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**RESTATED AND FIRST AMENDED  
DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
  
FOR  
  
CORONADO COMMONS**

**TABLE OF CONTENTS**

PART ONE: INTRODUCTION TO THE COMMUNITY ..... 1

    Article I    Creation of the Community ..... 1

    Article II    Concepts and Definitions ..... 2

PART TWO: CREATION & MAINTENANCE OF COMMUNITY STANDARDS ..... 4

    Article III    Maintenance and Repair of Units ..... 4

        3.1.    Maintenance of Units ..... 4

        3.2.    Insurance on Units ..... 6

    Article IV    Architectural Standards ..... 6

        4.1.    Applicability ..... 6

        4.2.    Architectural Review ..... 6

        4.3.    Procedures ..... 7

        4.4.    No Waiver of Future Approvals ..... 8

        4.5.    Limitation of Liability ..... 8

    Article V    Use and Conduct ..... 8

        5.1.    Restriction on Use, Occupancy, and Alienation ..... 8

        5.2.    Framework for Regulation ..... 10

        5.3.    Rule Making Authority and Procedures ..... 10

        5.4.    Owners' Acknowledgment ..... 10

        5.5.    Rights of Owners ..... 10

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION ..... 12

    Article VI    Association Membership and Voting Rights ..... 12

        6.1.    Membership ..... 12

        6.2.    Voting ..... 12

    Article VII    Association Powers and Responsibilities ..... 13

        7.1.    Function of the Association ..... 13

        7.2.    Implied Rights; Board Authority ..... 13

        7.3.    Area of Common Responsibility ..... 13

        7.4.    Association Insurance ..... 14

        7.5.    Safety and Security ..... 17

        7.6.    Provision of Services ..... 18

        7.7.    Indemnification of Officers, Directors, and Others ..... 18

    Article VIII    Association Finances ..... 18

        8.1.    Budgeting for Common Expenses ..... 18

        8.2.    Funding Common Expenses ..... 19

        8.3.    Payment of Assessments; Retroactive Assessment ..... 20

        8.4.    Declarant's Option to Fund Budget Deficits ..... 21

        8.5.    Personal Obligation and Lien for Assessments; Delinquencies ..... 21

8

PART FOUR: COMMON AREA ..... 23

    Article IX    Acceptance, Management, and Control of Common Area ..... 23

        9.1.    Control of Common Area ..... 23

        9.2.    Acceptance of Common Area Conveyed by Declarant ..... 24

        9.3.    Reconveyance of Common Area to Declarant ..... 24

Article X	Rights to Use Common Area	24
10.1.	Non-Exclusive Easement in Common Area	24
10.2.	Assignment of Rights to Use Common Area	25
Article XI	Changes in Common Area	25
11.1.	Common Area to Remain Undivided	25
11.2.	Conveyance or Deduction of Common Area	25
11.3.	Condemnation	25
11.4.	Improvements to Common Area	26
PART FIVE: DEVELOPMENT OF COMMUNITY		26
Article XII	Additional Rights Reserved to Declarant	26
12.1.	Right to Develop	26
12.2.	Easements	26
12.3.	Enforcement	26
12.4.	Right to Approve Changes in Community Standards	26
12.5.	Right to Transfer or Assign Declarant Rights	27
12.6.	Exclusive Rights To Use Name of Development	27
12.7.	Easement to Inspect and Right to Correct	27
12.8.	Right to Notice of Design or Construction Claims	27
12.9.	Termination of Rights	27
Article XIII	Easements	28
13.1.	Easements for Encroachment	28
13.2.	Easements of Support	28
13.3.	Easements for Maintenance of Adjoining Units	28
13.4.	Easements for Perimeter Walls and Fencing	28
13.5.	Cross-Drainage Easements	29
13.6.	Easements for Stormwater Runoff	29
13.7.	Easements for Utilities, Etc	29
13.8.	Easements to Serve Additional Property	30
13.9.	Easements for Maintenance, Emergency, and Enforcement	30
13.10.	Easements to Exercise Powers and Perform Responsibilities	30
Article XIV	Party Walls and Other Shared Structures	31
14.1.	General Rules of Law to Apply	31
14.2.	Maintenance	31
14.3.	Right to Contribution Runs With the Land	31
14.4.	Disputes	31
PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY		31
Article XV	Protection of Mortgagees	31
15.1.	Notices of Action	31
15.2.	No Priority	32
15.3.	Notice to Association	32
15.4.	Failure of Mortgagee to Respond	32
Article XVI	Dispute Resolution and Limitation on Litigation	32
16.1.	Agreement to Encourage Resolution of Disputes Without Litigation	32
16.2.	Dispute Resolution Procedures	33
16.3.	Initiation of Litigation by Association	34

Article XVII	Compliance and Enforcement	35
17.1.	Obligation to Comply with Governing Documents; Right to Enforce	35
17.2.	Association Remedies and Sanctions	36
17.3	Notice and Hearing Procedures	37
17.4.	Enforcement Rights by Declarant	37
17.5.	Remedies Cumulative; Recovery of Costs	38
Articles XVIII	Miscellaneous Provisions	38
18.1.	Binding Effect and Duration	38
18.2.	Amendment	39
18.3.	Severability	39
18.4.	Conflict	39
18.5.	Notice of Sale or Transfer	40
Exhibit "A"	(Legal Description)	42

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# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CORONADO COMMONS

THIS RESTATED AND FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CORONADO COMMONS ("Declaration") is made by Coronado Commons PHX, LLC, an Arizona Limited Liability Company (the "Declarant").

## PART ONE: INTRODUCTION TO THE COMMUNITY

*The Declarant intends to develop the real property described in Exhibit "A" as a community of single family townhomes and related amenities. The Declarant recognizes that one of the keys to a successful community is a mechanism for the long-term maintenance of the appearance and quality of life that enhances the living experience within a shared structure development. By recording this Declaration in the public records of Maricopa County, Arizona, the Declarant intends to establish that mechanism.*

### **Article I      Creation of the Community.**

This Declaration sets forth various rights and duties which will be binding on and benefit each Unit and each present and future property owner in the Community known as Coronado Commons. This Declaration also sets forth specific rights and provisions which are for the benefit of the Declarant, Coronado Commons PHX, LLC, the developer of Coronado Commons. The provisions of this Declaration work together to establish a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the community.

The Declarant has established Coronado Commons Homeowners Association, a Arizona non-profit corporation (the "Association"), to own and operate those areas of the Community which are intended for the common use and benefit of all owners, to maintain such Common Areas and certain other portions of the Community, and to administer and enforce the provisions of this Declaration and the other documents referenced in this Declaration. Each owner of a Unit in the Community will be a member of the Association and, through such membership, will have the opportunity to participate in the governance and administration of the Community. This document does not, and is not intended to, create a condominium under Arizona law.

**Article II Concepts and Definitions.**

The terms used in this Declaration and the attached exhibit are intended to have their normal, commonly understood definitions, unless otherwise specified. In order to minimize repetition, avoid confusion, and explain key concepts, some terms are capitalized to indicate that they have special definitions. Whenever used in their capitalized form, those terms have the following meanings:

"Area of Common Responsibility": Those areas within or abutting the Community which the Association is authorized or responsible to maintain as a Common Expense, including:

- (a) the Common Area; and
- (b) such other areas, if any, for which the Association is assigned or assumes responsibility pursuant to this Declaration or any agreement with the owner of the property.

"Articles of Incorporation" or "Articles": The Articles of Incorporation of Coronado Commons Homeowners Association, as filed with the Arizona Corporation Commission.

"Assessment": An amount of money which the Owner of a Unit is obligated to pay to the Association and which, until paid, constitutes a lien on the title to the Unit which may be foreclosed in the same manner as a Mortgage under Arizona law.

"Association": Coronado Commons Homeowners Association, an Arizona non-profit corporation, its successors or assigns.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving the same role as the board of directors under Arizona corporate law.

"By-Laws": The By-Laws of Coronado Commons Homeowners Association, as they may be amended from time to time.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including any landscaping, walkways, parking areas, and other structures on and improvements to such real property.

"Common Expenses": The expenses which the Association incurs, or expects to incur, in exercising its authority and performing its responsibilities under the Governing Documents and Arizona law, and reasonable contributions to reserve funds, as the Board may find necessary and appropriate.

"Community": The real property described in Exhibit "A", more commonly known as Coronado Commons.

**"Declarant"**: Coronado Commons PHX, LLC, an Arizona Limited Liability Company, or any successor, or assign and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

**"Declarant Control Period"**: The period of time during which the Declarant is entitled to appoint a majority of the members of the Board of Directors pursuant to the By-Laws, which shall be the period of time until the Declarant sells the last Unit, unless the Declarant in its sole discretion decides to turn over control to the other Members before such time.

**"General Assessment"**: Assessments to fund Common Expenses for the general benefit of all Units, as described in Section 8.2(a).

**"Governing Documents"**: The Articles of Incorporation, the By-Laws, this Declaration, and the Restrictions and Rules, or any of the above, as each may be amended from time to time.

<b>GOVERNING DOCUMENTS</b>	
<b>Articles of Incorporation</b> (filed with Arizona Corporation Commission)	establishes the Homeowners Association as a non-profit corporation
<b>By-Laws</b> (adopted by the Board of Directors)	administrative rules governing the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
<b>Declaration</b> (this document which is recorded in the Public Records)	creates obligations which are binding upon the Association and all present and future owners of property in Coronado Commons
<b>Restrictions and Rules</b> (adopted by the Board of Directors)	specific provisions governing use of property, activities, and conduct within Coronado Commons

**"Member"**: A Person holding a membership in the Association pursuant to Section 6.1.

**"Mortgage"**: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A **"Mortgagee"** is the beneficiary or holder of a Mortgage.

**"Owner"**: One or more Persons who hold the record title to any Unit, other than a Mortgagee or other Person holding title merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**"Person"**: A human being, a corporation, a partnership, a trust, or any other entity recognized by law.

"Plat": Any subdivision plat for the Community recorded in the Public Records, which may be amended from time to time.

"Public Records": The place designated as the official location for recording of deeds and similar documents affecting title to real estate in Maricopa County, Arizona, i.e., the Maricopa County Recorder's Office.

"Restrictions and Rules": The restrictions and rules relating to uses, activities, and conduct within the Community, as they may be modified, expanded, and repealed pursuant to the procedures described in Article V.

"Special Assessment": Assessments to cover unanticipated Common Expenses or Common Expenses in excess of those budgeted, as described in Section 8.2(b).

"Specific Assessment": An Assessment against a particular Unit or Units for expenses which the Association incurs or expects to incur for any purpose described in Section 8.2(c).

"Unit": Each numbered lot shown on the Plat of the Community, together with the structures and improvements, if any, constructed on each such lot. The term shall not include Common Areas or property dedicated to the public.

"Yard of the Unit": The portion of each Unit shown on the Landscape Plans for Coronado Commons dated October 28, 2013, which is located within the boundaries of the Unit but outside of any structure located on the Unit.

## **PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for maintenance, architecture, use, and conduct within the Community are what distinguish Coronado Commons from other residential developments and make it a place that people want to call "home." Yet those standards should be more than just a long list of prohibitions. This Declaration establishes guidelines and procedures to establish and maintain community standards and to allow such standards to evolve as technology, public perception, and applicable law change.*

### **Article III Maintenance and Repair of Units.**

#### **3.1. Maintenance of Units.**

(a) Each Owner shall be responsible for maintenance, repair and replacement of all portions of the interior of his or her Unit as necessary to keep it in good order and repair, and in a neat, clean, and attractive condition consistent with Restrictions and Rules. Such maintenance responsibility shall include, but shall not be limited to maintaining, repairing and replacing, as necessary, of all pipes, lines, wires, conduits, or other apparatus which serve only the Unit located wholly within the Unit boundaries (including all utility lines serving only the Unit). The Association shall be responsible for maintaining, repairing and replacing, as necessary, all such

apparatus located outside the Unit. The Association shall be responsible for the water lines to the water meter or water sub-meter serving each Unit. The Association shall be responsible for the sewer lines to the boundary of the Unit. The Owner shall be responsible for the water lines from the water meter or water sub-meter serving each Unit. The Owner shall be responsible for the sewer lines under the boundaries of the Unit. The Owner shall also be responsible for all meters and electric panels serving only their own Unit.

(b) The Association shall be responsible for:

(i) painting of the exterior surfaces of each Unit, including the exterior painted surfaces of windows and window frames, doors and door frames (including garage doors), and any shutters, eaves, fascia, gutters and downspouts on the exterior of such Unit;

(ii) maintaining, repairing, and replacing, as necessary, and pressure cleaning all sidewalks and driveways, including the paved portion of the Unit adjacent to the garage of each Unit;

(iii) maintaining, repairing and replacing, as necessary, the exterior surfaces of the Unit, including window and window frames, doors and door frames (including garage doors), and any shutters, eaves, fascia, gutters and downspouts on the exterior of the Units;

(iv) maintaining, repairing, and replacing, as necessary, any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines, and time clocks, wherever located) serving the front yards of Units, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or Occupant of any Unit in accordance with Article IV.

(c) Each Owner shall be responsible for:

(i) maintaining all the landscaping in the Yard of the Unit, which maintenance shall include mowing of lawns, pruning of shrubbery, weed control, removal and replacement of dead trees and shrubs, and irrigation;

(ii) periodic treatment of all exterior walls and foundations of the dwelling for termites;

(iii) maintaining, repairing and replacing, as necessary, the roof of his Unit (including shingles and roof decking);

(iv) maintenance, repair and replacement, if necessary, of the foundation and structure of the dwelling on his Unit.

All cost and expenses related to the Association's responsibility hereunder shall be a Common Expense of the Association; provided, any Common Expense occasioned by the negligence or misconduct of the Owner or occupant of any Unit, or their guests, may be assessed as a Specific Assessment against the Unit of such Owner or occupant in accordance with Section 8.2.

3.2. Insurance on Units.

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to maintain property insurance covering the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. The Association shall, as set forth in Section 7.4(a)(i), be responsible for obtaining insurance on the Common Areas. The premiums for such insurance shall be made a part of the Common Expenses of the Association and be levied as a General Assessment against all the Units. The Owner shall be liable to pay any such costs which are not covered by insurance proceeds. Each Owner is responsible for insuring the contents of his or her Unit.

**Article IV** Architectural Standards.

No Person shall commence any activities within the scope of Section 4.1 ("Work") on any Unit or the Common Area unless and until such Person submits an application for approval of the proposed Work and such application is approved in writing by the Declarant or the Board pursuant to Section 4.2. The Reviewer (as defined below) may in its sole discretion designate in advance certain types of landscaping activities which are exempt from this application process.

4.1. Applicability.

(a) No Person shall:

(i) undertake any staking, clearing, excavation, grading, or other site work on a Unit or the Common Area;

(ii) construct, place, or install any structures or other improvements on a Unit or the Common Area or alter the exterior of any existing structures or improvements;

(iii) plant, install or remove any trees, shrubs, or other landscaping materials on a Unit, unless approved by the Reviewer (as defined below); or

(iv) make any encroachment onto another Unit or the Common Area, except in compliance with this Article.

4.2. Architectural Review.

Declarant, for a period of 5 years from the date this Declaration is recorded (or until such earlier time as Declarant determines in its sole discretion to turn over control to the Association), shall have the exclusive authority to review and act upon all applications for approval and to exercise all authority of the "Reviewer" under this Article. Thereafter, or at such earlier time as Declarant, in its sole discretion, determines by recording a written statement to that effect in the Public Records, such authority shall be exercised by the Board. (For purposes of this Article, the Reviewer shall refer to the Declarant or the Board, as appropriate under the circumstances).

#### 4.3. Procedures.

An application for approval of any proposed Work shall be in the form required by the Reviewer and shall include plans and specifications ("Plans") in such detail as the Reviewer reasonably deems appropriate to evaluate such matters as the location, size, materials, manner of construction or installation and other features of the proposed Work which the Reviewer deems relevant. The Reviewer may require the submission of such additional information as it deems necessary to consider any application. The Reviewer may refuse to consider any application if the Reviewer determines, in its reasonable discretion, that the Plans are not sufficiently legible, precise, or detailed or are otherwise insufficient in any respect.

In reviewing each submission, the Reviewer may consider (but shall not be limited to consideration of):

- (i) size, location, and finished grade elevations;
- (ii) the quality of workmanship and design; and
- (iii) harmony with surrounding structures and the environment.

Decisions of the Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the Reviewer and its members change over time.

The Reviewer shall, within 30 days after receipt of each complete application or other required submission, advise the applicant, in writing at an address specified in the application, of (i) the approval of Plans, or (ii) the disapproval of such Plans, specifying the features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the Reviewer fails to so advise the applicant by written notice within such 30-day period, the applicant may give the Reviewer written notice of such failure to respond. If the Reviewer has still not responded within 10 days after receipt of such notice of failure to respond, approval shall be deemed granted; provided, no approval shall be deemed granted unless applicant has given the Reviewer such written notice of failure to respond, and gives another 10 days written notice to Reviewer after the first notice to respond expires.

Notice shall be deemed to have been given at the time the envelope containing such notice, property addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice, including FedEx, telephone facsimile or electronic mail, shall, however, be sufficient and shall be deemed to have been given at the time of delivery. The Board may also adopt a procedure for providing notice by email to the Owners, which can be used in lieu of or in addition to the notice provisions stated in this section.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails

to commence and diligently pursue to completion all approved work, Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard as provided for in the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

All Work shall be completed within six months of commencement or such shorter period as the Reviewer may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Reviewer. Any proposed work that is visible from outside the Unit and that changes the uniformity of the aesthetics of any structure shall be subject to strict scrutiny by the Reviewer and may be disapproved by the Reviewer in its sole and absolute discretion.

4.4. No Waiver of Future Approvals.

Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

4.5. Limitation of Liability.

The standards and procedures established pursuant to this Article are intended only to provide a mechanism for maintaining and enhancing the overall appearance and attractiveness of the Community, and shall not create any duty or responsibility to any Person to ensure the structural integrity or soundness of approved Work, the adequacy of soils or drainage, compliance with building codes and other governmental requirements, or any other matter. Neither the Declarant, the Association, the Board, nor any member of any of the foregoing shall be held liable for any injury, damages, or loss to any Person arising out of the approval or disapproval of any proposed Work.

**Article V** Use and Conduct.

5.1. Restriction on Use, Occupancy, and Alienation.

The restrictions set forth in this Section may be amended only in accordance with Article XVIII.

(a) All Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Unit, except that an Owner, lessee or occupant of a Unit may conduct a business activity within a Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Unit; (c) the business activity is conducted solely in the Unit; (d) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Owners, lessees or occupants; and (e) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or

offensive use or threaten the security or safety of other Owners, lessees or occupants, as may be determined from time to time in the sole direction of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

(b) Leasing. For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, or gratuity. A Unit may be leased only in its entirety (e.g., separate rooms within the same Unit may not be separately leased).

There shall be no subleasing of a Unit or assignment of lease except with the Board's prior written approval. All leases shall be in writing, must require that tenants and all occupants of the leased Unit be bound by and obligated to comply with the Governing Documents, and shall have a term of at least 6 months.

Within ten days of the lease being signed an Owner shall notify the Board of any lease and provide any additional information the Board may require. The Owner must give the tenant copies of the Governing Documents. The Board may adopt reasonable Rules and Restrictions regulating leasing and subleasing, including the total number of Units which may be rented at any given time.

(c) Occupants Bound. Every Owner shall cause anyone occupying or visiting his or her Unit to comply with the Governing Documents and shall be responsible for all violations and losses they cause to the Common Areas, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

(d) Subdivision of a Unit and Time-Sharing. Units may not be subdivided or their boundary lines changed except with the prior written approval of Declarant, which it may withhold in its sole discretion.

Timesharing, fraction-sharing, or similar programs whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years is prohibited, except with the prior written approval of Declarant, which it may withhold in its sole discretion.

5.2. Framework for Regulation.

Initial Restrictions and Rules governing use, conduct, and activities within the Community will be adopted by the Board of Directors. This Article establishes procedures for adopting additional rules which interpret, expand, modify, or repeal the initial Restrictions and Rules in order to respond to unforeseen problems and changes in conditions, needs, desires, trends, and technology which inevitably will affect the Community.

5.3. Rule Making Authority and Procedures.

(a) Authority. Subject to the terms of this Article, the Board may adopt rules applicable to the Common Area or Units. Prior to the termination of the Declarant Control Period, such rules shall become effective as of the date determined by the Board. After the termination of the Declarant Control Period, such rules shall become effective only upon approval of 60% of the Members and the approval of Declarant as set forth in Section 12.4.

(b) Notice. For the period of the first five years after termination of the Declarant Control Period, no rulemaking action shall be taken unless and until a meeting of the Board has been called to consider and discuss the proposed action. Members shall have a reasonable opportunity to be heard at such meeting prior to any vote being taken on the proposed action. Within 10 days of such meeting, the Board shall notify, in writing, the Declarant of the proposed action. Declarant shall, within 10 days of receiving such notice, either approve or disapprove the proposed action and notify the Board, in writing, of such decision. In the event Declarant approves such action, the Board shall send a notice to each Owner describing the action and its effective date.

5.4. Owners' Acknowledgment.

All Owners and occupants of Units are given notice that use of their Units and the Common Area is limited by the Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

5.5. Rights of Owners.

(a) The Association shall provide, without cost, a copy of the current Restrictions and Rules to any requesting Member or Mortgagee.

(b) Except as may be specifically set forth in this Declaration (either initially or by amendment) or the Initial Restrictions and Rules, neither the Board nor the Members may adopt any rule in violation of the following provisions:

(i) Abridging Existing Rights. No rule shall require Owners to dispose of personal property which was kept in or on a Unit prior to the adoption of such rule and which

was in compliance with all rules in force previous to such time, unless otherwise required to be removed by law; provided, the above shall apply to any Owner only for as long as he or she remains the Owner of the affected personal property or Unit. The rights granted under this subsection shall not run with title to any Unit.

(ii) Activities Within Units. No rule shall interfere with the activities carried on within Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that create an unreasonable source of annoyance or nuisance to the neighborhood, or that create any noxious or offensive activity.

(iii) Alienation. No rule shall prohibit the sale of any Unit, or require the consent of the Association or Board prior to the sale of any Unit; provided, the Association may require that Owners use lease forms approved by the Association but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer. Section 5.1(b) imposes a minimum lease term.

(iv) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or discriminate among Owners with respect to their rights to use the Common Area over the objection of any Owner expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay Assessments. This provision does not affect the right to increase the amount of Assessments as provided in Article VIII.

(v) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households.

(vi) Signs and Displays. Owner's rights to display seasonal, religious or holiday signs, symbols, and decorations inside their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged. Owners may also display on their exterior doors seasonal, religious and holiday signs, symbols, and decorations normally displayed in residences located in single-family residential neighborhoods. Any other displays visible from outside the Unit shall not be permitted. The Board, in conjunction with the Members of the Association, shall develop, if desired, an exterior seasonal decoration and lighting display which shall be uniform throughout the Community. Such exterior display shall only be permitted between Thanksgiving Day and January 10 of each year.

Signs, banners, posters, placards, billboards, advertisements, bulletins, announcements, symbols, displays or any other manifestation of a message, slogan, or symbol of any kind shall not be displayed upon or visible from the outside of a Unit or placed or displayed anywhere within the Community; provided any signs installed by Declarant or its broker shall be permitted until the Declarant sells the last of the Units. Furthermore, any signs which cannot be prohibited under Arizona law, as amended from time to time, shall be permitted. In addition, one "for sale"

or one "for rent" sign shall be permitted to be placed by the Owner of a Unit indicating that the Unit is for sale or for rent so long as such sign is placed in the area designated by the Board and the design, quality and size of the sign is approved in accordance with Article IV.

(vii) Similar Treatment. Similarly situated Owners shall be treated similarly.

(viii) Interference with Private Amenities. The Association may not interfere with the use or operation of any Yard of the Unit.

The limitations in this Section shall apply to the exercise of the rulemaking authority under this Article only; they shall not apply to amendments to this Declaration adopted in accordance with Section 18.2.

### **PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

*The success of the community is dependent upon the support and participation of every owner in its governance and administration. . The Declaration establishes Coronado Commons as the mechanism by which each owner is able to provide that support and participate in the Community. While many powers and responsibilities are vested in the Association's Board of Directors, some decisions are reserved for the Association's membership -- the Owners within the Community.*

#### **Article VI Association Membership and Voting Rights.**

##### **6.1. Membership.**

Every Owner shall be a Member of the Association. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation. All co-Owners of a Unit shall be jointly obligated to perform the responsibilities of the Owner of the Unit, and any one co-Owner may be held fully responsible for all such obligations. The membership rights of an Owner which is a corporation, partnership, trust, or other entity may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

##### **6.2. Voting.**

There shall be only one vote per Unit regardless of the number of Persons who hold the interest required for membership under Section 6.1. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

On any matter as to which the Governing Documents or Arizona law require a vote or approval of the membership, such vote or approval may be obtained by affirmative vote at a meeting or by written consent, or by any combination thereof, unless the Governing Documents

or Arizona law expressly require that the vote on such matter be taken at a meeting of the membership.

**Article VII Association Powers and Responsibilities.**

**7.1. Function of the Association.**

The Association has been established for the purpose of administering the Community in accordance with the Governing Documents. Its responsibilities include, but are not limited to:

- (a) management, maintenance, operation, and control of the Area of Common Responsibility;
- (b) enforcing the Governing Documents, including such reasonable rules regulating use, conduct, activities, and aesthetic matters within the Community as may be set forth in or adopted pursuant to this Declaration; and
- (c) administering and enforcing the architectural standards set forth in Article IV.

**7.2. Implied Rights; Board Authority.**

The Association shall have the powers and authority granted by, and shall perform its functions in accordance with, the Governing Documents and the laws of the State of Arizona. The Association shall also have any right, power, or privilege which may reasonably be implied from, or which is reasonably necessary to exercise, any right, power, or privilege expressly under Section 7.3.

**7.3. Area of Common Responsibility.**

The Association shall operate the Common Areas in good repair and in a neat, clean, and attractive condition consistent with this Declaration and the Initial Rules and Restrictions. By way of example and not limitation, the Association's responsibility shall include:

- (a) maintaining and operating the Common Area and the facilities, improvements, and landscaping thereon, including, without limitation, the private driveway, pool area, barbeque area, guest parking areas, entry features (including the entry gate, if any), entry signage, perimeter fencing, if any, and any street lights or other lighting located on Common Areas;
- (b) maintaining those portions of Units for which the Association is assigned or assumes responsibility pursuant to Section 3.1(b); and
- (c) any water management company.

Except as the Governing Documents may otherwise specifically provide, all costs associated with operation of the Common Areas shall be a Common Expense to be allocated among all Units as part of the General Assessment.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

7.4. Association Insurance.

(a) Required Coverage. The Association shall obtain and maintain at all times as a Common Expense, the following insurance coverage:

(i) property insurance on the Common Areas insuring against all risks of direct physical loss commonly insured against. The total amount of such insurance shall not be less than 100% of the replacement cost of such insurable improvements;

(ii) comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board in the exercise of its business judgment, but with a combined single limit of not less than Two Million Dollars (\$2,000,000.00), to the extent reasonably available, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Area of Common Responsibility;

(iii) officers' and directors' liability insurance in such amounts as the Board, in its business judgment, may determine necessary, but not less than Two Million Dollars (\$2,000,000.00) per occurrence, ( if reasonably available);

(iv) flood insurance, if the Board of Directors determines it necessary or advisable;

(v) worker's compensation insurance, if and to the extent necessary to meet the requirements of law; and

(vi) such other insurance as the Board determines to be necessary or advisable.

(b) Policy Requirements. All insurance coverage obtained by the Association shall be written in the name of the Association as trustee for the Owners and the Mortgagees of Units, as their interests may appear. Each Owner shall be an insured person under the liability insurance policy with respect to liability arising out of his or her membership in the Association. In addition, the policies providing the coverage required under clauses (i) and (ii) of subsection (a) above shall provide that the insurer waives its rights of subrogation against any Owner or members of an Owner's household; that any "other insurance" clause contained in the policy expressly excludes an Owner's policies from its operation; and that no act or omission by any Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

In addition to the above, the Board shall use reasonable efforts to secure policies providing for the following:

(i) that the policy cannot be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association, or the managing agent, nor may the conduct of any of the above be made a condition to recovery under the policy;

(ii) that the policy may not be jeopardized, canceled, or substantially modified without at least 30 days' prior notice in writing to the Board, all Owners, and each Mortgagee to whom certificates of insurance have been issued; and

(iii) an agreed value endorsement and an inflation guard endorsement.

All policies of insurance shall be written with companies licensed to do business in the State of Arizona. Such companies shall issue certificates or memoranda of insurance to the Association, and, if requested in writing, to any Owner or Mortgagee so requesting.

(c) Insurance Deductibles. The Board, subject to the limitations set forth in this Declaration, shall determine the amount of the deductible for all insurance the Association is required to maintain. In the event of an insured loss giving rise to a claim under property insurance carried by the Association, the amount of the deductible shall be considered a maintenance expense to be paid by the Person or Persons (including the Association) who would otherwise be responsible for such repair in the absence of insurance, except that if the loss under a policy maintained by the Association affects more than one Unit or a Unit and the Common Area, the cost of the deductible shall be a Common Expense. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, or invitees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

(d) Association's Insurance Coverage Primary. To the extent that the Association is required to maintain insurance under this Section, the Association's insurance shall be primary and shall not be brought into contribution with individual policies of insurance purchased by Owners or their Mortgagees.

(e) Limitations. Nothing in this Section gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds.

(f) Board Authority - Insurance Coverage.

(i) The Board of Directors, upon resolution, shall have the authority to require all or any Owners to do any reasonable act or perform any reasonable work to their Units which will, in the Board's sole discretion, decrease the possibility of fire or other damage, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage; provided, however, if the cost of providing such required work would exceed One Thousand Dollars (\$1000.00) per Unit in any fiscal year, then the required work shall be subject to approval at a duly called and constituted meeting of the Association by the affirmative vote, in person or by proxy, of Owners holding at least 60% of the total Association vote. This authority shall include, but shall not be limited to, requiring Owners to install smoke detectors and such other measures as the Board may

reasonably require.

(ii) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any reasonable requirement made by the Board pursuant to this paragraph, the Association, upon 15 days' written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost and expense. Such cost shall be added to and become a part of the Assessment obligation of such Owner, shall become a lien against the Unit, and may be collected as provided in Article VIII hereof. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this paragraph, including, but not limited to, the right of entry as set forth in this Declaration.

(g) Repair and Reconstruction After Casualty Loss. In the event of damage to or destruction of all or part of the Community insured under policies maintained by the Association, as a result of fire or other casualty, unless (i) reconstruction or repair is prohibited by law or by local health or safety statute, or (ii) Owners holding at least 80% of the total Association vote, including the Owner(s) of the damaged Unit(s) and the Declarant or Coronado Commons, or their assigns, vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure in accordance with the original plats of survey and floorplans and the standard of material, design, and quality of such restoration shall be equal to or exceed the original construction. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the standards of the Community. In the event of substantial damage or destruction, each Mortgagee shall be entitled to written notice of the damage, and nothing in the Governing Documents shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Unit.

The procedure for repair and reconstruction shall be:

(i) Immediately after a fire or other casualty causing damage to any portion of the Area of Common Responsibility, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to a condition as good as that which existed before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(ii) If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Special Assessments shall be made against all of the Units without necessity of approval of the membership. If after repair and reconstruction is completed, there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(iii) Any such reconstruction or repair shall be substantially in accordance with the plats of survey, floor plans, and specifications under which the damaged structures were

originally constructed.

(iv) Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a basis for any claim, proceeding, or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the plats of survey, floor plans, and specifications under which the improvements were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(v) The net proceeds of the insurance collected because of a casualty and the funds collected by the Association from Assessments against Owners because of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this subparagraph.

(vi) The construction fund shall be paid by the Association in appropriate progress payments to such contractors, suppliers, and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

#### 7.5. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their personal property and Unit. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security within the Community. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and agrees to inform any and all tenants and occupants of its Unit that the Association, its Board of Directors, Declarant, and any successor or assign of each are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

7.6. Provision of Services.

The Association shall also be authorized to enter into contracts or other agreements with third parties, including Declarant, to provide such services. By way of example, such services may include water distribution management, trash collection, lawn maintenance, pest control, fire protection, security monitoring, and other similar services, although the Association shall have no obligation to provide any such services. The Board may modify or cancel any services provided to the Owners and their Units at any time in its discretion.

The cost of any such services provided to all Units shall be a Common Expense and/or the Association may charge use and consumption fees for selected services. No Owner shall be exempt from the obligation to pay for any such services undertaken as a Common Expense based upon non-use or any other reason.

7.7. Indemnification of Officers, Directors, and Others.

Subject to Arizona law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Arizona law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Article VIII Association Finances.**

8.1. Budgeting for Common Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare an operating budget reflecting the estimated Common Expenses which the Association expects to incur during the coming year.

The budget may include a contribution to one or more reserve funds, and shall include an annual contribution to a reserve fund for repair and replacement of any assets for which the Association is responsible which have an expected useful life of three years or more. The amount of such contribution shall be based upon the Board's reasonable estimate of the annual contribution needed over the remaining estimated useful life of each asset to provide sufficient funds for repair or replacement of such asset as required.

The Board shall send a copy of the budget to each Owner at least 45 days prior to the effective date of such budget. During the Declarant Control Period, the budget shall automatically become effective.

The Board may revise the budget from time to time during the fiscal year to reflect unanticipated expenses or changes in anticipated expenses, as the Board deems appropriate. The Board shall provide a copy of any revised budget to the Members.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year increased by 10% or the percentage increase in the Consumer Price Index during the previous year, whichever is greater, shall continue for the current year. However, in determining the percentage increase, any increase due to increases in insurance premiums which the Association is obligated to maintain in accordance with Sections 3.2 and 7.4(a) shall be ignored. The "Consumer Price Index" shall refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (West Region; Base: 1982-1984 = 100). In the event the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department or bureau or agency or shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculations envisioned herein, or in the event no such alternative index exists or a dispute arises concerning the selection of such alternative index, the Board shall have the final right and power to select and/or formulate such an alternative index.

## 8.2. Funding Common Expenses.

The Association is authorized to levy three types of Assessments to cover the Common Expenses of the Association, as follows:

(a) General Assessments. Common Expenses as reflected in the annual operating budget which directly or indirectly benefit all of the Units shall be allocated equally among all of the Units which are subject to Assessment under Section 8.3 as a General Assessment. The Board shall determine the amount of the General Assessment for each fiscal year at the time the budget is prepared, subject to adjustment in the event that the budget is revised during the year. Notice of the amount of the General Assessment, as it may be adjusted, shall be sent to each Owner with a copy of the budget.

The General Assessment shall be an annual assessment due and payable in advance on the first day of each fiscal year; however, the Board shall permit any General Assessment to be paid in equal monthly installments.

The Board may not impose a General Assessment that is more than 20% greater than such assessment for the immediately preceding fiscal year without the approval of a majority of the Members of the Association.

(b) Special Assessments. Any Common Expenses of a non-routine nature, or which were not anticipated in the Association's annual operating budget, or which exceed budgeted amounts, may be assessed as a Special Assessment. Special Assessments shall be allocated equally among all Units subject to Assessment. Special Assessments shall be payable in such manner and at such times as the Board may determine, and may be payable in installments over a period of more than one year.

Notice of any Special Assessment shall be sent to each Owner at least 45 days prior to the due date of such Special Assessment (or the first installment thereof).

(c) Specific Assessments. The Association may assess the following expenses as a Specific Assessment against a particular Unit or Units:

(i) those costs, including overhead and administrative costs, of providing benefits, items, or services to a Unit or the occupants thereof upon request of the Owner, which Assessments may be made in advance of the provision of the requested benefit, item, or service as a deposit against costs to be incurred on behalf of the Owner; and

(ii) those costs incurred in bringing the Unit into compliance with the Governing Documents or as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, or guests. (

### 8.3. Payment of Assessments; Retroactive Assessment.

(a) The obligation to pay Assessments shall commence as to all Units on the first day of the month following the month in which the Board first determines the budget and levies assessments pursuant to this Article. The first General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time the assessments commence on the Units.

(b) Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of Assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two or more installments. The General Assessment shall be due and payable in 12 equal monthly installments. If any Assessment or other charges against a Unit become delinquent, the Board may, upon at least 10 days' written notice, require any unpaid installments of all outstanding Assessments on such Unit to be paid in full immediately.

(c) Upon written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of

such certificate.

(d) Failure of the Board to fix Assessment amounts or rates or to deliver or mail an Assessment notice to each Owner shall not waive the Association's right to collect such Assessments retroactively or release any Owner from the obligation to pay any Assessment when levied. In such case, each Owner shall continue to pay General Assessments pursuant to Section 8.1 on the same basis as during the last year for which an Assessment was levied, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls.

#### 8.4. Declarant's Option to Fund Budget Deficits.

During the Declarant Control Period, Declarant may satisfy its obligation for assessments on Units which it owns by paying the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year.

Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Declarant Control Period, Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

#### 8.5. Personal Obligation and Lien for Assessments; Delinquencies.

(a) Personal Obligation. Except as otherwise provided in this Section, each Owner, by accepting a deed or entering into a recorded contract of sale for any Unit, agrees to pay the Assessments authorized in this Declaration. No Owner may exempt himself or herself from liability for Assessments by non-use of the Common Area, abandonment of his or her Unit, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No reduction or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience arising from the making of repairs or improvements, or otherwise as a result of any action or inaction by the Association.

All Assessments, together with:

(i) interest computed from the due date of each Assessment at a rate of 18% per annum (or the maximum rate permitted by Arizona law if less than 18% per annum);

(ii) late charges in such amount as the Board may establish by resolution (subject to the limitations of Arizona law); and

(iii) costs of collection (including reasonable attorneys' fees, whether or not suit is filed) shall be the personal obligation of the Person who is the Owner of the Unit at the time the Assessment is due. Upon a transfer of title to a Unit, the new Owner shall be jointly and severally liable with the former Owner for any Assessments and other charges due at the time of conveyance (i.e., both are responsible and either may be required to pay the full amount due to

the Association), unless the new Owner took title following foreclosure of a Mortgage which has priority over the Association's lien under subsection (b) below.

(b) Lien for Assessments. The Declarant does hereby establish, create, and make each Unit subject to a lien (i.e., a security interest) in favor of the Association to secure payment of all Assessments, as well as interest, late charges (subject to the limitations of Arizona law), costs of collection (including attorney's fees), and any other charges authorized in Section 8.5(a). The lien shall remain in existence without being reserved or referenced in any deed or other document and without any other action required. Such lien shall have priority over (i.e., shall be paid before) all other liens, except:

(i) the liens of all taxes, bonds, assessments, and other levies which by law would have priority; and

(ii) the lien or charge of any Mortgage recorded in the Public Records which was made in good faith and for value and which, by law, would have priority over all other Mortgages on the Unit (collectively, "Priority Liens"). In the event of a foreclosure of the Association's lien, the Association shall be entitled to receive only those proceeds remaining after payment of the amounts required to remove or satisfy any Priority Liens, up to the amount of the Association's lien.

(c) Delinquencies. In the event that the Owner is delinquent in paying any amounts due to the Association, the Association may, at its discretion (but subject to all applicable debt collection Statutes):

(i) prepare and file a lien affidavit in the Public Records specifying the amount of any unpaid Assessments and other charges due to the Association as of the date of such filing;

(ii) sue to collect the amounts due and, upon obtaining a judgment, foreclose its lien in the same manner as mortgages are foreclosed under Arizona law. The Association may purchase the Unit at the foreclosure sale and thereafter hold, lease, mortgage, and convey the Unit. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving its lien.

(iii) If a Unit is owned by the Association: (i) no right to vote shall be exercised on its behalf; (ii) no Assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Unit had it not been acquired by the Association.

The sale or transfer of any Unit shall not affect the Association's lien or relieve such Unit from the lien securing any subsequent Assessments. However, a Person who obtains title to a Unit pursuant to the foreclosure of a Mortgage constituting a Priority Lien shall not be personally liable for Assessments due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses which the Association may thereafter allocate among all Owners as part of the General Assessment under Section 8.2(a). In no event, however, shall the collection of the unpaid assessments from the other Owners release the original Owner owing

such debt from his or her personal liability to pay the Association the full amount of such debt.

Each Owner, by accepting a deed to any Unit, consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.

#### **PART FOUR: COMMON AREA**

*One of the primary functions of the Association is to own, operate, and maintain various portions of the Community, called Common Areas, which are designed and intended for the common use and enjoyment of all residents and the common benefit of all Units. The Common Areas in Coronado Commons are designed to enhance the lifestyle and the value of owning property in this Community.*

#### **Article IX Acceptance, Management, and Control of Common Area.**

##### **9.1. Control of Common Area.**

The Association, acting through its Board, may acquire, hold, and dispose of real property (i.e., land and improvements to the land and interests in land) and personal property (for example, furnishings, equipment, and other items which are not attached to land), subject to the limitations set forth in this Declaration. Any such property shall be Common Area during such period as it is held by the Association and shall cease to be Common Area upon transfer or conveyance of the Association's interest in the property. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for management, operation, and control of the Common Area.

##### **9.2. Acceptance of Common Area Conveyed by Declarant.**

The Declarant and its designees may convey to the Association real and personal property, including easements, leasehold and other interests in property. Such property shall be accepted by the Association "as is" and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

##### **9.3. Reconveyance of Common Area to Declarant.**

Upon request of the Declarant, the Association shall reconvey to the Declarant any unimproved property or interests therein which the Declarant originally conveyed at no cost to the Association, to the extent conveyed by the Declarant in error or needed by the Declarant to make minor adjustments in property lines or to accommodate public or quasi-public facilities. The Declarant shall not be required to pay for such property, but shall pay the costs of preparing and recording the deed to effect such reconveyance.

**Article X     Rights to Use Common Area.**

**10.1.   Non-Exclusive Easement in Common Area.**

Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) the Governing Documents, any other applicable covenants, and any other instrument affecting title to the property;

(b) any restrictions or limitations contained in any deed or other document conveying an interest in such property to the Association;

(c) the right of the Board and the membership to adopt, amend, and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) the right of the Board to charge reasonable use fees, damage deposits, and similar charges for the use of any of the Common Area;

(e) the right of the Association, acting through the Board, to dedicate, transfer, or grant easements over all or any part of the Common Area, subject to such approval requirements as may be set forth elsewhere in this Declaration, except that any transfer or encumbrance of a Common Area shall be subject to an easement over such Common Area for access to all Units served thereby; and (f) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

**10.2.   Assignment of Rights to Use Common Area.**

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, occupants of the Owner's Unit under any lease authorized pursuant to this Declaration, and guests, subject to reasonable regulation by the Board. The Owner of a Unit which is rented under a lease authorized pursuant to this Declaration shall be deemed to have assigned to the tenant all such rights to use and enjoy recreational and social facilities on the Common Area for the term of the lease. For as long as the Owner has rented the Unit, such Owner shall not have the right to use the facilities, although the Owner's right to such shall be automatically reinstated upon the expiration of the lease.

**Article XI Changes in Common Area.**

**11.1. Common Area to Remain Undivided.**

Except as permitted in this Declaration, the Common Area shall remain undivided. No Person shall seek to have a court partition or divide the ownership interest of all or any portion of the Common Area unless the portion of the Common Area which is the subject of such action has been removed from the provisions of this Declaration or unless all Owners and Mortgagees have consented in writing. This Section shall not apply to any property which was formerly Common Area once the Association no longer holds any legal interest in such property. Moreover, this Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

**11.2. Conveyance or Dedication of Common Area.**

(a) The Association, acting through the Board without a vote of the membership, may grant licenses and leases of portions of the Common Area, and may grant easements over the Common Area for installation and maintenance of utilities or drainage facilities or for other purposes, to the extent not inconsistent with the intended use of the Common Area.

(b) Except as provided in Sections 9.3 and 11.2(a), the Association shall not mortgage or convey any real property comprising all or any portion of the Common Area without the approval of Owners representing at least 80% of the total votes in the Association and the written consent of Declarant.

(c) The Association may dedicate portions of the Common Area to Maricopa County, the City of Phoenix, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval requirement set forth in Section 11.2(b).

**11.3. Condemnation.**

Each Owner shall be entitled to written notice if any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain. The award made for such taking shall be payable to the Association for such purposes as the Board shall determine.

**11.4. Improvements to Common Area.**

The Association shall not incur any Common Expenses for development or construction of capital improvements to the Common Area unless approved by Persons entitled to cast 60% of the total votes in the Association and the Declarant in writing.

**PART FIVE: DEVELOPMENT OF THE COMMUNITY**

*The Declaration reserves various rights to the Declarant and the Association in order to*

*facilitate the smooth and orderly development and administration of the Community.*

**Article XII Additional Rights Reserved to Declarant.**

12.1. Right to Develop.

Declarant and its employees, agents, and designees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and to Coronado Commons as it deems appropriate in its sole discretion.

12.2. Easements.

Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing, and installing improvements to the Common Area as it deems appropriate in its sole discretion.

12.3. Enforcement.

Declarant may enforce the provisions of the Governing Documents at law or in equity. Declarant may also exercise self-help to cure any violation of the Governing Documents. Declarant may not exercise such remedy until Declarant has given written notice to the Association and the violating Owner setting forth the violation and the requisite cure and the Association and/or the Owner has been given the opportunity to effectuate such cure which shall be undertaken no more than seven days after such written notice has been received by the Association and the Owner.

In the event neither the Association nor the Owner cure the violation and Declarant exercises its right of self-help, Declarant shall be entitled to recover from the Association all costs expended in curing the violation. The Association shall promptly reimburse Declarant for all such costs and such amounts shall be a Specific Assessment levied against the Unit of the Owner violating the Governing Documents in accordance with Article VIII.

12.4.

Right to Transfer or Assign Declarant Rights.

Any or all rights (including the right to approve activities of the Association) and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and duly records in the Public Records.

12.5 Exclusive Rights to Use Name of Development.

No Person shall use the name "Coronado Commons" or any derivative of such names or

in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Coronado Commons" in printed or promotional matter where such term is used solely to specify that particular property is located within the Community. The Association shall be entitled to use the words "Coronado Commons" in its name.

12.6 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. No entry into a Unit shall be permitted without the Owner's consent. The Person exercising this easement shall promptly repair, and pay for, any resulting damage.

12.7. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

12.8. Termination of Rights.

The rights reserved to Declarant under this Article shall terminate upon the earlier of (a) seven years from the date this Declaration is filed in the Public Records, or (b) when, in its sole discretion, Declarant so determines by recording a written statement to that effect in the Public Records.

**Article XIII Easements.**

13.1. Easements for Encroachment.

The Declarant hereby creates, for the benefit of each Unit and each portion of the Common Area, reciprocal easements for encroachment due to the unintentional placement, or the settling or shifting, of the structures or improvements on such Unit or portion of the Common Area, and for maintenance and use of any encroaching structure or improvement, except that no easement for encroachment shall exist:

- (a) for any structure or improvement constructed in violation of the Governing Documents;
- (b) beyond a distance of three feet, as measured from any point on the common boundary along a line perpendicular to such boundary; or
- (c) if such encroachment occurred due to reckless, willful and knowing conduct on

the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.2. Easements for Maintenance of Adjoining Units.

There shall be and is hereby imposed on each Unit an easement for reasonable ingress and egress by or on behalf of the Owner of any adjoining Unit for the purpose of repair, maintenance, or replacement of improvements on such adjoining Owner's Unit. Such easement shall be exercised only during reasonable hours and after reasonable notice to the Owner or occupants of the Unit upon which entry is to be made.

13.3. Easements for Perimeter Walls and Fencing.

There are hereby reserved to the Declarant, the Association, and the designees of each, perpetual, non-exclusive easements for:

(a) the installation, maintenance, repair, removal, and replacement of perimeter walls or fencing, trees, shrubs, and other landscaping buffers over those portions of the Community lying within 10 feet of the perimeter boundaries of the Community, as such boundaries may exist and change from time to time (the "Perimeter Easement Area"); and

(b) ingress and egress over the Units and Common Area as reasonably necessary to obtain access to the Perimeter Easement Area for such purposes.

Such easement shall include the right to disturb existing landscaping within the Perimeter Easement Area, to dig holes, and to temporarily pile dirt and plant material upon the Perimeter Easement Area, provided the area is restored to a neat and attractive condition, to the extent practical, as soon as reasonably possible after completion of the activities authorized hereunder. Nothing herein shall obligate the Declarant or the Association to install any perimeter fencing, walls, or landscaping in any Perimeter Easement Area. In addition, the Association shall have the same rights as the Declarant to self-help with respect to violations of Owners, and may charge such costs that it expends in curing violations as a Specific Assessment levied against the Unit of the Unit violating the Governing Documents.

13.4. Cross-Drainage Easements.

Each Unit shall be burdened with a perpetual, non-exclusive easement over that portion of the Unit which is not improved with structures, for the purpose of drainage of stormwater runoff from any portion of the Community including the Common Areas; provided, no Person shall alter the natural drainage of stormwater from any Unit once construction of initial improvements has been completed so as to unreasonably increase the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, and the Declarant as long as it owns any property subject to the Declaration.

### 13.5. Easements for Stormwater Runoff.

The Community shall be subject to an easement in favor of Declarant or the Association, as the owner of the Common Area for the natural or controlled flow of stormwater across the Community; provided, this Section shall not permit changes to the existing stormwater flow without the approval of Declarant.

### 13.6. Easements for Utilities, Etc.

Declarant hereby reserves for itself, so long as Declarant owns any property within the Community, and grants to the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company), perpetual non-exclusive easements upon, across, over, and under all of the Community, including the Units, to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining, and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; walkways and pathways; drainage systems; irrigation systems, street lights, and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, electricity, and utility meters; and for the purpose of installing any of the foregoing on property which Declarant or the Association owns or within easements designated for such purposes on the Plat. This easement shall include the right of Declarant, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) to enter and/or access the attic area and floor slab of each Unit for the purpose of installing, replacing, repairing, maintaining, monitoring, or operating any of the foregoing.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes.

(b) There is hereby reserved to Declarant the exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Community.

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. Except in an emergency, the exercise of these easements shall not extend to permitting entry into any Unit, nor shall it unreasonably interfere with the use of any Unit, without first affording reasonable notice to the Owner or occupant.

### 13.7. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property within Coronado Commons. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities on such property. Declarant agrees that it or

the Person exercising such easement shall be responsible for any damage caused to the Common Area or any Unit as a result of the exercise of such easement.

13.8. Easements for Maintenance, Emergency, and Enforcement.

The Declarant reserves for itself and grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.3. The Declarant and the Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons and to inspect for the purpose of ensuring compliance with and to enforce the Governing Documents. Such right may be exercised by the Declarant, any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

This right of entry shall include Declarant's or the Association's right to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by Declarant or the Board. The rights granted pursuant to this Section shall not be exercised as to any Unit without first being granted permission by the Owner of the Unit; provided, no permission shall be required for emergency personnel acting in their official capacities to enter any Unit.

13.9. Easements to Exercise Powers and Perform Responsibilities.

In addition to all other easements granted elsewhere in this Declaration, the Declarant hereby reserves to itself and grants to the Association, perpetual, non-exclusive easements over the Community as necessary to enable the Declarant and the Association, and their respective agents, employees, and assigns, to exercise the authority and fulfill the responsibilities that each respective entity is granted or assigned by the Governing Documents.

**Article XIV Party Walls and Other Shared Structures.**

14.1. General Rules of Law to Apply.

The yard fences built as a part of the original construction in the Yards of the Unit which serve and/or separate any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

14.2. Maintenance.

The cost of any repair and maintenance of a yard fence shall be the responsibility of the Association. However, any Owner who causes damage to any yard fence by such Owner's negligence or intentional acts shall be responsible to the Association to pay for such damages.

14.3. Right to Contribution Runs With the Land.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

14.4. Disputes.

Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XVII.

**PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*This part of the Declaration establishes a mechanism for the amicable resolution of disputes, should they arise, and provides procedures for enforcing the provisions of the Governing Documents when necessary.*

**Article XV Protection of Mortgagees.**

15.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (stating the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

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

(b) Any delinquency in the payment of Assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner which is not cured within 60 days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

15.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

15.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

**Article XVI Dispute Resolution and Limitation on Litigation.**

16.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) The Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.1 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within the Community,

except that the following shall not be considered Claims unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.1:

- (i) any suit by the Association to collect Assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part

Two of this Declaration (relating to creation and maintenance of community standards);

(iii) any suit between Owners, which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(iv) any suit in which any indispensable party is not a Bound Party.

16.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

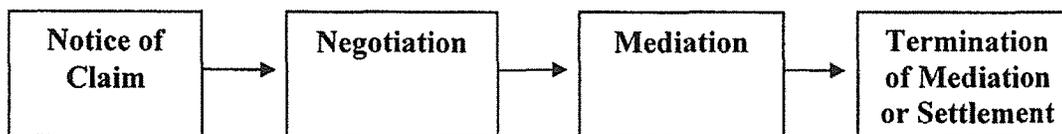
(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 16.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Phoenix, Arizona area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

#### Alternative Dispute Resolution Process



(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

#### 16.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast 80% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Declarant Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

**Article XVII Compliance and Enforcement.**

17.1. Obligation to Comply with Governing Documents; Right to Enforce.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents and shall ensure that his or her guests and any visitors to the Unit also comply. Failure to comply shall be cause for:

(i) the Association or the Declarant to impose sanctions against the Owner, the occupant, and the Unit as authorized in this Declaration and the By-Laws; and

(ii) the Declarant, the Association, or any Owner to take action in a court of law or equity to enforce the Governing Documents, subject to the dispute resolution procedures set forth in Article XVI, if applicable.

(b) The Association may enforce applicable Maricopa County and City of Phoenix ordinances and permit either Maricopa County or the City of Phoenix to enforce their ordinances within the Community for the benefit of the Association and its Members.

(c) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. The Association shall not be obligated to take enforcement action if the Board reasonably determines that, under the circumstances of a particular case:

(i) the Association's legal position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

17.2. Association Remedies and Sanctions.

In addition to any remedies or sanctions specifically authorized elsewhere in the Governing Documents, the Association may seek or impose any of the following remedies and sanctions for violation of the Governing Documents:

(a) assessment of reasonable monetary fines which shall constitute a lien upon the violator's Unit (in the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) suspension of the Owner's right to vote;

(c) suspension of any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any Assessment or other charge owed to the Association;

(d) upon the Owner's failure to take required action after written notice and a reasonable opportunity to do so, entering upon the Unit (which entry shall not be considered a trespass) and taking action to cure any condition or remove any thing or structure which is in violation of the Governing Documents and to restore the Unit to a complying condition, in which event the Association may charge all costs incurred against the Unit and the Owner as a Specific Assessment;

(e) precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV from continuing or performing any further activities in the Community (in which event the Association shall have no liability to any Person);

(f) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and

(g) recording a notice of violation in the Public Records.

### 17.3. Notice and Hearing Procedures.

Except as set forth in Section 17.3(c), prior to imposing any sanction for violation of the Governing Documents, taking any action to enforce the provisions of the Governing Documents, or exercising the rights granted to the Association under this Article, the Association shall comply with the notice and hearing procedures set forth in subsections (a) and (b) below.

(a) Notice. The Association shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the action which the Association proposes or intends to take, and (iii) a period of not less than 10 calendar days within which the alleged violator may present a written request for a hearing. If a timely request for a hearing is not made within the 10-day period, the Association may proceed with the action or impose the sanction described in the notice. If the violation is abated within the 10-day period, the Association may, but shall not be obligated to, suspend the proposed action or sanction. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. Notwithstanding any suspension of proceedings hereunder, if the same or a similar violation is repeated within 12 months after the date of notice of the original violation,

the Association may pursue any and all remedies described in the original notice without further notice to the alleged violator.

(b) Hearing. The hearing shall be held in conformance with procedures as set forth in a policy to be adopted by the Board, which may be amended from time to time.

(c) Applicability. The notice and hearing procedures set forth in this Section shall not apply to any claim which the Association is required or elects to submit to the dispute resolution procedures set forth in Article XVI, nor to the exercise of self-help to cure violations after written notice to the Owner and an opportunity to cure pursuant to Section 17.2(d). Subject to the provisions of Article XVI, as they may apply, the Association may also file suit in a court of law or equity to enforce the Governing Documents, to enjoin any violation, or to recover monetary damages for any violation without the necessity of complying with the notice and hearing procedures set forth above.

#### 17.4. Enforcement Rights by Declarant.

The Declarant may enforce the provisions of the Governing Documents at law or in equity. The Declarant may also exercise self-help to cure any violation of the Governing Documents. The Declarant may not exercise such remedy until it has given written notice to the Association and the violating Owner setting forth the violation and the requisite cure and the Association and/or the Owner has been given the opportunity to effectuate such cure which shall be undertaken no more than seven days after such written notice has been received by the Association and the Owner.

In the event neither the Association nor the Owner cure the violation and the Declarant exercises its right of self-help, the Declarant shall be entitled to recover from the Association all costs expended in curing the violation. The Association shall promptly reimburse the Declarant for all such costs and such amounts shall be a Specific Assessment levied against the Unit of the Owner violating the Governing Documents in accordance with Article VIII.

#### 17.5. Remedies Cumulative; Recovery of Costs.

(a) All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity.

(b) In any action to enforce the Governing Documents, if the party seeking to enforce prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

**Article XVIII Miscellaneous Provisions.**

**18.1. Binding Effect and Duration.**

All of the property described in Exhibit "A" shall be held, sold, used, and conveyed subject to the terms of this Declaration which shall run with the title to such real property. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Community, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Community.

This Declaration is intended to, and unless specifically limited by Arizona law, shall have perpetual duration. However, so long as Arizona law limits the period during which covenants may run with the land, the Association shall hold a meeting to consider renewal of the development scheme and the covenants set forth in this Declaration within (but not before) two years prior to any date such covenants automatically would terminate under Arizona law. The covenants set forth in this Declaration shall be renewed and shall continue in full force and effect, without interruption, upon the affirmative vote of all Owners.

Notwithstanding the above, each Owner, by acceptance of a deed or entering into and recording a contract of sale for a Unit, and each successor in title to a Unit, agrees to appoint, and hereby does appoint, Declarant to exercise his or her vote at the first meeting held under this Section to consider renewal of the covenants as set forth in this Declaration. At each subsequent meeting held in accordance with this Section, each Owner shall be entitled personally to cast the vote for his or her Unit. The renewal of the covenants set forth in this Declaration shall be evidenced by a recorded instrument executed by all Owners, or by Declarant on behalf of such Owners as provided above.

Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

**18.2. Amendment.**

For a period of ten (10) years from the date this Declaration is recorded, the Declarant may amend this Declaration without the approval of the Association or the Owners, if such amendment (i) is specifically required to enable any institutional or governmental entity to make, purchase, insure, or guarantee mortgage loans on the Units, or (ii) does not materially adversely affect the rights of any Owner under this Declaration without such Owner's consent.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners entitled to cast at least 67% of the total number of votes in the Association and the consent of Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause

shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within three months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

18.3. Severability.

Invalidation by judgment or court order of any provision of this Declaration shall not affect the validity of other provisions of this Declaration. Invalidation of any provision as applied in a particular case shall not affect the validity of other applications of the same provision.

18.4. Conflict.

Any other recorded instruments affecting title to any portion of the Community may contain provisions which are more restrictive than the provisions of this Declaration, and in such case, the more restrictive provision shall control. The Association shall have the standing and authority to enforce all such restrictions.

18.5. Notice of Sale or Transfer of Title.

(a) **Administrative Fee.** Each Person (other than the Declarant) who purchases or obtains a Unit shall pay to the Association, or the Association's managing agent an Administrative Fee in such amount as is established from time to time by a written resolution of the Board. The Administrative Fee shall become due at the close of escrow or immediately upon the transfer of the Unit, whichever occurs first, and shall be required upon each transfer of title to each Unit. The Administrative Fee shall be used exclusively to cover administrative costs associated with the transfer.

(b) **Working Capital Fee.** To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person (other than the Declarant) who purchases or obtains a Unit shall pay to the Association a sum equal to one-fourth (1/4<sup>th</sup>) of the current General Assessment for such Unit (the "Working Capital Fee"). Such payment shall become due at the close of escrow or immediately upon the transfer of title to the Lot, whichever occurs first, and shall be required upon each transfer of title to each Unit. Funds paid to the Association pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the General Assessment or any

other Assessments levied by the Association pursuant to this Declaration.

(c) Reserve Contribution Fee. To assist the Association in establishing adequate reserve funds, each Owner (other than the Declarant) who purchases or obtains a Unit shall pay to the Association a sum equal to one-fourth (1/4<sup>th</sup>) of the then current General Assessment for such Unit (the "Reserve Contribution Fee"). Such payment shall become due at the close of escrow or immediately upon the transfer of title to the Unit, whichever occurs first, and shall be required upon each transfer of title to each Unit. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any other Assessment levied by the Association pursuant to this Declaration. The Board shall have the right, by an affirmative vote of the majority of the members of the Board, and based upon the Board's analysis of replacement and repair reserves to permanently or temporarily cease to assess the Reserve Contribution Fee or to change the amount of the Reserve Contribution Fee to be collected. Having ceased to assess the Reserve Contribution Fee, the Board shall have the right to reinstate the Reserve Contribution Fee at any time thereafter, it being the intent that the Board shall have the right to begin or cease the collection of the Reserve Contribution Fee as well as change the Reserve Contribution Fee as the Board deems appropriate from time to time. Funds paid to the Association pursuant to this Section shall be kept in a separate account to be used by the Association as reserve funds.

SIGNED IN  
COUNTERPART

~~DECLARANT:~~

~~CORONADO COMMONS PHX, LLC,  
an Arizona limited liability company, by  
and through its two members~~

~~JAG DEVELOPMENT, LLC,  
an Arizona limited liability company~~

~~By: \_\_\_\_\_  
Its: Manager~~

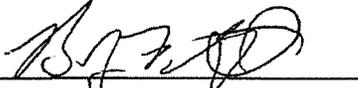
~~ABG Coronado, LLC,  
an Arizona limited liability company~~

~~By: \_\_\_\_\_  
Its: Member~~

**CORONADO COMONS PHX, LLC., an  
Arizona limited liability company**

**By: JAG Development LLC., an  
Arizona limited liability company  
Its: Manager**

By:   
Its: Member

By:   
Its: Member

STATE OF ARIZONA }  
 } ss.  
COUNTY OF MARICOPA }

The foregoing instrument was acknowledged before me 8th day of September, 2014 by ALLAN R. GUTKIN, the member of JAG Development LLC., an Arizona limited liability company, the manager of CORONADO COMONS PHX, LLC., an Arizona limited liability company

  
\_\_\_\_\_  
Notary Public

My commission expires: 3/15/15



PATRICIA CASILLAS  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

STATE OF ARIZONA }  
 } ss.  
COUNTY OF MARICOPA }

The foregoing instrument was acknowledged before me this 8th day of September, 2014 by BENJAMIN Z. GUTKIN, the member of JAG Development LLC., an Arizona limited liability company, the manager of CORONADO COMONS PHX, LLC., an Arizona limited liability company

  
\_\_\_\_\_  
Notary Public

My commission expires: 3/15/15



PATRICIA CASILLAS  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

**EXHIBIT "A"**

**Coronado Commons**

Lots 1 through 20, inclusive and Tracts A, B, and C, CORONADO COMMONS, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1173 of Maps, Page 46.

OLD REPUBLIC TITLE AGENCY

47115355-8-5-2--  
Hoyp

WHEN RECORDED RETURN TO:

Ryan Muzzarelli  
1817 N. 3<sup>rd</sup> Street ~~S-100~~  
Suite S-100  
Phoenix, Arizona 85004  
4711005355

2 of 4

ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS

THIS ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS ("Assignment") is made as of the 8th day of September, 2014, by CORONADO COMMONS PHX, LLC, LLC, an Arizona limited liability company ("Assignor"), and SRM I - PHOENIX, LLC, an Arizona limited liability company ("Assignee").

RECITALS

A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement between the parties (the "Agreement"), whereby Assignor agreed to sell and Assignee agreed to purchase all of Assignor's right, title, and interest in and to certain real property located in Maricopa County, Arizona, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. WHEREAS, in connection with the conveyance of the Property from Assignor to Assignee, Assignor and Assignee desire that Assignor shall assign to Assignee, and Assignee shall assume from Assignor, any rights to act as "Declarant" (the "Rights") under that certain Declaration of Covenants, Conditions and Restrictions for Coronado Commons recorded on February 14, 2014, as Document Number 2014-0099139, Official Records of the Maricopa County Recorder (the "Declaration"), and as further amended on today's date, September 8, 2014, without warranting the existence, scope, character, assignability, or duration of said Rights.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Assignor hereby assigns to Assignee all Rights of "Declarant" that Assignor has under the Declaration. The foregoing assignment is made without any covenants, representations or warranties with respect to such rights and powers or whether Assignor owns or has any particular rights or powers.

2. Assignee hereby accepts the foregoing assignment and assumes all such rights, powers and obligations Assignor may have as "Declarant" under the Declaration, first arising from and after the date of this Assignment. Assignor shall indemnify and hold Assignee harmless

from and against any and all claims and liabilities, costs and attorney's fees, suffered or incurred by Assignee by reason of the failure of Assignor to perform and comply with the obligations, liabilities, duties of the "Declarant" and covenants and agreements contained in the Declaration that accrued or arose out of events occurring prior to the date hereof. Assignee hereby agrees to indemnify and hold Assignor harmless against all such obligations to be observed and performed under by "Declarant" under the Declaration with respect to the Property after the date of this Assignment and all costs, expenses, payments, liabilities, claims, demands, actions, judgments, losses and fees (including, without limitation, attorneys' fees) at any time and from time to time paid, suffered, incurred or sustained by Assignor by reason of, or in connection with or arising out of any such obligations assumed under the Declaration shall be paid by Assignee.

3. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

4. This Assignment shall be construed and enforced in accordance with the laws of the State of Arizona.

5. Each of the parties signing this Assignment hereby warrants, and represents that it has the full legal power, authority and right to execute, deliver and perform the obligations under this Assignment, that this Assignment has been duly authorized by all requisite actions on the part of such warranting party, and that no remaining action or third party action is required to make this Assignment binding upon such party.

6. This Assignment may be executed in any number of counterparts, each of which, when so executed and when delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument. Copies of this executed Assignment shall be fully enforceable as originals.

*[Remainder of page intentionally left blank - Signatures appear on the following pages.]*

**CORONADO COMONS PHX, LLC., an  
Arizona limited liability company**

**By: JAG Development LLC., an  
Arizona limited liability company  
Its: Manager**

By:   
Its: Member

By:   
Its: Member

STATE OF ARIZONA                    }  
  } ss.  
COUNTY OF MARICOPA                }

The foregoing instrument was acknowledged before me 8th day of September, 2014 by ALLAN R. GUTKIN, the member of JAG Development LLC., an Arizona limited liability company, the manager of CORONADO COMONS PHX, LLC., an Arizona limited liability company

  
\_\_\_\_\_  
Notary Public

My commission expires: 3/15/15



PATRICIA CASILLAS  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

STATE OF ARIZONA                    }  
  } ss.  
COUNTY OF MARICOPA                }

The foregoing instrument was acknowledged before me this 8th day of September, 2014 by BENJAMIN Z. GUTKIN, the member of JAG Development LLC., an Arizona limited liability company, the manager of CORONADO COMONS PHX, LLC., an Arizona limited liability company

  
\_\_\_\_\_  
Notary Public

My commission expires: 3/15/15



PATRICIA CASILLAS  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

IN WITNESS WHEREOF, Assignee has caused this Assignment and Assumption of Declarant's Rights to be effective as of the date first written above.

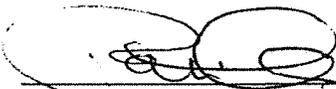
**ASSIGNEE:**

**SRM I - PHOENIX, LLC**, an Arizona limited liability company, by and through its 3 Managers:

By:   
Print Name: Ryan Muzzarelli  
Its: Manager

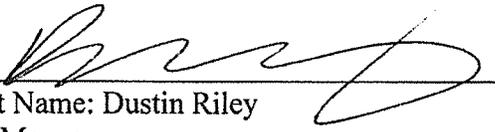
STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing Assignment and Assumption of Declarant's Rights was acknowledged before me this 8th day of September, 2014, by Ryan Muzzarelli, the Manager of **SRM - I - PHOENIX, LLC**, an Arizona limited liability company, on behalf thereof.

  
Notary Public

My Commission Expires:

 **PATRICIA CASILLAS**  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

By:   
Print Name: Dustin Riley  
Its: Manager

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

The foregoing Assignment and Assumption of Declarant's Rights was acknowledged before me this 8th day of September, 2014, by Dustin Riley, the Manager of **SRM - I - PHOENIX, LLC**, an Arizona limited liability company, on behalf thereof.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

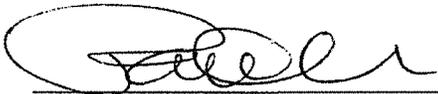


**PATRICIA CASILLAS**  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

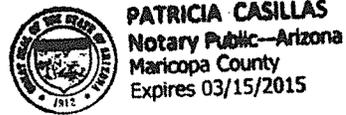
By:   
Print Name: Michael W. Smith  
Its: Manager

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

The foregoing Assignment and Assumption of Declarant's Rights was acknowledged before me this 8th day of September, 2014, by Michael W. Smith, the Manager of SRM – I - PHOENIX, LLC, an Arizona limited liability company, on behalf thereof.

  
Notary Public

My Commission Expires:



**Exhibit "A"**

**TO ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS**

Legal Description of Property

**Coronado Commons**

Lots 1 through 20, inclusive and Tracts A, B, and C, CORONADO COMMONS, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1173 of Maps, Page 46.

OLD REPUBLIC TITLE AGENCY

47115355-3-5-3--

Hoyp

WHEN RECORDED MAIL THIS  
SPECIAL WARRANTY DEED TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Space Above for Recorder's Use)

47110053 55

3 of 4

SPECIAL WARRANTY DEED

Coronado Commons PHX, LLC, an Arizona limited liability company ("Grantor"), for and in consideration of the Ten Dollars (\$10.00), in hand paid to Grantor by SRM I-Phoenix, LLC., an Arizona limited liability company ("Grantee"), and other good and valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, hereby assigns, conveys, grants, transfers and delivers to Grantee all that certain land situated in Maricopa County, Arizona, and described on Exhibit "A" attached hereto and made a part hereof for all purposes (the "Property").

SUBJECT TO: all existing taxes, assessments, reservations in patents, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

GRANTOR HEREBY binds itself and its successors and assigns to warrant and defend the title against all acts of the Grantor, and none other, subject to the matters above set forth.

EXECUTED as of the 8 day of Sept, 2014

SEE ATTACHED FOR SIGNATURE  
AND NOTARY

CORONADO COMONS PHX, LLC., an  
Arizona limited liability company

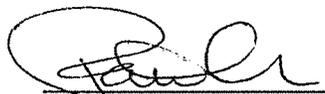
By: JAG Development LLC., an  
Arizona limited liability company  
Its: Manager

By:   
Its: Member

By:   
Its: Member

STATE OF ARIZONA                    }  
  } ss.  
COUNTY OF MARICOPA            }

The foregoing instrument was acknowledged before me 4th day of September, 2014 by ALLAN R. GUTKIN, the member of JAG Development LLC., an Arizona limited liability company, the manager of CORONADO COMONS PHX, LLC., an Arizona limited liability company

  
Notary Public

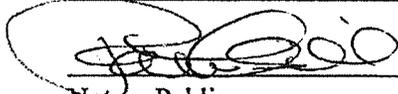


PATRICIA CASILLAS  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

My commission expires: 3/15/15

STATE OF ARIZONA                    }  
  } ss.  
COUNTY OF MARICOPA            }

The foregoing instrument was acknowledged before me this 4th day of September, 2014 by BENJAMIN Z. GUTKIN, the member of JAG Development LLC., an Arizona limited liability company, the manager of CORONADO COMONS PHX, LLC., an Arizona limited liability company

  
Notary Public



PATRICIA CASILLAS  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

My commission expires: 3/15/2015

**ORDER NO. : 4711005355-PC**

**EXHIBIT A**

Lots 1 through 20 and Tracts A and B, of CORONADO COMMONS, according to Book 1173 of Maps, page 46, Official Records of Maricopa County, Arizona.

AFFIDAVIT OF PROPERTY VALUE

1. ASSESSOR'S PARCEL IDENTIFICATION NUMBER(S)

Primary Parcel: 118 - 54 - 008 - SPLIT
BOOK MAP PARCEL

Does this sale include any parcels that are being split / divided?

Check one: Yes [ ] No [X]

How many parcels, other than the Primary Parcel, are included in this sale? 1

Please list the additional parcels below (attach list if necessary):

- (1) 118-54-022 (2)
(3) (4)

2. SELLER'S NAME AND ADDRESS:

CORONADO COMMONS PHX, LLC
1427 N. 3rd St., Ste. 200
Phoenix AZ 85004

3. (a) BUYER'S NAME AND ADDRESS:

SRM I - PHOENIX, L.L.C.
9302 S. Willow Dr.
Tempe AZ 85284

(b) Are the Buyer and Seller related? Yes [ ] No [X]

If Yes, state relationship:

4. ADDRESS OF PROPERTY:

1625 North 3rd Street, Phoenix, Arizona 85004

5. (a) MAIL TAX BILL TO: (Taxes due even if no bill received)

SRM I - PHOENIX, L.L.C.
9302 S. Willow Dr.
Tempe AZ 85284

(b) Next tax payment due

6. PROPERTY TYPE (for Primary Parcel): NOTE: Check Only One Box

- a. [X] Vacant Land f. [ ] Commercial or Industrial Use
b. [ ] Single Family Residence g. [ ] Agricultural
c. [ ] Condo or Townhouse h. [ ] Mobile or Manufactured Home
d. [ ] 2-4 Plex i. [ ] Other Use; Specify:
e. [ ] Apartment Building

7. RESIDENTIAL BUYER'S USE: If you checked b, c, d or h in item 6 above, please check one of the following:

- a. [ ] To be used as a primary residence.
b. [ ] To be rented to someone other than a "qualified family member."
c. [ ] To be used as a non-primary or secondary residence.

See reverse side for definition of a "primary residence, secondary residence" or "family member."

8. If you checked e or f in Item 6 above, indicate the number of units:
For Apartments, Motels / Hotels, Mobile Home / RV Parks, etc.

9. TYPE OF DEED OR INSTRUMENT (Check Only One Box):

- a. [ ] Warranty Deed d. [ ] Contract or Agreement
b. [X] Special Warranty Deed e. [ ] Quit Claim Deed
c. [ ] Joint Tenancy Deed f. [ ] Other:

10. SALE PRICE: \$ 1,323,000.00

11. DATE OF SALE (Numeric Digits): 05 / 14
Month / Year

12. DOWN PAYMENT \$ 270,000.00

13. METHOD OF FINANCING:

- a. [ ] Cash (100% of Sale Price) e. [X] New loan(s) from financial Institution:
(1) [X] Conventional
(2) [ ] VA
(3) [ ] FHA
b. [ ] Barter or trade
c. [ ] Assumption of existing loan(s)
d. [ ] Seller Loan (Carryback) f. [ ] Other financing; Specify:

14. PERSONAL PROPERTY (see reverse side for definition):

- (a) Did the Sale Price in Item 10 include Personal Property that impacted the Sale Price by 5 percent or more? Yes [ ] No [X]
(b) If Yes, provide the dollar amount of the Personal Property:
\$ AND

briefly describe the Personal Property:

15. PARTIAL INTEREST: If only a partial ownership interest is being sold, briefly describe the partial interest:

16. SOLAR / ENERGY EFFICIENT COMPONENTS:

- (a) Did the Sale Price in Item 10 include solar energy devices, energy efficient building components, renewable energy equipment or combined heat and power systems that impacted the Sale Price by 5 percent or more? Yes [ ] No [X]
If Yes, briefly describe the solar / energy efficient components:

17. PARTY COMPLETING AFFIDAVIT (Name, Address, Phone Number):

BUYER AND SELLER AS SHOWN ABOVE

Phone:

18. LEGAL DESCRIPTION (attach copy if necessary):

EXHIBIT "A" ATTACHED HERETO

THE UNDERSIGNED BEING DULY SWORN, ON OATH, SAYS THAT THE FOREGOING INFORMATION IS A TRUE AND CORRECT STATEMENT OF THE FACTS PERTAINING TO THE TRANSFER OF THE ABOVE DESCRIBED PROPERTY.

Signature of Seller / Agent

Signature of Buyer / Agent

State of AZ, County of Maricopa

State of AZ, County of Maricopa

Subscribed and sworn to before me on this 8 day of Sep 2014

Subscribed and sworn to before me on this 8 day of Sep 2014

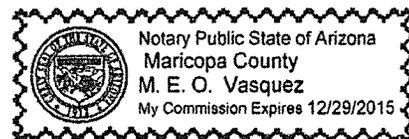
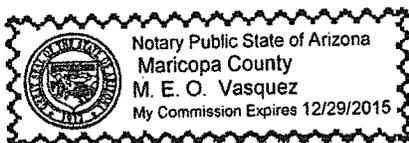
Notary Public

Notary Public

Notary Expiration Date 12-29-15

Notary Expiration Date 12-29-15

DOR FORM 82162 (4/2014)



**ORDER NO. : 4711005355-PC**

**EXHIBIT A**

Lots 1 through 20 and Tracts A and B, of CORONADO COMMONS, according to Book 1173 of Maps, page 46, Official Records of Maricopa County, Arizona.

OLD REPUBLIC TITLE AGENCY

47115355-13-5-5--  
Hoyp

When recorded return to:

Account Servicing Department  
Grand Canyon Title Agency, Inc.  
2720 East Camelback Road, Suite 100  
Phoenix, Arizona, 85016

4711005355

4 of 4

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** is made as of 09/08/2014, by SRM I-Phoenix, LLC, an Arizona limited liability company, whose mailing address is 9302 South Willow Drive, Tempe, AZ 85284, as trustor (jointly and severally, if more than one, the "Trustor"), Joe Riley, an unmarried man, whose mailing address is 2947 W. McDowell Road, Phoenix, AZ 85009, as beneficiary (the "Beneficiary"), and GRAND CANYON TITLE AGENCY, INC., whose mailing address is 2720 East Camelback Road, Suite 100, Phoenix, Arizona 85016, as trustee (the "Trustee").

1. **GRANT IN TRUST.** For the purpose of securing payment and performance of the Obligations defined in Section 2, the Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to the Trustee, in trust for the benefit of the Beneficiary, with power of sale, all estate, right, title and interest that the Trustor now has or may later acquire in and to the real property located in the County of Maricopa, State of Arizona, as described in Schedule A attached to this Deed of Trust (the "Land"), together with:

- A. All existing or subsequently erected buildings, structures and improvements on the Land (the "Improvements");
- B. All appurtenances, rights of way and easements used in connection with the Land;
- C. All water and water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) used in connection with the Land and all shares of stock evidencing the same;
- D. All existing and future leases and any guaranties of such leases;
- E. All pumping stations, engines, pipes and ditches;
- F. All oil, gas, geothermal and other mineral rights, if any, in or pertaining to the Land, and all royalty, leasehold or other rights of the Trustor pertaining to such mineral rights;
- G. All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and the Improvements, including, without limitation, all gas, electric, cooking, heating, cooling, air conditioning, refrigeration and plumbing fixtures and equipment;

H. All maps, plans, specifications, surveys, reports, data and drawings, all governmental applications, permits and licenses, accounts, general intangibles, and all contracts and agreements of the Trustor relating to the Land and the Improvements, including, without limitation, architectural, structural, mechanical and engineering plans and specifications, studies, data and drawings prepared for or related to the development of the Land or the construction, renovation or restoration of any of the Improvements or the extraction of minerals, sand, gravel or other valuable substances from the Land;

I. Any and all substitutions and replacements of the foregoing, accessions thereto, and all proceeds of the foregoing (including, without limitation, insurance and condemnation proceeds relating to the foregoing or any adjacent real property now or previously owned by Trustor), whether now existing or later acquired.

All property described in this Section 1 is herein called the "Property".

2. **OBLIGATIONS SECURED.** The Trustor has granted, conveyed, transferred and assigned its interest in the Property to the Beneficiary for the purpose of securing:

A. The payment of all indebtedness evidenced by the Trustor's promissory note of even date herewith, payable to the order of the Beneficiary in the principal amount of \$1,334,247.00, as it may be modified, extended, renewed, restated or amended from time to time, together with all refinancings, substitutions and renewals thereof (the "Note").

B. The payment, observance and performance of all obligations to be paid, observed or performed by the Trustor under the Loan Documents, including without limitation all monies expended or advanced by Beneficiary pursuant to the terms hereof, or to preserve any right of Beneficiary hereunder, or to protect or preserve the Property or any part thereof. The "Loan Documents" are collectively the Note, this Deed of Trust, any loan agreement, any security agreement, any guaranty, as applicable, and any other agreement, instrument or document heretofore, now or hereafter executed by the Trustor in connection with the lending transactions contemplated hereby.

C. The payment, observance and performance of all other obligations and liabilities of the Trustor to the Beneficiary, whether such other obligations and liabilities are: (i) now existing or hereafter incurred or created; (ii) voluntary or involuntary; (iii) due or not due; (iv) absolute or contingent; or (v) incurred directly or acquired by the Beneficiary by assignment or otherwise. However, such other obligations and liabilities shall not include consumer indebtedness unless otherwise agreed in writing. Consumer indebtedness shall mean "consumer credit" subject to the disclosure requirements of the federal Truth in Lending Act and the regulations issued pursuant to that Act.

All obligations referred to in this Section 2 are herein called the "Obligations".

3. **PERFORMANCE OF OBLIGATIONS.** The Trustor shall promptly pay and perform each Obligation in accordance with its terms.

4. **ASSIGNMENT OF RENTS.**

A. Assignment. The Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to the Beneficiary all rents, royalties, issues, profits, revenue, income and proceeds of the Property,

whether now due, past due or to become due, including all prepaid rents and security deposits (collectively, the "Rents"). This is an absolute assignment, not an assignment for security only.

B. License. The Trustor reserves a license to collect and retain the Rents as they become due and payable, so long as no Event of Default (as defined in Section 18) shall exist and be continuing. If an Event of Default has occurred and is continuing, the Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this license without notice to or demand upon the Trustor, and without regard to the adequacy of the Beneficiary's security under this Deed of Trust. After the termination of this license, any Rents received by the Trustor shall be held in trust by the Trustor for the benefit of the Beneficiary, and the Trustor shall promptly pay the Rents over to the Beneficiary.

C. Collection and Application of Rents. Subject to the license reserved to the Trustor in Subsection 4.B, the Beneficiary has the right, power and authority to collect any and all Rents. The Trustor hereby irrevocably appoints the Beneficiary as its attorney-in-fact, with full power of substitution, to perform any and all of the following acts, if and at the times when the Beneficiary in its sole discretion may so choose:

- (1) Demand, receive and enforce payment of any and all Rents; or
- (2) Give receipts, releases and satisfactions for any and all Rents; or
- (3) Sue either in the name of the Trustor or in the name of the Beneficiary for any and all Rents.

The appointment granted herein shall be deemed to be a power coupled with an interest. The Beneficiary's right to the Rents does not depend on whether or not the Beneficiary takes possession of the Property as permitted by this Deed of Trust. In the Beneficiary's sole discretion, it may choose to collect Rents either with or without taking possession of the Property. If an Event of Default occurs while the Beneficiary is in possession of all or part of the Property and is collecting Rents as permitted by this Deed of Trust, the Beneficiary, the Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted in this Deed of Trust.

D. The Beneficiary Not Responsible. Under no circumstances shall the Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not the Beneficiary, in person or by agent, takes actual possession of the Property, the Beneficiary is not and shall not be deemed to be: (1) a "mortgagee in possession" for any purpose; (2) responsible for performing any of the obligations of the lessor under any lease of all or part of the Property; (3) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or (4) liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of the Property.

## 5. SECURITY AGREEMENT.

A. Grant of Security Interest. Some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents now or hereafter constitutes personal property or fixtures, the Trustor, as debtor, grants to the Beneficiary, as secured party, a security interest in all such Property and Rents, to secure payment and performance of the Obligations.

This Deed of Trust constitutes a security agreement under the Arizona Uniform Commercial Code, covering all such Property and Rents.

B. Financing Statement. The Trustor authorizes Beneficiary to file one or more financing statements and such other documents as the Beneficiary may from time to time require to perfect or continue the perfection of the Beneficiary's security interest in any Property or Rents. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

C. Uniform Commercial Code Remedies. The Beneficiary may exercise any or all of the remedies granted to a secured party under the Arizona Uniform Commercial Code.

D. Disposition Upon Default. Upon the occurrence of an Event of Default, the Beneficiary may dispose of any personal property separately from the sale of real property, in any manner permitted by Chapter 9 of the Arizona Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Obligation for purposes of A.R.S. Section 33-813, as amended or recodified from time to time. In its discretion, the Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by the Arizona Uniform Commercial Code. The Trustor agrees that such a sale of personal property, together with real property, constitutes a commercially reasonable sale of the personal property.

6. **FIXTURE FILING AND CONSTRUCTION MORTGAGE.** This Deed of Trust constitutes a financing statement filed as a fixture filing under the Arizona Uniform Commercial Code, covering any property which now is or later may become fixtures attached to the real property covered by this Deed of Trust. This Deed of Trust is also a "construction mortgage" as defined in the Arizona Uniform Commercial Code, to the extent it secures an obligation incurred for the construction of an Improvement on the Land (including the acquisition cost of such Land) or the refinancing of an obligation incurred for the construction of an Improvement on such Land (including the acquisition cost of such Land).

7. **REPRESENTATIONS AND WARRANTIES.** The Trustor represents and warrants as follows:

A. Priority. Unless otherwise consented to by the Beneficiary, the lien granted by this Deed of Trust now does and hereafter will constitute a lien of first priority.

B. Ownership. The Trustor is, and, as to Property acquired by it from time to time after the date hereof, the Trustor will be, the owner of all of the Property free from any encumbrances other than the Beneficiary's lien thereon, and the Trustor shall defend the Property against any and all claims and demands of all persons at any time claiming any interest therein in any manner materially adverse to the Beneficiary.

C. Power. The Trustor has full power and authority and legal right to grant a lien in the Property and to assign the Rents pursuant to this Deed of Trust.

D. Consents. No consent of any other party (including, without limitation, creditors of the Trustor) and no consent, authorization, approval, or other action by, and no notice to or filing with, any governmental authority is required either (1) for the grant of a lien in the Property pursuant to this Deed of Trust

or for the execution, delivery or performance of this Deed of Trust by the Trustor or (2) for the exercise by the Beneficiary of the rights provided for in this Deed of Trust.

8. **PROTECTION OF THE PROPERTY; INSPECTIONS.** The Trustor will take reasonable efforts in good faith, at all times, to protect the Property against damage or loss. The Trustor shall maintain, keep and preserve the Property in good condition and repair, shall not commit or permit waste of the Property and shall not remove, demolish or substantially alter any of the Improvements. The Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property and the Improvements. The Beneficiary or its agent may make reasonable entries upon the Property and may make inspections and tests of the Property as the Beneficiary deems appropriate to determine the Trustor's compliance with this Deed of Trust. Any inspections or tests made by the Beneficiary shall be for the Beneficiary's purposes only and shall not be construed to create any responsibility or liability on the part of the Beneficiary to the Trustor or to any other person.

9. **INSURANCE.** The Trustor will also insure the Property against such hazards and in such amounts as the Beneficiary may require, under policies containing endorsements naming the Beneficiary as loss payee and prohibiting any cancellation or material revision in such policies without 30 days' prior written notice to the Beneficiary. This Deed of Trust constitutes (and the Trustor acknowledges receipt of) written notice to the Trustor that the accommodations made available to the Trustor by the Beneficiary is not conditioned on the requirement that the Trustor procure insurance from any insurance company designated by the Beneficiary. However, such insurance policies shall be written by insurance companies acceptable to the Beneficiary.

10. **DAMAGES AND INSURANCE AND CONDEMNATION PROCEEDS.** The Trustor absolutely and irrevocably assigns to the Beneficiary, all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use that affects all or part of the Property or any interest in it or any adjacent real property that Trustor now owns or previously owned, all amounts held in any accounts relating to any previous or pending condemnation, and all proceeds of any insurance policies payable because of loss sustained to all or part of the Property. The Trustor shall immediately notify the Beneficiary in writing if any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property. If the Beneficiary chooses to do so, it may in its own name appear in or prosecute any action or proceeding with respect to injury or loss to all or part of the Property, and it may make any compromise or settlement of such action or proceeding. The Trustor hereby appoints the Beneficiary as its attorney-in-fact, with full power of substitution, to perform the foregoing acts. The appointment granted herein shall be deemed to be a power coupled with an interest. The Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join the Trustor in adjusting any loss covered by insurance. All proceeds of such awards of damages, condemnation and other compensation and insurance proceeds shall be paid to the Beneficiary. Any such proceeds received by the Trustor shall be held in trust by the Trustor for the benefit of the Beneficiary, and the Trustor shall promptly pay the proceeds over to the Beneficiary. The Beneficiary shall apply those proceeds first toward reimbursement of all of the Beneficiary's costs and expenses of recovering the proceeds, including attorneys' fees and costs. The remaining proceeds shall either be applied to the reduction of the Obligations or to the repair or restoration of the Property, as the Beneficiary may elect. If the Beneficiary elects to apply the proceeds to restoration or repair, the Trustor shall repair or replace the damaged or destroyed Property in a manner satisfactory to the Beneficiary.

11. **TAX AND OTHER LIENS.** The Trustor shall pay promptly when due all taxes, assessments and governmental charges or levies imposed upon the Property, all utility charges for the Property and all claims (including claims for labor, materials and supplies) against the Property, except to the extent the validity thereof is

being contested in good faith and the Trustor provides the Beneficiary with such cash deposit, surety bond or other security satisfactory to the Beneficiary that is sufficient to discharge the contested tax, assessment, charge, levy or claim.

12. **EXPENDITURES BY THE BENEFICIARY.** If the Trustor fails to comply with any provision of this Deed of Trust, or if any action or proceeding is commenced that would materially affect the Beneficiary's interests in the Property, the Beneficiary on the Trustor's behalf may, but shall not be required to, take any action that the Beneficiary deems appropriate. Any amount that the Beneficiary expends in so doing shall be payable on demand, shall be secured by this Deed of Trust and shall bear interest at the highest rate charged under any of the Obligations from the date incurred or paid by the Beneficiary to the date of repayment by the Trustor.

13. **FURTHER ASSURANCES.** The Trustor agrees that at any time and from time to time at its expense, the Trustor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that the Beneficiary deems appropriate or advisable, in order to preserve and protect the lien granted in this Deed of Trust or to enable the Beneficiary to exercise and enforce its rights and remedies under this Deed of Trust.

14. **IMPOUNDS.** Upon demand by the Beneficiary, the Trustor will pay monthly to the Beneficiary an amount equal to 1/12th of the estimated annual cost of taxes, assessments and hazard and other required insurance premiums on the Property. The accumulated funds will be applied by the Beneficiary to the payment of such taxes, assessments and insurance premiums. If there are not sufficient accumulated funds to pay such taxes, assessments and insurance premium as they become due, the Trustor shall, upon demand, immediately pay the amount necessary to make up such deficiency. No interest will be paid on the accumulated funds by the Beneficiary to the Trustor, unless otherwise required by applicable law. Upon an Event of Default, the Beneficiary may apply the accumulated funds to the Obligations in whatever order the Beneficiary elects. However, no such application of the accumulated funds shall cure an Event of Default.

15. **HAZARDOUS SUBSTANCES.** The Trustor has no knowledge of the presence, use, disposal, storage or release of any Hazardous Substances on or in the Property, whether by the Trustor or any prior owners or occupants of the Property. The Trustor shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Substances on or in the Property, except as permitted by Environmental Law. The Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The Trustor shall promptly give the Beneficiary written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which the Trustor has knowledge. If the Trustor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, the Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law. "Hazardous Substances" means those substances defined as toxic or hazardous substances by Environmental Law, together with gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. "Environmental Law" means federal, state and local laws, regulations and ordinances that relate to health, safety or environmental protection. The Trustor agrees to indemnify, protect, defend and hold the Beneficiary harmless for, from and against any and all expenses, damages and costs and consequential damages incurred by the Beneficiary, including, without limitation, attorneys' fees and costs, as a result of any Hazardous Substances on the Property or the failure of the Property to comply with any Environmental Law, even if such expenses, damages and costs shall be incurred by the Beneficiary after acquisition of the Property by the Beneficiary or a purchaser through foreclosure, Trustee's sale or deed in lieu of foreclosure. The foregoing indemnification and hold harmless provision shall survive payment in full of the Obligations.

16. **SUBSTITUTION OF THE TRUSTEE.** From time to time, the Beneficiary may remove the Trustee and appoint a successor Trustee to any Trustee appointed under this Deed of Trust. A Notice of Substitution of the Trustee shall be executed and recorded in accordance with applicable law.

17. **TRANSFER OF PROPERTY.** A "Transfer" means any sale, contract to sell, conveyance, encumbrance, lease or other transfer of all or any material part of the Property or any right, title or interest in the Property, whether voluntary, involuntary, by operation of law or otherwise. If the Trustor is a corporation, a "Transfer" also means any transfer or transfers of shares constituting, in the aggregate, more than twenty percent (20%) of the voting power. If the Trustor is a partnership, a "Transfer" also means withdrawal or removal of any general partner, dissolution of the partnership under applicable law, or any transfer or transfers of, in the aggregate, more than twenty percent (20%) of the partnership interests. The Trustor acknowledges that the Beneficiary is entering into the transactions constituting the Obligations in reliance on the expertise, skill and experience of the Trustor. Thus, the Obligations include material elements similar in nature to a personal service contract. In consideration of the Beneficiary's reliance, the Trustor agrees that the Trustor shall not make any Transfer, unless the transfer is preceded by the Beneficiary's express written consent to the particular transaction and transferee. The Beneficiary may withhold such consent in its sole discretion. If any Transfer occurs, the Beneficiary in its sole discretion may declare all of the Obligations to be immediately due and payable, and the Beneficiary and the Trustee may invoke any rights and remedies provided in this Deed of Trust or by applicable law.

18. **EVENTS OF DEFAULT.** As used in this Deed of Trust, the term "Event of Default" has the meaning given to it in the Note and the other Loan Documents, as applicable, or, if the Obligations are not evidenced by a Note or Loan Documents, the term "Event of Default" means the failure of the Trustor to pay, observe or perform any obligation on the part of the Trustor to be paid, observed or performed described in Section 2 of this Deed of Trust.

19. **REMEDIES.** At any time after an Event of Default, the Beneficiary shall be entitled to invoke any and all rights and remedies described in this Section or permitted by applicable law. All such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

A. The Beneficiary may declare any or all of the Obligations to be due and payable immediately. However, all of the Obligations shall automatically be due and payable in full if a voluntary or involuntary petition shall be filed by or against the Trustor under the United States Bankruptcy Code or similar statute, or a receiver, trustee, assignee for the benefit of creditors or other similar official shall be appointed to take possession, custody or control of the properties of the Trustor.

B. The Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

C. To the extent permitted by applicable law, the Beneficiary, in person, by agent or by court appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that the Beneficiary in its sole discretion may consider necessary and appropriate to protect the security of this Deed of Trust.

D. The Beneficiary may request the Trustee to exercise the power of sale granted in this Deed of Trust. Before any Trustee's sale, the Beneficiary or the Trustee shall give such statement of breach or nonperformance and notice of sale as may then be required by applicable law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, the Trustee

shall sell the Property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither the Trustee, nor the Beneficiary, shall have any obligation to make demand on the Trustor before any Trustee's sale. From time to time in accordance with then applicable law, the Trustee may, and in any event at the Beneficiary's request shall, postpone any Trustee's sale by public declaration at the time and place noticed for that Trustee's sale, unless otherwise required by applicable law. At any Trustee's sale, the Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States. The Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property being sold without any covenant or warranty whatsoever, express or implied. Any such deed shall be conclusive evidence in favor of purchasers or encumbrancers for value and without notice, that all requirements of law were met relating to the exercise of the power of sale and the Trustee's sale of the Property conveyed by such deed. Knowledge of the Trustee shall not be imputed to the Beneficiary. At any Trustee's sale, any person, including the Trustor, the Trustee or the Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for that Property, the Beneficiary shall have the benefit of any law permitting credit bids. The Beneficiary and the Trustee shall apply the proceeds of any Trustee's sale in the following manner: (1) to pay all costs and expenses of exercising the power of sale and of sale, including, without limitation, the Trustee's fees and attorneys' fees and costs actually incurred; (2) to pay the Obligations secured by this Deed of Trust; and (3) to remit the remainder, if any, to the person or persons entitled to it or to the clerk of the Superior Court of the county in which the sale took place.

E. The Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property or to obtain specific enforcement of any of the covenants or agreements in this Deed of Trust. If the Beneficiary brings such an action, the Trustor agrees to pay the Beneficiary's attorneys' fees and costs as set by the court (and not a jury) and court costs.

F. The Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Deed of Trust, including, without limitation, attorneys' fees and costs and costs of title evidence.

20. **REINSTATEMENT.** In the event of reinstatement of the Obligations secured by this Deed of Trust in accordance with applicable law after an Event of Default, the Trustee shall record a Cancellation of Notice of Sale. Reinstatement after an Event of Default shall not constitute a waiver of any Event of Default then existing or subsequently occurring, nor impair the right of the Beneficiary to declare other Events of Default or the right to cause the Trustee to record a Notice of Sale, nor otherwise affect this Deed of Trust or any other instrument or document relating to the Obligations or any of the rights, obligations or remedies of the Beneficiary or the Trustee in this Deed of Trust or any other instrument or document relating to the Obligations.

21. **TIME OF ESSENCE.** Time is of the essence in each provision of this Deed of Trust.

22. **NO WAIVER.** No failure on the part of the Beneficiary to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Beneficiary or any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

23. **NOTICES.** Unless otherwise required by applicable law, any notices or consents required or permitted by this Deed of Trust shall be in writing and shall be deemed delivered if delivered in person or if sent by certified mail, postage prepaid, return receipt requested, overnight courier or by fax, to the Trustor or the Beneficiary at the addresses set forth above.

24. **APPLICABLE LAW.** The laws of the State of Arizona shall govern the construction of this Deed of Trust and the rights and remedies of the parties hereto.

25. **BINDING EFFECT AND ENTIRE AGREEMENT.** This Deed of Trust shall inure to the benefit of, and shall be binding on, the Beneficiary and its successors and assigns and the Trustor and its heirs, personal representatives, successors and permitted assigns. This Deed of Trust, together with all other documents evidencing or securing the Obligations, constitutes the entire agreement between the Beneficiary and the Trustor.

26. **AMENDMENTS; CONSENTS.** No amendment, modification, supplement, termination, or waiver of any provision of this Deed of Trust, and no consent to any material departure by the Trustor therefrom, may in any event be effective unless in writing signed by the Beneficiary, and then only in the specific instance and for the specific purpose given.

27. **SEVERABILITY.** If any provision of this Deed of Trust shall be held invalid under any applicable law, such invalidity shall not affect any other provision of this Deed of Trust that can be given effect without the invalid provision, and, to this end, the provisions of this Deed of Trust are severable.

28. **INDEMNIFICATION.** Trustor hereby protects, indemnifies and saves harmless Beneficiary, its officers, directors, agents, representatives and employees, from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses whether or not litigation has been commenced and in all trial, bankruptcy and appellate proceedings) imposed upon, incurred by, or asserted against Beneficiary or any of such persons by reason of (a) ownership of any interest in the Property or any part thereof, (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (c) any use, disuse or condition of the Property or any part thereof, or the adjoining sidewalks, curbs, vaults and vault space, if any, or any streets or ways, (d) any failure on the part of Trustor to perform or comply with any of the terms hereof or of the Loan Documents, or any inaccuracy in any representation or warranty made by Trustor herein or in the Loan Documents, (e) any defense of the right, title or interest conveyed by this Deed of Trust, (f) the performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (g) any subsidence or erosion of any part of the surface of the Property, including any shoreline or any bank of any river, stream, creek, canal, lake, ocean or other water source, or (h) the location or existence of asbestos or any toxic or hazardous waste, chemicals, materials or substance on, at, in or under the Property or any part thereof. If any action, suit or proceeding is brought against Beneficiary, or any of its officers, directors, agents, representatives or employees, for any such reason, Trustor, upon the request of any such individual or entity, shall at Trustor's expense, cause such action, suit or proceeding to be resisted and defended by counsel satisfactory to Beneficiary or such individual or entity. Any amounts payable to an indemnified person under this Section which are not paid within ten (10) days after written demand therefor shall bear interest at the Default Interest Rate from the date of such demand, and such amounts, together with such interest, shall be indebtedness secured by this Deed of Trust. The obligations of Trustor under this Section shall survive any defeasance of the Deed of Trust.

29. **ESTOPPEL AFFIDAVITS.** Trustor, within ten (10) days after the date of a written request from Beneficiary, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby, and stating whether or not any offsets or defenses exist against the obligations of Trustor to pay such principal and interest.



SRM I-Phoenix, LLC

By: [Signature]  
Name: Mike Smith  
Its: Partner  
"Trustor"

STATE OF ARIZONA )  
 )  
:ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of Sept, 2014, by Mike Smith, the Partner of SRM I-Phoenix, LLC, an Arizona limited liability company, on behalf of the company.

My Commission Expires:  
\_\_\_\_\_

[Signature]  
NOTARY PUBLIC



**PATRICIA CASILLAS**  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

SCHEDULE A

To Deed of Trust, Assignment of Rents,  
Security Agreement and Fixture Filing

Legal Description of the Land:

**ORDER NO. : 4711005355-PC**

**EXHIBIT A**

Lots 1 through 20 and Tracts A and B, of CORONADO COMMONS, according to Book 1173 of Maps, page 46, Official Records of Maricopa County, Arizona.

OLD REPUBLIC TITLE AGENCY

47  
Ho

WHEN RECORDED RETURN TO:

Ryan Muzzarelli  
1817 N. 3<sup>rd</sup> Street **S-100**  
Suite S-100  
Phoenix, Arizona 85004  
**4711005355**

**2 of 4**

ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS

**THIS ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS** ("Assignment") is made as of the 8th day of September, 2014, by **CORONADO COMMONS PHX, LLC, LLC**, an Arizona limited liability company ("Assignor"), and **SRM I - PHOENIX, LLC**, an Arizona limited liability company ("Assignee").

**RECITALS**

A. Assignor and Assignee are parties to that certain Purchase and Sale Agreement between the parties (the "Agreement"), whereby Assignor agreed to sell and Assignee agreed to purchase all of Assignor's right, title, and interest in and to certain real property located in Maricopa County, Arizona, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. WHEREAS, in connection with the conveyance of the Property from Assignor to Assignee, Assignor and Assignee desire that Assignor shall assign to Assignee, and Assignee shall assume from Assignor, any rights to act as "Declarant" (the "Rights") under that certain Declaration of Covenants, Conditions and Restrictions for Coronado Commons recorded on February 14, 2014, as Document Number 2014-0099139, Official Records of the Maricopa County Recorder (the "Declaration"), and as further amended on today's date, September 8, 2014, without warranting the existence, scope, character, assignability, or duration of said Rights.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Assignor hereby assigns to Assignee all Rights of "Declarant" that Assignor has under the Declaration. The foregoing assignment is made without any covenants, representations or warranties with respect to such rights and powers or whether Assignor owns or has any particular rights or powers.

2. Assignee hereby accepts the foregoing assignment and assumes all such rights, powers and obligations Assignor may have as "Declarant" under the Declaration, first arising from and after the date of this Assignment. Assignor shall indemnify and hold Assignee harmless

from and against any and all claims and liabilities, costs and attorney's fees, suffered or incurred by Assignee by reason of the failure of Assignor to perform and comply with the obligations, liabilities, duties of the "Declarant" and covenants and agreements contained in the Declaration that accrued or arose out of events occurring prior to the date hereof. Assignee hereby agrees to indemnify and hold Assignor harmless against all such obligations to be observed and performed under by "Declarant" under the Declaration with respect to the Property after the date of this Assignment and all costs, expenses, payments, liabilities, claims, demands, actions, judgments, losses and fees (including, without limitation, attorneys' fees) at any time and from time to time paid, suffered, incurred or sustained by Assignor by reason of, or in connection with or arising out of any such obligations assumed under the Declaration shall be paid by Assignee.

3. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

4. This Assignment shall be construed and enforced in accordance with the laws of the State of Arizona.

5. Each of the parties signing this Assignment hereby warrants, and represents that it has the full legal power, authority and right to execute, deliver and perform the obligations under this Assignment, that this Assignment has been duly authorized by all requisite actions on the part of such warranting party, and that no remaining action or third party action is required to make this Assignment binding upon such party.

6. This Assignment may be executed <sup>Unofficial Document</sup> in any number of counterparts, each of which, when so executed and when delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument. Copies of this executed Assignment shall be fully enforceable as originals.

***[Remainder of page intentionally left blank - Signatures appear on the following pages.]***

**CORONADO COMONS PHX, LLC., an  
Arizona limited liability company**

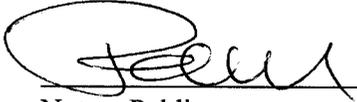
**By: JAG Development LLC., an  
Arizona limited liability company  
Its: Manager**

By:   
Its: Member

By:   
Its: Member

STATE OF ARIZONA }  
 } ss.  
COUNTY OF MARICOPA }

The foregoing instrument was acknowledged before me 8th day of September, 2014 by ALLAN R. GUTKIN, the member of JAG Development LLC., an Arizona limited liability company, the manager of CORONADO COMONS PHX, LLC., an Arizona limited liability company

  
\_\_\_\_\_  
Notary Public



**PATRICIA CASILLAS**  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

My commission expires: 3/15/15

STATE OF ARIZONA }  
 } ss.  
COUNTY OF MARICOPA }

The foregoing instrument was acknowledged before me this 8th day of September, 2014 by BENJAMIN Z. GUTKIN, the member of JAG Development LLC., an Arizona limited liability company, the manager of CORONADO COMONS PHX, LLC., an Arizona limited liability company

  
\_\_\_\_\_  
Notary Public

Unofficial Document



**PATRICIA CASILLAS**  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

My commission expires: 3/15/15

**IN WITNESS WHEREOF**, Assignee has caused this Assignment and Assumption of Declarant's Rights to be effective as of the date first written above.

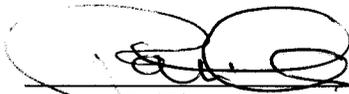
**ASSIGNEE:**

**SRM I - PHOENIX, LLC**, an Arizona limited liability company, by and through its 3 Managers:

By:   
Print Name: Ryan Muzzarelli  
Its: Manager

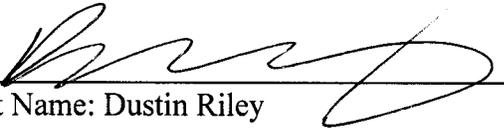
STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

The foregoing Assignment and Assumption<sup>Unofficial Document</sup> of Declarant's Rights was acknowledged before me this 8th day of September, 2014, by Ryan Muzzarelli, the Manager of **SRM - I - PHOENIX, LLC**, an Arizona limited liability company, on behalf thereof.

  
Notary Public

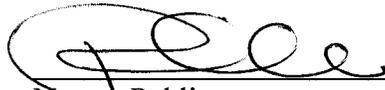
My Commission Expires:

 **PATRICIA CASILLAS**  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

By:   
Print Name: Dustin Riley  
Its: Manager

STATE OF ARIZONA        )  
                                      ) ss.  
County of Maricopa        )

The foregoing Assignment and Assumption of Declarant's Rights was acknowledged before me this 8th day of September, 2014, by Dustin Riley, the Manager of **SRM - I - PHOENIX, LLC**, an Arizona limited liability company, on behalf thereof.

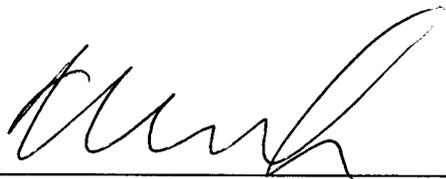
  
\_\_\_\_\_  
Notary Public

My Commission Expires:

Unofficial Document

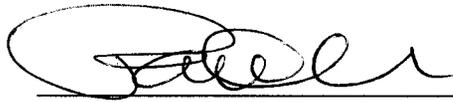


**PATRICIA CASILLAS**  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

By:   
Print Name: Michael W. Smith  
Its: Manager

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

The foregoing Assignment and Assumption of Declarant's Rights was acknowledged before me this 8th day of September, 2014, by Michael W. Smith, the Manager of **SRM – I - PHOENIX, LLC**, an Arizona limited liability company, on behalf thereof.

  
Notary Public

My Commission Expires:

Unofficial Document



**PATRICIA CASILLAS**  
Notary Public—Arizona  
Maricopa County  
Expires 03/15/2015

**Exhibit "A"**

**TO ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS**

Legal Description of Property

**Coronado Commons**

Lots 1 through 20, inclusive and Tracts A, B, and C, CORONADO COMMONS, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1173 of Maps, Page 46.

Unofficial Document