

(B) **"Architectural Committee Rules"** means the rules adopted by the Architectural Committee, as they may be amended from time to time.

(C) **"Articles"** means the Articles of Incorporation of the Association, as they may be amended from time to time.

(D) **"Assessments"** means the Common Expense Assessment and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

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

(F) **"Association"** means the Arizona nonprofit corporation organized by the Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of **"Mitchell Lofts Homeowners Association"**.

(G) **"Board of Directors" or "Board"** means the Board of Directors of the Association.

(H) **"Buildings"** means the structures designated as buildings on the Plat containing one or more Units.

(I) **"Bylaws"** means the Bylaws of the Association, as they may be amended from time to time.

(J) **"City"** means the City of Phoenix.

(K) **"Common Elements"** means all physical portions of the Condominium, other than the Units and the Limited Common Elements.

(L) **"Common Expenses"** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

(M) **"Common Expense Assessment"** means the assessment levied against the Units pursuant to Section 7.1(A) of this Declaration.

(N) **"Common Expense Liability"** means the liability for common expenses allocated to each Unit by this Declaration.

(O) **"Condominium"** means the real property located in Maricopa County, Arizona, which is described in Exhibit "A" attached to this Declaration, together with all Buildings and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto.

(P) **"Condominium Act" or "Act"** means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as it may from time to time be amended.

Unofficial Document

(Q) **"Condominium Documents"** means this Declaration and the Articles, Bylaws, Rules and Architectural Committee Rules.

(R) **"Declarant"** means Mitchell Lofts, LLC, an Arizona limited liability company, and its successors and any person or entity to whom it may transfer any Special Declarant Right in accordance with the Condominium Act.

(S) **"Declaration"** means this Condominium Declaration, as it may be amended from time to time.

(T) **"Development Rights"** means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following:

(i) Add real estate to the Condominium;

(ii) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;

(iii) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(iv) Withdraw real estate from the Condominium;

(v) Make the Condominium part of a larger condominium or planned community;

(vi) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other 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; and

(vii) Amend the Declaration during the Period of Declarant Control to comply with the rules 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.

(U) **“Eligible Insurer or Guarantor”** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 11.1 of this Declaration.

(V) **“Eligible Mortgage Holder”** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Article 11 of this Declaration.

(W) **“FHA”** means the Federal Housing Administration.

(X) **“FHLMC”** means the Federal Home Loan Mortgage Corporation.

(Y) **“First Mortgage”** Unofficial Document
REVISED 11/2013 means a mortgage or deed of trust or contract for sale as contemplated by the provisions of A.R.S. §33-741, et seq., on a Unit with first priority over any other mortgage or deed of trust or contract for sale.

(Z) **“First Mortgagee”** means the holder of any First Mortgage.

(AA) **“FNMA”** means the Federal National Mortgage Association.

(BB) **“Improvements”** means all physical structures including, but not limited to, Buildings, private drives, parking areas, fences, and walls, and all landscaping, including, but not limited to, hedges, plantings, trees, and shrubs of every type and kind.

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

(DD) **“Member”** means any person, corporation, partnership, joint venture or other legal entity who is or becomes a member of the Association pursuant to the terms of this Declaration.

(EE) **“Period of Declarant Control”** means the time period commencing on the date this Declaration is recorded with the County Recorder of Maricopa County, Arizona, and ending on the earlier of:

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

(ii) Four (4) years after all Declarant's have ceased to offer Units for sale in the ordinary course of business.

(FF) **"Person"** means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental 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.

(GG) **"Plat"** means the Condominium Plat for Mitchell Lofts which plat has been recorded with the County Recorder of Maricopa County, Arizona, in Instrument Number 2007-0405181, as amended by the Amended and Restated Condominium Plat for Mitchell Lofts, which plat has been recorded with the County Recorder of Maricopa County, Arizona, in Instrument Number 2007-095913, and any amendments, supplements or corrections thereto, which by this reference are incorporated herein and made a part hereof.

(HH) **"Property"** means that real property located in Maricopa County, Arizona, described on Exhibit "A" attached to this Declaration, together with all improvements, including the Units, easements, rights and appurtenances thereto.

(II) **"Purchaser"** means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit Owner ^{Unofficial Document} except for (i) a Person who purchases a Unit and then leases it to the Declarant for use as a model 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.

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

(KK) **"Special Declarant Rights"** means any right or combination of rights reserved by or granted to the Declarant in this Declaration or by the Condominium Act to do any of the following:

(i) Construct improvements provided for in this Declaration or shown on the Condominium Plat;

(ii) Exercise any Development Right;

(iii) Maintain sales offices, management offices, models, and signs advertising the Condominium;

(iv) Use easements through the Common Elements for the purpose of making improvements within the Condominium; and

(v) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

(LL) **“Unit”** means a portion of the Condominium as described in this Declaration and as shown on the Plat that is designated for separate ownership and occupancy, the boundaries of which are described in Section 2.5 of this Declaration.

(MM) **“Unit Owner” or “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 or entities 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 in 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, on payment in full of all monies due under the contract. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

(NN) **“VA”** shall mean the Veterans Administration.

Unofficial Document
ARTICLE 2

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

2.1 Submission of Property. The Property is hereby submitted to a Condominium in accordance with the provisions of the Condominium Act. All of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as a fee simple condominium project to be known as Mitchell Lofts Condominiums. All of the Property is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Property and in furtherance of a plan for improvement of the Property and division thereof into Condominiums; further, each and all of the provisions hereof shall be deemed to run with the Property and shall be a burden and a benefit on the Property and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing or owning an interest in a Unit and to their respective personal representatives, heirs, successors and assigns.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is Mitchell Lofts Condominiums.

2.3 Name of Association. The name of the Association is the Mitchell Lofts Homeowners Association.

2.4 Identifying Number of Units. The identifying number of the Units are as follows: Unit 1 through 7, inclusive.

2.5 Unit Boundaries.

(A) The boundaries of each Unit are the interior unfinished surfaces of the perimeter walls, floors and ceilings, doors and windows along the perimeter boundaries of the air space, as said boundaries are shown on the Plat, together with all of the fixtures and improvements therein contained and including the heating, ventilating and air conditioning equipment of the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or for the use and enjoyment of another Unit: Bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flutes, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door mean the points at which such surfaces are located when the window or door is closed. The dimensions of the Units are more specifically set forth in the Plat.

(B) Subject to the provisions of Section 2.8 of this Declaration, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit.

Unofficial Document

(C) Declarant reserves the right to relocate the boundaries between adjoining Units owned by the Declarant 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.

2.6 Allocation of Common Element Interest, Votes and Common Expense Liabilities. The undivided interests in the Common Elements and in the Common Expenses of the Association, including the Common Expense Liability, shall be allocated equally among the Units. Accordingly, each Unit's percentage interest in the Common Elements and in the Common Expenses of the Association, including the Common Expense Liability, shall be one seventh (1/7th).

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

2.8 Allocation of Limited Common Elements.

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

(i) If any chute, flue, duct, pipe, wire, conduit, bearing wall, bearing column, heating or air conditioning units and related equipment 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;

(ii) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, entryways, or roof decks, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside of the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit;

(iii) Each Unit is allocated the roof deck or balcony shown on the Plat as adjoining the Unit and which is designed for the exclusive use of the Unit;

(iv) Any gas, electric or water meter which serves only one Unit is allocated to the Unit which it serves; and

(v) Landings and stairways serving more than one and fewer than all of the Units are allocated to the Unit or Units served.

(B) A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of Section 33-1218(B).

(C) The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to ^{Unofficial Document} this Declaration and an amendment to the Plat if required by the Condominium Act.

ARTICLE 3

EASEMENTS

3.1 Utility Easement. There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the Association or any providing utility company 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, approved and constructed by the Declarant or as approved by the Board of Directors. This easement shall in no way affect any other recorded easements on the Common Elements.

3.2 Easements for Ingress and Egress. There is hereby 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 and unrestricted right of ingress and egress by the Unit Owner to the Unit. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes except that such easements shall not extend to any Limited Common Elements. Such easements shall run in favor

of and be for the benefit of the Unit Owners and occupants of the Units and their guests, families, tenants and invitees.

3.3 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 Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to adopt reasonable Rules governing the use of the Common Elements;

(ii) The right of the Association to suspend the voting rights of a Unit Owner for any period during which any Assessment against his Unit remains unpaid; and for a period not to exceed sixty (60) days for any other infraction or violation of the Condominium Documents;

(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; and

(iv) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Sections 3.4 and 3.5 of this Declaration.

Unofficial Document

(B) If a Unit is leased or rented, in whole or in part, 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 the right to use the Common Elements if the Unit Owner resides with the lessee in the Unit. If the Unit Owner does not reside with lessee in the Unit, then 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 Unit Owner or other person entitled to use the Common Elements pursuant to Subsection (A) above or of any lessee who is entitled to use the Common Elements pursuant to Subsection (B) above may use the Common Elements provided they are accompanied by a Unit Owner, lessee or other person entitled to use the Common Elements pursuant to Subsection (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 certain specified 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 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.

3.4 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 models throughout the Condominium and to maintain one or more advertising signs on the Common Elements while the Declarant is selling 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 models, management offices and sales and leasing offices to different locations within the Condominium. Upon the relocation of a model, management office or sales and 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 restrict the use of the parking spaces which are not allocated as Limited Common Elements. Such right shall include reserving such spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(D) The Declarant shall have the right, without a vote of the members, to allocate as a Limited Common Element ^{Unofficial Document} any parking spaces which are part of the Common Elements and which have not previously been allocated as a Limited Common Element. Any such allocation shall be made in an amendment to this Declaration, executed and recorded by the Declarant.

(E) Declarant reserves the right to retain ownership of all personal property, fixtures and equipment used in the sales, management, construction and maintenance of the Condominium and reserves the right to remove such items.

(F) In the event of any conflict or inconsistency between this Section 3.4 and any other provision of the Condominium Documents, this Section 3.4 shall control and prevail over such other provisions.

3.5 Declarant's Easements.

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

(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 correcting 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) The Declarant shall have an easement through the Units for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant.

(D) The 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 his obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.

(E) In the event of any conflict between this Section 3.5 and any other provision of the Condominium Documents, this Section 3.5 shall control.

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

3.7 Common Elements Easement in Favor of the Association.

(A) The Common Elements shall be subject to an easement in favor of the Association 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, with the right to grant permits, licenses and easements for purposes necessary for the operation of the Condominium.

(B) Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purposes of performing emergency repairs or necessary maintenance or pest control activities as the Association may deem necessary to control, prevent or eradicate the infestation of the Condominium by insects, rodents or other pests.

3.8 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 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.

(E) For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 5.2(B) of this Declaration.

3.9 Units and Limited Common Elements Easement in Favor of Association. Unofficial Document 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, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

(B) For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements;

(C) For correction of 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, the Architectural Committee or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents;

(E) For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements in order to verify that the provisions of

the Condominium Documents are being complied with by the Unit Owners, their guests, tenants, invitees and the other occupants of the Unit;

(F) An encroachment easement, to the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, shifting or settling, or alterations or restoration authorized by this Declaration or any reason other than an intentional encroachment.

ARTICLE 4

USE AND OCCUPANCY RESTRICTIONS

4.1 Residential Use. All Units and Limited Common Elements shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Unit, except that a Unit Owner or other resident of a Unit may conduct a business activity within a Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (c) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Unit Owners or other residents in the Condominium; and (d) 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 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 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.

4.2 Balconies; Roof Deck. The Unit Owner shall be entitled to maintain patio style furniture and a refrigeration unit on the balcony or roof deck for the Unit Owner's or its resident's use. The refrigeration unit must be a counter-height model installed below counter level. All balcony and roof deck furnishings must be compatible with the roof deck or balcony size and building architecture. Other than patio-style furniture and the refrigeration unit for the Unit Owner's or resident's use, no furniture, umbrellas, equipment or other materials shall be kept or stored on any balcony or roof deck. A Unit Owner shall have the right to plant flowers and other plants of Unit Owner's selection in containers on the balcony and roof deck reserved to the Unit as a Limited Common Area, but if a Unit Owner desires to plant flowers or plants which will exceed the height of the balcony or roof deck wall, the Unit Owner must obtain the prior written approval of the Architectural Committee. A Unit Owner may install a water line on the balcony or roof deck or along the outside wall of the balcony or roof deck to (a) water the plant containers on the balcony or roof deck, or (b) aerate the balcony and roof deck area; provided, however, that the water line shall be a Limited Common Element to be operated and maintained, at Unit Owner's sole expense, by the Unit Owner benefited by the water line and provided

further, such water line, prior to installation, is approved by the Architectural Committee. A Unit Owner shall maintain the area of the balcony and roof deck in a neat and clean condition and all flowers and plants shall be neatly trimmed and free of weeds or debris. The Architectural Committee shall have the right to alter, remove or replace any balcony or roof deck furniture or landscaping, if such action is reasonably necessary in the sole discretion of the Architectural Committee, for the aesthetic appearance or health reasons of the Condominium, the drainage requirements of the Condominium, or to preserve the views from surrounding Units. In no event shall a Unit Owner be entitled to use a barbeque grill or hibachi (except for an electric grill, which use is permitted), fire pit, or other cooking device on the balcony or roof deck.

4.3 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any portion of the Condominium whether attached to a Building or structure or otherwise, unless (i) such installation is placed in the most inconspicuous location possible without unnecessarily interfering with reception, (ii) any equipment is painted to blend with the surface it is attached to, (iii) any wires or cables are concealed either in a building seam or a conduit (painted to match the surface it is affixed to), and (iv) such installation is approved by the Architectural Committee, unless applicable law prohibits the Architectural Committee from requiring such prior approval. If applicable law prohibits prior approval, any such equipment must be installed or constructed in accordance with such rules or regulations as the Architectural Committee may adopt.

4.4 Utility Service. Except for lines, wires and devices existing on the Condominium as of the date of this Declaration and maintenance and replacement of the same, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are contained in conduits or cables installed and maintained underground or concealed in, under or on Buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Buildings or structures approved by the Architectural Committee. The Owner of the Unit shall be solely responsible for obtaining and paying for utility or other services for the Unit.

4.5 Improvements and Alterations. Except for construction work or alterations performed by Declarant with respect to any Unit or the Common Elements, there shall be no structural alterations, additions or improvements to any Unit or the Common Elements without the prior written approval of the Members entitled to cast at least fifty-one percent (51%) of the total votes in the Association. Any Unit Owner may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Architectural Committee, provided such alterations do not adversely affect the thermal or acoustical properties of any other Unit but such Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements. No Unit Owner or other 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 Architectural Committee and an architect or engineer, licensed in Arizona, 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 nor materially or adversely affect the thermal or acoustical properties of any other Unit. The Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement within a Unit, or within a Limited Common Element (including but not limited to the enclosure of a roof deck or balcony), 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 Architectural Committee, which approval shall only be granted if the Architectural Committee affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements.

4.6 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Condominium, except in covered containers of a type, size and style which are approved by the Architectural Committee, and in enclosed areas designated by the Association. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Board of Directors shall have the right to require all Owners to place trash and garbage in containers located in areas designated by the Board of Directors. No incinerators shall be kept or maintained in any Unit.

4.7 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except such machinery or equipment as is usual and customary in connection with the Unofficial Document maintenance or construction of buildings, improvements or structures which are within the permitted uses of such property, and except that which Declarant or the Association may require for the construction, operation and maintenance of the Common Elements.

4.8 Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house pets, shall be maintained in or on the Condominium and then only if they are kept, bred or raised solely as domestic pets and not for commercial purposes. No pet or any other animal shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. No Unit Owner may keep more than two (2) dogs in a Unit at one time, and each dog must weigh fifty (50) pounds or less. All dogs shall be kept on a leash not to exceed six (6) feet in length when outside a Unit or any Limited Common Elements allocated to the Unit, and all dogs shall be directly under the Unit Owner's control at all times. No Unit Owner or any lessee or guest of a Unit Owner shall permit any dog being kept in the Unit or the Limited Common Elements allocated to the Unit to relieve itself on any portion of the Common Elements. It shall be the responsibility of the Unit Owner, lessee or guest to remove immediately any droppings from pets. No structure for the care, housing, confinement, or training of any animal or pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building in which the Unit is located. Upon the written request of any Unit Owner, the Board of Directors shall determine whether, for the purposes of this Section, a particular animal or bird is a generally recognized house pet, a nuisance, or whether the number of pets on any property is reasonable. The right of Unit Owners and other occupants of Units to maintain a reasonable number of house pets in or on the Condominium pursuant to this Section is expressly subject to the right of the Board of Directors

to restrict such house pets to only certain portions of the Condominium and to restrict the size and number of such pets which may be maintained or kept in the Units or any portion of the Common Elements. Notwithstanding the foregoing, these restrictions do not apply to Assistive Animals. Assistance Animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provide emotional support that alleviates one or more identified symptoms or effects of a person's disability to the extent required by law. Assistance animals (sometimes referred to as "service animals," "support animals," or "therapy animals") perform many disability-related functions, including but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing minimal protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. Assistive Animals may be professionally trained or trained by the owner.

4.9 Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage, barn or other structure, and no temporary Improvement of any kind shall be used at any time for a residence either temporarily or permanently. Temporary buildings or structures used during the construction of buildings or structures approved by the Architectural Committee shall be permitted but must be removed promptly upon completion of the construction of the building or structure.

4.10 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on the Condominium.

4.11 Mineral Exploration. Unofficial Document No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

4.12 Diseases and Insects. No Unit Owner shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious plant diseases, mold or noxious insects. Each Unit Owner shall perform such pest and mold control activities as may be necessary to prevent insects, rodents and other pests and mold.

4.13 Trucks, Trailers, Campers and Boats. Except as otherwise prohibited by law, no truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium except for (a) pickup trucks of less than 3/4 ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level or mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked in compliance with this Declaration and the Rules and are used on a regular and recurring basis for basic transportation, (b) temporary parking of vehicles by the guests and invitees of the Unit Owner or tenant of a Unit subject to the Rules.

4.14 Motor Vehicles. Except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium and no inoperable vehicle may be stored or parked on any portion

of the Condominium. All vehicles must have current licenses. Except as otherwise prohibited by law, no automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any street (public or private) within the Condominium.

4.15 Garage and Driveway Parking. All automobile, motorcycle, motor bike or other motor vehicle shall be parked inside the respective garages. When not in use, garage doors shall be kept closed. Temporary parking by guests, tenants, licensees or invitees of such Unit Owner is permitted in the driveway located in front of each Unit.

4.16 Towing of Vehicles. The Board of Directors shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle 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.

4.17 Signs. No signs (including, but not limited to "For Sale" or "For Rent" signs), flags (except as provided herein) or advertising devices of any nature, including, without limitation, commercial, political (except as provided herein), informational or directional signs or devices, shall be erected or maintained on any part of the Condominium, without the prior inspection and written approval of the Association, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association. Notwithstanding the foregoing, an Owner shall not be prohibited from the outdoor display of any flag specifically permitted by Arizona law if the flag is displayed in a manner consistent with state and federal law. The Association may adopt reasonable rules and regulations regarding the placement and manner of display for such flags and regulate the location and size of flagpoles. An Owner shall be prohibited from the indoor or outdoor display of any political sign on that Owner's property earlier than forty-five (45) days before the day of an election and later than seven (7) days after an election day. The Association may adopt reasonable rules and regulations regarding the size and number of political signs that may be placed on an Owner's property if such regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the Condominium is located does not regulate the size and number of political signs on residential property, the Association rules and regulations shall permit at least one (1) political sign with the maximum dimensions of twenty-four inches (24") by twenty-four inches (24") on an Owner's property. For the purposes of this paragraph, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

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

4.19 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. Notwithstanding the foregoing, with the prior written consent of the Association, a Unit Owner may hold a party or activity in areas located in the Common Element and/or on the balcony or roof deck of the Unit Owner and play music provided such music is at an acceptable volume and provided further that such music is not played before 10:00 a.m. or after 10:00 p.m. on the day of the party or activity; provided, however that no prior written consent of the Association is required if the party is for a period of two (2) hours or less and the number of persons attending the party through the time period is fifteen (15) or less persons. On days, other than a party or activity day, a Unit Owner may play music on the balcony or roof deck of the Unit Owner provided such music is played at a reasonable level and provided further that the music is not played before noon or after 10:00 p.m. Other rules may be adopted by the Association.

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

4.21 Limitation on Leasing of Units. A Unit Owner may lease less than his entire Unit; provided, however that such lease is not for a period of less than ninety (90) days and provided further that the occupancy of such Unit does not exceed one (1) person per bedroom. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the lessee to comply with the terms of the Condominium Documents shall be a default under the lease. Upon leasing his 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. The Unit Owner is responsible for the behavior of the tenant and tenant's guests and any costs, fees, fines, and attorney fees that may be imposed or incurred because of tenant's or guest's violation of the Rules and this Declaration.

4.22 Parking Spaces. The Board of Directors may assign parking spaces in the Common Elements to Owners or make such parking spaces available for guest parking.

4.23 No Overloading. No Owner shall bring anything into his Unit or permit anything to be done in his Unit that will cause damage to the Buildings. No Owner shall overload the floor of his Unit, balcony or roof deck.

4.24 Outside Lights. Except as initially installed by Declarant, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any building, structure, balcony, or roof deck unless approved by the Architectural Committee.

4.25 Variances. The Board of Directors may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 4 if the Board of Directors determines in its sole discretion that: (a) a restriction would create an unreasonable hardship or burden on a Unit Owner or occupant or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete; and (b) the activity permitted under the variance will not have any substantial adverse effect on Unit Owners and occupants and is consistent with the high quality of life intended for residents of the Condominium.

4.26 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Unit, in the Common Elements or in any other part of the Condominium that would result in cancellation of the insurance on the Condominium or any part thereof nor shall anything be done or kept in any Unit, in the Common Elements or in any other part of the Condominium that would increase the rate of insurance on the Condominium or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit, or in the Common Elements or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner or guest, tenant, licensee or invitee of any Owner, and Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees or invitees of such Owner.

4.27 Declarant Approval Required Unofficial Document After the expiration of the Period of Declarant Control and for so long as the Declarant owns any Unit, any action for which the consent or approval of the Board of Directors is required under this Declaration may be taken only if such action is also consented to or approved by the Declarant.

ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall maintain, repair and make necessary improvements to all Common Elements, whether located inside or outside the Units, except for the Limited Common Elements, which the Unit Owners are obligated to maintain pursuant to Section 5.2 of this Declaration and obtain any payment for utility or other services for the Common Element. The cost of all such repairs, maintenance and charges for utilities and other services shall be a Common Expense and shall be paid for by the Association. The Association shall obtain an audited financial statement each fiscal year.

5.2 Duties of Unit Owners.

(A) Each Unit Owner shall maintain, repair, replace and restore, at his own expense, all portions of his Unit, subject to the Condominium Documents.

(B) Each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to this Declaration except for the structural parts of such Limited Common Elements. Each Unit Owner shall take all necessary action to keep the Limited Common Elements which he is obligated to maintain under this Subsection free of and clear from unsightly accumulations of weeds, trash and litter and infestation of pests, mold and other nuisances.

5.3 Repair or Restoration Necessitated by Owner. Each Unit Owner shall be liable to the Association, to the extent permitted for by Arizona law, for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful conduct of the Unit Owner. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner shall be paid by the Unit Owner, upon demand, to the Association. 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.

5.4 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration, the Association shall deliver a notice of violation to the Unit Owner. Within ten (10) days of the receipt of the notice of violation, Unit Owner may either (a) correct the violation, (b) notify the Association of Unit Owner's intent to correct the violation within ten (10) days of receipt of the notice, or (c) request a hearing. If a hearing is requested, the hearing shall be held within thirty (30) days of request. The finding shall be rendered, in writing within thirty (30) days of the hearing. The finding may impose a fine and order the Unit Owner to correct the violation within ten (10) days of the date of the finding. If the correction of the violation is not performed within ten (10) days of the date of the finding, the Association shall have the right, but not the obligation, to correct the violation. The cost of any such correction and/or the fine, shall be assessed against the nonperforming Unit Owner pursuant to Section 7.2(F) of this Declaration.

ARTICLE 6

THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

6.1 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 set forth in A.R.S. Section 33-1242 as prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of Unit Owners representing more than fifty percent (50%) of the votes in the Association. 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.

6.2 Directors and Officers.

(A) During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to 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) The 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 the 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 the Declarant, be approved by the Declarant before they become effective.

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of any area by any Unit Owner, by the family of such Unit Owner, or by any invitee, licensee or lessee of such Unit Owner; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, 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.

6.4 Architectural Committee. Until established by the Board of Directors, the Members of the Board of Directors shall be the Members of the Architectural Committee. Upon at least thirty (30) days prior written notice to the Members, the Board of Directors may establish an Architectural Committee consisting of not less than three (3) members appointed by the Board of Directors. The Board of Directors or the Architectural Committee, as applicable, shall regulate the external design, appearance, use and maintenance of the Condominium and perform such other functions and duties as are imposed upon it by the Condominium Documents or by the Board of Directors. Members of the Architectural Committee may or may not be Members.

6.5 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners.

6.6 Personal Liability. Neither Declarant nor any member of the Board of Directors or of any committee of the Association, any officer of the Association nor any manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Declarant, the Association, the Board of Directors, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in

this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

6.8 Warranties. The Association shall exercise all rights available under any warranty applicable to any Common Element.

6.9 The Common Elements. The Board of Directors, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Elements designated for use in connection with Owner's Unit, if any, in a clean, sanitary, safe and attractive condition and in good order and repair. The Association shall be responsible for the maintenance and repair of the exterior of the Buildings, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, roofs and fences and maintenance of landscaping, walkways, driveways, parking areas, and grass area. The Board of Directors shall also be responsible for maintenance, repair and replacement of Common Elements within the Buildings, including, without limitation, landings, stairways, utility lines, and all improvements and other items located within or used in connection with the Common Elements. The specification of duties of the Board of Directors with respect to the Common Elements shall include, but not necessarily be limited to, the following:

(A) **Painting, Repairs and Replacement.** The Board of Directors shall cause all improvements in the Common Elements to be repaired, replaced and/or repainted as necessary to maintain the original appearance thereof (normal wear and fading excepted).

(B) **Utilities.** The Board of Directors shall cause to be maintained properly and in good condition and repair all utilities and utility systems in the Common Elements.

(C) **Drainage; Landscaping; Irrigation.** The Board of Directors shall cause all drainage systems, landscape installations, and irrigation systems within the Common Elements to be inspected as deemed reasonably prudent by the Board. In particular, the Board shall inspect for any misaligned, malfunctioning or nonfunctional sprinklers, or blocked drainage grates, basins, lines, and systems, which could cause damage to the Condominiums.

(D) **Hardscape.** The Board of Directors shall cause all hardscape and paved areas within the Condominium to be inspected at times as deemed reasonably prudent by the Board.

(E) Structures and Roofs. The Board of Directors shall cause the structures and roofs of all Buildings and other improvements within the Condominium to be inspected at times as deemed reasonably prudent by the Board of Directors.

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budget.

(A) At least sixty (60) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, 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 may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Section 7.2 (D) or (E) of this Declaration.

(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 7.1 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 allocable share of the Common Expenses as provided in Section 7.1 of this Declaration and, each Unit Owner shall continue to pay the Common Expense Assessment against his 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.

7.2 Common Expense Assessment.

(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 Subsection (E) of

this Section) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6 of this Declaration. The amount of the Common Expense Assessment assessed pursuant to this Subsection (A) shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

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

(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 a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection (A) of this Section.

(D) If any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against his Unit.

(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 Liabilities.

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

(G) At the Declarant's option, the Common Expense Assessment for any Unit on which construction has not been substantially completed may be an amount which is twenty-five percent (25%) of the Common Expense Assessment for Units which have been substantially completed; provided, the Declarant shall pay to the Association any deficiency in funds due to the Declarant having paid a reduced Common Expense Assessment and necessary for the Association to be able to timely pay all Common Expenses. "Substantially completed" is defined to mean the issuance of a certificate of occupancy for a Unit.

7.3 Special Assessments. In addition to Common Expense Assessment, the Association may levy, in any fiscal year of the Association, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment shall have first been approved by

Unit Owners representing two-thirds (2/3) of the votes in the Association who are voting, as provided in the Bylaws, at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

7.4 Notice and Quorum for any Action Authorized Under Section 7.3. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under Section 7.3 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. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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

(A) Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate the Board of Directors may from time to time establish.

(B) All Assessments and other fees and charges imposed or levied against any Unit or Unit Owner shall be secured by the Assessment Lien as provided for in the Condominium Act. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien and no further recordation of any claim of lien shall be required.

(C) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in any manner allowed by law including, but not limited to (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts, or (ii) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.6 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 party 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 fees and charges 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 obligation of the defaulting Unit Owner.

7.7 Exemption of Unit Owner. No Unit Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit.

7.8 Certificate of Payment. The Association 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 his 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.

7.9 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.

7.10 Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses, establish reserves or to purchase necessary equipment or services, each Purchaser of a Unit (from the Declarant and each subsequent Person) shall pay to the Association for deposit in a separate account immediately upon becoming the Unit Owner of the Unit, or with respect to the sale of a Unit by Declarant, Declarant may, at its option, contribute part or all of, a sum equal to, two (2) month's Common Expense Assessment for the then current fiscal year. Such amount shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. The Declarant shall not be entitled to use such funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. When any unsold Units are sold, the Declarant may reimburse self for funds it paid the Association for an unsold Units share of the fund from funds collected at the closing.

7.11 Surplus Funds. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves may in the discretion of the Board of Directors either be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense Liability, be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Assessments or contribute to such reserves or capital funds that the Association may from time to time maintain.

7.12 Monetary Penalties. In accordance with the procedures set forth in the Bylaws, the Board of Directors shall have the right to levy reasonable monetary penalties against a Unit Owner for violations of the Condominium Documents by the Unit Owner, its residents or invitees.

7.13 Transfer Fee. Each Person who acquires a Unit from a Person other than the Declarant shall pay to the Association immediately upon becoming the Unit Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Unit. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement that the Association is required to mail or deliver to a purchaser under A.R.S. §33-1260A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. §33-1260(C).

ARTICLE 8

INSURANCE

8.1 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 coverage:

(i) Property insurance on the Common Elements and Units including building service equipment, supplies, and other common personal property belonging to the Association, any fixtures, equipment or other property within the Unit to the extent they are financed by a mortgage, otherwise exclusive of improvements and betterments installed in Units by Owners and exclusive of the personal property of Unit Owners, issued under a standard form "All Risk of Direct Physical Loss Form" in an amount equal to the maximum insurable replacement value of the insured property, as determined by the Board of Directors; provided, however, that the total amount of insurance after application of any deductibles 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 property insurance policy.

(ii) Broad Form Comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$2,000,000.00 combined single limit each occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner. Such policy shall also include medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles.

(iii) Coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party if the Association has employees and if deemed appropriate by the Board of Directors.

(iv) Error and omissions coverage for all officers, directors, trustees and employees of the Association, with coverage amounts to be determined by the Board.

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

(vi) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Unit Owners.

(vii) Certificate of property insurance shall be issued to each Unit Owner and First Mortgagee upon reasonable written request.

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

- (a) Each Unit Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or his membership in the Association.
- (b) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household.
- (c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.
- (d) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance Unofficial Document which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.
- (e) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.
- (f) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).
- (g) For policies of hazard insurance, a standard mortgagee clause commonly accepted by private institutional investors in Maricopa County, Arizona providing that the insurance carrier shall notify the First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any reduction or cancellation of the policy.

(ix) If the Condominium is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of: (a) one hundred percent (100%) of the current replacement cost of the Buildings and any other property covered on the required form of policy; (b) the maximum limit of coverage available under the National Insurance Act of 1968, as amended; or (c) the then existing FHLMC/FNMA flood insurance requirements for similar condominium projects.

(x) "Agreed Amount" and "Inflation Guard" endorsements.

(B) If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Association policy shall provide primary coverage.

(i) There may be named as an insured on behalf of the Association, the Association's authorized representative, including any Trustee with whom the Association may enter into any Insurance Trust Agreement or any successor (Insurance Trustee) who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Each Unit Owner appoints the Association or Insurance Trustee as its attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate deposit of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purpose.

8.2 Directors' and Officers' Liability Insurance/Fidelity Bonds. The Association shall maintain:

(A) Directors' and officers' liability insurance in amounts determined by the Board of Directors to be satisfactory to cover actions of the directors and officers of the Association; or

(B) Blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of the fidelity bonds maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Condominium, (ii) the estimated maximum funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, or (iii) the sum equal to three months aggregate Common Expense Assessments on all Units plus reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

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

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

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

(C) The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity

bond to be maintained by the Association pursuant to Subsection (B) of this Section. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

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

8.4 Insurance Obtained by Unit Owners. Each Unit Owner shall maintain insurance in an amount not less than Six Hundred Thousand and no/100 Dollars (\$600,000) for Unit Owner's benefit and at Unit Owner's expense covering Unit Owner's Unit including, but not limited to: (a) physical damage insurance on the personal property in Unit Owner's Unit and elsewhere on the Condominium, including any additions, alterations and improvements to Unit Owner's Unit (whether installed by such Unit Owner or any prior Unit Owner or whether originally constructed); (b) the personal liability to the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all of the Unit Owners; and (c) additional living expense. All such policies of insurance carried by each Unit Owner shall list the Association as an additional insured and shall be without contribution with respect to the policies of property insurance obtained by the Board of Directors for the benefit of all of the Unit Owners. For the purposes of this Section 8.4, "additions, alterations and improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including without limitation, carpeting, flooring, wall covering, paint and paneling. Each Unit Owner shall remain obligated for maintaining and repairing the Unit and keeping in place all insurance even if the Unit is leased. Upon written request of the Association, a Unit Owner shall provide evidence of such insurance.

8.5 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 §33-1253 of the Condominium Act.

8.6 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article 8 of the Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a Deed of Trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a First Mortgage to whom a certificate or memorandum of insurance has been issued at their respective last known addresses

8.7 Lender Requirements. Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium development projects established by FHA, VA, FNMA and the Government National Mortgage Association, so long as any of them is a First Mortgagee or owner of a Unit, except to the extent such coverage is not available or has been waived in writing by FHA, VA, FNMA or the Government National Mortgage Association. Policies shall be deemed

unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, a Unit Owner, FNMA, FHLMC or any designee of FNMA or FHLMC; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA or a Unit Owner from collecting insurance proceeds.

8.8 Evidence of Insurance. Upon request, the Board of Directors shall provide the First Mortgagee with a copy of the "master" or "blanket" policy of multi peril property insurance, including copies of endorsements to such policy as required by FHLMC or FNMA, and, where applicable, a copy of any flood insurance policy, a copy of the comprehensive policy of public liability insurance, an appropriate certificate or memorandum of insurance as to each Unit which is the subject of a mortgage being serviced for FHLMC or FNMA, any other insurance drafts, policies, notices, invoices and other similar documents.

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

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

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

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

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

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

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

Unofficial Document

ARTICLE 10

EMINENT DOMAIN

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

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

proportion to their respective interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced interest.

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

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

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

ARTICLE 11

RIGHTS OF FIRST MORTGAGEES

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

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

(B) Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor or any other default in the performance by the Unit Owner of any obligation under the Condominium Documents, which delinquency or default remains uncured for the period of sixty (60) days;

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

(D) Any change in the purposes to which a Unit or common element is restricted; and

(E) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in this Article 11 of this Declaration.

11.2 Approval Required for Amendment to Declaration, Articles or Bylaws. 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 Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (A) Voting rights;
- (B) Assessments, assessment liens or subordination of assessment liens;
- (C) Reserves for maintenance, repair and replacement of Common Elements;
- (D) Insurance or fidelity bonds;
- (E) Responsibility for maintenance and repairs;
- (F) Expansion of the Condominium, or the addition or annexation of property to the Condominium;
- (G) Boundaries of any Unit;
- (H) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (I) Convertibility of Units into Common Elements or of Common Elements into Units;
- (J) Leasing of Units;
- (K) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- (L) A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;
- (M) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents; and
- (N) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors.

Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws, which additions or amendments are not material, 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 Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

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

11.4 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer Or Guarantor will, upon written request, be entitled to (a) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours, (b) receive within one hundred and eighty (180) days following the end of any fiscal year of the Association, a compilation of the financial condition of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. In no event is the Association under any obligation to obtain an audited financial statement, unless required by applicable law or as a condition of an Eligible Insurer or Guarantor to finance or guarantee financing of the lien of which is secured by a Unit.

11.5 Prior Written Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least sixty-seven percent (67%) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Unit Owners (other than the Declarant or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

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

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

(C) Partition or subdivide any Unit;

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

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

ARTICLE 12

RESERVATION OF DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Pursuant to the Condominium Act, Declarant reserves all of the Development and Special Declarant Rights in the Condominium afforded under A.R.S. §§33-1202(14) and (21), respectively, subject to the expiration deadlines set forth below. Specifically, but without limitation, Declarant reserves the following rights:

12.1 Development Rights. Declarant hereby reserves, for a period of seven (7) years following the recordation of this Declaration (or any lesser period specified by law with respect to any particular Development Right), all Development Rights under A.R.S. §33-1202(14).

12.2 Right to Complete Improvements and Construction Easement. Declarant hereby reserves the right to complete the construction of Improvements on the Condominium, and an easement over the Condominium for the purpose of doing so.

12.3 Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain offices for sales and management and models as provided in Section 3.4 above, and to maintain signs on the Common Elements for so long as Declarant owns any portion of the Condominium.

12.4 Use of Easements. Declarant reserves the right to use easements through the Common Elements for the purpose of making ^{Unofficial Document} improvements within the Condominium.

12.5 Appointment and Removal of Directors and Officers. Declarant reserves the right to appoint and remove any officer of the Association or any member of the Board of Directors as set forth in Section 6.2 above, for the time period set forth therein.

12.6 Right to Configure Project. To the extent permitted by law, the Declarant shall have the right, at any time, to change the design, size and configuration, or make any other changes as it deems appropriate, of the Condominium.

ARTICLE 13

SALES PROHIBITIONS

13.1 Sales Prohibitions. Each Unit Owner represents and warrants to the Declarant that it is buying the Unit for its own use and not for speculative purposes. In no event shall any Unit Owner sell, transfer convey or otherwise dispose of Unit Owner's Unit within one (1) year after the date of purchase of such Unit unless:

(a) The Unit Owner dies, is rendered incompetent or incapacitated to the extent that occupancy of the Unit is an undue hardship.

(b) The Unit Owner declares bankruptcy and sale of the Unit is incident to a Court approved plan.

- (c) A First Mortgagee forecloses on the Unit.
- (d) The sale of the Unit is made pursuant to a court order.
- (e) The sale of the Unit is pursuant to a bona fide divorce settlement.
- (f) The Unit Owner becomes unemployed or is permanently transferred to another location outside a radius of twenty (20) miles from the Property.
- (g) The Unit Owner has suffered a hardship that renders ownership of the Unit impossible, as the Declarant may in its discretion determine.
- (h) The transfer is to a grantor trust or otherwise part of a bona fide estate planning.

At any time a Unit Owner is entitled to sell a Unit pursuant hereto, and Unit Owner receives an offer Unit Owner desires to accept, Unit Owner shall first offer the Unit to the Declarant (if within the Period of Declarant Control) for sale on the same terms and conditions as set forth in such offer. Unless Declarant delivers written notice to the Owner at such Unit that it accepts such offer within thirty (30) days after receipt of notice thereof, Declarant shall be deemed to have rejected it. The right to limit the sales and the right of first refusal are personal to, and exercisable only by Declarant until the last Unit is sold. The rights may not be exercised by the Board of Directors or Association.

ARTICLE 14

GENERAL PROVISIONS

14.1 Enforcement. 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 and charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter.

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

14.3 Duration. The covenants and restrictions of this Declaration shall run with and bind the Condominium, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

14.4 Termination of Condominium. The Condominium may be terminated in the manner provided for in the Condominium Act.

14.5 Amendment.

(A) Except in cases of amendments that may be executed by a Declarant under this Declaration or under Section 33-1220 of the Condominium Act, or by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, and except to the extent permitted or required by other provisions of the Condominium Act, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

(B) Except to the extent expressly permitted or required by the Condominium Act, an amendment to the 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.

(C) An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing.

(D) During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to (i) comply with the Act or any other applicable law if the amendment does not adversely affect the rights of the Unit Owners, (ii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner, or (iii) comply with the rules 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 limitations, the Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(E) During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration or the Plat to comply with applicable law or to correct any error or inconsistency in the Declaration or the Plat if the amendment does not adversely affect the rights of any Unit Owner.

(F) Any amendment adopted by the Unit Owners pursuant to Subsection (A) above shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of each County in which any portion of the Condominium is located. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection (D) or (E) of this Section or the Condominium Act shall be executed by the Declarant and shall be recorded with the County Recorder of each County in which any portion of the Condominium is located. Amendments shall be recorded within thirty (30) days of the adoption of any amendment.

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

14.7 Notices. All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address which the Unit Owner 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, the Declarant, or the Architectural Committee 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 days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

14.8 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each person or entity, for himself, 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, rules, and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such person by so doing thereby acknowledges that the Condominium Document^{Unofficial Document} 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, rules and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future 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 and the membership in the Association and the other rights created by the Condominium Documents shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

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

14.10 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.

14.11 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.

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

14.13 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.

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

14.15 Attorneys' Fees. In the event the Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce a lien or to collect any amounts due from a Unit Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Condominium Documents, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action.

14.16 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.

14.17 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

14.18 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the

legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of violation was recorded, the recording data of the Notice of Violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

14.19 Sound Issues.

(A) Each Unit Owner and occupant of a Unit has read and understands that the Units are attached residential Units with common walls. Each Unit Owner and occupant of a Unit may hear loud noises and feel vibrations from activities in adjoining Units. Each Unit Owner and occupant of a Unit, for itself and its family, invitees and licensees, acknowledges and agrees as follows:

(i) Declarant makes no representations or warranties with respect to the level of noise or vibrations that may be heard or felt from Unit to Unit at any point in time; and

(ii) Compliance with Section ^{Unofficial Document} 4 of this Declaration is necessary to attempt to reduce the noise and vibration levels heard and felt within adjacent Units.

Each Unit Owner and occupant of a Unit, on behalf of itself and its family, invitees and licensees, assumes the risk that, because the Units are attached residential Units, certain noise and vibrations from other Units may be heard within the Unit and acknowledges that the foregoing was considered in the Unit Owner's decision to purchase a Unit. Further, each Unit Owner and occupant of a Unit agrees to accept the determination of the Board of Directors as to whether any noise and vibration levels are excessive if a dispute arises with respect to the enforcement of this Declaration. Neither the Declarant, the Association nor any director, officer, agent or employee of the Association shall be liable to any Unit Owner, occupant of a Unit or its family, invitees or licensees for any claims or damages resulting, directly or indirectly, from any noise or vibrations emanating from one Unit to another. Each Unit Owner and occupant of a Unit hereby releases the Declarant and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities (including, without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, distress, disturbance, injury or damage resulting from noises or vibrations.

14.20 Views Not Guaranteed. Although certain Units in the Condominium at any point in time may have particular views, no express or implied easements exist for views or for the passage of light and air to any Unit. Neither Declarant nor Association make any representation or warranty whatsoever, express or implied, concerning the view which any Unit will have whether at the date this Declaration is recorded or thereafter. Further, the payment of

any premium for any Unit does not constitute a guarantee of any view the Unit may have now or in the future. Any view which exists at any point in time for a Unit may be impaired or obstructed by further construction within the Condominium, including, without limitation, by construction of improvements (including, without limitation, landscaping) by Declarant, construction by third parties and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Unit or any view of a Unit from any other property.

14.21 Construction Defect Dispute Notification and Resolution Procedure. Except as may be required by the Condominium Act or any other provision of Arizona law, all actions or claims (a) by the Association against the Declarant, (b) by any Unit Owner(s) against Declarant, or (c) by both the Association and any Unit Owner(s) against the Declarant, relating to or arising out of the Condominium, including but not limited to, the Declaration or any other Condominium Documents, the use or condition of the Condominium or the design or construction of or any condition on or affecting the Condominium, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this Section 14.21. Declarant and each Unit Owner acknowledge that the provisions set forth in this Section 14.21 shall be binding upon current and future Unit Owners of the Condominium and upon the Association, whether acting for itself or on behalf of any Unit Owner. (Unofficial Document) Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of any disclaimer or limited warranty, if any, provided by Declarant to a Unit Owner pursuant to a purchase agreement.

(A) **Notice.** Any Person (including, without limitation, the Association) with a Dispute claim shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

(B) **Right to Inspect and Right to Corrective Action.** Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Condominium to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and the Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by Declarant (provided Declarant shall repair or replace any property damaged or destroyed during such inspection or testing), which rights shall continue until such time as the Dispute is resolved as provided in this Subsection 14.21(B). The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Condominium and the property which is the subject of the claim to take and complete corrective action.

(C) **No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in Subsection 14.21(B) shall be construed to impose any obligation on Declarant to

inspect, test, repair or replace any item of the Condominium for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant to a Unit Owner in connection with the sale of the Condominium and/or the Improvements constructed thereon. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated, except by a writing executed and recorded by Declarant.

(D) Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Subsection 14.21 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Subsection 14.21(D)) or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against Declarant without complying with the procedures described in this Subsection 14.21(D).

(i) Position Memoranda, Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Condominium is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Notwithstanding the foregoing, applicable subcontractors and material suppliers designated by Declarant may attend mediation sessions and may be made parties to the mediation. Confidential information

disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

(E) Arbitration. Should mediation pursuant to Subsection 14.21(D) above not be successful in resolving any Dispute, such claim or dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Subsection 14.21(E). The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subcontractors, material suppliers and other parties whose participation is reasonably necessary to afford complete relief in arbitration or who are involved in common questions of law or fact shall be included as parties in the arbitration. Subject to the limitations imposed in this Subsection 14.21(E), the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Condominium is located.

(ii) Arbitration. A single ^{Unofficial Document} arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Condominium. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the demand for arbitration on all respondents named therein.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (a) witness lists; (b) expert witness designations; (c) expert witness reports; (d) exhibits; (e) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (f) hearing briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Subsection 14.21(B) above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(vii) Arbitration Award. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, A.R.S. Section 12-1501, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held, or as applicable, pursuant to the Federal Arbitration Act (Title 9 of the United States Code).

(F) WAIVERS.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 14.21 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 14.21. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 14.21 THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE CONDOMINIUM, EACH UNIT OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

(G) Statutes of Limitation. Nothing in this Section 14.21 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

(H) Required Consent of Declarant to Modify. Neither this Section 14.21 nor Section 14.22 below may be amended, except in accordance with Subsection 14.5(A) of this Declaration and with the express written consent of the Declarant.

14.22 Required Consent of Unit Owners for Legal Action. Any action or claim instituted by the Association (which action or claim shall be subject to the terms of Section 14.21) against the Declarant, relating to or arising out of the Condominium, including, but not limited to the Declaration or any other Condominium Documents, the use or condition of the Condominium or the design or construction of or any condition on or affecting the Condominium, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Units) or disputes which allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Condominium or any Improvements, shall have first been approved by Unit Owners representing seventy-five percent (75%) of the votes in the Association who are voting, as provided in the Bylaws, at a meeting duly called for such purpose.

(A) Notice of Unit Owners.

(i) Prior to obtaining the consent of the Unit Owners in accordance with Section 14.22, the Association must provide written notice to all Unit Owners which notice shall (at a minimum) include (a) a description of the nature of any action or claim (the "Claim"), (b) a description of the attempts of Declarant to correct such Claim and the opportunities provided to Declarant to correct such Claim, (c) a certification from an engineer licensed in the State of Arizona that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (d) the estimated cost to repair such Claim, (e) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant and a description of the relationship between such attorney and member(s) of the Board of Directors (if any), (f) a description of the fee arrangement between such attorney and the Association, (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (h) the estimated time necessary to conclude the action against Declarant, and (i) an affirmative statement from the Board of Directors that the action is in the best interest of the Association and its Members.

(ii) In the event the Association recovers any funds from Declarant (or any other person or entity) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

(B) Notification to Prospective Purchasers. In the event that the Association commences any action or claim, all Unit Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Subsection 14.22(A).

14.23 Effect of Declaration. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

14.24 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents, consultants or employees in connection with the Condominium, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration.

[Signatures on following page]

Unofficial Document

8th IN WITNESS WHEREOF, the Declarant has executed this Declaration on this day of November, 2007.

MITCHELL LOFTS, LLC,
an Arizona limited liability company

By: Sondra Marks
Name: Sondra Marks
Its: Member / Manager

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 8th day of November, 2007, by Sondra Marks, the Member / Manager of MITCHELL LOFTS, LLC, an Arizona limited liability company, on behalf of the company.

Elaine Nagai
Unofficial Document
Notary Public

My Commission Expires:

August 22, 2008

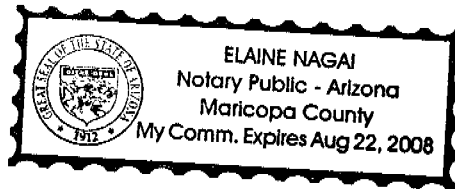


EXHIBIT "A"

Legal Description

Unofficial Document

LEGAL DESCRIPTION

PARCEL NO. 1

The south 135 feet of the north 310 of Lot 8 Whitton Acres according to the Plat of Record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, Page 64.

PARCEL NO. 2

Lot 36 & 37, Block 2 of Amended Plat of Lots 1, 2, 3, 4, 5, 6 and 7 Whitton Acres, according to the Plat of Record in the Office of the County Recorder of Maricopa County, Arizona recorded in Book 4 of Maps, Page 23.

Unofficial Document