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**CONDOMINIUM DECLARATION**

**FOR**

**WOODSHIRE ON BUTLER CONDOMINIUMS**

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**CONDOMINIUM DECLARATION  
FOR  
WOODSHIRE ON BUTLER CONDOMINIUMS**

THIS CONDOMINIUM DECLARATION FOR WOODSHIRE ON BUTLER CONDOMINIUMS (this "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2021, by WOODSHIRE ON BUTLER LLC, an Arizona limited liability company (the "**Declarant**").

**ARTICLE 1**

**DEFINITIONS**

As used in this Declaration, the terms defined in this Article shall have meanings specified in this Article. Capitalized terms used in this Declaration but not otherwise defined in this Declaration shall have the meanings specified for such terms in A.R.S. §33-1201, et seq., as amended and supplemented from time to time.

**1.1 "Additional Property"** means the real property described on Exhibit A-1 attached hereto.

**1.2 "Articles"** means the Amended and Restated Articles of Incorporation of the Association, as amended from time to time.

**1.3 "Assessments"** means the Regular Assessments, Special Assessments, and Reimbursement Assessments levied pursuant to Article 9.

**1.4 "Assessment Lien"** means the lien granted to the Association by the Condominium Act to secure the payment of Assessments, monetary penalties and other fees and charges owed to the Association.

**1.5 "Association"** means WoodShire on Butler Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

**1.6 "Board of Directors" or "Board"** means the Board of Directors of the Association, whether appointed by Declarant during the Period of Declarant Control or elected by the Unit Owners.

**1.7 "Bylaws"** means the Amended and Restated Bylaws of the Association, as amended from time to time.

**1.8 "City"** means the City of Flagstaff, Arizona, a municipal corporation.

**1.9 "Common Elements"** means all portions of the Condominium other than the Units.

**1.10 “Common Expenses”** means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association, together with any allocations to reserves including, without limitation, the cost of maintaining private streets, walkways, landscaping on Common Elements and any landscaping walkways, steps or other items within a Unit that the Association agrees to maintain, any access control mechanisms and the cost of insurance maintained by the Association.

**1.11 “Common Expense Liability”** means the percentage of undivided interests in the Common Expenses allocated to each Unit by Section 2.6.

**1.12 “Condominium”** means the Land, together with the Dwelling Units and all other Improvements located thereon.

**1.13 “Condominium Act”** means A.R.S. §33-1201, et seq., as amended from time to time, or any successor statute which governs the creation and management of condominiums.

**1.14 “Condominium Documents”** means this Declaration and the Articles, Bylaws, and Rules.

**1.15 “Declarant”** means WoodShire on Butler LLC, an Arizona limited liability company, and any successor or assign to whom it may expressly assign any or all of its rights as Declarant under this Declaration by a Recorded instrument, to the extent of such assigned rights.

**1.16 “Declaration”** means this Condominium Declaration for WoodShire on Butler Condominiums, as amended from time to time.

**1.17 “Development Rights”** means any right or combination of rights reserved by or granted to Declarant in this Declaration to do any of the following:

- (a) Add real estate to the Condominium;
- (b) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;
- (c) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;
- (d) Withdraw real estate from the Condominium;
- (e) Make the Condominium part of a larger condominium or planned community;
- (f) Amend the Declaration during the Period of Declarant Control, pursuant to A.R.S. §33-1243(E), to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in this Declaration if the amendment does not adversely affect the rights of any Unit Owner;

(g) Amend the Declaration during the Period of Declarant Control, pursuant to A.R.S. §33-1243(E), to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

**1.18 “Dwelling Unit”** means a single family residence constructed within a Unit.

**1.19 “First Mortgage”** means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

**1.20 “First Mortgagee”** means the holder of any First Mortgage.

**1.21 “Improvement”** means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the Land, including, but not limited to, Dwelling Units, buildings, private streets, paving, fences, walls, sculptures, signs, hedges, plants, trees and shrubs of every type and kind.

**1.22 “Invitee”** means any person whose presence within the Condominium is approved by or is at the request of a particular Owner, Lessee or Occupant, including, without limitation, family members, guests, employees and contractors.

**1.23 “Land”** means the real property described on Exhibit A attached hereto.

**1.24 “Lessee”** means any Person who is the tenant or lessee under a written lease of a Unit.

**1.25 “Limited Common Elements”** means a portion of the Common Elements specifically designated in this Declaration or an amendment to this Declaration as a Limited Common Element and allocated by this Declaration, by Declarant in a subsequent amendment to this Declaration or by operation of law for the exclusive use of one or more but fewer than all of the Units.

**1.26 “Member”** means a Person who is or becomes a member of the Association.

**1.27 “Occupant”** means a person, other than an Owner, in possession of a Unit at the request of or with the consent of the Owner.

**1.28 “Owner” or “Unit Owner”** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is

vested in a trustee pursuant to A.R.S. § 33-801, et seq., the trustor shall be deemed to be the Unit Owner.

**1.29 “Parking Space”** means a portion of the Condominium intended for the parking of a single motor vehicle and shown on the Plat.

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

**1.31 “Person”** means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

**1.32 “Plat”** means the Final Plat of WoodShire on Butler Condominiums recorded in \_\_\_\_\_ in the official records of the County Recorder of Coconino County, Arizona, and any amendments, supplements and corrections thereto and any amendments and restatements thereof.

**1.33 “Purchaser”** means any Person (other than Declarant) who becomes a Unit Owner, except for a Person who purchases a Unit and then leases it to Declarant for use in connection with the marketing or sale of other Units.

**1.34 “Recording”** means placing an instrument of public record in the office of the County Recorder of Coconino County, Arizona and **“Recorded”** means having been so placed of public record.

**1.35 “Regular Assessment”** means the assessment levied against the Units pursuant to Section 9.3.

**1.36 “Reimbursement Assessment”** means an assessment levied by the Association in accordance with Section 9.5.

**1.37 “Rules”** means the rules and regulations adopted by the Board of Directors, as amended from time to time.

**1.38 “Special Assessment”** means any assessment levied pursuant to Section 9.4.

**1.39 “Special Declarant Rights”** means any right or combination of rights reserved by or granted to Declarant in this Declaration to do any of the following:

- (a) Construct Improvements provided for in this Declaration;
- (b) Exercise any Development Right;

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

(d) Use easements through the Common Elements for the purpose of making Improvements within the Condominium or within real estate which may be added to the Condominium;

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

**1.40** “Unit” means a portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5.

**1.41** “Visitor Parking Spaces” has the meaning set forth in Section 3.3.6.

## ARTICLE 2

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

**2.1** Submission of Property. Declarant is the owner of the Land. Declarant hereby submits the Land to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Land shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Land and shall be binding upon and inure to the benefit of Declarant and all Unit Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Condominium, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

**2.2** Name of Condominium; County in Which Condominium is Located; Legal Description. The name of the Condominium created by this Declaration is WoodShire on Butler Condominiums. All portions of the Condominium are located in Coconino County, Arizona. The legal description of the real property included in the Condominium is set forth on Exhibit A attached hereto.

**2.3** Name of Association. The name of the Association is WoodShire on Butler Homeowners’ Association.

**2.4** Identifying Numbers of Units. The Identifying Numbers of the Units are Units 1 through 50 of WoodShire on Butler Condominiums and are shown on the Plat.

**2.5 Unit Boundaries.** The horizontal boundaries of the Units are shown on the Plat. The upper vertical boundary of each Unit is 52 feet above ground level and the lower vertical boundary of each Unit is ten (10) feet below ground level.

**2.6 Allocation of Common Element Interest and Common Expense Liabilities.** Each Unit is allocated a percentage of undivided interests in the Common Elements and in the Common Expenses determined by dividing the numerator of one (1) by the denominator equal to the total number of Units in the Condominium. The percentage interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentage interests. The ownership of each Unit shall not be conveyed separate from the percentage interest in the Common Elements allocated to the Unit. The undivided percentage of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even if the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

**2.7 Allocation of Votes in the Association.** The total votes in the Association shall equal the number of Units in the Condominium. Each Member shall be entitled to one (1) vote for each Unit of which it is the Owner.

**2.8 Description and Allocation of Limited Common Elements.**

**2.8.1** Parking Spaces within the Common Elements may be designated by Declarant as Limited Common Elements allocated to particular Units. The initial designations of Parking Spaces as Limited Common Elements and their allocations to particular Units are set forth on the Plat. Each numbered Parking Space shown on the Plat (labeled on the Plat as "LCE #\_\_") is a Limited Common Element allocated to the correspondingly numbered Unit shown on the Plat. Subsequent designations of Parking Spaces as Limited Common Elements and the Units to which they are allocated shall be by amendment to this Declaration made by Declarant. Parking Spaces labeled on the Plat as "C.E." are Common Elements not allocated to any particular Unit.

**2.8.2** Parking Spaces may be reallocated in accordance with A.R.S. §33-1218(B). During the Period of Declarant Control, no reallocation shall be made without Declarant's prior written approval, and any reallocation approved by Declarant shall be deemed to be reasonable.

**2.8.3** Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his Unit, subject to the rights of Declarant and the Association granted by the Condominium Documents. All Limited Common Elements must be used in accordance with the Condominium Documents.

**2.8.4** As a Development Right, Declarant has the right to create Common Elements or Limited Common Elements within the Condominium which shall include converting Common Elements which are not Limited Common Elements to Limited Common Elements and vice versa. To exercise any such right, Declarant shall prepare, execute and record an amendment to this Declaration which may include a new plat or an amendment to the Plat and shall take such other actions as are required by statute.

**2.9 Access Controls.** Declarant reserves the right, but has no obligation, to install access control mechanisms at the Condominium, which access control mechanisms shall be primarily situated on the Common Elements; provided, however, that if it is necessary or convenient to situate any portion of such access control mechanisms on a Unit(s), Declarant shall have an easement to construct and install same and the Association shall have an easement to maintain, repair and replace same upon, across and under such Unit(s). Each Owner, Lessee and Occupant acknowledges and agrees that any such access control mechanisms do not guarantee the safety or security of the Owners, Lessees or Occupants or their families, guests or invitees or guarantee that no unauthorized person will gain access to the Condominium. Each Owner, Lessee and Occupant, and their families, guests and invitees, acknowledge that the access control mechanisms may restrict or delay entry into, or access within, certain areas by police, fire department, ambulances and other emergency vehicles or personnel and agree to assume the risk that the access control mechanisms will restrict or delay entry into, or access within such areas by police, fire department, ambulances or other emergency vehicles or personnel. Neither Declarant, the Association nor any director, officer, agent or employee of Declarant or the Association shall be liable to Owner, Lessee or Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the existence or non-existence, operation or non-operation or maintenance of the access control mechanisms.

### **ARTICLE 3**

#### **EASEMENTS, RIGHTS AND DEVELOPMENT RIGHTS**

**3.1 Utility Easement.** There is hereby granted and created a non-exclusive easement upon, across and under the Common Elements and the Units for the installation, replacement, repair or maintenance of utility lines and systems, including, but not limited to, natural gas, water, sewer, telephone, electricity, internet and cable television or other communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or Declarant to install and maintain the necessary utility lines, pipes, facilities and equipment on the Common Elements and the Units, but no sewer lines, natural gas lines, electrical lines, water lines, or other utility or service lines or facilities may be installed or located on the Common Elements or the Units except as initially constructed or approved by Declarant during the Period of Declarant Control or by the Board of Directors after the Period of Declarant Control. This easement shall in no way affect any other recorded easements on the Common Elements.

**3.2 Easements for Ingress and Egress.** There is hereby granted and created non-exclusive easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths and walks, that from time to time may exist upon the Common Elements. There is also granted and created a nonexclusive easement for ingress and egress for pedestrian and

vehicular traffic over, through and across private streets and drives and Parking Spaces (subject to the right to exclusive use of Parking Spaces designated as Limited Common Elements in accordance with this Declaration). Such easements shall run in favor of and be for the benefit of the Owners, Lessees, Occupants and Invitees.

### **3.3 Unit Owners' Rights and Easements of Enjoyment.**

**3.3.1** Except as otherwise provided herein, each Owner, Lessee and Occupant shall have a right and non-exclusive easement of enjoyment in and to the Common Elements, which right and easement shall be appurtenant to and shall pass with the title to his Unit, subject to the following provisions:

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

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

(c) The right of the Association to grant non-exclusive easements over all or a portion of the Common Elements.

(d) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to Declarant by Section 3.4.

(e) The right of the Association to suspend the right of an Owner, Lessee or Occupant to use the Common Elements (other than the right of a Unit Owner, Lessee or Occupant to use the private streets within the Common Elements for ingress and egress to and from the Unit owned/occupied by same) for any period during which the Owner, Lessee or Occupant is in violation of any provision of the Condominium Documents.

**3.3.2** Notwithstanding the provisions of Subsection 3.3.1 to the contrary, if a Unit is leased, the Lessee and the members of his family residing with the Lessee shall have the right to use any recreational amenities which are part of the Common Elements during the term of the lease, and the Unit Owner shall have no right to use such recreational amenities until the termination or expiration of the lease.

**3.3.3** Except as otherwise provided herein, the guests of any Owner, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3 may use the Common Elements provided they are accompanied by an Owner, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3. The Board of Directors shall have the right to limit the number of guests who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests to certain specified times.

**3.3.4** The easement of enjoyment in and to the Common Elements shall not be conveyed, transferred, alienated or encumbered separate and apart from a Unit except as

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

**3.3.5** The provisions of this Section 3.3 shall not apply to any of the Limited Common Elements that are allocated to the exclusive use of one or more but less than all of the Units.

**3.3.6** Anything herein to the contrary notwithstanding, the Parking Spaces that are not designated as Limited Common Elements and allocated to Units (the “**Visitor Parking Spaces**”) may be used by the Unit Owners, Occupants and Lessees and their Invitees, provided, however, if a Parking Space is allocated to a Unit as a Limited Common Element, then the Owner, Lessee or Occupant of said Unit shall first park any vehicle belonging to it in said Limited Common Element Parking Space before parking any such vehicle in a Visitor Parking Space.

**3.4 Declarant’s Rights and Easements.**

**3.4.1** Declarant shall have the right and an easement to maintain sales or leasing offices, management offices, storage areas, models and related facilities throughout the Condominium and to maintain one or more marketing, directional or advertising signs, flags or banners on the Common Elements so long as Declarant is marketing Units in the Condominium.

**3.4.2** So long as Declarant is marketing Units in the Condominium for sale or lease, Declarant shall have the right to restrict the use of the Parking Spaces which are not allocated as Limited Common Elements or which are allocated to Units owned by Declarant or an affiliate of Declarant.

**3.4.3** Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over under and across the Common Elements and the Units to erect and construct Dwelling Units and other Improvements including, without limitation, private streets and access controls, and to use the Common Elements and any Units owned by Declarant for construction, warranty, modification or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.

**3.4.4** Declarant reserves and is hereby granted all Development Rights, and all Special Declarant Rights. The real estate to which those rights apply is the real property described on Exhibit A attached hereto and any property added to the Condominium. Declarant and its employees and agents shall have an easement on, over, under and across the Common Elements and Units for the purpose of development of the Condominium or discharging Declarant’s obligations or exercising Declarant’s rights.

**3.5 Units and Common Elements Easement and Rights in Favor of Association.**

**3.5.1** The Units and the Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) For inspection of the Units and Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by Unit Owners, Lessees and Occupants, including, without limitation, of all items of maintenance and repair for which they are responsible.

(b) For inspection, maintenance, repair and replacement of the Common Elements, Limited Common Elements, any improvements which the Association is responsible for maintaining and any portion of any Unit(s) which the Association expressly agrees to maintain.

(c) For correction of conditions (including, without limitation, broken or leaking water pipes, broken hot water heaters or obstructed sewer lines) in one or more Units, Common Elements or Limited Common Elements.

(d) For the purpose of enabling the Association, the Board of Directors or any other committees appointed by the Board of Directors to exercise and discharge their respective rights, powers and duties under the Condominium Documents.

Except in case of emergency, the Association shall only enter a Unit at reasonable times and upon reasonable notice to the Unit Owner or, if the Unit is leased, to the Lessee. In the event of an emergency, the Association may enter a Unit without prior notice to the Unit Owner or the Lessee, but promptly following the Association's entry into the Unit, the Association shall notify the Unit Owner or the Lessee of the nature of the emergency condition which required entry without notice.

**3.6 Easements for Utilities and Maintenance.** On behalf of all Owners, the Association may create and dedicate easements over the Common Elements and Units: (a) for the benefit of all service providers for the installation, repair, replacement and maintenance of sanitary sewers, water, electric, gas and telephone lines and facilities, heating and air-conditioning facilities, internet, cable telephone or master television antenna or satellite lines or cables, and drainage facilities, and for ingress to and egress from the Condominium in connection therewith, and (b) for ingress to and egress from the Condominium for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Condominium and the Owners, Lessees and Occupants including, without limitation, for U.S. Mail distribution and collection and private or municipal refuse collection, without the joinder or consent of any First Mortgagee or other Person. During the Period of Declaration Control, any such easements are subject to the prior written approval of Declarant.

**3.7 Addition of Real Estate to the Condominium.**

**3.7.1** Declarant hereby expressly reserves the right, but not the obligation, to add real estate to the Condominium, without the consent of the Association, any Unit Owner or

any other Person, by annexing and subjecting to this Declaration all or any portion of the Additional Property. Declarant shall exercise its right to add real estate to the Condominium by executing and Recording an amendment to this Declaration (which shall include a new plat if and as required by the Condominium Act) containing the following: (a) a legal description of the portion of the Additional Property being annexed; (b) the number of Units being added by the annexation and the identifying number assigned to each new Unit; (c) if applicable, a description of the Common Elements and Limited Common Elements created and, in the case of Limited Common Elements, a designation of the Unit to which each Limited Common Element is allocated if required by the Condominium Act; and (d) a reallocation to each Unit of a percentage of undivided interests in the Common Elements and in the Common Expenses of the Association and votes which will be calculated as provided in Sections 2.6 and 2.7 above.

**3.7.2** The Additional Property, when and if added to the Condominium, shall be subject to the Condominium Documents.

**3.7.3** Declarant makes no assurances that any of the Additional Property will be added to the Condominium and, if so, as to the exact number of Units which may be added.

## ARTICLE 4

### ARCHITECTURAL REVIEW

**4.1 Review of Proposed Exterior Changes.** No construction, alteration, addition, change, repair or replacement of or to any Dwelling Unit that changes the size, shape, height or configuration of the Dwelling Unit as originally constructed, no change to any equipment located outside of the Dwelling Unit, and no change to any landscaping or anything else within the Unit boundaries that is maintained by the Association (each, a "**Material Change**") is permitted other than by Declarant in its sole and absolute discretion. In addition, no other construction, reconstruction, repair, alteration, addition or change to the exterior of any Dwelling Unit that is not a Material Change (each, a "**Change**") is permitted other than by Declarant, unless complete plans and specifications showing the nature, design, kind, quality, shape, height, materials, color scheme and location of any such Change shall have first been submitted to and approved in writing by the Board. Decisions of the Board in this regard shall be binding and conclusive. The Board of Directors shall approve or disapprove, in writing, all plans within 30 days after submission of all relevant materials and issuance by the Association of a receipt therefor. In the event the Board fails to approve or disapprove same within such 30-day period, approval shall be deemed denied. A majority vote of the Board of Directors, at a meeting at which a quorum is present, is required to approve a proposed Change. The approval of plans and specifications or Change shall not constitute a representation, warranty or guarantee that such plans and specifications or Change comply with proper engineering or design principles, with zoning or building ordinances or with other governmental regulations or restrictions. By approving plans and specifications or a Change, neither the Board nor the members thereof assumes any liability or responsibility therefor, or for any defect in the structure constructed from such plans and specifications.

**4.2 Guidelines.** The Board of Directors may adopt, and may from time to time amend, supplement and repeal, guidelines pertaining to color and building materials, and any

other regulations that may interpret, implement, and supplement this Declaration. The guidelines shall have the same force and effect as the Rules.

**4.3 Inspection.** Any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass, enter on any Unit, after reasonable notice to the Owner of such Unit, in order to inspect the improvements constructed or being constructed on such Unit to ascertain that such improvements have been, or are being built in compliance with the guidelines, plans and specifications approved in accordance with this Article and this Declaration; provided, however, such officer, director, employee or agent does not have the right to enter a Dwelling Unit for the foregoing purposes without the permission of the Owner thereof.

**4.4 Fee.** The Association may establish a reasonable processing fee to defer the costs of the Board in considering any requests for approvals submitted to the Board.

**4.5 Architectural Committee.** The Board, in its discretion, may establish an architectural committee to perform some of the duties set forth in this Article 4 and shall appoint the members of such committee.

## ARTICLE 5

### DEVELOPMENT STANDARD AND RESTRICTIONS

**5.1 Type, Size and Placement of Primary Dwelling Unit.** No structure of any kind whatsoever other than one single family residence of Building Type "A" or Building Type "B" (the footprints of which are shown on the Plat) shall be built within any Unit. Said residence shall consist of not less than 900 sq. ft. of enclosed living area. Any residence may be of split-level design or two-story design, but shall not exceed 35 feet in height from ground level. The height and location of any structure shall be designed and located so as to preserve the views and privacy of adjoining Units. All structures and improvements built on a Unit shall be of new construction and no structure shall be moved from any other location onto a Unit, and shall comply with all applicable laws and regulations including zoning and building ordinances and other governmental regulations and restrictions.

**5.2 Building Setbacks.** The front, rear and side setbacks shall conform to all applicable laws, ordinances, regulations and applicable plat(s).

**5.3 Exterior Surfaces.** Any structure constructed on a Unit shall have siding of wood, brick, stucco, glass, rock, stone or combinations thereof and follow architectural guidelines and combustible material standards. The Board of Directors must give prior written approval of the exterior color before it is applied or changed. Exterior colors must be earth tone colors.

**5.4 Roofs.** All roofing material shall be Class A roof as defined by the Uniform Building Code limited to either metallic, fiberglass or composition shingles. The Board must give written approval of the plan and color before initial installation or subsequent replacement.

**5.5 No Garages or Driveways.** There shall be no garage or driveway within any Unit.

**5.6 Utilities.** Unless prohibited by law or the nature of the service to be rendered, all gas, electric, power, telephone, internet, water, sewer, cable television and other utility service lines and equipment of any kind or character, shall be placed and kept underground up to the walls of a Dwelling Unit. However, the Declarant shall not be prohibited from erecting temporary power or telephone structures incident to construction. The foregoing shall not prohibit service pedestals and above-ground switch cabinets and transformers, where required.

**5.7 Drainage.** There shall be no interference with the established drainage pattern over any property unless approved by the Board of Directors or unless adequate provision is made for proper drainage conforming to applicable city and county rules, regulations, ordinances and drainage criteria. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Land is completed, or which is shown on any plans conforming to applicable rules, regulations, ordinances, and applicable drainage criteria.

**5.8 Temporary Structures, Mobile Homes, Etc.** No manufactured or prefabricated home or mobile home and no prefabricated shed shall be permitted or placed on any Unit or anywhere else on the Land. No structure of a temporary character, including but not limited to a house trailer, tent, shack, temporary garage, or outbuilding shall be placed or erected on any Unit.

**5.9 Occupancy Before Completion of Dwelling Unit.** No residence placed or erected on any Unit shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth. However, during the actual construction or alteration of a structure within any Unit, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work, including (but not limited to) one portable toilet approved in advance and in writing by the Board of Directors as to nature, size, location and frequency of service.

**5.10 Construction Activities & Storage.** No building materials of any kind or character shall be placed on any Unit except in connection with a construction plan approved, in writing, in advance by the Board of Directors. Normal construction activities shall not be considered a nuisance or otherwise prohibited so long as the Unit is kept in a clean and litter-free condition during construction periods and reasonable working hours are established. The Board of Directors is authorized to designate the areas and manner in which building materials and construction equipment shall be stored and the routes construction vehicles may use as well as to determine reasonable working hours. All materials must be new or approved by the Local Building Inspector. All construction shall (i) be according to the rules and regulations governing construction in the City of Flagstaff, (ii) be accomplished under a permit issued by the City of Flagstaff, and (iii) be completed under the latest codes and requirements in effect in the City of Flagstaff at the time of construction.

**5.11 Landscaping Preservation and Revegetation Requirement.** After original construction of the Dwelling Unit, native growth shall not be destroyed or removed from the Property, except pursuant to plans approved by the Board.

## ARTICLE 6

### USES AND RESTRICTIONS

The Land shall be held, used and enjoyed, subject to the following limitations and restrictions (in addition to all other provisions hereof):

**6.1 Private Residential Purposes.** All Units shall be used for single-family residential purposes only, and no other structures except one Dwelling Unit shall be placed or maintained thereon. Dwelling Units and Units shall be occupied and used by the respective Owners solely for private single family residential use of the Owner, his or her family, his or her tenants (long- or short-term) and social guests and for no other purpose. No group homes in which unrelated persons reside shall be permitted.

**6.2 Business Activities.**

**6.2.1 Criteria for Home Business.** No trade or business may be conducted in or from any Dwelling Unit, except that an Owner or occupant residing in any Dwelling Unit may conduct business activities at the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements and is consistent with the residential character of the Condominium; (c) the business activity does not involve any additional person conducting such business to enter the Condominium; (d) the existence or operation of the business does not increase that Unit's use of Common Element facilities over the standard for a single family dwelling; (e) the existence or operation of the business does not require customers or delivery trucks to visit the Dwelling Unit nor result in additional or unusual traffic or parking of vehicles in the vicinity of any Unit or Common Element; and (f) the business activity does not constitute a nuisance, or a hazardous or offensive use, or cause the owners to violate any other provisions of this Declaration, or threaten the security or safety of other residents of the Condominium, as may be determined in the sole discretion of the Board.

**6.2.2 Pertinent Definitions** The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally-accepted meanings.

**6.3 Aerials & Antennae.** Subject to the Telecommunications Act of 1996 and any other applicable law, no exterior aerial, antenna or satellite dish for the transmission or reception of television, radio or microwave signals, or any other form of communication reception, of a temporary or permanent character, shall be erected on any Unit or attached to any Dwelling Unit unless reasonably screened from view and approved in writing by the Board of Directors.

**6.4 Animals.** Each Owner of a Unit may keep no more than 4 generally-recognized house or yard pets on a Unit, provided that they are not kept, bred or maintained for any commercial purpose. No animal shall be allowed to become a nuisance. The Board of Directors

has the right to determine, in its sole and absolute discretion, whether a particular animal is a generally-recognized house or yard pet or a nuisance. The Board may adopt Rules concerning household pets. All animals must be kept under leash or controlled at all times so that they will not interfere with any Owner's use and enjoyment of the Common Elements and it shall be the responsibility of all pet owners to clean up after their pets. At night all pets must be kept in the Owner's Dwelling Unit. Any additional kennel structures must be approved by the Board.

**6.5 Backboards.** No basketball backboards or other fixed sport apparatus of any kind shall be erected or used on any Unit or attached, by either a permanent or temporary method, to any Dwelling Unit unless approved, in writing, by the Board of Directors.

**6.6 Clotheslines.** No outside clotheslines or other outside facilities for drying or airing clothes shall be built or installed on any Unit without written approval unless wholly out of sight of any person outside the Dwelling Unit or line of sight.

**6.7 Derricks, Boring, Etc.** No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Land, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon products or minerals of any kind be produced or extracted therefrom. No part of the Land may be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or earth substance of any kind.

**6.8 Diseases and Insects.** No Unit Owner shall permit any thing or condition to exist upon any area of the Condominium which shall induce, breed or harbor infectious plant diseases, rodents or noxious insects.

**6.9 Drainage.** No person shall interfere with the established drainage pattern over any Unit or the Common Elements. "Established drainage" is defined as the drainage which exists at the time the overall grading of the Land was completed, or which is shown on any grading plans approved by the City of Flagstaff. No fence, wall, or any other structure or improvement may be constructed in such a manner as to obstruct the natural flow of drainage across the Units and over the Common Elements, and the plans for all such improvements must be approved in writing by the Board of Directors.

**6.10 Hazardous Activities Prohibited.** No activities shall be conducted at the Condominium which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged at the Condominium and no open fires shall be lighted or permitted at the Condominium, except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or firepit (subject to fire protection rules and regulations). No incinerators or similar equipment shall be placed or maintained on any Unit.

**6.11 Insurance Rates.** Nothing shall be done or kept on any Unit or Common Element which will increase the rate of insurance on such property nor shall anything be done or kept on or in any Dwelling Unit or Common Element which will result in the cancellation of insurance on any such property or which would be in violation of any law, unless expressly approved by the Board of Directors.

**6.12 Landscaping Maintenance.** All landscaping on a Unit shall conform to and be compatible with original landscaping on a Unit, and landscaping shall not be permitted to cause a nuisance or interfere with native wildlife. All trees and other vegetation on the Land shall be left in their natural condition or, upon written approval of the Board, be trimmed to a height which will not materially interfere with the principal views from the neighboring building sites.

**6.13 Lighting.** All lighting must comply with the lighting and photometric plans approved by the City as well as the City of Flagstaff Lighting Code and other applicable statutes and regulations.

**6.14 Units Not to be Subdivided.** No Unit shall be subdivided or resubdivided, except by Declarant. No portion less than all of a Unit, nor any easement or other interests therein, shall be sold, conveyed or encumbered. Resubdivision by Declarant may result in additional Units at its discretion.

**6.15 Machinery.** No machinery or equipment of any kind shall be built or allowed outdoors on a Unit, excepting for such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a single-family residence. No such machinery or equipment of any type shall be built or allowed upon any Unit which may be visible from another Unit or Common Element.

**6.16 Mailboxes.** If the Board of Directors has provided uniform mailbox designs in the course of original construction, then such designs, colors, lettering, and other features shall be maintained by each Unit Owner at all times. The location of mailboxes is subject to input by the postmaster.

**6.17 Maintenance of Units.** Each Unit and Dwelling Unit shall at all times be kept in a clean, sightly, environmentally sensitive, and well-kept condition by the Owner, Lessee and/or Occupant thereof. No weeds, trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Unit, except as necessary during a period of construction.

**6.18 Nuisances.** No rubbish or debris of any kind shall be placed or permitted on any Unit so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof, or to its occupants. No loud or offensive noise, such as continually barking dogs, abnormally loud motors or engines, excessively loud music, or any other noise-producing sources which disturb the normal levels of sound in a rural atmosphere, excessively glaring or bright lights, foul odors or any other use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Condominium, or any portion thereof, by its residents, shall be permitted to exist or operate at the Condominium. Without limiting the generality of any of the foregoing provisions:

- (a) no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property without the prior written approval of the Board of Directors;

(b) unreasonable noises penetrating beyond the private property of a Unit Owner shall not be permitted between the hours of 10:00 p.m. and 8:00 a.m.;

(c) at no time shall guns or firearms (including air, BB and pellet guns) be discharged in or about the Condominium; and

(d) no all-terrain vehicles or snowmobiles may be operated in or about the Condominium at any time, except to enter or exit a Unit on a street on an infrequent basis (no more than twice a day, unless used during snow conditions). The Board of Directors, in its sole discretion, shall have the right to determine the existence of any such nuisance.

**6.19 Renting.** Any rental agreement, including any agreement to lease the Dwelling Unit, must be in writing (which may be in the form of an electronic agreement) and must provide that the failure of any lessee or tenant to comply with the Rules, Bylaws, Articles and provisions of this Declaration shall be a material default under the lease and allow termination thereof. Rental and short-term rental (including Airbnb and VRBO rentals) is allowable provided that all Lessees and Occupants must comply with all Condominium Documents.

**6.20 Right of Inspection.** During reasonable hours, any member of the Board, or any authorized representative of the Board shall have the right upon reasonable notice to the Owner of a Dwelling Unit to enter upon and inspect the Unit (except the interior of Dwelling Unit), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

**6.21 Signs.** No billboards, posters, or advertising signs of any character shall be erected, placed, permitted or maintained on any Unit or improvement thereon of this subdivision, except:

(a) signs as may be required by legal proceedings or permitted by the Condominium Act including, without limitation, A.R.S. §33-1261;

(b) a maximum of 2 residential identification signs, each with a maximum face area of 72 square inches;

(c) during the period of construction of any structure or improvement, one job-identification sign not larger than 18 inches in height and 2 inches in width, and having a face area not larger than 3 feet;

(d) one yard sale sign not larger than 18 inches in height and 24 inches in width and not to be posted for more than 3 consecutive calendar days; or

(e) any other sign which has the prior written approval of the Board of Directors.

Declarant is exempt from the provisions of this Section.

**6.22 Solar Devices.** Solar devices may be placed, erected or installed on any Unit with the design and placement approval of the Board of Directors.

**6.23 Storage.** All equipment, wood piles, storage piles or other unsightly objects shall be screened and concealed from the view of neighboring Units, streets or Common Elements. Woodpiles shall be stacked in a neat and orderly fashion.

**6.24 Tanks.** No tanks of any kind, elevated above the ground or visible in any manner, shall be erected, placed, or permitted upon any Unit. Tanks used in connection with any Dwelling Unit constructed on a Unit, including tanks for storage of fuels, must be buried and concealed from the view of neighboring Units, streets or Common Elements and placed and maintained in a safe manner.

**6.25 Trash Containers, Recycling Containers and Collection.** Trash containers shall be located in centralized locations for the use of the Unit Owners and their tenants, invitees and guests; provided that each Unit Owner can maintain, in a clean manner and discreet location, one (1) covered trash container of the nature, type, size and style which are approved by the Board of Directors.

**6.26 Vehicle Parking and Storage.**

**6.26.1 General Rule.** Any and all motor vehicles not prohibited by the provisions hereof shall be parked in a Parking Space, subject to the other provisions of this Declaration.

**6.26.2 Inoperable Vehicles.** No abandoned, inoperable, junked or wrecked vehicles shall be parked on any portion of the Condominium. This includes any vehicle that has not been driven under its own propulsion for two (2) weeks or longer, which does not have an operable propulsion system installed therein, or which is not licensed and registered in accordance with applicable laws; provided, however, that otherwise permitted vehicles parked by Unit Owners while on vacation or during a period of illness or other approved condition shall be excepted. In the event that the Board shall determine that a vehicle falls within the prohibition herein, a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if said vehicle is not removed within one week thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

**6.26.3 Vehicle Repair.** No activity such as, but not limited to major or long term maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats, may be performed on any Unit. However, the Board of Directors may allow minor repairs pursuant to applicable Rules.

**6.26.4 Recreational Vehicles.** Parking or storing of trucks in excess of one- ton size, recreational vehicles, commercial vehicles, motorhomes, campers, trailers, boats and similar vehicles is prohibited on all portions of the Condominium.

**6.26.5 Use of Recreational Vehicle as Living Quarters.** The use or occupancy of a recreational vehicle, motorhome, van, camper, trailer, or boat as living quarters is strictly prohibited on any portion of the Condominium. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories.

**6.26.6 Commercial Vehicles.** No commercial vehicle shall be parked, stored, or placed in or about a Unit, except for automobiles or standard-sized pickup trucks, which are for both business and personal use, and provided any signs or marking of a commercial nature on such commercial vehicle shall be unobtrusive and inoffensive as determined by the Board of Directors.

**6.27 Outside of Dwelling Units; Exterior Decks.** All decks shall be maintained by the Unit Owner in an orderly and sightly manner and nothing shall be placed or stored on any deck other than typical outdoor furnishings (such as patio furniture, umbrellas, plants and the like), as may be further specified in the Rules. Unless expressly set forth herein or in the Rules, the Board of Directors shall have the sole discretion to determine what is orderly, sightly and typical. Nothing shall be placed outside of any Dwelling Unit unless approved by the Association or permitted by the Rules.

**6.28 Fire Safety.** Due to the possibility of fire, each of the Unit Owners shall at all times maintain his entire Unit cleared of hazardous growth, vegetation, dead wood, and other flammable or host materials. Additionally:

(i) Each Dwelling Unit shall have not less than two garden hose outlets with adequate hoses so as to permit a stream of water to be directed at all sides and the roof of said Dwelling Unit and all trees and other structures upon the Unit;

(ii) Each Unit Owner shall own and maintain a sufficient number of fire extinguishers to adequately protect the improvements upon the Unit.

(iii) No Unit Owner shall maintain any flammable materials or otherwise use his Unit in a manner which would create a fire danger to any Unit;

(iv) Each Unit Owner shall be bound by all fire protection rules and regulations issued by the Declarant and/or the Association;

(v) Outdoor storage of firewood, kindling or compost material must be stored at least 30' from any structure, unless the material is stored in an approved bin or enclosure. No LPG tanks will be maintained within 30' of any structure.

**6.29 No Motor Vehicles in Pedestrian Areas.** No motor-driven vehicles of any kind shall make use of any easements or areas set aside for pedestrian use.

**6.30 Addresses.** Addresses for all residences will be at least 4" in height and will be in front of and affixed to the structure itself, per fire department specifications. All numbers will be clearly visible from the street, and each number will be on a contrasting background.

**6.31 Conditions.** None of the land shall be used, in whole or in part, for the storage of any property or thing that will cause the land to appear in an unclean or untidy condition, or that will be obnoxious to the eye; nor shall any substance or material be kept upon the land that will emit a foul or obnoxious odor, or cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of the surrounding property.

**6.32 Wells.** No Unit Owner may drill a well on the Land.

**6.33 Window Coverings.** Window coverings in Dwelling Units shall be tasteful and compatible with the exterior color scheme of the applicable Dwelling Unit. Window coverings made of reflective materials including, without limitation, aluminum foil or mirrors, are prohibited.

## ARTICLE 7

### MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

**7.1 Duties of the Association.** The Association shall maintain, repair and replace all Common Elements including, anything herein or elsewhere to the contrary notwithstanding, the Limited Common Elements and any portion of any Unit(s) which the Association expressly agrees to maintain including, but not limited to, any landscaping, walkways and steps within the Unit boundaries (collectively, "**Association Maintained Property**"). The cost of all such obligations and maintenance, repairs and replacements of the Common Elements and Association Maintained Property shall be a Common Expense. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements and Association Maintained Property, but same shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements or Association Maintained Property.

**7.2 Duties of Unit Owners.** Other than Association Maintained Property, each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit including, without limitation, the interior and exterior of any Dwelling Unit and air conditioning equipment outside of the Dwelling Unit in a good, clean, attractive and sanitary condition, subject to the provisions of this Declaration including, but not limited to, Sections 4.1, 7.1 and 7.4 and Article 10. It is intended that each Dwelling Unit constructed on a Unit shall be entirely within that Unit's boundaries; however, if any portion of a Dwelling Unit encroaches onto a Common Element, the Owner of that Unit shall, nevertheless, maintain the entire interior and exterior of the Dwelling Unit (other than Association Maintained Property) and there shall be an easement over the Common Element in favor of such Owner to the extent of the encroachment and for the Owner's maintenance obligations described above.

**7.3 Repair or Restoration Necessitated by Owner.** Each Owner shall be liable to the Association for any damage to the Common Elements or any Improvements, landscaping or

equipment thereon which results from the negligence or willful misconduct of the Owner or of the Owner's Lessees, Occupants or Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of an Owner or of the Owner's Lessees, Occupants or Invitees shall be assessed against the Owner as provided in Section 9.5.

**7.4 Owner's Failure to Maintain.** If an Owner fails to maintain in good condition and repair his Unit or repair or restore same following any damage or destruction, including the Dwelling Unit thereon, and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Owner by the Association, the Association may perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Section 9.5.

## ARTICLE 8

### THE ASSOCIATION

**8.1 Rights, Powers and Duties of the Association.** No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association.

**8.2 Directors and Officers.** During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association. Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

**8.3 Rules.** The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of the Units and the Common Elements.

**8.4 Identity of Members.** Each Unit Owner shall be a member of the Association. The membership of the Association at all times shall consist exclusively of the Unit Owners. Membership in the Association shall be mandatory. An Owner shall automatically, upon

becoming an Owner, be a member of the Association and shall remain a member of the Association until he is no longer an Owner for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Unit and may not be separately assigned, transferred or conveyed.

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

## ARTICLE 9

### ASSESSMENTS

**9.1 Creation of the Lien and Personal Obligation to Pay Assessments.** Each Unit Owner, upon the recordation of a deed to any Unit, whether or not it shall be so stated in such deed, agrees and covenants to pay to the Association: (A) Regular Assessments or charges, (B) Special Assessments, and (C) Reimbursement Assessments. All assessments levied against a Unit, together with interest from the date of delinquency until paid, late charges, costs and reasonable attorney's fees, shall be charged against the Unit and shall be a continuing lien upon the Unit, to the extent permitted by the Condominium Act.

Delinquent assessments, together with interest, late fees, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment was levied, and shall bind his or her heirs, devisees, personal representatives and assigns. Except as otherwise provided herein, the personal obligation for delinquent assessments shall pass to successors in title and become expressly assumed by them.

**9.2 Purpose of Assessment.** The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Members and their guests and to enhance and protect the value, desirability and attractiveness of the Condominium.

**9.3 Establishing Assessment Amount.** Regular Assessments for each fiscal year shall be established when the Board approves a budget for that fiscal year. The Board may provide that such Regular Assessment is payable in one annual payment or in equal monthly or quarterly installments or otherwise. Each year the Board shall prepare, approve and make available to each Member, a budget. If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed. The Board of Directors is expressly authorized to adopt and amend budgets for the Association from time to time and no ratification of any budget by the Unit Owners shall be required.

**9.4 Special Assessment.** Special Assessments may be levied by the Board of Directors, in addition to the Regular Assessment, for constructing capital improvements; correcting an inadequacy in the current operating account; defraying, in whole or in part, the cost

of any construction, reconstruction, unexpected repair or replacement of Improvements in the Condominium; or paying for such other matters as the Board may deem appropriate for the Condominium. From and after the Period of Declarant Control, Special Assessments shall be subject to approval by a vote of a majority of the Members who are voting in person or by proxy at a meeting duly called for this purpose (at which a quorum is present).

**9.5 Reimbursement Assessments.** The Association shall levy a Reimbursement Assessment against any Owner if the Owner has necessitated an expenditure of money by the Association to bring the Owner or his/her Unit into compliance or otherwise. A Reimbursement Assessment shall not be levied by the Association until notice and an opportunity for a hearing has been given to the Owner in accordance with procedures established by the Board and as required by law. Reimbursement Assessments may be enforced in the same manner as Regular Assessments to the extent permitted by law.

**9.6 Declarant's Reduced Assessment.** The Regular Assessment for any Unit on which construction has not been substantially completed shall be an amount not less than twenty-five percent (25%) of the Regular Assessment for Units which have been substantially completed as determined at the sole discretion of Declarant. So long as any Unit owned by Declarant qualifies for the reduced Regular Assessment provided for in this Section 9.6, Declarant shall be obligated to pay to the Association any deficiency in the monies of the Association due to Declarant having paid a reduced Regular Assessment and necessary for the Association to be able to timely pay all Common Expenses.

**9.7 Effect of Non-Payment of Assessments; Remedies of the Association.** If any assessment is not paid within fifteen (15) days of its due date, a late fee and interest may be charged, in an amount to be determined by the Board of Directors. In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of any Owner to pay the Assessments in any manner provided by law or in equity, or without any limitation to the foregoing, or by suit or enforcement of the lien in accordance with procedures established by the Board and in accordance with applicable law. To the extent permitted by law, all assessments, plus late fees, interest and costs connected therewith, shall be a continuing lien upon the Unit assessed. Such lien shall be deemed to have attached as of the date of recordation of this Declaration and shall be senior to all matters other than liens recorded prior the recordation of this Declaration, to liens for real estate taxes and other government assessments or charges against the Unit, and the lien of any First Mortgage. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed, in accordance with the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Unit. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien. Anything herein to the contrary notwithstanding, no lien shall apply to interest, lien fees, late charges or other fees, charges and costs prohibited by law. No offset against any assessment shall be permitted for any reason, including, without limitation, any claim

that the Association is not properly discharging its duties. No Owner is exempt from liability for payment of assessments for any reason.

**9.8 Subordination of the Lien to First Mortgages; Sale or Transfer of Unit.** The lien for assessments provided for herein, including without limitation any fees, costs, late charges, or interest which may be levied by the Association in connection with unpaid assessment as permitted by law, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Unit pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of such executory land sales contract, shall extinguish the lien of assessments or charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; provided, however, that any such delinquent assessments or charges, including interest, late charges, costs, and reasonable attorneys' fees, which are extinguished as provided herein, may, if permitted by law, be reallocated and assessed to all Units as a common expense or may be expressly assumed by a successor Owner. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of such executory land sales contract, shall relieve any Owner of a Unit from liability for any assessments or charges thereafter becoming due, nor from the lien thereof. In the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrued prior to the acquisition of title to the Unit in question by such First Mortgagee.

**9.8.1** Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or Bylaws, or the Rules, the following provisions shall apply to and benefit each First Mortgagee of a Unit:

**9.8.2** First Mortgagees shall not be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, condition, restriction, regulation, Rule, Article or Bylaw, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, nor shall a First Mortgagee be liable for any violation of the Restrictions that occurred prior to such First Mortgagee acquiring title.

**9.8.3** During the pendency of any proceeding to foreclose the First Mortgage, including any period of redemption, the First Mortgagee (or receiver appointed in such action) may, but is not required to, exercise any or all of the rights and privileges of the Owner of the mortgaged Unit, including (but not limited to) the exclusion of the Owner's exercise of such rights and privileges.

**9.8.4** Notwithstanding any other provision herein, at such time as a First Mortgagee becomes the record Owner of a Unit, it shall be subject to all of the terms and conditions of this Declaration, including but not limited to, the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.

**9.8.5** The First Mortgagee, or any other party acquiring title to a mortgaged Unit through foreclosure suit or through any equivalent proceeding arising from said First Mortgage,

such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged Unit free and clear of any lien authorized by or arising out of any of the provisions of this Declaration or Bylaws which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.

**9.8.6** Nothing in this Declaration shall in any manner be deemed to give an Owner, or any other party, priority over any rights of a First Mortgagee of a Unit pursuant to the terms of such first mortgagee's mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation awards for losses or to a taking of any Unit. Each First Mortgagee shall be entitled to timely written notice of such loss or taking.

**9.9 Transfer, Disclosure and Working Capital Fees.** Upon the transfer of title to any Unit from Declarant to a purchaser and each subsequent transfer thereafter, at the discretion of the Board, the transferor and/or transferee shall pay to the Association a transfer fee, a disclosure fee and/or a working capital fee. The initial transfer fee is \$200, \$100 paid by each of the transferor and the transferee; the initial disclosure fee is \$200 paid by the transferor; and the initial working capital fee is \$200 paid by the transferee.

**9.10 Reserves.** The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, working capital fees or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "**Reserve Account**") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. To the extent the Reserve Account is maintained and/or reserves collected based on any such study, neither Declarant, its officers, directors or employees, nor any member of the Board shall have any liability for the adequacy or inadequacy of or otherwise with respect to the Reserve Account or with respect to the collecting of reserves.

**9.11 Surplus Funds.** Surplus funds of the Association remaining after payment of the Common Expenses shall be deposited in the Reserve Account as a prepayment of reserves.

## ARTICLE 10

### INSURANCE

**10.1 Condominium Act.** The provisions of this Article 8 reflect the Condominium Act in effect as of the date hereof. These provisions shall be deemed modified if and to the extent the Condominium Act is amended.

**10.2 Required Insurance.** Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain, to the extent reasonably available, both:

- (a) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against or, as determined by the Board against fire

and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty per cent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Liability insurance in an amount determined by the Board 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 Common Elements.

**10.3 Intentionally Omitted.**

**10.4 Notice of Unavailability.** If the insurance described in Section 10.2 is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners. The Association may carry any other insurance it deems appropriate to protect the Association or the Unit Owners.

**10.5 Requirements.** Insurance policies carried by the Association shall provide the following:

(a) Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements and his Unit or membership in the Association.

(b) The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household.

(c) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association's policy provides primary insurance.

**10.6 Insurance Obtained by Unit Owners.** Each Unit Owner shall obtain insurance at the Unit Owner's own expense covering all portions of such Unit Owner's Unit including, without limitation, the interior and exterior of any Dwelling Unit and any personal property and providing personal liability coverage in an amount approved by the Board of Directors. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Unit Owner. Each Unit Owner shall provide evidence to the Association that all such insurance required by this Section has been obtained, and if any Unit Owner fails to comply with the provisions of this Section, the Board of Directors shall be entitled to obtain, but shall not be obligated to obtain, the insurance for such Unit required by this Section. The cost of such insurance shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments. If any insurer of liability or the Common Elements of the Association

shall require that each Unit Owner obtain and carry any additional insurance coverage for the Unit or personal property, then each Unit Owner shall comply with said requirements.

**10.7 Adjustment of Loss.** Any loss covered by the property policy under Section 10.2(a) and Section 10.3 shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a mortgage or deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interest may appear. Subject to the provisions of Section 10.10, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

**10.8 Certificates of Insurance.** An insurer that has issued an insurance policy under this Article 10 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee or beneficiary under a mortgage or deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a mortgage or deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**10.9 Repair or Replacement.** Any portion of the Condominium for which insurance is required by the Association under this Article 10 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless any of the following apply:

- (a) The Condominium is terminated.
- (b) Repair or replacement would be illegal under any state or local health or safety statute or ordinance.
- (c) Eighty percent (80%) of the Unit Owners, including every Owner of a Unit or allocated Limited Common Elements which will not be rebuilt, vote not to rebuild.

**10.10 Cost of Repair or Replacement.** The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Condominium is not repaired or replaced:

- (a) The insurance proceeds attributable to the damaged Common Elements in proportion to their Common Element interests or as otherwise provided in this Declaration shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium.
- (b) The insurance proceeds attributable to allocated Limited Common Elements which are not rebuilt shall be distributed in proportion to their Common Element interests or as otherwise provided in this Declaration to the Owners of

the Units to which those Limited Common Elements were allocated, or to lien holders as their interests may appear.

(c) The remainder of the proceeds shall be distributed to all the Unit Owners or lien holders as their interests may appear in proportion to the Common Element interests of all the units.

**10.11 Repair/Replacement of Units.** The Unit Owner shall repair or replace any damaged or destroyed Dwelling Unit located within his Unit in a timely manner and subject to the provisions of Articles 4 and 5 above.

**10.12 Reallocated Interests.** If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated on the vote as if the Unit had been condemned under A.R.S. § 33-1206(A), and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

**10.13 Distribution Upon Termination.** Notwithstanding the foregoing, A.R.S. § 33-1228 governs the distribution of insurance proceeds if the Condominium is terminated.

**10.14 Premiums/Deductibles.** Premiums for all insurance obtained by the Association pursuant to this Article 10 shall be Common Expenses and shall be paid for by the Association. To the extent permitted by applicable law, the Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

**10.15 Additional Insurance.** The Board may obtain or require additional or greater amounts of insurance as it reasonably deems appropriate.

**10.16 No Liability.** Neither the Association nor any Board member nor Declarant shall be liable to any person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of insurance is not adequate.

## ARTICLE 11

### EMINENT DOMAIN

**11.1 Total Taking of a Unit.** If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Unit Owner for his Unit and its interest in the Common Elements, regardless of whether any Common Elements are acquired. On acquisition, unless the decree otherwise provides, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking, and the Association shall promptly prepare, execute and record an amendment to this Declaration

reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection becomes a Common Element.

**11.2 Partial Taking of a Unit.** Except as provided in Section 11.1 above, if part of a Unit is acquired by eminent domain the award must compensate the Unit Owner for the reduction in value of the Unit and its interest in the Common Elements, regardless of whether any Common Elements are acquired. On acquisition, unless the decree otherwise provides, all of the following apply:

**11.2.1** The Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit.

**11.2.2** The portion of the allocated interests divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

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

**11.4 Total Taking of All Units.** If all of the Units of the Condominium are acquired by eminent domain, the condominium is terminated and the provisions of A.R.S. §33-1228 apply.

**11.5 Other Persons.** This section does not restrict the rights of mortgagees, Declarant or any other person holding an interest in a Unit or its Common Elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this section.

**11.6 Priority and Power of Attorney.** Nothing Contained in this Article 11 shall entitle an Owner to priority over any First Mortgagee under a lien encumbering his Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as its attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Elements, or any part thereof. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns or an Owner.

## ARTICLE 12

### GENERAL PROVISIONS

**12.1 Enforcement.** The Association may (but has no obligation to) enforce the Condominium Documents in any manner provided for in the Condominium Documents or by law or in equity. Failure by the Association to enforce the Condominium Documents shall not be a waiver of the right to do so thereafter.

Any Unit Owner may enforce the Condominium Documents in any manner provided for in this Declaration or at law or in equity, except that a Unit Owner may not exercise any remedy provided to the Association by this Declaration or enforce payment of any Assessments or other amounts payable to the Association pursuant to the Condominium Documents.

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

**12.3 Duration.** The covenants and restrictions of this Declaration, as amended from time to time, shall run with and bind the Condominium in perpetuity unless the Condominium is terminated as provided in Section 12.4.

**12.4 Termination of Condominium.** Except in the case of a taking of all the Units by eminent domain, the Condominium may be terminated only by the agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. The Condominium may be terminated only in the manner provided for in the Condominium Act.

**12.5 Amendment.**

**12.5.1** Except in cases of amendments that may be executed by Declarant in the exercise of its Development Rights or under A.R.S. § 33-1220, by the Association under A.R.S. § 33-1206, or by certain Unit Owners under A.R.S. § 33-1218 or A.R.S. § 33-1228(B), this Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. The consent of Declarant is required to any amendment during the Period of Declarant Control.

**12.5.2** Except to the extent expressly permitted or required by the Condominium Act, an amendment to this Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

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

**12.5.4** During the Period of Declarant Control, Declarant shall have the right to amend the Declaration, including the Plat, to: (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (b) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; (c) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; (d) comply with the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or the Condominium Documents is

required by law or requested by Declarant; or (e) as otherwise permitted by this Declaration or the Condominium Act.

**12.5.5** Any amendment adopted by the Unit Owners pursuant to Subsection 12.5.1 shall be signed by any officer of the Association designated for that purpose and shall be Recorded within thirty (30) days after the adoption of the amendment. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by Declarant pursuant to Subsection 12.5.1, Subsection 12.5.4 or the Condominium Act shall be executed by Declarant and shall be Recorded.

**12.6 Notices.** All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Owner. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Owners shall constitute notice to all Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

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

**12.8 Topic Headings.** The marginal or topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Sections or of this Declaration. Unless otherwise specified, all references in this Declaration to Articles of Sections refer to Articles and Sections of this Declaration.

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

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

**12.11 Joint and Several Liability.** In the case of joint ownership of a Unit, the liabilities and obligations of each of the joint Unit Owners set forth in, or imposed by, the Condominium Documents shall be joint and several.

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

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

**12.14 Number of Days.** In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

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

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

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

Unofficial Copy

IN WITNESS WHEREOF, the parties hereto have executed this Declaration as of the date set forth above.

DECLARANT:

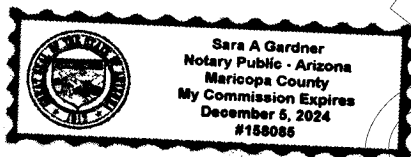
**WOODSHIRE ON BUTLER LLC**, an  
Arizona limited liability company

By Arizona Mountain Communities, LLC, a  
Delaware limited liability company, its Sole  
Member

By *[Signature]*  
Philip V. Petersen, its Manager

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of March, 2021, by Philip V. Petersen, the Manager of Arizona Mountain Communities, LLC, a Delaware limited liability company, the Sole Member of WoodShire on Butler LLC, an Arizona limited liability company, on behalf of the limited liability company.



*Sara A. Gardner*  
Notary Public

My Commission Expires:  
Dec. 5, 2024

Unofficial Copy

**EXHIBIT A**

**LEGAL DESCRIPTION OF LAND**

**(See Attached)**

Unofficial Copy



A parcel of land located in the Northeast quarter of Section 23, Township 21 North, Range 7 East of the Gila & Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

BEGINNING at a ½” rebar with plastic cap marked “LS 11369” at a point on the South right-of-way line of Butler Avenue, as conveyed to the City of Flagstaff by Roadway Right-of-Way recorded in Docket 918, Page 572, records of Coconino County, Arizona, from which a 2” square metal plate on an angle iron at the Northeast corner of Section 23 bears North 00° 46’ 03” West, a distance of 799.60 feet (Basis of Bearings for this description) as shown on said ALTA/ACSM survey;

THENCE South 00° 46’ 03” East, a distance of 523.39 feet to a 2” brass cap in concrete marked “LS 4321”, said point being the North 1/16<sup>th</sup> Section corner between Sections 23 and 24;

THENCE South 88° 40’ 26” West, a distance of 326.72 feet (record South 88° 39’ 50” West, 326.90 feet along the South line of the Southeast quarter of the Southeast quarter of the Northeast quarter of the Northeast quarter of Section 23) to a ½” rebar with plastic cap marked “LS 11369” at the Southeast corner of the Southwest quarter of the Southeast quarter of the Northeast quarter of the Northeast quarter of said Section 23;

THENCE North 00° 42’ 07” West along the East line of the Southwest quarter of the Southeast quarter of the Northeast quarter of the Northeast quarter, a distance of 330.73 feet (record 330.79 feet, to the Northeast corner of said Southwest quarter of the Southeast quarter of the Northeast quarter of the Northeast quarter);

THENCE South 88° 38’ 54” West along the North line of the Southwest quarter of the Southeast quarter of the Northeast quarter of the Northeast quarter, a distance of 21.73 feet to a point on the South right-of-way line of said Butler Avenue;

THENCE North 57° 18’ 42” East along the South right-of-way line of said Butler Avenue, a distance of 258.99 feet to a ½” rebar with plastic cap marked “LS 11369” at the beginning of a curve tangent to said line;

THENCE Northeasterly and Easterly along said right-of-way line, a distance of 124.18 feet along said curve concave to the Southeast, having a radius of 557.31 feet and a central angle of 12° 46’ 01” to a ½” rebar with plastic cap marked “LS 11369”;

THENCE continuing along said right-of-way line, a distance of North 70° 04’ 43” East tangent to said curve, a distance of 17.37 feet to the POINT OF BEGINNING.

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF ADDITIONAL PROPERTY**

**(See Attached)**

Unofficial Copy

**Parcel 3:**

Commencing at the northeast corner of said Section 23, a found 2"x 2" metal plate set in concrete;

Thence along the east line of said Section 23, South 00°44'24" East, 706.41 feet (Basis of Bearing) to a found ½" rebar with yellow plastic cap stamped "RLS 11369" on the north Right-of-Way line of Butler Avenue as shown on Book 21 of Surveys, Page 25, Official Records of Coconino County (herein referred to as R2);

Thence South 00°37'35" East, 93.27 feet to a found ½" rebar with yellow plastic cap stamped "RLS 11369" on the south Right-of-Way line of Butler Avenue as shown on R2;

Thence along the east line of that parcel of land as shown on R2, South 00°44'14" East, 523.54 feet to a found 1.5" brass cap stamped "ARENCO RLS 4321" at the southeast corner of said parcel;

Thence along the south line of said parcel, South 88°43'33" West, 326.77 feet to a found ½" rebar with yellow plastic cap stamped "RLS 11369" at the southeast corner of that parcel of land as described in R1 and the **TRUE POINT OF BEGINNING**;

Thence along the south line of said parcel as described in R1, South 88°40'49" West, 100.63 feet;

Thence leaving said south line, North 22°15'26" West, 14.24 feet to the beginning of a non-tangent curve concave to the east having a radius of 424.97 feet and being subtended by a chord which bears North 14°21'56" West 118.06 feet;

Thence northerly along said curve, 118.45 feet through a central angle of 15°58'09";

Thence North 03°49'48" West, 54.18 feet to the beginning of a tangent curve concave to the east, having a radius of 31.06 feet;

Thence northeasterly along said curve, 22.39 feet through a central angle of 41°18'32";

Thence North 41°07'19" East, 12.46 feet;

Thence North 49°09'35" East, 38.94 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 1169.67 feet and being subtended by a chord which bears North 52°48'05" East 72.98 feet;

Thence northeasterly along said curve, 72.99 feet through a central angle of 3°34'31";

Thence North 51°25'21" East, 1.30 feet;

Thence North 62°44'34" East, 20.31 feet;

Thence North 52°21'57" East, 17.99 feet to a point on the west line of that parcel of land as shown on R2;

Thence along said west line, South 00°39'43" East, 300.35 feet to the **TRUE POINT OF BEGINNING**;

Containing 32,404 square feet, or 0.7439 Acres, more or less.

This legal description was prepared by Aaron D. Borling, RLS 48756, on behalf of and at the request of Shephard-Wesnitzer, Inc., Flagstaff, AZ.



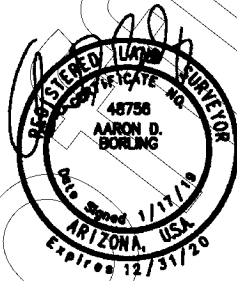


PLOTTED: Jan 16, 2019 - 10:02am

## EXHIBIT 'B' TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE NORTHEAST QUARTER OF SECTION 23,  
TOWNSHIP 21 NORTH, RANGE 7 EAST  
GILA AND SALT RIVER MERIDIAN  
COCONINO COUNTY, ARIZONA

| Curve Table |        |         |       |                 |              | Parcel Line Table |        |               |
|-------------|--------|---------|-------|-----------------|--------------|-------------------|--------|---------------|
| Curve #     | Length | Radius  | Delta | Chord Direction | Chord Length | Line #            | Length | Direction     |
| C1          | 11.90  | 74.57   | 9.14  | S62° 16' 52"E   | 11.88        | L1                | 110.66 | S88° 40' 49"W |
| C2          | 102.72 | 388.50  | 15.15 | S49° 18' 05"E   | 102.42       | L2                | 93.37  | N0° 32' 50"W  |
| C3          | 72.99  | 1169.67 | 3.58  | N52° 48' 05"E   | 72.98        | L3                | 19.67  | S58° 15' 33"E |
| C4          | 22.39  | 31.06   | 41.31 | N16° 49' 28"E   | 21.91        | L4                | 10.51  | S39° 04' 21"E |
| C5          | 118.45 | 424.97  | 15.97 | N14° 21' 56"W   | 118.06       | L5                | 115.52 | S88° 40' 49"W |
|             |        |         |       |                 |              | L6                | 50.42  | N0° 32' 50"W  |
|             |        |         |       |                 |              | L8                | 21.88  | N88° 40' 26"E |
|             |        |         |       |                 |              | L9                | 30.29  | S0° 39' 43"E  |
|             |        |         |       |                 |              | L10               | 17.99  | N52° 21' 57"E |
|             |        |         |       |                 |              | L11               | 20.31  | N62° 44' 34"E |
|             |        |         |       |                 |              | L12               | 1.30   | S51° 25' 21"W |
|             |        |         |       |                 |              | L13               | 38.94  | S49° 09' 35"W |
|             |        |         |       |                 |              | L14               | 12.46  | S41° 07' 19"W |
|             |        |         |       |                 |              | L15               | 54.18  | S3° 49' 48"E  |
|             |        |         |       |                 |              | L16               | 14.24  | S22° 15' 26"E |
|             |        |         |       |                 |              | L17               | 100.63 | S88° 40' 49"W |
|             |        |         |       |                 |              | L21               | 93.27  | S0° 37' 35"E  |



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110 W. Dale Avenue  
Flagstaff, AZ 86001  
928-773-0354  
928-774-8934 fax  
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|         |          |
|---------|----------|
| JOB NO. | 18245    |
| DATE    | JAN. '19 |
| SCALE   | AS SHOWN |
| DRAWN   | TNO      |
| DESIGN  |          |
| CHECKED | ADB      |

LEGAL EXHIBIT

FLAGSTAFF  
ARIZONA

SHEET  
**7**  
OF 7