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**PINNACLE PEAK OFFICE PARK
CONDOMINIUM**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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- EXHIBIT "A" Legal Description for the Property**
- EXHIBIT "B" Gross Area and Percentage of Interests for each Unit**
- EXHIBIT "C" Reserved Parking Allocation**

**PINNACLE PEAK OFFICE PARK
CONDOMINIUM**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the date hereinafter set forth by POPP, LLC, an Arizona limited liability company, and is made in reference to the following Recitals which are a material part of this Declaration.

RECITALS:

A. The Company is the fee owner of that certain real property commonly known as Pinnacle Peak Office Park, which is situated in the City of Scottsdale, County of Maricopa, State of Arizona, the legal description of which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, together with all buildings, improvements and other permanent fixtures of whatsoever kind thereon, including all buildings and other improvements to be constructed thereon, and all rights and privileges belonging or pertaining thereto, and any interest in the Association or the common elements thereof.

B. The Company desires to submit the Property to a condominium plan of description and ownership pursuant to Title 33, Chapter 9, of the Arizona Revised Statutes, and upon development it will be composed of commercial condominiums to be developed and sold pursuant to this Declaration.

C. The Association has been formed by the Company for common area management and for other purposes benefiting the Property and its Owners and Occupants. The Association's purposes, rights, duties and obligations are set forth in this Declaration. The Company and the Association intend that the Property, and its Owners and Occupants shall share certain common elements of the Property and that the Owners shall own undivided interests in these Common elements. In order to provide such common area management to the Property, the Association may (i) acquire, construct, operate, manage, maintain, repair and replace a variety of common elements upon the Property; (ii) establish, levy, collect and disburse assessments and other charges imposed to pay for the services described in subsection (i); and (iii) administer and enforce all provisions of the Declaration and enforce use and other restrictions imposed on the Property, or any part thereof.

D. The Company and the Association each further desire to declare and establish, for their assignees and their own benefit, and for the mutual benefit of all Owners and Occupants of the Property or any part thereof, whether present or future, certain easements and rights in, over, upon and under the Property, and certain mutually beneficial covenants, restrictions and obligations with respect to the proper use, conduct and maintenance of the Property, including, but not limited to establishing certain easements for (i) ingress and egress by vehicular and pedestrian traffic in, over and upon the Property, (ii) to establish certain public and/or private utility easements under, through and across the Property, and (iii) certain other covenants,

conditions and restrictions upon the Property and all parts thereof which will constitute a general scheme for the use and enjoyment by the Owners and Occupants of the Property.

E. This Declaration provides for the management duties and rights of the Association, including the ability to make assessments in order to fulfill such obligations, and establishes the easements and restrictions governing the use and occupancy of the Property.

F. It is desirable to have covenants, conditions and restrictions binding upon the Property and each and every portion thereof, and to have certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The Company and the Association desire and intend that the assignees, Owners, Mortgagees, beneficiaries and trustees under trust deeds, Tenants, Occupants, Permittees and all other persons hereafter acquiring any interest in the Property or any part thereof, shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth. The rights, easements, privileges and restrictions included here shall all run with the land and be binding upon the Property, the Company and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof. All are declared to be in furtherance of a plan to promote and protect the cooperative use, conduct and maintenance of the Property, are established for the benefit of the Property and all parts thereof and for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

AGREEMENT:

NOW, THEREFORE, pursuant to Title 33, Chapter 9, of the Arizona Revised Statutes, Declarant hereby submits the Property to the condominium to be known as the "Pinnacle Peak Office Park Condominium" and hereby declares that the entire Condominium shall be subject to these covenants, conditions and restrictions, and shall be held, and used subject to the following covenants, conditions, restrictions, easements and equitable servitudes. The covenants, conditions, restrictions, easements and equitable servitudes set forth in this Declaration shall run with the Condominium, shall be binding upon all persons having or acquiring any right, title or interest in the Condominium, or any part thereof, and shall inure to the benefit of the Condominium, and each portion thereof, and an interest therein, and shall inure to the benefit of and be binding upon any assignee and successor in interest of the Company and each Owner and may be enforced by the Company, by any Owner, or their assignees and/or successors in interest, or by the Association.

ARTICLE 1 **DEFINITIONS**

As used herein, unless the context otherwise requires, the following terms shall have the following definitions:

- 1.1 "Act" means Title 33, Chapter 9 of the Arizona Revised Statutes.

1.2 “Adjacent Parcel” means the parcel of land consisting of approximately 41,420 square feet located immediately south and east of the Property.

1.3 “Allocated Interests” means the undivided interests in the Common Elements, the Common Expense Liability and votes in the Association allocated to each Owner as more particularly set forth in Article 3.

1.4 “Articles” or “Articles of Incorporation” means the Articles of Incorporation of the Association, as the same may be amended from time to time.

1.5 “Assessments” means the Regular Assessments, Special Assessments, Individual Expense Assessments, User Fee Assessments and Enforcement Assessments all levied pursuant to Article 8.

1.6 “Assessment Lien” means the lien granted to the Association by this Declaration and the Act to secure the payment of Regular and Special Assessments and any interest, late fees, Collection Costs and other fees and charges owed to the Association with respect to such Regular and Special Assessments.

1.7 “Association” means Pinnacle Peak Office Park Association, an Arizona non-profit corporation, its successors and assigns, formed or to be formed to administer, exercise and enforce the Declaration and any documents related thereto, and to exercise the rights, powers and duties set forth in the Declaration.

1.8 “Board” or “Board of Directors” means the Board of Directors of the Association.

1.9 “Building” means the structures designated as Building(s) on the Project Plat.

1.10 “Business Use” shall be construed to have its ordinary, generally accepted meaning and shall include any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. The leasing of an Owner's own Building or Unit shall not be considered a trade or business.

1.11 “Bylaws” means the Bylaws of the Association required by the Act, as the same may be amended from time to time.

1.12 “City” means the City of Scottsdale, Arizona.

1.13 “Collection Costs” means all costs, fees, charges and expenditures (including, without limitation, attorneys' fees, court costs, filing fees and recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments.

- 1.14 “Common Elements” means all portions of the Condominium other than the Units.
- 1.15 “Common Expense Liability” means the liability for Common Expenses allocated to each Owner by Section 3.3.
- 1.16 “Common Expenses” means expenditures made by or financial liabilities of the Association, together with any allocation for reserves.
- 1.17 “Company” means POPP, LLC, an Arizona limited liability company.
- 1.18 “Condominium” means (a) the Units comprising the Condominium hereby created, (b) the Common Elements, and (c) Limited Common Elements, if any; and such term shall in general have the same meaning as set forth in the Act, as it relates to the Condominium hereby created.
- 1.19 “Condominium Documents” means the Declaration, Bylaws, Articles of Incorporation, and Rules, if any, comprising the Condominium.
- 1.20 “Declarant” means the Company and its successors and assigns, who reserve, are granted, or succeed to any Special Declarant Rights pursuant to this Declaration or the Act.
- 1.21 “Declaration” means this Declaration establishing the Pinnacle Peak Office Park Condominium and Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time.
- 1.22 “Development Rights” means any right or combination of rights reserved by or granted to a Declarant in this Declaration to do any of those things as described and set forth in the Act.
- 1.23 “Enforcement Assessment” means an assessment levied by the Association pursuant to Section 8.6.
- 1.24 “First Mortgage” means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust.
- 1.25 “First Mortgagee” means the holder of any First Mortgage.
- 1.26 “Individual Expense Assessment” means an assessment levied by the Association pursuant to Section 8.4.
- 1.27 “Lease” means any agreement for the leasing or rental of a Unit or a portion of a Unit and the interest in the Common Elements appurtenant to such Unit.

1.28 "Leased Premises" means the specific Unit or portion of a Unit and the interest in the Common Elements appurtenant thereto, which is the subject of a Lease.

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

1.30 "Majority of Members" means a vote of more than fifty percent (50%) of the total votes allocated to the Members under Section 3.4.

1.31 "Member" means any Person who is or becomes a member of the Association.

1.32 "Membership" means a membership in the Association.

1.33 "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under Arizona law as security for the performance of an obligation, including, without limitation, a deed of trust, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code. "Mortgagee" means a person secured by a Mortgage, including a trustee and beneficiary under a deed of trust; and "Mortgagor" means the party executing a Mortgage.

1.34 "Occupant" means a person or persons, other than an Owner, and including, but not limited to, a Tenant, in rightful possession of a Unit or a part thereof.

1.35 "Owner" or "Unit Owner" means the record owner, whether one or more Persons or entities, 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 in the Property. Owner shall not include: (a) Persons or entities having an interest in a Unit merely as security for the performance of an obligation, or (b) a Tenant of a Unit or a part of the 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. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. §33-801, *et seq.*, the trustor shall be deemed to be the 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 Owner. The Declarant may be an Owner.

1.36 "Parcel" means a portion of the Property owned by an Owner, including, but not limited to a Building, Condominium or Unit, as set apart by established and specifically identified boundaries within the Property.

1.37 "Parking Space" means each of the separate parking spaces lined in the parking areas depicted on the Project Plat.

1.38 "Party Wall" means a wall located between two Units.

1.39 "Perimeter Building Walls" means the perimeter walls of a Building, including all windows and doors, but excluding (a) any fixtures, lines, pipes, wires, ducts or conduits within the wall which serve only one Unit and (b) any lath, furring, wallboard, plasterboard, plaster, paint, wallpaper, paneling or other materials that constituting any part of the finished surfaces of the interior surface of the perimeter walls.

1.40 "Period of Declarant Control" means the time period commencing on the date this Declaration is Recorded and ending on the earlier of: (a) ninety (90) days after the conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than the Declarant; or (b) four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business.

1.41 "Permittees" means all Occupants or Owners and all customers, employees, licensees and other business invitees of such Occupants or Owners.

1.42 "Person" means an individual, corporation, partnership, limited liability company or other entity capable of holding title to real property and their respective heirs, personal representatives, successors and assigns.

1.43 "Project" means all of the Property, Buildings and structures, including, but not limited to, the Units and Common Elements, encompassing Pinnacle Peak Office Park, as more particularly described on the Project Plat.

1.44 "Project Plat" or "Plat" means the final plat of survey of the entire Property, which Project Plat was recorded on 6-8-05, as Instrument No. 2005-768937 in Book of Maps 753 at page 16 of the records of the County Recorder of Maricopa County, Arizona.

1.45 "Property" means the real property commonly known as the Pinnacle Peak Office Park, as more particularly described on Exhibit "A" attached hereto and all Buildings, Condominiums, Parcels, Units, other improvements and permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.46 "Public Restrooms" means a portion of the Common Elements designated on the Plat as Public Restrooms.

1.47 “Purchaser” means any Person, other than the Declarant, who by means of a voluntary transfer becomes a Unit Owner, except for a Person who purchases a Unit and then leases it to the Declarant for use in connection with the sale of other Units, or a Person who, in addition to purchasing a Unit, is assigned any Special Declarant Right.

1.48 “Record” or “Recording” refers to the record or the act of recording, in the office of the County Recorder of Maricopa County, Arizona.

1.49 “Regular Assessment” means the assessment levied by the Association pursuant to Section 8.2.

1.50 “Rules and Regulations” or “Rules” means the rules and regulations adopted by the Association Board of Directors pursuant to this Declaration as such rules and regulations may be amended from time to time.

1.51 “Special Assessment” means an assessment levied by the Association pursuant to Section 8.3.

1.52 “Special Declarant Rights” means any right or combination of right reserved by or granted to a Declarant in this Declaration to do any of those things or perform any acts as set forth in the Act.

1.53 “Taking” shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Property.

1.54 “Tenant” means any lessee or tenant of a specific Unit or portion of a Unit, which is the subject of a Lease.

1.55 “Unit” means any portion of the Condominium which is shown on the Project Plat designed and designated for separate ownership or occupancy, all as defined in the Act and shall not include any of the Common Elements. There shall be allocated and appurtenant to each Unit an undivided interest in the Common Elements as set forth in Section 3.5 hereof.

1.56 “User Fee Assessment” means (a) any payments, fees or charges imposed by the Association pursuant to Section 8.5 for the use, rental or operation of the Common Elements, other than Limited Common Elements intended to serve a single Unit, and for services provided to Unit Owners; and (b) reasonable charges imposed by the Association pursuant to Section 8.5 for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments.

1.57 “Utility Room” means a portion of the Common Elements designated on the Plat as a Utility Room.

ARTICLE 2
ESTABLISHMENT OF THE CONDOMINIUM

2.1 Declaration. Declarant hereby creates and establishes the Condominium pursuant to Title 33, Chapter 9 of the Arizona Revised Statutes, to be hereafter known as the "Pinnacle Peak Office Park Condominium" and does hereby declare that all of the Units shall be owned, leased, sold, conveyed and encumbered or otherwise held or disposed of subject to the terms, conditions and other provisions of the Condominium Documents and the Act. Pursuant to the Act, the Declarant hereby divides the Property into the Units described in Section 3.2 and shown on the Plat and Common Elements. Declarant hereby designates each Unit for separate ownership or occupancy. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Condominium and shall be binding upon and inure to the benefit of the Declarant and all Unit Owners, Tenants and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Condominium, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

ARTICLE 3
DESCRIPTION OF THE CONDOMINIUM,
UNITS AND ELEMENTS

3.1 Entire Condominium. The entire Condominium shall consist of the Units, Limited Common Elements, and the Common Elements.

3.2 Units. Reference is hereby made to the final Project Plat for a description of the boundaries of each Unit, its identifying number and its location or planned location within the Condominium.

3.2.1 The legal description for any Units created from the Property shall be determined in the following manner:

(a) The vertical boundaries are the exterior surfaces of the Perimeter Building Walls (and the exterior surface of any windows or doors in the Perimeter Building Walls) of the Building in which the Unit is located and a vertical plane running through the center of any Party Wall separating the Unit from another Unit or from a Utility Room;

(b) The upper horizontal boundary of a top floor Unit is the bottom surface of the roof trusses of the Building in which the Unit is located, and the upper horizontal boundary of a lower floor Unit is the bottom surface of the upper floor support beams; and

(c) The lower horizontal boundary of a Unit is the top surface of the floor (or slab) of the Unit.

3.2.2 All Limited Common Elements allocated solely to a Unit and located within the boundaries of a Unit are part of such Unit.

3.2.3 All spaces, interior partitions and other fixtures and improvements (including, but not limited to, chutes, flues, wires, conduits, heating and air conditioning units, hot water heaters and gas, cable television, water and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the boundaries of a Unit but which serve more than one Unit are part of the Common Elements.

3.2.4 The location and dimensions of the perimeter walls of the Units as shown on the Plat are based on architectural drawings and are approximate. The actual location and dimensions of the perimeter walls of the Units may vary from the location and dimensions of the perimeter walls as shown on the Plat. The actual physical location and dimensions of the perimeter walls of a Unit, as initially constructed, or as reconstructed following the damage or destruction of such walls, shall be considered the location and dimensions of the perimeter walls of the Units for purposes of this Declaration (except for the calculation of the percentage of undivided interests of each Unit in the Common Expenses and in the Common Elements pursuant to Section 3.3 and the allocation of votes in the Association pursuant to Section 3.4) regardless of any variances from the location and dimensions of the perimeter wall as shown on the Plat.

3.2.5 In the event of any inconsistency or conflict between the provisions of this Section 3.2 and the Plat in regard to the description of the boundaries of the Unit, this Section shall control.

3.2.6 Declarant reserves the right to relocate the boundaries between adjoining Units owned by the Declarant and to reallocate each such Unit's interest in the Common Elements, votes in the Association and Common Expense Liability subject to and in accordance with the Act.

3.3 Allocation of Common Elements and Common Expense Liability. Each Unit is allocated a percentage of undivided interests in the Common Elements and in the Common Expenses calculated by dividing the total gross area of each Unit by the total gross area of all Units in the Condominium. The total gross area of each Unit is the sum of (a) the square footage of the Unit, plus (b) the square footage obtained by multiplying the square footage of the Utility Room and Public Restrooms located in the Building in which the Unit is located by the percentage obtained by dividing the square footage of the Unit by the total square footage of all Units within that Building. The total gross area of each Unit and the percentage of undivided interests of each Unit are set forth on Exhibit "B" attached to this Declaration. The percentage of interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their

respective percentages of interest. The ownership of each Unit shall not be conveyed separate from the percentage of interest in the Common Elements allocated to the Unit. The undivided percentage of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit.

3.4 Allocation of Votes in the Association. The total votes in the Association shall be 100. The votes in the Association shall be allocated among the Units in accordance with each Unit's percentage of undivided interests in the Common Elements. The votes allocated to each Unit are set forth on Exhibit "B" attached to this Declaration.

3.5 Allocation of Limited Common Elements.

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

(a) Any chute, flue, pipe, duct, wire, conduit or other fixture (including, but not limited to, heating and air conditioning units and related equipment and natural gas, cable television, water and electric pipes, lines or meters), located outside of the boundaries of a Unit, which serve only one Unit are a Limited Common Element allocated solely to the Unit served.

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

(c) Each Unit is allocated the covered/reserved and/or uncovered/reserved Parking Spaces designated by Declarant on Exhibit "C" attached hereto (or subsequently Recorded by Declarant) as being allocated to the Unit.

3.5.2 Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his Unit, subject to the rights granted to the Declarant or the Association by the Condominium Documents. All Units must be used in accordance with the Declaration and the Rules. So long as the Declarant owns any Unit, the Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. After the Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding at least sixty-seven percent (67%) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation

by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Act.

3.6 Relocation of Boundaries Between Adjoining Units. The boundaries between or among adjoining Units may be relocated by an amendment to this Declaration. The Owners of the Units affected by the relocation of boundaries shall prepare an amendment to this Declaration and the Plat that identifies the Units involved, specifies the outer boundaries of the Units and their dimensions and includes the Units' identifying numbers. If the Owners of the adjoining Units have specified a reallocation between their Units of the allocated interests in the Common Elements, in the Common Expenses and in the votes in the Association, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the Owners of those Units, shall contain words of conveyance between or among them and, before recording the amendment, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

3.7 Subdivision of Units. A Unit may be subdivided into two or more Units. A Unit Owner desiring to subdivide his Unit shall prepare an amendment to the Declaration and the Plat which identifies the Unit involved, specifies the boundaries of each Unit created and the dimensions, assigns an identifying number to each Unit created and allocates the allocated interest in the Common Elements, in the Common Expenses and in the votes in the Association formerly allocated to the subdivided Unit to the new Units in a reasonable manner. The amendment shall be executed by the Owner of the Unit to be subdivided and, before recording, submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and shall specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

3.8 Combination of Units. If the Declarant conveys adjoining Units to one Person, the Declarant may not construct the Party Wall between the adjoining Units so that the adjoining Units can be used as one Unit. If adjoining Units were initially conveyed by the Declarant to different Persons but are subsequently become owned by the same Person, the Owner of the adjoining Units may remove all or a portion of the Party Wall between the adjoining Units provided the removal of a portion or all of the Party Wall is approved by the Board of Directors prior to removal. The provisions of Section 5.3 shall apply to any request by an Owner of adjoining Units to remove all or a portion of the Party Wall between the Units. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that the removal of the Party Wall will not impair the structural integrity or mechanical systems of the Building or lessen the support of any portion of the Condominium. The fact that a Party Wall is removed with approval of the Board of Directors shall not affect the Units' percentage undivided interest in the Common Elements or the Units' Common Expense Liability. A Party Wall between adjoining Units which is removed with approval of the Board of Directors may be constructed or reconstructed with the prior written approval of the Board of Directors. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that the construction or

reconstruction of the Party Wall will not impair the structural integrity or mechanical systems of the Building or lessen the support of any part of the Condominium. The provisions of Section 5.3 shall apply to any request by an Owner of adjoining Units to construct or reconstruct a Party Wall between the Units owned by such Owner. If the construction or reconstruction of a Party Wall is approved by the Board of Directors, the provisions of Section 5.3 shall apply to the construction or reconstruction of such Party Wall.

3.9 Parking Spaces. Parking Spaces shall be part of the Common Elements as shown on the Project Plat subject to the provisions contained herein.

3.9.1 Certain reserved Parking Spaces shall be Limited Common Elements designated by the Declarant on Exhibit "C" for the exclusive use of a Unit Owner and/or his Tenants or Occupants, and their respective employees and Permittees. The reserved Parking Spaces designated for the exclusive use of any Owner shall be appurtenant to the use and occupancy of the Unit owned by that Owner and shall not be sold, assigned or leased by the Owner separate or apart from that Unit.

3.9.2 Uncovered and unreserved Parking Spaces shall be available for use by all Owners, their Tenants or Occupants, and their respective employees and Permittees, on a first come, first serve basis; provided, the Declarant or Board shall have the right to assign additional Parking Spaces and to establish Rules and Regulations for the operation and management of the Parking Spaces for and on behalf of the Association as the Declarant or Board from time to time shall establish. A Unit Owner and his Tenants or Occupants, and their respective employees and Permittees shall not use any Parking Spaces which have been assigned by the Declarant or the Association for the exclusive use by other Owners (and with respect to any Owner, his Tenants and their respective employees, any designated visitor Parking Spaces), or which have been designated by the City as being restricted to certain uses (such as fire lanes and loading areas).

3.10 Adjacent Parcel. Subsequent to the Recording of this Declaration, Declarant intends to execute and cause to be Recorded an instrument entitled Restriction Agreement and Grant of Easements (the "RAGE"). Among other things, the RAGE will regulate and govern (consistent with this Declaration) the development of certain areas that are used in common between the Property and the Adjacent Parcel (collectively "Both Parcels"); the construction and development of improvements on Both Parcels; certain easement rights; use restrictions; maintenance standards; and liability and insurance issues. The RAGE also provides that if the owner of either the Property or the Adjacent Parcel fails to comply with the requirements of the RAGE, the non-defaulting party shall have the right (upon written notice and an opportunity to cure) to enter upon the property of the defaulting party, cure the default, and charge the defaulting party for the cost of the cure. In the event of a default by either party to the RAGE, such provision could result in economic liability to the Association.

ARTICLE 4
EASEMENTS AND DEVELOPMENT RIGHTS

4.1 Utility Easement.

4.1.1 There is hereby granted and created an easement upon, across, over and under the Common Elements and the Units for the installation, replacement, repair or maintenance of utility lines and systems, including, but not limited to, natural gas, water, sewer, telephone, electricity and cable television or other communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or the Declarant to install and maintain the necessary utility lines, pipes, facilities and equipment on the Common Elements and the Units, but no sewer lines, electrical lines, water lines, or other utility or service lines or facilities may be installed or located on the Common Elements or the Units except as initially designed, approved and constructed 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.

4.1.2 The Owners of adjoining Units shall both have the right and non-exclusive easement to use the portion of the Party Wall within the boundaries of the adjoining Unit for the installation, maintenance, repair and replacement of chutes, conduit, wires, pipes, cables, lines and other fixtures which provide utility services to such Owner's Unit; provided however, that an Owner shall not penetrate the wallboard or drywall on the interior surface of the Party Wall of the adjoining Unit. In addition, the Owners of all Units within a Building shall each have the right and a non-exclusive easement to use the inside of the Perimeter Building Walls of the Building for the installation, maintenance, repair and replacement of chutes, conduit, wires, pipes, cables, lines and other fixtures which provide utility services to such Owner's Unit; provided however, that an Owner shall not penetrate the wallboard or drywall on the interior surface of the Perimeter Building Wall located within the boundaries of any other Unit.

4.2 Easements for Ingress and Egress. There is hereby granted and created easements for ingress and egress for pedestrian traffic over, through and across hallways, sidewalks, elevators, stairways, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also granted and created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such streets and drives 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 and their Permittees.

4.3 Unit Owners' Easements of Enjoyment.

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

(a) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements;

(b) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Act;

(c) The right of the Association to grant non-exclusive easements over all or a portion of the Common Elements if the Board of Directors determines that the granting of the easement is necessary for the development or maintenance of the Common Elements or beneficial to the Unit Owners and Occupants;

(d) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Section 4.4; and

(e) The right of the Association to suspend the right of a Unit Owner, Tenant or Occupant to use the Common Elements for any period during which the Unit Owner, Tenant or Occupant is in violation of any provision of the Condominium Documents.

4.3.2 The easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit. Such right and easement of enjoyment in and to the Common Elements shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

4.3.3 The provisions of this Section 4.3 shall not apply to any of the Limited Common Elements that are allocated to the exclusive use of one or more but less than all of the Units.

4.4 Declarant's Rights and Easements.

4.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, storage areas, models and related facilities throughout the Condominium and to maintain one or more marketing, directional or advertising signs on the Common Elements so long as the Declarant is marketing Units in the Condominium. Declarant reserves the right to maintain models, management offices, storage areas and sales and leasing offices in any Units owned or leased by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate. Declarant may from time to time relocate models, storage areas, management offices and sales and leasing offices to different locations within the Condominium. Declarant shall have the right and an easement to post signs, flags and banners on the Common Elements in connection with its marketing of Units.

4.4.2 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 parking spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

4.4.3 The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Condominium that has not been represented to the Association as property of the Association. The Declarant reserves the right to remove from the Condominium any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures; provided that Declarant shall promptly repair any damage to the Condominium caused by such removal.

4.4.4 Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Elements and the Units to erect and construct the Common Elements and the Units shown on the Plat and all other improvements the Declarant may deem appropriate 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 in the Condominium.

4.4.5 The Declarant and its employees, agents, contractors and subcontractors shall have an easement through the Units for the purpose of completing any renovations, warranty work or modifications to be performed by Declarant.

4.4.6 The Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and the Condominium Documents and for the purpose of exercising Special Declarant Rights whether arising under the Act or reserved in this Declaration.

4.4.7 To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights.

4.4.8 The Declarant shall have the right to the exclusive use, without charge, of any portion of any of the facilities within the Common Elements on a short term basis for employee meetings, administrative purposes, special events or any other purpose, subject to the following: (a) the availability of the facilities at the time a request is submitted by Declarant to the Association; (b) the Declarant shall indemnify the Association against any loss or damage resulting from Declarant's use thereof; and (c) the Declarant shall return the facilities to the Association in the same condition as existed prior to Declarant's use thereof.

4.4.9 In the event of any conflict or inconsistency between this Section 4.4 and any other provision of the Condominium Documents, this Section 4.4 shall control and prevail

over such other provisions. The rights of the Declarant set forth in this Section 4.4 shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any means provided in this Declaration.

4.5 Easement for Support. There is hereby granted and reserved to each Unit a non-exclusive easement for structural support over every other Unit in the Building in which the Unit is located, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to a non-exclusive easement for structural support in favor of every other Unit in the Building in which the Unit is located, the Common Elements and the Limited Common Elements.

4.6 Easements and Rights of the Association.

4.6.1 The Common Elements and the Units shall be subject to an easement in favor of the Association and its agents, employees and contractors for the purpose of: (a) making emergency repairs to the Common Elements and those components of the Unit the Association is obligated to maintain pursuant to this Declaration; (b) inspection, upkeep, maintenance, repair and replacement of the Common Elements and those components of the Units which the Association is obligated to maintain pursuant to this Declaration; (c) exercising all rights and powers of the Association and discharging all duties and obligations of the Association; (d) inspection of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible; (e) correction of conditions (including, without limitation, broken or leaking water pipes, broken hot water heaters or obstructed sewer lines) in one or more Units or Limited Common Elements which have damaged or if left uncorrected could damage, the Common Elements, the Limited Common Elements or other Units; and (f) inspection of the Units and the Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Tenants and Occupants of the Unit. Except in case of emergency, the Association shall only enter a Unit at reasonable times and upon reasonable notice to the Unit Owner or, if the Unit is leased, to the Tenant. In the event of an emergency, the Association may enter a Unit without prior notice to the Unit Owner or the Tenant, but promptly following the Association's entry into the Unit, the Association shall notify the Unit Owner or the Tenant of the nature of the emergency condition which required entry without notice.

4.6.2 Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium.

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

4.7.1 For the installation, repair, maintenance, use, removal or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication

wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

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

4.7.3 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 6.2.

4.8 Easement for Unintended Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element as a result of original construction, reconstruction, shifting, settlement or movement of any improvement or alteration or restoration authorized by this Declaration or any reason other than an encroachment created by the intentional conduct or gross negligence of a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted.

ARTICLE 5

USE AND OCCUPANCY RESTRICTIONS

5.1 General Use and Occupancy. Subject to the terms of this Declaration, and the other Condominium Documents, all of the Condominium and each portion thereof, including each of the Units, shall be subject to the Condominium Documents, and all applicable rules, regulations, ordinances and laws of governmental agencies, including, but not limited to, zoning laws and regulations, and shall be utilized only for office use and for no other uses or purposes unless specifically authorized by the Declarant. Without limiting the generality of the foregoing, no Unit or any portion thereof shall be utilized for housing or living purposes.

5.2 Misuse and Nuisance. No nuisances shall be allowed upon the Condominium or any portion thereof, nor any use or practice be allowed (including, but not limited to, anything which permits any excessive noises or objectionable odors to be produced upon or to emanate from the Units, or any portion thereof), which is the source of annoyance to any Owner or Occupant or which interferes with the peaceful possession and proper use of the Condominium and/or the Project by its Owners and Occupants. Each Unit and the Common Elements shall be kept in a clean and sanitary condition and no fire hazard shall be allowed to exist. No Owner or Occupant shall permit or suffer anything to be done or kept upon his Unit or make any use of his Unit or the Common Elements which will increase the rate of insurance upon the Condominium or any part thereof. In connection with the foregoing (but not in limitation thereof):

5.2.1 No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed or be directed to the outside of any Unit without prior written approval and authorization of the Association. The foregoing requirement shall not apply to the Declarant and Declarant shall be entitled to store items on the Condominium and/or the Project until completion of construction.

5.2.2 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 otherwise, unless approved in writing by the Board of Directors, unless applicable law prohibits the Board from requiring such prior approval. Even if applicable law prohibits the Board from requiring prior approval of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with such rules and regulations as the Board may adopt.

5.2.3 No outside lighting shall be placed or maintained on any Unit without prior written approval and authorization of the Board of Directors, it being intended that all outside lighting be uniform throughout the Condominium.

5.2.4 No Owner or Occupant shall permit any thing or condition to exist upon the Condominium or any Unit which shall induce, breed or harbor plant disease or noxious insects.

5.2.5 No Owner or Occupant shall violate or permit a violation in or on his Unit, or in or on the Common Elements, of any law, rule, regulation or ordinance regarding hazardous materials, water pollution, air pollution or other environmental laws.

5.2.6 No vending machines and outdoor furniture or any type shall be placed or maintained on the Common Elements unless approved in advance by the Board.

5.3 Improvements and Alterations.

5.3.1 Except as otherwise expressly provided in this Declaration, no Owner, Tenant or Occupant or any other Person other than the Association shall make any alterations or modifications to the Common Elements or the Perimeter Building Walls or construct or install any improvement on or within the Common Elements or the Perimeter Building Walls without the prior written approval of the Board of Directors.

5.3.2 Any Owner, Tenant or Occupant may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Board of Directors, except that no Owner shall make any additions, alterations or improvements to the Perimeter Building Walls or any Party Wall without the prior written consent of the Board. Any Owner making any nonstructural additions, alterations or improvements within his Unit shall be responsible for any damage to other Units in the Building, and to the Common Elements which results from any such alterations, additions or improvements. No Owner, Tenant or Occupant

shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Owner, Tenant or Occupant receives the prior written approval of the Board and an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of the Building or lessen the support of any portion of the Condominium. All additions, alterations or improvements to a Unit must be performed by contractors licensed by the Arizona Registrar of Contractors.

5.3.3 Notwithstanding Subsection 5.3.2, no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of a Building shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding improvements. Except as expressly permitted by this Section 5.3, no wall, partition, fixture or other improvement situated within a Unit shall be constructed, installed or modified without the prior written approval of the Board.

5.3.4 No Owner, Tenant or Occupant shall overload the electric wiring in the Building in which his Unit is located, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior consent of the Board, acting in accord with the direction of the Board. No Owner, Tenant or Occupant shall overload the floors of any Unit.

5.3.5 The Board of Directors may condition the approval of any proposed additions, alterations or improvements to a Unit or the Common Elements in any manner, including, without limitation: (a) retaining approval rights of the contractor to perform the work; (b) restricting the time during which such work may be performed; (c) requiring the placement of a security deposit in an amount determined by the Board of Directors in an account controlled by the Board of Directors; (d) requiring the provision to the Board of Directors of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Arizona; and (e) requiring that the Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Board. The Owner shall be obligated to designate Declarant, the Association, the Board and any other Person designated by the Board as additional insureds under the policies. The Owner shall be responsible for all costs incurred by the Board in connection with the Board of Director's review of proposed changes to the Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Board to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed an Individual Expense Assessment.

5.3.6 Proposed additions, alterations and improvements to a Unit or the Common Elements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association

with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are made shall defend, indemnify and hold harmless the Association, Declarant and all other Owners, Tenants or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Association.

5.3.7 The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 5.3 or any rules of the Association governing additions, alterations or improvements to the Units or the Common Elements. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Association nor any of the officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the Association and their respective directors, officers, agents and employees harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Tenant or Occupant of the Owner's Unit.

5.4 Lawful Use. No unlawful use shall be made of the Condominium or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Condominium or any portion thereof shall be the same (either the responsibility of the Unit Owner or of the Association) as the responsibility for the maintenance and repair of the particular part of the Condominium affected.

5.5 Animals. No animals, reptiles, fish (except a fish aquarium maintained inside a Unit) or birds of any kind shall be raised, bred or kept on or in any Unit or on the Common Elements, unless approved in writing by the Board. A veterinary clinic shall be a permitted use, provided that no pet grooming or boarding shall be permitted (except that boarding is permitted for the care of sick or injured animals).

5.6 Environmental Matters.

5.6.1 Definitions.

(a) The term "Hazardous Substance" means any substance that is at any pertinent time defined or listed in, or otherwise classified, designated, or regulated pursuant to, any Environmental Law as a hazardous substance, hazardous material, extremely hazardous substance, hazardous waste, hazardous chemical, infectious waste, toxic substance, toxic pollutant or solid waste, or any other legislative or regulatory formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or EP toxicity, including, without limitation, friable asbestos and polychlorinated biphenyls and also including oil and petroleum, petroleum products, by-products and wastes, and by-products associated with the extraction, refining, or use of petroleum or petroleum products, whether or not so defined, listed, classified, designated or regulated in "Environmental Laws."

(b) The term "Environmental Law" means any statute, law, act, ordinance, rule, regulation, order, decree, or ruling of any Federal, State and/or local governmental, quasi-governmental, administrative or judicial body, agency, board, commission or other authority relating to the protection of health and/or the environment or otherwise regulating and/or restricting the use, storage, disposal, treatment, handling, release, and/or transportation of Hazardous Substances, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act, The Resource Conservation and Recovery Act, The Federal Water Pollution Control Act, The Clean Air Act, The Hazardous Materials Transportation Act, The Toxic Substances Control Act, The Emergency Planning and Community Right To Know Act, and the Environmental Control Laws of the State of Arizona, each as now or hereafter amended, and all regulations and interpretive guidelines respectively promulgated thereunder.

(c) For purposes of this Section 5.6 and unless the context otherwise requires, the term "the Building" shall be limited in meaning to the Building in which the Unit in question is located.

5.6.2 Environmental Covenants.

(a) Each Owner will not, and it will cause its Occupants to not, use, handle, generate, manufacture, produce, store, discharge, treat, remove, transport, or dispose of Hazardous Substances at, in, upon, under, to or from the Building or the Property except (i) in de minimis quantities necessary for or incidental to the improvement of any Unit and/or the Condominium, and the conduct of business at the Parcel, and/or (ii) in strict compliance with all Environmental Laws.

(b) Each Owner will, and will cause its Occupants to, immediately deliver to the Board complete copies of all notices, demands, or other communications received by such Owner or any Occupant from any governmental or quasi-governmental authority or any insurance company or board of fire underwriters or like or similar entities regarding in any way (i) alleged violations or potential violations of any Environmental Law or otherwise asserting the existence or potential existence of any condition or activity at the Building or on the Property which is or could be dangerous to life, limb, property, or the environment (including without limitation water or air quality), or (ii) releases or threatened releases in excess of reportable quantities of Hazardous Substances upon, under, at, in, or from the Building or the Property.

(c) Each Owner shall immediately advise the Board in writing (and orally in the event of a release or other emergency) of (i) any and all enforcement, clean-up, removal, and mitigation orders or other governmental, regulatory, or judicial acts or orders instituted, or threatened pursuant to any Environmental Law affecting the Parcel, the Building, the Property, Owner, or any Occupant; (ii) all claims made or threatened by any third party against the Parcel, the Building, the Property, Owner or any Occupant (if and when actually known to Owner) relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any actual, proposed, or threatened use, handling, generation, manufacture, production, storage, release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal, and/or presence of any Hazardous Substance on, under, from, to, or about the Parcel, the Building or the Property; (iii) the discovery by Owner or any Occupant of any occurrence or condition at the Parcel, the Building, or the Property that could cause the Building or the Property to be the subject of a claim, order, or action under any Environmental Law, and/or (iv) the discovery by the Owner or any Occupant of any occurrence or condition which could subject the Building or the Property, Owner, or any Occupant to any material adverse effect on ownership, occupancy, transferability, marketability, or use of the Building or the Property under or as a consequence of any Environmental Law.

(d) Each Owner shall, and shall cause its Occupants to, at its sole cost and expense, observe, perform, and comply with all Environmental Laws applicable to the activities of Owner or such Occupant at the Building and the Property and all enforcement, cleanup, removal, and mitigation orders or other governmental, regulatory, or judicial acts or orders instituted pursuant to any Environmental Law affecting the Building and the Property, Owner or any Occupant which relate to or arise out of acts or failures to act on the part of such Owner or such Occupant, and shall, and shall cause any Occupant to, make all repairs and restorations to the Building or the Property required following the completion thereof.

(e) Each Owner shall obtain and maintain in full force and effect during the periods required by law each license, permit, or other governmental or quasi-governmental consent or approval relating to the use, handling, generation, manufacture, production, storage, release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal, or presence of Hazardous Substances, (the "Environmental Permits"), and shall immediately notify the Association in writing of the actual or threatened termination or non-renewal of any of the Environmental Permits then required by law to be maintained by Owner.

(f) Each Owner will, and will cause its Occupants to, provide to the Board upon the Board's request copies of all (i) Material Safety Data Sheets with respect to Hazardous Substances known to such Owner to be present upon the Parcel, and (ii) Chemical Inventory Reporting Forms filed by such Owner pursuant to the Emergency Planning and Community Right To Know Act ("EPCRA") or any state or local laws or ordinances enacted pursuant to or in furtherance of EPCRA.

(g) The Board will immediately deliver to each Owner complete copies of all notices, demands, or other communications received by the Board from any governmental or quasi-governmental authority, or any insurance company or board of fire underwriters or like or similar entities, regarding in any way (i) alleged violations or potential violations of any Environmental Law or otherwise asserting the existence or potential existence of any condition or activity at the Building or on the Property which is or could be dangerous to life, limb, property, or the environment (including without limitation water or air quality), or (ii) releases or threatened releases in excess of reportable quantities of Hazardous Substances upon, under, at, in, or from the Building or the Property.

(h) The Board shall immediately upon the Board receiving actual notice thereof advise each Owner in writing (and orally in the event of a release or other emergency) of (i) any and all enforcement, cleanup, removal, mitigation, or other governmental, regulatory, or judicial acts or orders instituted, contemplated, or threatened pursuant to any Environmental Law affecting the Building or the Property or any Occupant thereof; (ii) all claims made or threatened by any third party against the Building or the Property or any Occupant thereof relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any actual, proposed, or threatened use, handling, generation, manufacture, production, storage, release, discharge, treatment, removal, transportation, decontamination, cleanup, disposal, and/or presence of any Hazardous Substance on, under, from, to, or about the Building or the Property; (iii) the discovery by the Board of any occurrence or condition at the Building or the Property that could cause the Building or the Property to be the subject of a claim, order, or action under any Environmental Law, and/or (iv) the discovery by the Board of any occurrence or condition at the Building or the Property which could subject the Building or the Property, Owner, or any Occupant to any material adverse effect on ownership, occupancy, transferability, marketability, or use of the Building or the Property under or as a consequence of any Environmental Law.

(i) The Board shall, at its sole cost and expense, observe, perform, and comply with all Environmental Laws applicable to the activities of the Association and all enforcement, clean-up, removal, and mitigation orders or other governmental, regulatory, or judicial acts or orders instituted pursuant to any Environmental Law affecting any Building, Owner or any Occupant which relate to or arise out of acts or failures to act on the part of the Board, and shall make all repairs and restorations to any Building required following the completion thereof.

5.7 Medical Waste. If any Unit is used or occupied, in whole or in part, as a medical, dental or veterinary clinic, the Owner of that Unit shall, and shall cause its Occupants to, affirmatively determine and strictly comply with all municipal, county, state and federal statutes, ordinances, rules, regulations and guidelines applicable to the storage, removal and disposal of Medical Wastes (as defined herein) and hazardous wastes from the Owner's or Occupant's activities and, in addition, provide for the regular, safe and sanitary storage, removal and disposal of such Medical Wastes. The term "Medical Wastes" includes, but is not limited to, virulent infectious wastes and materials (liquid and solid), bandages and dressings, sharps, needles, syringes, lancets, blood and blood products, body fluids, radioactive waste (infectious and non-infectious), tissue, cultures of viable disease-causing agents and any other Medical Wastes or by-products which pose risk of injury or disease to human beings. Each Owner shall, and shall cause its Occupants to contract directly for (and agree to pay the entire cost of) Medical Waste disposal services with a qualified carrier, and will establish within the Parcel a secure and sanitary area for temporary storage of such wastes between routine removal intervals. At no time shall wastes be stored elsewhere in a Building or Common Elements.

5.8 Flammable Material. Owners and Occupants shall not permit or keep in their Unit, except in minor quantities approved in writing by the Board after written notification from the applicable Owner, any flammable, combustible or explosive material, chemical or substance in a manner, which may, by virtue of the type of material or quantity kept, increase the insurance rate or make insurance on a Building or Property unobtainable or unenforceable. All such substances shall be kept in containers or other receptacles as directed by the applicable Fire Department, insurance agency, or other governmental authority. Further, no toxic materials of any kind in quantities exceeding that allowable by law shall be stored or kept in or on any Unit, or any portion thereof. All such material shall be kept on the Condominium in strict accordance with all applicable laws, statutes, rules, ordinances and regulations.

5.9 Storage. No exterior storage of any items of any kind shall be permitted, except with prior written approval and authorization of the Board and the Association. This provision shall apply, without limitation, to supplies, equipment, trailers, travel trailers, boats, mobile homes and unmounted pickup camper units. Also, without limitation, no automobiles, trucks or other vehicles, regardless of ownership, age, condition or appearance, shall remain on the Project in any manner which could be construed as being stored, neglected, abandoned or otherwise not in frequent use, except pursuant to written approval and authorization of the Declarant and the Association. The forgoing requirement shall not apply to the Declarant and Declarant shall be entitled to store items on the Project until completion of construction of the Project.

5.10 Repairs. Except for emergency repairs, no repairs of any detached machinery, equipment or fixtures, including, without limitation, motor vehicles, shall be made upon or in any Unit or Common Element within view of other portions of the Project without prior written approval and authorization of the Association.

5.11 Signs. No exterior signs, interior signs which can be viewed or seen from the outside, advertisements, name plates, identification directory of any kind, or other lettering may be placed, allowed or maintained on the outside of any Unit or Common Elements, or hung from

windows without prior approval and authorization of the Board and subject to reasonable specifications and Rules and Regulations promulgated by the Board, and in accordance with the sign criteria established between Declarant and the Project architects in conformity with the applicable codes of the City.

5.12 Parking. All vehicles belonging to an Owner, Occupant, or an employee, customer, visitor or Permittee of any Owner or Occupant shall be parked only in a designated Parking Space in compliance with this Declaration and any Rules adopted by the Association.

5.13 Garbage. No garbage or trash shall be placed on the exterior of any Unit, except in containers meeting the specifications of the City and the Association, and the placements, maintenance and appearance of all such containers shall be subject to Rules and Regulations of the Association. No rubbish, trash or garbage shall be allowed to accumulate inside a Unit.

5.14 Burning and Incinerators. No open fires or burning shall be permitted on the Project or any part thereof, at any time and no incinerators or like equipment shall be placed, allowed or maintained upon the Project unless approved in writing by the Association.

5.15 Plantings, Fences, Screens, Etc. No shades, awnings, aluminum screens or other types of shade screening that can be viewed from the outside of any Unit or the Common Elements shall be placed on windows on or about any Unit or the Common Elements unless approved in writing by the Board. Further, no fences, hedges, walls, trees, or landscaping shall be placed or maintained upon the Condominium, including outside an individual Unit, except as are initially installed by the Declarant or which may be approved from time to time by the Board. Without the prior written approval of the Board, an Owner or Occupant shall not change the color or reflective properties of any window tint installed by the Developer on exterior windows.

5.16 Machinery and Equipment. No machinery or equipment of any type, including, without limitation, heating and air conditioning equipment, shall be placed, allowed or maintained on the outside of any Unit, except with prior written approval and authorization of the Board. All heating and air conditioning equipment and meters must be installed where indicated by the Declarant or the Board.

5.17 Leasing. Any Lease or rental agreement for any Unit or any part thereof shall be in writing, shall in all respects be subject to and in compliance with the provisions of this Declaration, the Articles and Bylaws, and shall expressly provide that a violation of any such provisions shall be a default under such Lease. A copy of any such Lease or rental agreement shall be delivered to the Board prior to the commencement of the term thereof. Each Lease and/or rental agreement must contain a clause that each Tenant shall be subject to and bound by this Declaration, all of the Condominium Documents and the provisions thereof. For the purposes of this Declaration, leasing means any agreement for the leasing or rental of a Unit, or a part thereof.

5.18 Declarant's Exemption. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, its agents, assigns, and contractors to

maintain during the period of conversion and sales or leases thereof, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the sale or leasing of the Condominium, including, without limitation, a business office, storage area, construction yards, signs, billboards, model units and sales office.

5.19 Change in Intended Use. No portion of the Condominium may be developed or redeveloped otherwise than in accordance with its original intended use, without the prior written approval and authorization of the Board and Declarant.

5.20 Board Approval. Any consent or approval given by the Board with respect to the use restrictions set forth under this Article 5, may be amended or repealed at any time by resolution of the Board.

5.21 Rules and Regulations. Reasonable Rules and Regulations concerning the use of the Condominium and all portions thereof and imposing reasonable restrictions upon the Owners and Occupants, and the use of the Condominium or any part thereof may be made and amended from time to time by the Board, so long as such Rules and Regulations are not inconsistent with the other provisions of this Declaration.

5.22 Window Coverings. An Owner or Occupant shall not place any window coverings, screens or blinds in or about the exterior windows of any Building, Condominium or Unit, except the following: Levolor® "Riviera" one-inch metal mini-blinds, low gloss black color, #892; Levolor® two-inch premium hardwood venetian blinds, ebony color, #1202507; or the equivalent.

5.23 Water Usage. Each Owner will not, and will cause its Occupants to not, use in the Owner's Unit more than 0.02 gallons of water per square foot per day. The Association shall have the right to install a water meter on any Unit in the Project to monitor the water usage by the Owner or Occupant of that Unit. If the Association determines that the Owner or Occupant is exceeding the water usage limitations imposed under this Section, the Association shall have the right to impose such fines or levies upon the Owner and the Unit (including but not limited to the cost to install a water meter) as the Board may deem appropriate from time to time.

ARTICLE 6

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

6.1 Duties of the Association. The Association shall maintain, repair and replace all Common Elements, except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 6.2. In addition, the Association shall maintain, repair and replace the Perimeter Building Walls, except for the doors and windows within the Perimeter Building Walls. The cost of all such maintenance, repairs and replacements made by the Association shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Tenant, Occupant or other Person shall

construct or install any improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Tenant, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

6.2 Duties of Unit Owners. Each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit in a good, clean and sanitary condition, except for the portions of the Perimeter Building Walls within the boundaries of the Unit that the Association is obligated to maintain, repair and replace pursuant to Section 6.1. In addition, each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to Subsections 3.5.1 (a) and (b) in a good, clean and sanitary condition.

6.3 Repair or Restoration Necessitated by Owner. Each Unit Owner shall be liable to the Association for any damage to the Common Elements or the improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Unit Owner or of the Unit Owner's Tenants or Permittees. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner or of the Unit Owner's Permittees shall be assessed against the Unit Owner pursuant to Subsections 8.2.4 and 8.6.

6.4 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 and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsections 8.2.4 and 8.6.

6.5 Sprinkler System and Fire Alarm System. In accordance with the requirements of the City, each Building is equipped with a sprinkler system and a fire alarm system. The heads of the sprinkler system will intrude into the Units. All pipes, heads and other parts of the sprinkler system (whether located within or outside of a Unit) and all control panels, wiring and other components of the fire alarm system (whether located within or outside of a Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. If an Owner, Tenant or Occupant or their Permittees causes the sprinkler system or the fire alarm system to be activated (except in the case of a fire) or damages or destroys any part of the sprinkler system or the fire alarm system, the Owner of the Unit shall be responsible for the cost of any repairs to the sprinkler system or the fire alarm system made by the Association and for all other losses or damages resulting from such actions.

ARTICLE 7
THE ASSOCIATION

7.1 Purposes, Rights, Powers and Duties of the Association.

7.1.1 The Association shall be a non-profit Arizona corporation. The Association has been, or will be formed, to constitute the Property "Unit Owners' Association", as that term is defined in the Act. The Association shall serve as the governing body for all of the Owners for the protection, improvement, alteration, expansion, augmentation, disposal, divestment, redescription, maintenance, repair, replacement, administration and operation of the Condominium (excluding maintenance, repair, replacement of a Unit), the Assessment of expenses, payment of losses, disposition of hazard insurance proceeds received by the Association, and other matters as provided in this Declaration, the Act and in the Condominium Documents. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws. Unless this Declaration or the Condominium Documents specifically require a vote of Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The initial Board for the Association shall be composed of those Persons named in the Articles.

7.1.2 The affairs of the Association shall be conducted by the Board and such officers and committees as its Directors may elect and appoint in accordance with the Articles and Bylaws.

7.1.3 The Board, from time to time and subject to the provisions of this Declaration, may adopt, amend and repeal Rules and Regulations. The Rules and Regulations may, among other things, restrict and govern the use of any area by any Owner or Occupant, or by any Permittees, licensees or Tenants of such Owner or Occupant; provided, however, that the Rules and Regulations shall not unreasonably discriminate among Owners and Occupants and shall not be inconsistent with the Act, this Declaration, the Articles or the Bylaws. A copy of the Rules and Regulations as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded.

7.1.4 The Board may act as an architectural control committee pursuant to Section 5.3 to regulate the external design, appearance, use and maintenance of the Condominium and to perform such other functions and duties as are imposed upon it by the Condominium Documents or by separate, validly executed agreements.

7.2 Membership Identity. Membership in the Association shall be limited to and shall consist of all Unit Owners, with each Unit Owner being a Member as soon and so long as he shall be an Owner. Such membership shall automatically terminate when an Owner ceases for any reason to be an Owner, and the new Owner shall likewise automatically succeed to such membership in the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant (and then only to the Purchaser involved in such sale) or by intestate succession, testamentary disposition,

foreclosure of a Mortgage of record or other legal process transferring fee simple title to such Unit (and then only to the Person to whom such fee simple title is transferred). Any attempt to make a prohibited transfer of a membership will be null and void and will not be recognized by or reflected upon the books and records of the Association. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in such Owner's name upon the sale of such Owner's Unit to the Purchaser of such Owner's Unit, the Association shall have the right to enter a transfer upon the books of the Association and issue a new membership to the Purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

7.3 Voting Rights. The votes in the Association shall be allocated to each Unit Owner in accordance with the provisions of Section 3.4. Unless otherwise expressly provided herein, the affirmative vote of a Majority of the Members shall be required to approve any action presented for vote to the Members of the Association.

7.4 Corporate or Partnership Owner. In the event a Unit is owned by a corporation, partnership, limited liability company, or association, the corporation, partnership, limited liability company or association shall be a Member and shall designate in writing to the Association at the time of its acquisition of the Unit, the name and title of the Person who shall have the power to vote the membership of the corporation, partnership, limited liability company or association in the Association. The Person so designated shall be the only Person who shall be entitled to cast the vote(s) for the Unit(s) owned by such corporation, partnership, limited liability company or association. If the corporation, partnership, limited liability company, or association fails to designate the Person who shall have the right to vote the membership of the corporation, partnership, limited liability company or association, then until such designation is made, such corporation, partnership, limited liability company, or association shall lose its right to vote and it shall not be considered a Member for the purpose of determining the requirement for a quorum or any other purpose requiring the approval of a Person entitled to cast the vote for the Unit owned by such entity.

7.5 Trust Ownership. In the event any Unit or any portion thereof is held in trust, the Membership shall be issued in the name of the trust and the trustee shall have the power to vote such Membership, unless the trustee notifies the Association in writing (the Association may rely upon such written notice) that in accordance with the trust instrument another person has such power. In the event that there is more than one trustee of such trust, they shall designate in writing to the Association one of their number who shall have the power to vote the Membership on behalf of the trust.

7.6 The Association's Right to Rely. Until the Association has received a designation, in writing, of the individual authorized to vote on behalf of the Unit's Owner, the Association shall have the right to rely on any previous designation in writing received by it; or in the absence of any such written designation, the Association's designation.

7.7 Duty of Good Faith. Each Member of the Association pledges to act in good faith and reasonably to support the Condominium and its goals and purposes and to maintain its Unit and Common Elements in first-class condition and repair.

7.8 Construction of Additional Common Elements. Upon the affirmative vote of Members holding at least sixty-seven percent (67%) of the total number of votes entitled to be cast by Members, the Association may erect and construct on the Common Elements such additional improvements (which, upon completion, will constitute Common Elements) as are desired and contemplated by the Association.

7.9 Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any Assessment or other amounts due under the terms of this Declaration or the other Condominium Documents for a period of fifteen (15) days, such Owner's right to vote as a Member shall be automatically suspended and shall remain suspended until all payments, including accrued interest and attorney's fees, are brought current. In the event any Owner is in breach of any other provisions of this Declaration or of the Condominium Documents, such Owner's voting rights may be suspended by the Board for a period not to exceed sixty (60) days for any such infraction.

7.10 Transfer of Membership. The Association membership of each Unit Owner shall be appurtenant to his Unit. The rights and obligations of an Owner and his membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of such Unit, including, without limitation, any transfer by intestate succession, testamentary disposition, foreclosure of a mortgage of record, exercise of a power of sale under a deed of trust, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be null and void and shall not be reflected upon the books and records of the Association. Any transfer of ownership to such Unit shall operate to transfer such membership to the new Owner thereof.

7.11 Qualifications of Directors. Each director after the initial Director(s) shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership, limited liability company, association or trust, a director may be an officer, partner, manager, member, or beneficiary of such Owner). If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director, and his place on the Board shall be deemed vacant.

7.12 Board's Determination Binding. Subject to the right of any Owner to institute an action at law or in equity pursuant to the provisions of Article 19 hereof, in the event of any dispute or disagreement between the Owners relating to the Condominium, or any question of interpretation or application of the provisions of this Declaration, the Articles or Bylaws, the determination thereof by a two-thirds (2/3) vote of the Board shall be final and binding on each and all of such Owners.

7.13 Action by Owners. To the extent permitted by the Act, all actions required to be taken by the Owners, acting as a Unit Owners' Association for the Condominium, shall be taken

through its directors and officers, such actions to include without limitation, adoption or ratification of the Bylaws and Rules and Regulations for the Condominium created hereby.

7.14 Additional Provisions in Articles of Incorporation and Bylaws. The Articles and the Bylaws may contain any provision not inconsistent with the Act, other applicable Arizona law or with this Declaration relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members.

7.15 Personal Liability. No director or officer of the Association, no member of any committee of the Association, and no other person acting on behalf of the Board of Directors shall be personally liable to any Member, or to any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence in the discharge of such person's duties and responsibilities under the Condominium Documents provided such person acted in good faith and without intentional misconduct.

7.16 Annual Audit. The Board shall provide for an annual audit, review or compilation of the financial affairs of the Association. Such audit, review or compilation shall be completed no later than one hundred eighty days after the end of the Associations' fiscal year (except that for any fiscal year period less than twelve (12) months, the audit, review or compilation shall be deferred to the end of the next full twelve (12) month fiscal year period). The audit, review or compilation shall be made available to a then existing Member upon written request within thirty (30) days after compilation.

ARTICLE 8 **ASSESSMENTS**

8.1 Preparation of Budget.

8.1.1 At least thirty (30) 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: (a) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (b) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (c) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (d) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units. The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

8.1.2 At least ten (10) days before the beginning of each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Regular Assessment assessed against the Owner's Unit in accordance with Section 8.2. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 8.2, and each Unit Owner shall continue to pay the Regular Assessment against his Unit as established for the previous fiscal year until notice of the Regular Assessment for the new fiscal year has been given to the Unit Owners by the Board of Directors.

8.1.3 The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

8.2 Regular Assessment.

8.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to this Declaration) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 3.3. The amount of the Regular Assessment assessed pursuant to this Subsection 8.2.1 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, the Board of Directors may increase the Regular Assessment for that fiscal year and the revised Regular Assessment shall commence on the date designated by the Board of Directors.

8.2.2 The Regular Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser or such later date as may be selected by the Board of Directors for the commencement of Regular Assessments. The first Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Regular Assessments or Special Assessments be paid in installments.

8.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 8.2.1.

8.2.4 If any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that Common Expense exclusively against that Owner's Unit.

8.2.5 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.

8.2.6 The Regular Assessment for any Unit owned by the Declarant which is not substantially completed shall be an amount equal to twenty-five percent (25%) of the full Regular Assessment. For purposes of this Subsection, a Unit owned by the Declarant shall be deemed substantially completed when all interior partitions and other improvements have been completed and a Certificate of Occupancy for that Unit has been issued by the City. So long as any Unit owned by the Declarant qualifies for the reduced Regular Assessment provided for in this Subsection, the Declarant shall be obligated to pay to the Association any deficiency in the monies of the Association due to the Declarant having paid a reduced Regular Assessment and necessary for the Association to be able to timely pay all Common Expenses.

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

8.3 Special Assessments. The Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment (other than a Special Assessment levied pursuant to Section 10.4 as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by affirmative vote of a Majority of the Members. 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. Any Special Assessment shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 3.3.

8.4 Individual Expense Assessment. The Association may contract with various suppliers of goods or services to provide to the Owners, Tenants and Occupants goods or services which the Association is not required to provide under the Condominium Documents. Any such contract may either provide that the Association shall pay for the cost and expense of the goods or services provided to the Owners, Tenants or Occupants under the contract or that the cost and expense shall be billed directly to the Owner, Tenant or Occupant receiving such goods or services. Any such costs and expenses paid by the Association shall be assessed as an Individual Expense Assessment to the Unit receiving such goods or services.

8.5 User Fee Assessments. The Association may levy a User Fee Assessment against any Unit Owner for the purposes described in Section 1.56.

8.6 Enforcement Assessment. The Association may assess against an Owner as an Enforcement Assessment any of the following expenses: (a) any Collection Costs incurred by the Association in attempting to collect Individual Expense or User Fee Assessments or other amounts payable to the Association by the Owner; (b) any attorney fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Condominium Documents by the Owner or the Owner's Occupants, Tenants or Permittees; (c) any monetary penalties levied against an Owner including, but not limited to, reasonable monetary penalties imposed by the Association upon an Owner pursuant to this Declaration for violations of the Condominium Documents; (d) damages, expenses and costs assessed by the Association against a Unit Owner pursuant to Sections 6.3, 6.4 and 8.2.4, and interest, late fees, Collection Costs and other costs and charges incurred by the Association relative to such damages, expenses and costs; and (e); or (e) any amounts (other than Regular Assessments, Special Assessments, Individual Assessments and User Fee Assessments) which become due and payable to the Association by the Owner or the Owner's Occupants, Tenants or Permittees pursuant to the Condominium Documents.

8.7 Purposes for which Association's Funds May be Used. The Association may use the funds and property collected and received by the Association (including, but not limited to, all Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Condominium Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Condominium Documents or applicable law; (c) providing or promoting activities and services the Board of Directors deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Condominium and the Owners, Tenants and Occupants; (d) contracting for services to be provided to Owners, Tenants and Occupants; and (e) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Condominium.

8.8 Effect of Nonpayment of Assessments: Remedies of the Association.

8.8.1 Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors. If any Assessment, or any installment thereof, is not paid within fifteen (15) days after the Assessment first became due, the Association may assess against the delinquent Unit Owner a late fee in the amount established from time to time by the Board of Directors.

8.8.2 All Regular and Special Assessments, and all interest, late fees, collection costs and other fees and charges imposed or levied against any Unit or Owner relating to such Assessments shall be secured by the Assessment Lien as provided for in the Act. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Assessment Lien, the Association shall have the right but not the obligation, to record

a notice setting forth the amount of any delinquent Assessments, monetary penalties or other fees or charges imposed or levied against a Unit or the Owner which are secured by the Assessment Lien.

8.8.3 The Assessment Lien shall have priority over all liens, other interests and encumbrances except for: (a) liens and encumbrances Recorded before the recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges; and (c) the lien of any First Mortgage or seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Unit through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Unit which became payable prior to the acquisition of such Unit by the First Mortgagee or other Person. Any Assessments and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner.

8.8.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments and other charges covered by the Assessment Lien are paid to the Association by the Unit Owner of the Unit have been paid in full.

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

8.8.6 The enforcement of any Assessment Lien shall be subject to the limitations set forth in this Section 8.8 and A.R.S. § 33-1256, as amended.

8.8.7 The Association shall have a lien for any Individual Expense Assessment, User Fee Assessment or Enforcement Assessment, and for interest, late fees, Collection Costs and other fees and charges incurred or imposed by the Association relative to such Assessments, only after the Association obtains a judgment and submits that judgment for Recording; provided that the Association's lien for Individual Expense Assessments, User Fee Assessments and Enforcement Assessments, and for interest, late fees, Collection Costs and other fees and charges incurred or imposed by the Association relative to such Assessments may not be foreclosed and is effective only on conveyance of an interest in the Unit against which the lien attaches.

8.9 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.

8.10 Certificate of Payment. The Association upon 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 fifteen (15) 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.

8.11 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 Act.

8.12 Initial Working: Capital Fund. To provide the Association with initial operating funds, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Unit, a sum equal to two monthly installments of the Regular Assessment for the Unit. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.13 Reserve Contribution.

8.13.1 Except as provided in Subsection 8.13.2, each Person who purchases or otherwise becomes the Owner of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 8.16. The amount of the initial Reserve Contribution shall be set by the Board of Directors prior to the conveyance of the first Unit to a Purchaser. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of a Majority of the Members.

8.13.2 No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which even a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, *et seq.*

8.13.3 All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 8.16. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

8.14 Surplus Funds. Surplus funds of the Association remaining after payment of the Common Expenses and any prepayment of reserves may in the discretion of the Board of Directors either be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Regular Assessments.

8.15 Transfer Fee. Each Purchaser of a Unit (other than the Purchaser of a Unit from the Declarant) shall pay to the Association immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Unit.

8.16 Reserves.

8.16.1 The Board of Directors shall establish a separate bank account (the "Reserve Account") for Association funds designated by the Board of Directors as reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements. Until the expiration of the Period of Declarant Control, the reserves shall consist solely of the Reserve Contributions paid by Purchasers pursuant to Section 8.13. The Declarant makes no representation or warranty that the amount of the Reserve Contributions paid pursuant to Section 8.13 will fully or adequately fund the reserves required for the future periodic maintenance, repair or replacement of the major components of the Common Elements. Neither the Declarant nor any member, director, officer, employee or agent of the Declarant nor any person serving as a director or officer of the Association during the Period of Declarant Control shall be liable to the Association, any Member or any other Person as a result of such reserves not being funded during the Period of Declarant Control in excess of the amount of the Reserve Contributions paid by Purchasers pursuant to Section 8.13. Within ninety (90) days after the expiration of the Period of Declarant Control, the Board of Directors shall obtain a reserve study which shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. Upon receipt of the reserve study, the Board of Directors shall determine what additional funding, if any, of the reserves is required. The Board of Directors shall obtain an update of the reserve study at least once every three years thereafter. The reserves may be funded from the Reserve Contributions paid pursuant to Section 8.13, from the Regular Assessments or from any other revenues of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of

Directors shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected.

8.16.2 Unless the Association is exempt from federal or state taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association.

ARTICLE 9 **INSURANCE**

9.1 Scope of Coverage.

9.1.1 Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) A policy of property insurance insuring the Common Elements and the Perimeter Building Walls under a "special cause of loss" or "all risk" policy form with sprinkler leakage, debris removal and water damage endorsements. Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear, in an amount equal to one hundred percent (100%) of the then current replacement cost of the insured property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. The replacement cost shall be reviewed annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property (if any) owned by the Association.

(b) Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000 for any single occurrence and \$2,000,000 in aggregate for the policy term insuring the Association, the Board of Directors, the manager or management agent and their respective agents and employees, and the Unit Owners from liability arising out of or in connection with the use, ownership, maintenance or operation of the Common Elements. Such insurance shall cover all occurrences commonly insured against resulting in death, bodily injury, property damage and/or personal and advertising injury. Such policy shall include (i) a cross liability clause to cover liabilities of the Owners as a group to an Owner; (ii) medical payments insurance; (iii) blanket contractual liability coverage; and (iv) contingent liability coverage arising out of the use of hired and nonowned automobiles.

(c) Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering all the directors and officers of the Association and naming the managing agent of the Association as an additional insured.

(d) Umbrella liability insurance at a limit determined by the Board of Directors, providing "follow form" coverage in excess of primary liability insurance required herein.

(e) If applicable, pressured, mechanical and electrical equipment coverage on a comprehensive form in an amount not less than \$500,000 per accident per location.

(f) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Unit Owners.

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

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of this ownership of an undivided interest in the Common Elements or his membership in the Association.

(ii) 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.

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

9.1.2 The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 9.1 in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

9.1.3 Notwithstanding any of the other provisions of this Article to the contrary, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. Each Unit Owner appoints the Association, or any insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (a) the collection and appropriate disposition of the proceeds thereof; (b) the

negotiation of losses and execution of releases of liability; (c) the execution of all documents; and (d) the performance of all other acts necessary to accomplish such purpose.

9.1.4 The Association and its directors and officers shall have no liability to any Owner or First Mortgagee or other Person having a lien on a Unit if, after a good faith effort, (a) the Association is unable to obtain insurance required hereunder because the insurance is no longer available; (b) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (c) the Members fail to approve any increase in the Regular Assessment needed to pay the insurance premiums.

9.2 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.

9.3 Insurance Obtained by Unit Owners. Each Unit Owner shall obtain (a) a policy of property insurance, insuring the Owner's Unit (except for the Perimeter Building Walls which are insured under the property insurance maintained by the Association) under a "special cause of loss" or "all risk" policy form with sprinkler leakage, debris removal and water damage endorsements; (b) insurance covering the Unit Owner's loss of income and/or additional expense resulting from an interruption of business due to direct physical damage to the Owner's Unit or the Common Elements; (c) liability insurance covering such Owner's liability arising out of the ownership, maintenance, use or operation of the Owner's Unit (including liability arising out of the act of the Owner's guest, Permittee or Tenant) at a limit of not less than \$1,000,000 applicable to each occurrence and naming the Association's managing agent as an additional insured. Each Unit Owner shall provide the Board of Directors with a certificate of insurance evidencing such insurance coverage at least ten (10) days prior to the conveyance of the Unit to the Owner, and thereafter at least thirty (30) days prior to the expiration of any policy.

9.4 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and any lienholder as their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Act.

9.5 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article 9 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 Deed of Trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

9.6 Annual Insurance Review. The Board of Directors shall determine annually whether the amounts and types of insurance it has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Condominium is located,

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

ARTICLE 10
DESTRUCTION, CONDEMNATION, OBSOLESCENCE,
AND RESTORATION OR SALE OF CONDOMINIUM

10.1 Definition. As used herein, the terms shall have the following definitions.

10.1.1 "Substantial Destruction" shall exist whenever the Board determines that, as a result of any casualty, damage to or destruction of the Condominium or any part thereof, the excess of estimated costs of Restoration (as herein defined) over Available Funds (as herein defined) is fifty percent (50%) or more of the estimated Restored Value of the Condominium (as herein defined). "Partial Destruction" shall mean any other casualty, damage to or destruction of the Condominium or any part thereof.

10.1.2 "Substantial Condemnation" shall exist whenever the Board determines that a complete taking of the Condominium has occurred or that a taking of part of the Condominium, by condemnation or eminent domain or by grant or conveyance in lieu of condemnation or eminent domain has occurred, and that the excess of the estimated costs of Restoration over Available Funds is fifty percent (50%) or more of the estimated Restored Value of the Condominium, or portion thereof. "Partial Condemnation" shall mean any other such taking by eminent domain or by grant or conveyance in lieu of eminent domain.

10.1.3 "Substantial Obsolescence" shall exist whenever the Owners of Units to which two-thirds (2/3) of the undivided interests in the Common Elements are appurtenant determined by vote that the Condominium or any part thereof has reached an undesirable state of obsolescence or disrepair. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

10.1.4 "Restoration" in the case of any casualty, damage or destruction, shall mean restoration of the Condominium, or any part thereof, to a condition the same or substantially the same as the condition in which the Condominium existed prior to the casualty, damage or destruction; in the case of condemnation, shall mean restoration of the remaining portion of the Condominium, or any part thereof, to an attractive, sound and desirable condition; and, in the case of obsolescence, shall mean restoration of the Condominium, or any part thereof, to an attractive, sound and desirable condition.

10.1.5 "Restored Value" shall mean the value of the Condominium, or any part thereof, after restoration as determined by the Board.

10.1.6 "Available Funds" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation received by the Association or Unit Owner and any uncommitted reserves of the Association other than amounts derived through Assessment or

special Assessments. Available Funds shall not include that portion of insurance proceeds or condemnation awards or payments in lieu of condemnation legally required to be paid to a Mortgagee of all or any part of the Condominium, or that portion of any condemnation award or payment in lieu of condemnation paid to the Owner of a Unit for the condemnation or taking of that Owner's individual air space.

10.2 Restoration of the Condominium. Restoration of the Condominium shall be undertaken by the Association as to the Common Elements without a vote of the Owners in the event of Partial Destruction, Partial Condemnation or Partial Obsolescence and shall not be undertaken in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence if the Owners of Units to which two-thirds (2/3) of the undivided interests in the Common Elements are appurtenant consent to terminate the Condominium. Restoration of the Units shall be undertaken by the Unit Owner as to his Unit in the event of a Partial or Substantial Destruction, Partial or Substantial Condemnation or Partial or Substantial Obsolescence. Such restoration shall be performed substantially in accordance with this Declaration and the original plans and specifications for the Buildings, the Common Elements and the Units.

10.3 Sale of the Condominium. In the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence and the Owners of Units to which two-thirds (2/3) of the undivided interests in the Common Elements are appurtenant consent to terminate the Condominium, the Association shall cause a termination agreement and notice of intent to sell the Condominium to be prepared and recorded and the real estate shall be sold. Such termination agreement shall contain the ratification of the Owners to which two-thirds (2/3) of the undivided interests in the Common Elements are appurtenant and the ratification of any applicable Mortgagee, shall specify a date after which the agreement will be null and void unless it is recorded before that date, a statement that the real estate shall be sold and the minimum terms of the sale. In the event of such sale, condominium ownership under the Declaration shall terminate and as to the Common Elements the proceeds of sale and any insurance proceeds, distributed by the Association pro rata to each Owner according to their undivided interests in the Common Elements appurtenant to the Owner's Unit; and as to a Unit, each Owner shall be distributed the entire monies attributed to the Unit. Such payment shall be made to Owners or, as to Units which are subject to a Mortgage of record at the time of such payment jointly to such Owner and such Mortgagee as their interest may appear.

10.4 Special Assessments for Restoration. Whenever Restoration of the Common Elements is to be undertaken, the Association may levy and collect Special Assessments from each Owner in proportion to their respective interests in the Common Elements, payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by the Available Funds. Should any Owner not pay such Special Assessment when due, such Special Assessment, together with interest at the rate of fifteen percent (15%) per annum from the date such Special Assessment became due, costs and reasonable attorneys' fees, shall be secured by a lien on the Unit of each such Owner in the same manner as the lien provided for in Article 8 hereof.

10.5 Receipt and Application of Condemnation Funds. Except in a case where a Mortgagee or any other Person shall have the legal right to receive condemnation awards or payments in lieu of condemnation or eminent domain directly, all compensation, damages or other proceeds constituting awards for condemnation or eminent domain or payments in lieu of condemnation or eminent domain shall be paid to or held by the Association in a separate account without commingling with any other asset or property of the Association. The Association shall have the right, acting alone, to adjust or settle any condemnation award or payment in lieu of condemnation or eminent domain payable to it. Such funds shall be disbursed by the Association in accordance with the following priorities, subject to such evidence of application as the Association shall require. The amount thereof equitably allocable as compensation for the taking of or injury to the individual air space of a particular Unit or to improvements of an Owner therein shall be apportioned and paid to the Owner of such Unit or, as to Units which are subject to a Mortgage of record at the time of such payment, jointly to such Owner and such Mortgagee as their interests may appear. The balance of such funds shall be applied to costs and expenses of Restoration, if undertaken, and, to the extent not so applied, shall be allocated as follows: first, any portion of such funds allocable to the taking of or injury to the Common Elements shall be apportioned among all Owners of the Common Elements according to their respective undivided interests in the Common Elements; secondly, any portion of such funds received or awarded for severance damages shall be apportioned among Owners of Units whose individual air space was not taken or injured according to the foregoing apportionment; thirdly, any portion of such funds received or awarded for consequential damages or for other purposes shall be apportioned as the Association determines to be equitable under the circumstances. The lien priority of any First Mortgagee shall not be disturbed by any condemnation proceeding and shall continue in the proceeds of any condemnation award attributable to the mortgaged Unit in accordance with the provisions of this Section.

ARTICLE 11

RIGHTS OF OWNERS IN ANY DISTRIBUTIONS

11.1 Distribution According to Interest. In the event that any Owner or Mortgagee is entitled to receive any distribution of money, property or other things from the Association for any reason, including, without limitation, the sale or other disposition of all or any part of the Common Elements or the cessation or termination for any reason of the Condominium or the Association, such distribution shall be according to the undivided interests in the Common Elements of such Owner's or Mortgagee's Unit, except as may be specifically provided to the contrary in Articles 9 or 10 hereof.

ARTICLE 12

AMENDMENT

12.1 Supermajority Vote. Except as otherwise provided in this Declaration and except as otherwise permitted by the Act, the provisions of this Declaration may only be changed, modified or amended by an instrument in writing setting forth such change, modification or amendment, signed by Declarant as long as Declarant holds any ownership interest in the Condominium created hereby, or signed (and duly acknowledged) by the Owners of Units to

which not less than two-thirds (2/3) of the undivided interests in the Common Elements are appurtenant; provided, however, that so long as Declarant holds any interest in the Condominium created hereby, Declarant must approve of any such change, modification or amendment. Anything to the contrary notwithstanding contained herein, any amendment which would delete or modify any right granted to the Declarant by this Declaration must be approved in writing by the Declarant as long as Declarant has an ownership interest in the Condominium created hereby. In addition, unless the Property is reverted to acreage and the Project Plat is abandoned.

12.2 Consent. Notwithstanding anything contained herein to the contrary, if the Act, this Declaration, the Articles or the Bylaws require the consent or agreement of the Owners to which a specified percentage of the undivided interests in the Common Elements is appurtenant and/or any other persons having any interest in the Condominium, including, without limitation, the Association, for any such amendment or for any action specified in the Act or this Declaration, then any instrument so amending this Declaration or any provision hereof or providing for such action shall be signed by the Association and/or the Owners of not less than such specified percentage. Any such change, modification or amendment accomplished under any of the provisions of this Article 12 shall be effective upon recording of the instrument providing thereof signed and acknowledged as provided herein.

ARTICLE 13 **RESERVATION OF DEVELOPMENT RIGHTS** **AND PLAN OF DEVELOPMENT**

13.1 Reserved to Declarant. Declarant hereby expressly reserves the following Development Rights, as provided in the Act and the right to exercise such rights without the consent of any Mortgagee or any Owner:

13.1.1 To create easements, Units, Common Elements or Limited Common Elements within any portion of the Condominium created hereby, until more than fifty percent (50%) of the Units created have been conveyed to Owners other than a Declarant.

13.1.2 To subdivide Units, convert Units into Common Elements or convert Common Elements into Units.

13.1.3 To amend this Declaration during any period of Declarant control to comply with applicable law or to correct any error or inconsistency in this Declaration provided that such amendment does not adversely affect the rights of any Unit Owner contrary to the provisions of this Declaration.

ARTICLE 14 **GENERAL PROVISIONS**

14.1 Notices. Notices provided for in the Act, this Declaration, the Articles or by Bylaws shall be in writing and shall be mailed by certified mail postage prepaid if to the Association or the Board addressed to the address to which payments of Assessments are then

sent and if to an Owner, addressed to his Unit at the Condominium. The Association or the Board may designate a different address or addresses to which notices shall be sent from time to time by giving written notice of such change of address to all Owners. Any Owner may also designate a different address or addresses to which notices shall be sent by giving written notice of his change of address to the Association. Notices shall be deemed delivered upon receipt shown on the certified or registered receipt, after being deposited, properly addressed, in the United States mail, postage prepaid, or immediately upon delivery in person. Upon written request to the Board, which written request specifies an address to which notices may be sent, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner or Owners of the Units subject to the Mortgage held by such Mortgagee.

14.2 Public Dedication. Nothing contained in this Declaration shall be deemed to constitute a dedication for public use or to create any rights in the general public. Nothing contained in this Declaration shall be construed as creating an obligation on the part of the County of Maricopa in the State of Arizona or any other governmental authority having jurisdiction over the Condominium to maintain, repair or replace any Unit or the appurtenances thereto.

14.3 Severability. If any provision of this Declaration, the Articles, the Bylaws or the Rules and Regulations, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of this Declaration, the Articles, the Bylaws or the Rules and Regulations, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance shall not be affected thereby, shall remain in full force and effect as if such invalid part shall be promptly amended as herein provided or reformed by such court so as to implement the intent hereof to the maximum extent permitted by law.

14.4 Perpetuities and Restraints on Alienation. If any of the easements, privileges, covenants, interests or rights created by this Declaration would otherwise be unlawful, void or voidable for violation of the rule against perpetuities, then such shall continue in existence until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States, George W. Bush.

14.5 Rights and Obligations. Each grantee of Declarant, by the acceptance of a deed of conveyance, each purchaser under any agreement of sale within the meaning of the Act, by execution of such agreement for sale, and each Mortgagee, by the acceptance of any instrument conveying any interest in the Condominium as security for the performance of an obligation, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and equitable servitudes and shall be binding upon and shall inure to the benefit of any grantee, purchaser or any person having at any time any interest or estate in the Condominium in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument

of transfer, and each grantee shall be entitled to bring, and shall be subject to, an action for the recovery of damages, and for injunctive relief, or both, resulting from any breach of any such provisions.

14.6 Waiver. Any right or remedy provided for in this Declaration shall not be deemed to have been waived by any act or omission, including, without limitation, any acceptance of payment or partial performance or forbearance, except by an instrument in writing specifying such right or remedy and executed by the person against whom enforcement of such waiver is sought.

14.7 Professional Management Agreement. The Association may employ a responsible individual, corporation or other entity as manager to manage, operate and maintain the Common Elements, with all of the administrative functions and such other powers and duties as the Association may delegate from time to time and for such fees as the Association may establish. The Manager employed by the Association may also be employed by any Owner to manage, operate, repair and maintain its respective Unit or Units, provided, however, that the costs, expenses and fees incurred in connection therewith shall be accounted for separately and shall not be the obligation of the Association.

14.8 Taxes. Each Owner shall pay when due all real estate taxes, charges and Assessments levied against each Unit.

ARTICLE 15 **TERMINATION**

15.1 By Unanimous Consent. Except as otherwise provided in this Article 15, the Condominium and the Association may be terminated by an affirmative unanimous vote of the Unit Owners. Any such agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the Unit Owners so agreeing. The termination agreement shall specify a date after which the Agreement shall be void, unless it is recorded before that date. At the time of such termination, title to all of the real estate and the Condominium shall vest in the Unit Owners upon termination as Tenants-in-Common in proportion to their respective interests as set forth in Section 3.3. The Association may not be dissolved, however, unless another entity has agreed to assume the operation and maintenance responsibilities of the Association.

ARTICLE 16 **EXEMPTION OF DECLARANT FROM RESTRICTIONS;** **RESERVATION OF SPECIAL DECLARANT RIGHTS**

16.1 No Limit on Special Declared Rights. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents and subcontractors, or parties designated by it in connection with any construction, completion, sale or lease of the Condominium or any portion thereof. In addition to the foregoing, Declarant

expressly reserves the following Special Declarant Rights, as defined in A.R.S. §33-1202(21) and the right to transfer such rights as provided in A.R.S. §33-1244:

16.1.1 The right to construct any improvements as provided herein.

16.1.2 The right to exercise any Development Rights specifically set forth in Article 13 hereof.

16.1.3 The right to maintain sales offices, leasing offices, management offices, signs advertising the Condominium and model within the Condominium until the last Unit in the Condominium is sold to an Owner other than Declarant, or leased to an Occupant other than Declarant.

16.1.4 The right to use any easements through the Common Elements for the purpose of making improvements within the Condominium.

16.1.5 The right to appoint or remove any officer of the Association or any Board member during any Period of Declarant's Control.

ARTICLE 17 **REMEDIES**

17.1 Enforcement. In the event that any Unit Owner shall fail to comply with the provisions of the Act, this Declaration, the Articles, the Bylaws, or the Rules and Regulations, the Association shall have each and all of the rights and remedies provided for in the Act, this Declaration, the Articles, the Bylaws, or the Rules and Regulations, or which may be available at law or in equity and may prosecute any action or other proceeding against such Unit Owner for enforcement of such provisions or foreclosure of its lien and the appointment of a receiver for the Unit, or damages, or injunctive relief, or specific performance, or judgment for payment of money and collection thereof, or to sell the same as hereinafter provided, or any combination of such remedies or any other and further relief which may be available at law or in equity, all without notice and without regard to the value of such Unit or the solvency of such Owner, provided that the exercise of such remedies shall comply with Section 8.8 and A.R.S. § 33-1256, as amended. In addition to the remedies granted by the Association pursuant to this Article 17, in the event that any Owner or the Association shall fail to comply with the provisions of the Act, this Declaration, the Articles, the Bylaws, or the Rules and Regulations, any non-defaulting Owner shall have each and all of the rights and remedies provided for in the Act, this Declaration, the Articles, the Bylaws or the Rules and Regulations or which may be available at law or in equity and may prosecute any action or other proceeding against such defaulting Owner or the Association for the enforcement of such provisions, injunctive relief and/or specific performance.

17.2 Other Rights. Notwithstanding any provision of this Declaration to the contrary, any breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely

affect the lien and/or rights of any mortgagee except as herein expressly provided, each and all of such covenants, conditions, restrictions, reservations and servitudes shall be binding upon and effective against any Tenant under any Lease or against any Owner of any Unit whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

ARTICLE 18

MISCELLANEOUS

18.1 Binding Effect; Term. Unless sooner terminated as herein provided, this Declaration and the restrictions contained herein shall be binding upon each Owner and its heirs, executors, successors, assigns and grantees, and all other persons claiming an interest in the Condominium.

18.2 Reference to Declaration. All instruments of conveyance of transfer of any interest of all or any part of the Condominium may contain the restrictions herein set forth by reference to this Declaration. However, the restrictions herein shall be binding upon all Persons and entities affected by the terms of this Declaration, regardless of whether any reference is made to this instrument in a deed or other instrument of conveyance.

18.3 Severability. A determination by a Court of competent jurisdiction that any provision of the Declaration is invalid or is unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

18.4 Chance of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

18.5 Conflicts. If any of the provisions in the Articles, Bylaws or Rules and Regulations conflict with the provisions of this Declaration, the provisions in this Declaration shall control.

18.6 Authorization. Acts of the Association requiring prior authorization by Members of the Association shall be considered and voted upon at the meetings of the Members lawfully held and duly noticed for such purpose.

18.7 Common Element Rentals. Any rents from the leasing or renting of the Common Elements shall be the property of and paid directly to the Owners according to their percentage interests in the Common Elements and shall not be paid to, or be the property of, the Association.

18.8 Gender and Number. Whenever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders. Words used in the neuter gender shall include the masculine and feminine gender. Words used in the singular shall include the plural, and words in the plural shall include the singular.

18.9 Captions and Titles. All captions, titles and headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only, and are not deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent hereof.

ARTICLE 19

DISPUTE RESOLUTION

19.1 Defined Terms. As used in this Article 19, the following terms shall the meaning set forth below:

19.1.1 "Alleged Defect" means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit.

19.1.2 "Bound Parties" means: (a) the Declarant; (b) the Association (including its officers and directors, agents, employees and independent contractors, including property manager); (c) all Unit Owners, Tenants and Occupants; (d) the entity which platted the Condominium if different from but affiliated with Declarant; (e) the general contractor for the Condominium or (f) the subcontractors, material suppliers, labor suppliers, architects, engineers and consultants of any of the said contractors, including but not limited to their respective members, managers, directors, officers, partners, employees, agents and independent contractors.

19.1.3 "Claim" means: (a) any claim or cause of action arising out of or related in any way to an Alleged Defect, including, without limitation, any claim or cause of action for breach of express or implied warranties or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development of the Condominium; or (b) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

19.2 Agreement to Resolve Certain Disputes Without Litigation. All Bound Parties agree that all Claims shall be resolved in accordance with the dispute resolution procedures set forth in this Article 19.

19.3 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (i) a description of the Claim; (ii) a description of the attempts of

Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (iii) the estimated cost to repair such Alleged Defect; (iv) the name and professional background of the attorney retained by the Association to pursue the claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (v) a description of the fee arrangement between such attorney and the Association; (vi) the estimated attorney's fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (vii) the estimated time necessary to conclude the action; and (viii) an affirmative statement from the Board of Directors that the action is in the best interest of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to A.R.S. § 12-2602(B).

19.4 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within sixty (60) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("AAA") or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within sixty (60) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

19.5 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 19.5. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 19.5. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to

assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 19.5, the arbitration shall be conducted in accordance with the following rules:

19.5.1 Initiation of Arbitration. The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other rules as the AAA may determine to be applicable (the “AAA Rules”).

19.5.2 Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, *et seq.* In the event of a conflict between the AAA Rules and this Section 19.5, the provisions of this Section 19.5 shall govern.

19.5.3 Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within fourteen (14) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 19.5 as the “Arbitrator”.

19.5.4 Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

19.5.5 Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 19.5.3.

19.5.6 Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

19.5.7 Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (a) definition of issues; (b) scope, timing and types of discovery, if any; (c) schedule and place(s) of hearings; (d) setting of other timetables;

(e) submission of motions and briefs; (f) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (g) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (h) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

19.5.8 Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

19.5.9 Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

19.5.10 Hearings. Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

19.5.11 Final Award. The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

19.6 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 19.6 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided

by Declarant or any other Bound Party in connection with the sale of the Units. The right of a Bound Party and its employees, agents, contractors and consultants 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, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

19.7 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. Any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

19.8 Approval of Unit Owners. The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 19.3.

19.9 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 19.5. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

19.10 Conflicts. In the event of any conflict between this Article 19 and any other provision of the Condominium Documents, this Article 19 shall control.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 19 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 19. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 19, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS 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 CLAIM.

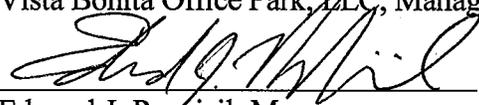
BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF A UNIT OWNER, THE ASSOCIATION, OR ANY OTHER BOUND PARTY FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST DECLARANT OR ANY OTHER BOUND PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 19 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE MARICOPA COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the 7th day of JUNE, 2005.

POPP, LLC,
an Arizona limited liability company

By: Vista Bonita Office Park, LLC, Manager

By: 
Edward J. Pospisil, Manager

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this 7 day of June, 2005, before me personally appeared Edward J. Pospisil, who acknowledged himself to be the Manager of Vista Bonita Office Park, LLC, the Manager of POPP, LLC, an Arizona limited liability company, and that he, in such capacity being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Manager.

My Commission Expires:

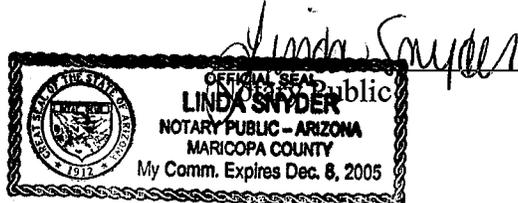


EXHIBIT "A"

Legal Description for the Property

Condominium Plat

Pinnacle Peak Office Park as recorded in Book 753 of Maps,
page 16

EXHIBIT "B"

Gross Area and Percentage of Interests for each Unit

<u>Building</u>	<u>Unit Number</u>	<u>Total Gross Area of Each Unit</u>	<u>Percentage Interest of Each Unit</u>	<u>Number of Votes</u>
Building A - 7450 E. Pinnacle Peak Road				
1st Floor	150	908.800	1.2858%	1.2858
	152	1,608.800	2.2762%	2.2762
	154	1,987.600	2.8122%	2.8122
	156	1,608.800	2.2762%	2.2762
	158	1,370.000	1.9384%	1.9384
2nd Floor	250	1,130.300	1.5992%	1.5992
	252	1,684.600	2.3835%	2.3835
	254	1,986.600	2.8108%	2.8108
	256	1,684.800	2.3838%	2.3838
	258	1,491.600	2.1104%	2.1104
Building B - 7400 E. Pinnacle Peak Road				
1st Floor	100	1,370.000	1.9384%	1.9384
	102	1,608.800	2.2762%	2.2762
	104	1,987.600	2.8122%	2.8122
	106	1,608.800	2.2762%	2.2762
	108	908.800	1.2858%	1.2858
2nd Floor	200	2,412.900	3.4139%	3.4139
	202	-	-	-
	204	2,750.100	3.8910%	3.8910
	206	1,684.600	2.3835%	2.3835
	208	1,130.300	1.5992%	1.5992
Building C - 7410 E. Pinnacle Peak Road				
	110	2,063.700	2.9199%	2.9199
	112	2,044.200	2.8923%	2.8923
	114	1,613.700	2.2832%	2.2832
	116	2,339.400	3.3099%	3.3099
	118	1,877.600	2.6565%	2.6565
Building D - 7420 E. Pinnacle Peak Road				
	120	1,877.600	2.6565%	2.6565
	122	2,339.400	3.3099%	3.3099
	124	1,613.700	2.2832%	2.2832
	126	2,044.200	2.8923%	2.8923
	128	2,063.700	2.9199%	2.9199
Building E - 7430 E. Pinnacle Peak Road				
	130	2,063.400	2.9194%	2.9194
	132	2,339.400	3.3099%	3.3099
	134	1,613.700	2.2832%	2.2832
	136	2,044.200	2.8923%	2.8923
	138	1,877.900	2.6570%	2.6570
Building F - 7440 E. Pinnacle Peak Road				
	140	1,877.600	2.6565%	2.6565
	142	2,339.400	3.3099%	3.3099
	144	1,613.700	2.2832%	2.2832
	146	2,044.200	2.8923%	2.8923
	148	2,063.700	2.9199%	2.9199
Totals		70,678.200	100.0000%	100.0000

EXHIBIT "C"

**PINNACLE PEAK OFFICE PARK CONDOMINIUMS
Parking Space Allocation Schedule**

Space Number on Plat	Unit Number	Reserved	Covered
1		Visitor	
2		Visitor	
3		Visitor	
4		Visitor	
5		Visitor	
6		Visitor	
7		Visitor	
8		Visitor	
9		Visitor	
10		Visitor	
11		Visitor	
12		Visitor	
13		Handicap	
14		Handicap	
15		Handicap	
16		Handicap	
17		Visitor	
18		Visitor	
19		Visitor	
20		Visitor	
21		Visitor	
22		Visitor	
23		Visitor	
24		Visitor	
25		Visitor	
26		Visitor	
27		Visitor	
28		Visitor	
29		Visitor	
30		Visitor	
31		Visitor	
32	258	Reserved	Covered
33	258	Reserved	Covered
34	256	Reserved	Covered
35	256	Reserved	Covered
36	254	Reserved	Covered
37	254	Reserved	Covered
38	254	Reserved	Covered
39	252	Reserved	Covered
40	252	Reserved	Covered
41	250	Reserved	Covered
42	250	Reserved	Covered
43	208	Reserved	Covered
44		Visitor	
45		Visitor	
46	206	Reserved	Covered
47	206	Reserved	Covered
48	204	Reserved	Covered
49	204	Reserved	Covered
50	204	Reserved	Covered

EXHIBIT "C"**PINNACLE PEAK OFFICE PARK CONDOMINIUMS
Parking Space Allocation Schedule**

Space Number on Plat	Unit Number	Reserved	Covered
51	204	Reserved	Covered
52	200	Reserved	Covered
53	200	Reserved	Covered
54	200	Reserved	Covered
55		Visitor	Covered
56		Visitor	Covered
57		Visitor	Covered
58		Visitor	
59		Visitor	Covered
60		Visitor	Covered
61	100	Reserved	Covered
62	100	Reserved	Covered
63	102	Reserved	Covered
64	102	Reserved	Covered
65	104	Reserved	Covered
66	104	Reserved	Covered
67	104	Reserved	Covered
68	106	Reserved	Covered
69	106	Reserved	Covered
70	108	Reserved	Covered
71		Omitted	
72		Visitor	
73	150	Reserved	Covered
74	150	Reserved	Covered
75	152	Reserved	Covered
76	152	Reserved	Covered
77	154	Reserved	Covered
78	154	Reserved	Covered
79	154	Reserved	Covered
80	156	Reserved	Covered
81	156	Reserved	Covered
82	156	Reserved	Covered
83	158	Reserved	Covered
84	158	Reserved	Covered
85		Visitor	
86	124	Reserved	Covered
87	114	Reserved	Covered
88	114	Reserved	Covered
89	116	Reserved	Covered
90	116	Reserved	Covered
91	116	Reserved	Covered
92	112	Reserved	Covered
93	112	Reserved	Covered
94	112	Reserved	Covered
95	118	Reserved	Covered
96		Visitor	
97		Visitor	
98	118	Reserved	Covered
99	118	Reserved	Covered

EXHIBIT "C"**PINNACLE PEAK OFFICE PARK CONDOMINIUMS
Parking Space Allocation Schedule**

Space Number on Plat	Unit Number	Reserved	Covered
100	110	Reserved	Covered
101	110	Reserved	Covered
102	110	Reserved	Covered
103		Visitor	Covered
104		Visitor	Covered
105		Visitor	Covered
106		Visitor	
107		Visitor	
108		Visitor	Covered
109		Visitor	Covered
110		Visitor	Covered
111	120	Reserved	Covered
112	120	Reserved	Covered
113	120	Reserved	Covered
114		Visitor	
115		Visitor	
116	128	Reserved	Covered
117	128	Reserved	Covered
118	128	Reserved	Covered
119	126	Reserved	Covered
120	126	Reserved	Covered
121	126	Reserved	Covered
122	122	Reserved	Covered
123	122	Reserved	Covered
124	122	Reserved	Covered
125	124	Reserved	Covered
126		Visitor	
127		Visitor	
128		Visitor	
129		Visitor	
130		Visitor	
131		Visitor	
132		Visitor	
133		Visitor	
134		Visitor	
135		Visitor	
136		Visitor	
137		Visitor	
138		Visitor	
139		Visitor	
140		Visitor	
141		Visitor	
142		Visitor	
143		Visitor	
144		Visitor	
145		Visitor	
146		Visitor	
147		Visitor	
148		Visitor	

EXHIBIT "C"**PINNACLE PEAK OFFICE PARK CONDOMINIUMS
Parking Space Allocation Schedule**

Space Number on Plat	Unit Number	Reserved	Covered
149		Visitor	
150		Visitor	
151		Visitor	
152		Visitor	
153		Visitor	
154		Visitor	
155		Visitor	
156		Visitor	
157		Visitor	
158		Visitor	
159		Visitor	
160		Visitor	
161		Visitor	
162		Handicap	
163		Handicap	
164		Visitor	
165		Visitor	
166		Visitor	
167		Visitor	
168		Visitor	
169		Visitor	
170		Visitor	
171		Visitor	
172		Visitor	
173		Visitor	
174		Visitor	
175		Visitor	
176		Visitor	
177		Handicap	
178		Handicap	
179		Visitor	
180		Visitor	
181		Visitor	
182		Visitor	
183		Visitor	
184		Visitor	
185		Visitor	
186		Visitor	
187		Visitor	
188		Visitor	
189		Visitor	
190		Visitor	
191		Visitor	
192		Handicap	
193		Handicap	
194		Visitor	
195		Visitor	
196		Visitor	
197		Visitor	
198		Visitor	

EXHIBIT "C"**PINNACLE PEAK OFFICE PARK CONDOMINIUMS
Parking Space Allocation Schedule**

Space Number on Plat	Unit Number	Reserved	Covered
199		Visitor	
200		Visitor	
201		Visitor	
202		Handicap	
203		Handicap	
204		Visitor	
205		Visitor	
206		Visitor	
207		Visitor	
208		Visitor	
209		Visitor	
210		Visitor	
211		Visitor	
212		Visitor	
213		Visitor	
214		Visitor	
215		Visitor	
216		Visitor	
217		Visitor	
218		Visitor	
219		Visitor	
220		Visitor	
221		Visitor	
222		Visitor	
223		Visitor	
224		Visitor	
225		Visitor	
226		Visitor	
227		Visitor	
228		Visitor	
229		Visitor	
230		Visitor	
231		Visitor	
232		Visitor	
233		Visitor	
234		Visitor	
235		Visitor	
236		Visitor	
237		Visitor	
238		Visitor	
239		Visitor	
240		Visitor	
241		Visitor	Covered
242		Visitor	Covered
243		Visitor	Covered
244		Visitor	Covered
245	130	Reserved	Covered
246	130	Reserved	Covered
247		Visitor	

EXHIBIT "C"**PINNACLE PEAK OFFICE PARK CONDOMINIUMS
Parking Space Allocation Schedule**

Space Number on Plat	Unit Number	Reserved	Covered
248		Visitor	
249	130	Reserved	Covered
250	136	Reserved	Covered
251	136	Reserved	Covered
252	136	Reserved	Covered
253	134	Reserved	Covered
254	134	Reserved	Covered
255	132	Reserved	Covered
256	132	Reserved	Covered
257	132	Reserved	Covered
258	138	Reserved	Covered
259	138	Reserved	Covered
260	138	Reserved	Covered
261		Visitor	
262		Visitor	
263		Visitor	Covered
264		Visitor	Covered
265		Visitor	Covered
266		Visitor	Covered
267		Visitor	Covered
268		Visitor	Covered
269		Visitor	Covered
270		Visitor	Covered
271		Visitor	Covered
272	140	Reserved	Covered
273	140	Reserved	Covered
274	144	Reserved	Covered
275	144	Reserved	Covered
276	148	Reserved	Covered
277	148	Reserved	Covered
278	148	Reserved	Covered
279		Visitor	
280	146	Reserved	Covered
281	146	Reserved	Covered
282	146	Reserved	Covered
283	142	Reserved	Covered
284	142	Reserved	Covered
285	142	Reserved	Covered
286	140	Reserved	Covered
287		Visitor	Covered
288		Visitor	Covered
289		Visitor	Covered
290		Visitor	

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20051673869 11/04/2005 11:33
BG500-4-1-1-
ELECTRONIC RECORDING

111 BG500

CAPTION HEADING: First Amendment CCRS

**FIRST AMENDMENT TO
PINNACLE PEAK OFFICE PARK CONDOMINIUM
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This First Amendment to Pinnacle Peak Office Park Declaration of Covenants, Conditions and Restrictions ("First Amendment") is dated for reference purposes as of the 1st day of November, 2005 by PPOP, LLC, an Arizona limited liability company ("Declarant") with reference to the following recitals that are expressly made part of this First Amendment.

RECITALS:

A. On June 8, 2005, the Declarant caused to be recorded in the Official Records of the Maricopa County Recorder as Instrument No. 2005-0768938 that certain Pinnacle Peak Office Park Declaration of Covenants, Conditions and Restrictions (the "Declaration") pertaining to the Property legally described on Exhibit "A" attached hereto.

B. Article 13 of the Declaration provides that the Declaration may be amended by the Declarant during the Period of Declarant Control (defined in the Declaration) to correct any error or inconsistency in the Declaration.

C. The Period of Declarant Control has not expired under the terms of the Declaration.

In consideration of the foregoing, Declarant hereby declares as follows:

1. All capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Declaration. Declarant hereby declares that the recitals set forth hereinabove are true and correct and incorporated into this First Amendment.

2. The spelling of the name of the Declarant throughout the Declaration (also sometimes referred to therein as the Company) is hereby corrected to read **PPOP, LLC** rather than **POPP, LLC** as incorrectly written in the Declaration.

3. Section 5.5 is amended to provide that a veterinary clinic shall **not** be permitted use.

4. Except as amended and/or modified by this First Amendment, the Declaration is hereby ratified and confirmed and all other terms of the Declaration shall remain in full force and effect, unaltered and unchanged by this First Amendment.

Dated as of the day written above.

PPOP, LLC,
an Arizona limited liability company

By: Vista Bonita Office Park, LLC,
an Arizona limited liability company,
Its: Manager

By: *Edward J. Pospisil*
Edward J. Pospisil, Manager

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this 1 day of November, 2005, before me personally appeared Edward J. Pospisil, who acknowledged himself to be the Manager of Vista Bonita Office Park, LLC, the Manager of PPOP, LLC, an Arizona limited liability company, and that he, in such capacity being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Manager.

Linda Snyder
Notary Public

My Commission Expires:

December 8, 2005



EXHIBIT "A"
Legal Description

Condominium Plat

Pinnacle Peak Office Park as recorded in Book 753 of Maps, page 16.

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20051819256 12/01/2005 12:59
1201-4-1-1-
ELECTRONIC RECORDING

When recorded mail to:

1/1
1201

Second Amendment to Pinnacle Peak Office Condominium

**Do not discard
This is part of the Official Document**

**SECOND AMENDMENT TO
PINNACLE PEAK OFFICE PARK CONDOMINIUM
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Second Amendment to Pinnacle Peak Office Park Declaration of Covenants, Conditions and Restrictions ("Second Amendment") is dated for reference purposes as of the 11 day of November, 2005 by PPOP, LLC, an Arizona limited liability company ("Declarant") with reference to the following recitals that are expressly made part of this Second Amendment.

RECITALS:

A. On June 8, 2005, the Declarant caused to be recorded in the Official Records of the Maricopa County Recorder as Instrument No. 2005-0768938 that certain Pinnacle Peak Office Park Declaration of Covenants, Conditions and Restrictions pertaining to the Property legally described on Exhibit "A" attached hereto, which was amended by the First Amendment dated November 1, 2005 and recorded in the Official Records of the Maricopa County Recorder on November 4, 2005 as Instrument No. 2005-1673869 (collectively the "Declaration").

B. Article 13 of the Declaration provides that the Declaration may be amended by the Declarant during the Period of Declarant Control (defined in the Declaration) to correct any error or inconsistency in the Declaration.

C. The Period of Declarant Control has not expired under the terms of the Declaration.

In consideration of the foregoing, Declarant hereby declares as follows:

1. All capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Declaration. Declarant hereby declares that the recitals set forth hereinabove are true and correct and incorporated into this Second Amendment.

2. Section 9.3 is amended to read as follows:

9.3 Insurance Obtained by Unit Owners. Each Unit Owner shall obtain (a) a policy of property insurance, insuring the Owner's Unit (except for the Perimeter Building Walls which are insured under the property insurance maintained by the Association) under a "special cause of loss" or "all risk" policy form with sprinkler leakage, debris removal and water damage endorsements; (b) insurance covering the Unit Owner's loss of income and/or additional expense resulting from an interruption of business due to direct physical damage to the Owner's Unit or the Common Elements; (c) liability insurance covering such Owner's liability arising out of the ownership, maintenance, use or operation of the Owner's Unit (including liability arising out of the act of the Owner's guest, Permittee or Tenant) at a limit of not less than \$1,000,000 applicable to each occurrence and naming the Association and the Association's managing agent as

additional insureds. Each Unit Owner shall provide the Board of Directors with a certificate of insurance evidencing such insurance coverage at least ten (10) days prior to the conveyance of the Unit to the Owner, and thereafter at least thirty (30) days prior to the expiration of any policy.

3. Except as amended and/or modified by this Second Amendment, the Declaration is hereby ratified and confirmed and all other terms of the Declaration shall remain in full force and effect, unaltered and unchanged by this Second Amendment.

Dated as of the day written above.

PPOP, LLC,
an Arizona limited liability company

By: Vista Bonita Office Park, LLC,
an Arizona limited liability company,
Its: Manager

By: [Signature]
Edward J. Pospisil, Manager

STATE OF ARIZONA)
)ss.
County of Maricopa)

On this 17 day of November, 2005, before me personally appeared Edward J. Pospisil, who acknowledged himself to be the Manager of Vista Bonita Office Park, LLC, the Manager of POPP, LLC, an Arizona limited liability company, and that he, in such capacity being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Manager.

[Signature]
Notary Public

My Commission Expires:

December 8, 2005

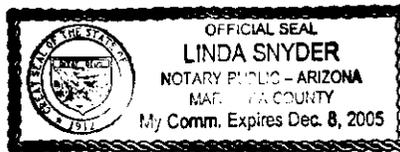


EXHIBIT "A"
Legal Description

Condominium Plat

Pinnacle Peak Office Park as recorded in Book 753 of Maps, page 16.

N:\- CLIENT NO\2400\2447 - Pospisi\014 - Pinnacle Peak Office Park\CC&Rs\SECOND AMENDMENT CC&RS.doc

Unofficial
Document

WHEN RECORDED MAIL TO:

1/1

CAPTION HEADING: Third Amendment To
Pinnacle Peak Office Park Condominium

DO NOT REMOVE

This is part of the official document.

**THIRD AMENDMENT TO
PINNACLE PEAK OFFICE PARK CONDOMINIUM
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Third Amendment to Pinnacle Peak Office Park Declaration of Covenants, Conditions and Restrictions ("Third Amendment") is dated for reference purposes as of the 25th day of April, 2007, by PPOP, LLC, an Arizona limited liability company ("Declarant") and no less than two-thirds of the Owners of Units (as described herein), with reference to the following recitals that are expressly made part of this Third Amendment.

RECITALS:

A. On June 8, 2005, Declarant caused to be recorded in the Official Records of the Maricopa County Recorder as Instrument No. 2005-0768938 that certain Pinnacle Peak Office Park Declaration of Covenants, Conditions and Restrictions pertaining to the property legally described on Exhibit "A" attached hereto, which was amended by First Amendment dated November 1, 2005, and recorded in the Official Records of the Maricopa County Recorder on November 4, 2005, as Instrument No. 2005-1673869, and by Second Amendment dated November 17, 2005, and recorded in the Official Records of the Maricopa County Recorder on December 1, 2005, as Instrument No. 2005-1819256 (collectively, the "Declaration").

B. Article 13 of the Declaration provides that the Declaration may be amended by Declarant during the Period of Declarant Control (defined in the Declaration) to correct any error or inconsistency in the Declaration provided that such amendment does not adversely affect the rights of any Unit Owner contrary to the provisions of the Declaration.

Unofficial Document

C. Article 12 of the Declaration provides that "[e]xcept as otherwise provided in this Declaration and except as otherwise permitted by the Act, the provisions of this Declaration may only be changed, modified or amended by an instrument in writing setting forth such change, modification or amendment, signed by the Declarant as long as Declarant holds any ownership interest in the Condominium created hereby, or signed (and duly acknowledged) by the Owners of Units to which not less than two-thirds (2/3) of the undivided interests in the Common Elements are appurtenant...."

D. The Period of Declarant Control has expired under the terms of the Declaration.

NOW, THEREFORE, in consideration of the foregoing, Declarant and Unit Owners hereby agree as follows:

1. All capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Declaration.

2. Section 5.5 of the Declaration, is hereby amended in its entirety, to read as follows:

5.5 Animals. No animals, reptiles, fish (except a fish aquarium maintained inside a Unit) or birds of any kind shall be raised, bred or kept on or in any Unit or on the Common Elements, unless approved in writing by the Board. A veterinary clinic shall only be a permitted use exclusive to Building C at 7410 East Pinnacle Peak Road ("Building C"), provided that no pet grooming or boarding shall be permitted (except that boarding is permitted for the care of sick or injured animals).

3. This Third Amendment is made and approved by the undersigned Unit Owners and Declarant at Scottsdale, Arizona, and all other terms of the Declaration shall remain in full force and effect, unaltered and unchanged by this Fourth Amendment.

Dated as of the day and date first written above.

DECLARANT:

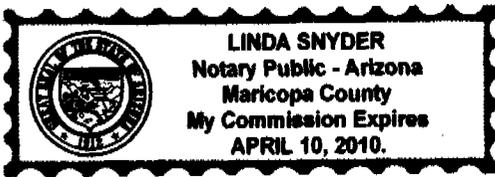
PPOP, LLC, an Arizona limited liability company

By: Vista Bonita Office Park, LLC, an Arizona limited liability company
Its: Manager

By: *Edward J. Pospisil*
Edward J. Pospisil, Manager

STATE OF ARIZONA)
) SS. Unofficial Document
County of Maricopa)

On this 25 day of April, 2007, before me personally appeared Edward J. Pospisil, who acknowledged himself to be the Manager of Vista Bonita Office Park, LLC, the Manager of PPOP, LLC, an Arizona limited liability company, and that he, in such capacity being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Manager.



Linda Snyder
Notary Public
My Commission Expires: April 10, 2010

UNIT OWNERS:

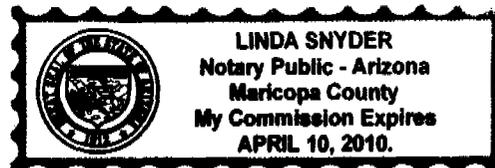
Vista Bonita Office Park, LLC, an Arizona limited liability company

By: *Edward J. Pospisil*
Edward J. Pospisil, Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 25 day of April, 2007, before my personally appeared Edward J. Pospisil, who acknowledged himself to be the Declarant and the Manager of Vista Bonita Office Park, LLC, and that he, in such capacities and being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Manager.

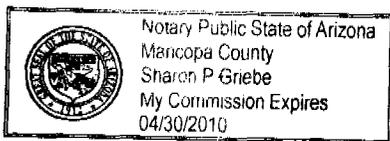
Linda Snyder
Notary Public



By Stephen Fiore

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 26 day of April, 2007, before my personally appeared Stephen Fiore, who acknowledged her/himself to be the Owner of 18.05 percent of undivided interest in the Common Elements of the Condominium, and that he/she, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

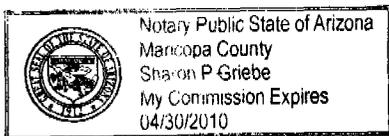


Sharon P. Griebel
Notary Public

By Deb Benhart

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 26 day of April, 2007, before my personally appeared Deb Benhart, who acknowledged her/himself to be the Owner of 3.56 percent of undivided interest in the Common Elements of the Condominium, and that he/she, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

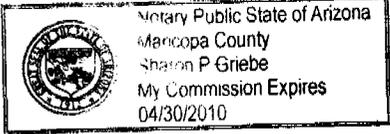


Sharon P. Griebel
Notary Public

By _____
STATE OF ARIZONA)
) ss.

County of Maricopa)

On this 26 day of April, 2007, before my personally appeared Fred Altenhus, who acknowledged her/himself to be the Owner of 3.89 percent of undivided interest in the Common Elements of the Condominium, and that he/she, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

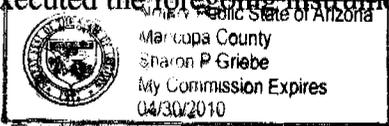


Sharon P. Griebel
Notary Public

By _____
STATE OF ARIZONA)
) ss.
County of Maricopa)

Unofficial Document

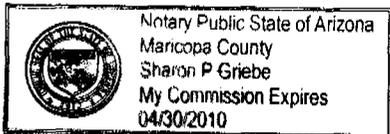
On this 30th day of April, 2007, before my personally appeared Shawn Byrnes, who acknowledged her/himself to be the Owner of 1.6 percent of undivided interest in the Common Elements of the Condominium, and that he/she, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.



Sharon P. Griebel
Notary Public

X By Cathy McCarthy
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 30th day of April, 2007, before my personally appeared Cathleen A. McCarthy who acknowledged her/himself to be the Owner of 4.21 percent of undivided interest in the Common Elements of the Condominium, and that he/she, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

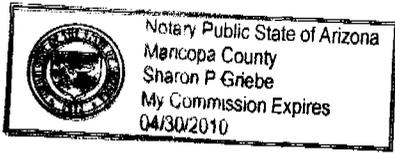


Sharon P. Griebel
Notary Public

By Greg Stipek

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 7th day of ~~April~~ ^{May}, 2007, before my personally appeared Greg Stipek who acknowledged her/himself to be the Owner of 3.3 percent of undivided interest in the Common Elements of the Condominium, and that he/she, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.



Sharon P. Griebel
Notary Public

By _____

STATE OF ARIZONA)
) ss.
County of Maricopa) Unofficial Document

On this _____ day of April, 2007, before my personally appeared _____, who acknowledged her/himself to be the Owner of _____ percent of undivided interest in the Common Elements of the Condominium, and that he/she, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Notary Public

Exhibit "A"

PINNACLE PEAK OFFICE PARK, ACCORDING TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JUNE 08, 2005, IN INSTRUMENT NO. 2005-768938, OFFICIAL RECORDS, AND PER MAP RECORDED IN BOOK 753 OF MAPS, PAGE 16, IN THE OFFICE OF THE RECORDER OF MARICOPA COUNTY, ARIZONA.

When recorded mail to:

First American Title

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20080117837 02/11/2008 01:31
328325-12-5-1--
ELECTRONIC RECORDING

NCS-328325-PHX3

1/4

CAPTION: FOURTH AMENDMENT TO
PINNACLE PEAK OFFICE PARK CNODINIUM
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**FOURTH AMENDMENT TO
PINNACLE PEAK OFFICE PARK CONDOMINIUM
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Fourth Amendment to Pinnacle Peak Office Park Declaration of Covenants, Conditions and Restrictions (“Third Amendment”) is dated for reference purposes as of the 11th day of January, 2008, is made by the Owners to which not less than two-thirds (2/3) of the undivided interests in the Common Elements are appurtenant, and the Declarant, to amend Article 5, Section 5.1 General Use and Occupancy, of the said Declaration, as amended, with reference to the following recitals that are expressly made part of this Third Amendment, as follows:

RECITALS:

WHEREAS, on June 8, 2005, the Declarant caused to be recorded in the Official Records of the Maricopa County Recorder as Instrument No. 2005-0768938, that certain Pinnacle Peak Office Park Declaration of Covenants, Conditions and Restrictions (the “Declaration”) pertaining to the property legally described on Exhibit “A” attached thereto; and

WHEREAS, on November 1st and 17th, 2005, the Declarant caused the Declaration to be amended by the recordation of the Amendments to Pinnacle Peak Office Park Condominium Declaration of Covenants, Conditions and Restrictions, respectively; and

WHEREAS, pursuant to Article 12 of the Declaration, which provides that the Declaration may be amended by approval of Owners, to which not less than two-thirds of the undivided interests in the Common Elements are appurtenant, and by approval of the Declarant, thereof, the Declaration was amended on April 25, 2007;

NOW, THEREFORE, THE FOLLOWING AMENDMENT TO THE DECLARATION IS ADOPTED AND APPROVED:

ARTICLE 5 USE AND OCCUPANCY RESTRICTIONS, Section 5.1 General Use and Occupancy, shall be amended to read as follows:

5.1 General Use and Occupancy. Subject to the terms of this Declaration, and the other Condominium Documents, all of the Condominium and each portion thereof, including each of the Units, shall be subject to the Condominium Documents, and all applicable rules, regulations, ordinances and laws of governmental agencies, including, but not limited to, zoning laws and regulations, and shall be utilized only for office use and for no other uses or purposes unless

David and Pamela Kurtz

By: [Signature]
David Kurtz

By: [Signature]
Pamela Kurtz

Owner of Unit(s) 128, with approximately 2.9199% of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 31st day of January, 2008, before me personally appeared David and Pamela Kurtz, who acknowledged themselves as Owners of unit(s) 128, and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

[Signature]
Notary Public

My Commission Expires:
3/15/09



KERRY A. CHRISMAN
Notary Public - Arizona
Maricopa County
Expires 03/15/09

Cactus Marketing, Inc., an Arizona corporation

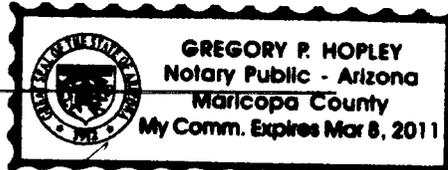
By: [Signature]
Timothy J. Aikin, President

Owner of Unit(s) 120, with approximately 2.6565% of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 30 day of January, 2008, before me personally appeared Timothy J. Aikin, who acknowledged himself to be the President/CEO and Director of Cactus Marketing, Inc., Owner of unit(s) 120, and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Notary Public



My Commission Expires:
March 8, 2011

[Signature]

McCarthy Properties, LLC, an Arizona limited liability company

By: Cathleen A. McCarthy
Cathleen A. McCarthy, Sole Member

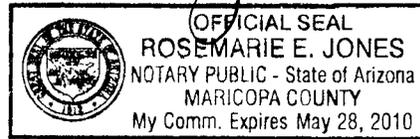
Owner of Unit(s) 26-158, with approximately 4.2146 % of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 31 day of January, 2008, before me personally appeared Cathleen A. McCarthy, who acknowledged herself to be the Sole Member of McCarthy Properties, LLC, Owner of unit(s) 156-158, and that she, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained

Rosemarie E. Jones
Notary Public

My Commission Expires: 5-28-2010



AN-KY Properties, LLC, an Arizona limited liability company

By: Angela R. Palmer
Angela R. Palmer, Sole Member

Owner of Unit(s) 154, with approximately 2.8122 % of the undivided interest in the Common Elements appurtenant.

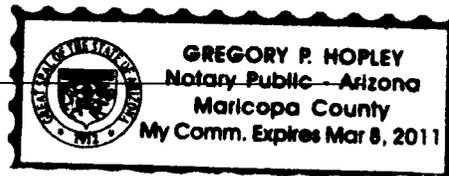
STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 30 day of January, 2008, before me personally appeared Angela R. Palmer, who acknowledged herself to be the Sole Member of AN-KY Properties, LLC, Owner of unit(s) 154, and that she, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Notary Public

My Commission Expires:

Mar 8, 2011



Gregory P. Hopley

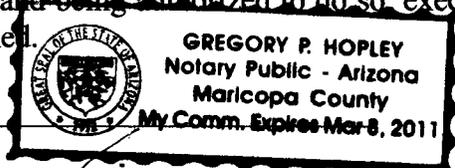
Cottonwood Canyon Land Company, L.L.C., an Arizona limited liability company

By: Greg A. Stipek
Greg A. Stipek, O.D., Sole Member

Owner of Unit(s) 122, with approximately 3.3099 % of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 30 day of January, 2008, before me personally appeared Greg A. Stipek, O.D., who acknowledged himself to be the Sole Member of Cottonwood Canyon Land Company, L.L.C., Owner of unit(s) 122, and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Notary Public 
Gregory P. Hopley

My Commission Expires:
March 8, 2011

WASSON PROPERTIES, L.L.C., an Arizona limited liability company

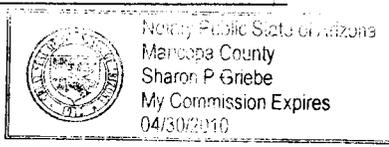
By: James W. Wasson
James W. Wasson, Manager

By: Kathy D. Wasson
Kathy D. Wasson, Manager

Owner of Unit(s) A, with approximately 19.254 % of the undivided interest in the Common Elements appurtenant. (130, 132, 134, 136, 138, 254, 256)

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 30 day of January, 2008, before me personally appeared James and Kathy Wasson, in their capacity as Managers of Wasson Properties, L.L.C., Owner of unit(s) *, and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained. (*130, 132, 134, 136, 138, 254, 256)

Notary Public 
Sharon P. Griebel

My Commission Expires:
April 30, 2010

Susan and Shawn Byrne

By: Susan Byrne
Susan Byrne

By: Shawn Byrne
Shawn Byrne

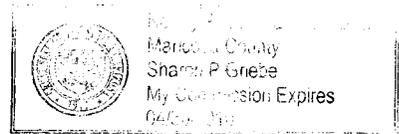
Owner of Unit(s) 208, with approximately 1.5992% of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 31 day of January, 2008, before me personally appeared Susan and Shawn Byrne, who acknowledged themselves to be Owner of unit(s) 208, and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Sharon P. Griebel
Notary Public

My Commission Expires: April 30, 2010



Parallel 49 Holdings, LLC, an Arizona limited liability company

By: Ross Lirtzman
Ross Lirtzman, DVM, Manager

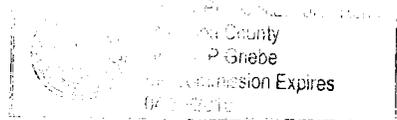
Owner of Unit(s) 110, 112, 114, with approximately 8.0954% of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 30 day of January, 2008, before me personally appeared Ross Lirtzman, DVM, who acknowledged himself to be the Manager of **Parallel 49 Holdings, LLC**, Owner of unit(s) 110, 112, 114, and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Sharon P. Griebel
Notary Public

My Commission Expires:
April 30, 2010



MFM Group, L.L.C., an Arizona limited liability company

By: [Signature]
D. Lee Mashburn, Manager

By: Starknight Capital Group, LLC
Its: Member

By: [Signature]
Stephen R. Fiore
Its: Manager

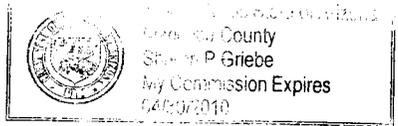
Owner of Unit(s) 116, 118, 250 & 252, with approximately 9.9491% of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 30th day of January, 2008, before me personally appeared D. Lee Mashburn, who acknowledged himself to be the Manager of MFM Group, L.L.C., and Stephen R. Fiore, in his capacity as manager of Starknight Capital Group, LLC, which is a Member of MFM Group, L.L.C., Owner of unit(s) * , and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained. * 116, 118, 250 & 252

[Signature]
Notary Public

My Commission Expires:
April 30, 2010



[CONTINUED ON FOLLOWING PAGE]

WR Realty, LLC, an Arizona limited liability company

By: [Signature]
Carey S. Williams, Member

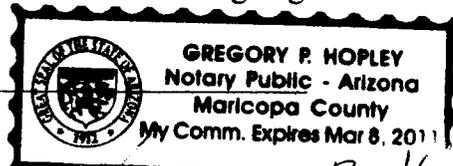
By: [Signature]
Stefan D. Russell, Member

Owner of Unit(s) 126, with approximately 2.8923 % of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 30 day of January, 2008, before me personally appeared Carey S. Williams and Stefan D. Russell, in their capacity as Members of WR Realty, LLC, Owner of unit(s) 126, and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Notary Public



My Commission Expires:
March 8, 2011

[Signature: Gregory P. Hopley]

Seif-Adkins Properties, LLC, an Arizona limited liability company

By: [Signature]
Artemiz Seif, Manager

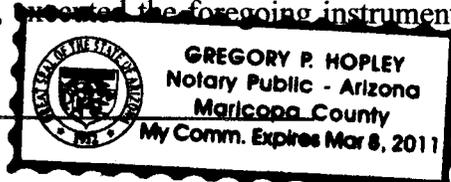
By: [Signature]
Garrett Adkins, Manager

Owner of Unit(s) 200, with approximately 3.4139 % of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 31 day of January, 2008, before me personally appeared Artemiz Seif and Garret Adkins, in their capacity as Managers of Seif-Adkins Properties, LLC, Owner of unit(s) 200, and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Notary Public



My Commission Expires:
March 8, 2011

[Signature: Gregory P. Hopley]

Benhart Landscaping, Inc., an Arizona corporation

By: *Brad Benhart*
Brad Benhart, President/Director

Owner of Unit(s) 156,152, with approximately 3.5620 % of the undivided interest in the Common Elements appurtenant.

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 1st day of ~~January~~ ^{Feb}, 2008, before me personally appeared Brad Benhart, who acknowledged himself to be the President and Director of Benhart Landscaping, Inc., Owner of unit(s) 156,152, and that, in such capacity and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Marilyn K. Zembsch
Notary Public

My Commission Expires:
12/12/2011

