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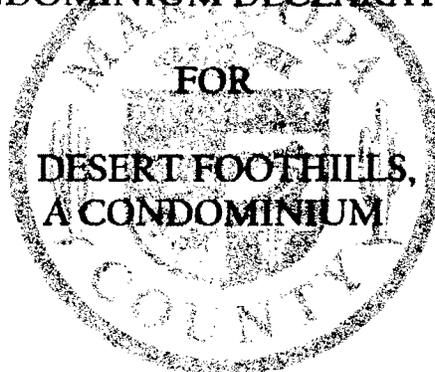
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**1st AMENDMENT TO THE
CONDOMINIUM DECLARATION**



CONDOMINIUM DECLARATION
FOR
DESERT FOOTHILLS, A CONDOMINIUM

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CONDOMINIUM DECLARATION
FOR
DESERT FOOTHILLS, A CONDOMINIUM

This Condominium Declaration for Desert Foothills, A Condominium is made this 21st day of July, 2004 by Desert Foothills JV, LLC, an Arizona limited liability company.

ARTICLE I

DEFINITIONS

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

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

1.2.1 **"Articles"** means the Articles of Incorporation of the Desert Foothills Condominium Association, as amended from time to time.

1.2.2 **"Assessments"** means the Common Expense Assessments, Special Assessments and Enforcement Assessments levied pursuant to Article 7.

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

1.2.4 **"Association"** means Desert Foothills Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

1.2.5 **"Board of Directors"** means the Board of Directors of the Association.

1.2.6 **"Building"** means each of the buildings located on the Parcel and designated as a building on the Plat.

1.2.7 **"Bylaws"** means the Bylaws of the Association, as amended from time to time.

1.2.8 **"Collection Costs"** means all costs, fees, charges and expenditures (including, without limitation, attorneys' fees, court costs, filing fees and recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, interest or other amounts payable to the Association pursuant to this Declaration.

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

1.2.10 "Common Expenses" means the actual or estimated costs or expenses incurred or to be incurred by the Association or financial liabilities of the Association including, without limitation, the following:

(a) the cost of maintenance, management, operation, repair and replacement of the Common Elements and all other areas within the Condominium which are maintained by the Association;

(b) the cost of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

(c) the cost of any utilities, trash pickup and disposal, elevator, landscaping, and other services benefiting the Unit Owners and their Units to the extent such services are paid for by the Association;

(d) the cost of fire, casualty, liability, worker's compensation and other insurance maintained by the Association as provided in this Declaration;

(e) reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Condominium Documents;

(f) the cost of bonding of the directors, officers and employees of the Association, any professional managing agent or any other person handling the funds of the Association;

(g) taxes paid by the Association;

(h) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Elements or portions thereof;

(i) the cost of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in furtherance of the purposes or the discharge of the obligations imposed on the Association by the Condominium Documents.

1.2.11 "Common Expense Assessment" means the assessment levied against the Units pursuant to Section 7.2.

1.2.12 "Common Expense Liability" means the liability for common expenses allocated to each Unit by Section 2.6.

1.2.13 "Condominium" means the Parcel, together with the Buildings and all other Improvements located thereon.

1.2.14 "Condominium Act" means the Arizona Condominium Act, A.R.S. §33-1201, et seq., as amended from time to time.

1.2.15 "Condominium Documents" means this Declaration and the Articles, Bylaws, and Rules.

1.2.16 "Declarant" means Desert Foothills JV, LLC, an Arizona limited liability company, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

1.2.17 "Declaration" means this Condominium Declaration for Desert Foothills, A Condominium, as amended from time to time.

1.2.18 "Development Rights" means any right or combination of rights 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 to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner;
- (g) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

1.2.19 "Enforcement Assessment" means an assessment levied pursuant to Section 7.5.

1.2.20 "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.

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

1.2.22 "Improvement" means any physical structure, fixture or facility existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, buildings, private drives, paving, fences, walls, sculptures, signs, hedges, plants, trees and shrubs of every type and kind.

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

1.2.24 "Lessee" means any Person who is the tenant or lessee under a written lease of a Unit.

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

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

1.2.27 "Occupant" means a person, other than a Unit Owner, in possession of a Unit at the request of or with the consent of the Unit Owner.

1.2.28 "Parcel" means the land described on Exhibit A attached hereto, together with all Improvements situated thereon and all easements and rights appurtenant thereto.

1.2.29 "Parking Space" means a portion of the Parcel intended for the parking of a single motor vehicle and identified on the Plat as a parking space.

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

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

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

1.2.33 "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.

1.2.34 "Plat" means the condominium plat for Desert Foothills, A Condominium, recorded in Book 696 of Maps, Page 34, in the official records of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

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

1.2.36 "Recording" means placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona and "Recorded" means having been so placed of public record.

1.2.37 "Rules" means the rules and regulations adopted by the Board of Directors, as amended from time to time.

1.2.38 "Special Declarant Rights" means any right or combination of rights to do any of the following:

- (a) Construct Improvements provided for in this Declaration or shown on the Plat;
- (b) Exercise any Development Right;
- (c) Maintain sales offices, management offices, models, and signs advertising the Condominium;
- (d) Use easements through the Common Elements for the purpose of making Improvements within 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.

1.2.39 "Unit" means a portion of a Building designated for separate ownership or occupancy. The boundaries of each Unit are shown on the Plat and described in Section 2.5.

1.2.40 "Unit Owner" or "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include 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. In the case of Units the fee simple title to which is vested in a

trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

1.2.41 "Utility Room" means a portion of the Common Elements designated on the Plat as a Utility Room.

ARTICLE 2

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

2.1 Submission of Property. The Declarant is the owner of fee title to the Parcel. Declarant hereby submits the Parcel 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 Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. Pursuant to the Act, the Declarant hereby divides the Parcel into the Units described in Section 2.5 and shown on the Plat and Common Elements. Declarant hereby designates each Unit for separate ownership or occupancy. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Parcel and shall be binding upon and inure to the benefit of the 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. The name of the Condominium created by this Declaration is Desert Foothills, Condominium.

2.3 Name of Association. The name of the Association is Desert Foothills Condominium Association.

2.4 Identifying Numbers of Units. The identifying numbers of the Units are:

Building One - Unit 101
Building One - Unit 103
Building One - Unit 203

Building Two - Unit 119
Building Two - Unit 121
Building Two - Unit 123
Building Two - Unit 219

Building Three - Unit 111
Building Three - Unit 211

2.5 Unit Boundaries.

2.5.1 The boundaries of each Unit are as follows:

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

(b) The upper horizontal boundary is a horizontal plane with an elevation which is ten feet (10') above the lower horizontal boundary of the Unit; and

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

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

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

2.5.4 The location and dimensions of the perimeter walls of the Units as shown on the Plat are based on architectural drawings and are approximate. The actual location and dimensions of the perimeter walls of the Units may vary from the location and dimensions of the perimeter walls as shown on the Plat. The actual physical location and dimensions of the perimeter walls of a Unit, as initially constructed, or as reconstructed following the damage or destruction of such walls, shall be considered the location and dimensions of the perimeter walls of the Units for purposes of this Declaration (except for the calculation of the percentage of undivided interests of each Unit in the Common Expenses and in the Common Elements pursuant to Section 2.6 and the allocation of votes in the Association pursuant to Section 2.7) regardless of any variances from the location and dimensions of the perimeter wall as shown on the Plat. Any variance between the boundaries of the Units as shown on the Plat and the boundaries of the Units as actually constructed shall not alter or otherwise affect the purchase price of the Unit.

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

2.5.6 Declarant reserves the right to relocate the boundaries between adjoining Units owned by the Declarant and to reallocate each such Unit's Common Element Interest, votes in the Association and Common Expense Liabilities subject to and in accordance with A.R.S. § 33-1222.

2.6 Allocation of Common Element Interest and Common Expense Liabilities. Each Unit is allocated a percentage of undivided interests in the Common Elements and in the Common Expenses calculated by dividing the total gross area of each Unit by the total gross area of all Units in the Condominium. The total gross area of each Unit is the sum of the square footage of the Unit and the square footage obtained by multiplying the square footage of the Utility Room located in the same Building as the Unit by the percentage obtained by dividing the square footage of the Unit by the total square footage of all Units within the same Building. For purposes of calculating the percentage of undivided interests of each Unit, the total gross area of each Unit shall be as shown on the Plat. The total gross area of each Unit and the percentage of undivided interests of each Unit are set forth on Exhibit B attached to this Declaration. The percentage of interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of interest. The ownership of each Unit shall not be conveyed separate from the percentage of interest in the Common Elements allocated to the Unit. The undivided percentage of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit.

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

2.8 Allocation of Limited Common Elements.

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

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

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

(c) Each Unit is allocated the covered parking space or spaces designated on Exhibit C attached hereto as being allocated to the Unit.

(d) The Utility Room located within each Building is allocated to the Unit or Units within the Building.

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

2.8.3 A Unit Owner of a Unit to which a Parking Space has been allocated may reallocate the Parking Space to another Unit Owner by Recording an amendment to this Declaration. The amendment shall be executed by the Unit Owners between or among whose Units the reallocation is made and shall state the manner in which the Parking space is to be reallocated. Before Recording the amendment, the amendment shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and Record the amendment.

2.8.4 So long as the Declarant owns any Unit, the Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. After the Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding at least sixty-seven percent (67%) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

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

2.10 Subdivision of Units. A Unit may be subdivided into two or more Units. A Unit Owner desiring to subdivide his Unit shall prepare an amendment to the Declaration and the Plat which identifies the Unit involved, specifies the boundaries of each Unit created and the dimensions, assigns an Identifying Number to each Unit created and allocates the allocated interest in the Common Elements, in the Common Expenses and in the votes in the Association formerly allocated to the subdivided Unit to the new Units in a reasonable manner. The amendment shall be executed by the Owner of the Unit to be subdivided and, before recording, submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is

unreasonable, which determination shall be in writing and shall specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

2.11 Combination of Units. If the Declarant conveys adjoining Units to one Person, the Declarant may not construct the Party Wall between the adjoining Units so that the adjoining Units can be used as one Unit. If adjoining Units were initially conveyed by the Declarant to different Persons but are subsequently become owned by the same Person, the Owner of the adjoining Units may remove all or a portion of the Party Wall between the adjoining Units provided the removal of a portion or all of the Party Wall is approved by the Board of Directors prior to removal. The provisions of Section 4.4 shall apply to any request by an Owner of adjoining Units to remove all or a portion of the Party Wall between the Units. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that the removal of the Party Wall will not impair the structural integrity or mechanical systems of the Building or lessen the support of any portion of the Condominium. The fact that a Party Wall is removed with approval of the Board of Directors shall not affect the Units' percentage undivided interest in the Common Elements or the Units' Common Expense Liability. A Party Wall between adjoining Units which is removed with approval of the Board of Directors may be constructed or reconstructed with the prior written approval of the Board of Directors. The Board of Directors shall not approve the request unless the Board of Directors is satisfied that the construction or reconstruction of the Party Wall will not impair the structural integrity or mechanical systems of the Building or lessen the support of any part of the Condominium. The provisions of Section 4.4 shall apply to any request by an Owner of adjoining Units to construct or reconstruct a Party Wall between the Units owned by such Owner. If the construction or reconstruction of a Party Wall is approved by the Board of Directors, the provisions of Section 4.4 shall apply to the construction or reconstruction of such Party Wall.

ARTICLE 3

EASEMENTS AND DEVELOPMENT RIGHTS

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

3.2 Easements for Ingress and Egress. There is hereby granted and created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes that from time to time may exist upon the Common Elements. There is also granted and created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such streets and drives as from time to time may be paved and intended for such purposes, except that such easements shall not extend to any Limited Common Elements. Such easements shall run in favor of and be for the benefit of the Unit Owners and Occupants and their Invitees.

3.3 Unit Owners' Easements of Enjoyment.

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

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

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

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

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

(e) The right of the Association to suspend the right of a Unit Owner, Lessee or Occupant to use the Common Elements for any period

during which the Unit Owner, Lessee or Occupant is in violation of any provision of the Condominium Documents.

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

3.3.3 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.

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

3.4.2 So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to restrict the use of the Parking Spaces, which are not allocated as Limited Common Elements. Such right shall include reserving such Parking Spaces for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

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

3.4.4 Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Elements and the Units to erect and construct the Common Elements and the Units shown on the Plat and all other Improvements the Declarant may deem appropriate and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.

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

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

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

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

3.4.9 In the event of any conflict or inconsistency between this Section 3.4 and any other provision of the Condominium Documents, this Section 3.4 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.4 shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any means provided in this Declaration.

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

3.6 Easements and Rights of the Association.

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

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

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

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

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

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

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

ARTICLE 4

USE AND OCCUPANCY RESTRICTIONS

4.1 Use of Units. All Units shall be used and occupied exclusively as offices for professional services which shall include, but not be limited to, medical or dental offices, law offices and offices for architects, optometrists, psychologists, out-patient surgery center, engineers, surveyors, accountants, real estate brokers and title insurance or escrow companies. A Unit may only be used for a use other than the uses permitted under the preceding sentence of this Section if (a) such other use is permitted under the zoning for the Condominium, and (b) such other use is approved by (i) the Declarant or the Board of Directors if approved during the Period of Declarant Control or (ii) all Unit Owners if the use is approved after the termination of the Period of Declarant Control.

4.2 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any portion of the Condominium whether attached to the Building or otherwise, unless approved in writing by the Board of Directors, unless applicable law prohibits the Board of Directors from requiring such prior approval. Even if applicable law prohibits the Board of Directors from requiring prior approval of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with such rules and regulations as the Board of Directors may adopt.

4.3 Improvements and Alterations.

4.3.1 Any Owner, Lessee or Occupant may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Board of Directors, except that no Owner shall make any additions, alterations or improvements to the Perimeter Building Walls or any Party Wall without the prior written consent of the Board of Directors. Any Owner making any nonstructural additions, alterations or improvements within his Unit shall be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements. No Owner, Lessee or Occupant shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Owner, Lessee or Occupant receives the prior written approval of the Board of Directors and an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of a Building or lessen the support of any portion of the Condominium. All additions, alterations or improvements to a Unit must be performed by contractors licensed by the Arizona Registrar of Contractors.

4.3.2 Notwithstanding Subsection 4.3.1, no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of a Building shall be made without the prior written approval of the Board of Directors, which approval shall only be granted if the Board of Directors affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Board of Directors. Except as expressly permitted by this Section 4.3, no wall, partition, fixture or other Improvement situated within a Unit shall be constructed, installed or modified without the prior written approval of the Board of Directors.

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

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

4.3.5 Proposed additions, alterations and improvements to a Unit or the Common Elements shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are made shall defend, indemnify and hold harmless the Association, Declarant and all other Owners, Lessees or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Association.

4.3.6 The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 4.3 or any rules of the Association governing additions, alterations or improvements to the Units or the Common Elements. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Association nor any of the officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the

Association and their respective directors, officers, agents and employees harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Lessee or Occupant of the Owner's Unit.

4.4 Animals. No animals, birds, reptiles, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium, except for fish kept in aquariums and animals, birds or reptiles kept by a veterinarian in connection with such veterinarian's practice.

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

4.6 Motor Vehicles. Except for emergency repairs, no automobile, motorcycle, van, sport utility vehicle, truck, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No automobile, motorcycle, motorbike, van, sport utility vehicle, truck or other motor vehicle shall be parked upon any part of the Condominium, except in the Parking Spaces. If a Parking Space is assigned to a Unit as a Limited Common Element, then no Unit Owner, Lessee or Occupant may park any automobile, motorcycle, motorbike or other motor vehicle owned or leased by such Unit Owner, Lessee or Occupant in any Parking Spaces other than the Parking Space assigned to the Unit as a Limited Common Element.

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

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

4.9 Trucks, Trailers, Campers and Boats. No mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium.

4.10 Towing of Vehicles. The Board of Directors shall have the right to have any automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred

by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle.

4.11 Signs. No signs (including, but not limited to, 'For Sale' or 'For Rent' signs) shall be permitted on the exterior of any Building or in the interior of a Unit if the signs would be visible from the exterior of the Building in which the Unit is located, or on any other portion of the Condominium without the prior written approval of the Board of Directors. The Board of Directors may permit signs identifying the Unit Owner, Lessee or Occupant of a Unit to be installed on the outside of the Building in which a Unit is located provided that the location size, color, style and appearance of the sign is acceptable to the Board of Directors, and the Board of Directors may permit such sign to be placed at any location on the outside of the Building that is acceptable to the Board of Directors. The Board of Directors may adopt criteria regarding the location, size, color, style and appearance of signs that may be placed or installed in the Condominium. In addition to the approval of the Board of Directors required by this Section, any sign must also comply with the ordinances of the City of Phoenix.

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

4.13 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner, Lessee or Occupants or is an annoyance to any Unit Owner, Lessee or Occupant or which interferes with quiet enjoyment of a Unit by the Unit Owner or Occupants. Except as part of a security system, no exterior speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the Condominium without the prior written approval of the Board of Directors.

4.14 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed without the prior written consent of the Board of Directors.

4.15 Rental of Units. Any lease for a Unit must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other occupants shall be a default under the lease. At least ten (10) days before commencement of the lease term, the Unit Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person whom the Association can contact in the event of an emergency involving the Unit. Any Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. The Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other persons residing in the Unit and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

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ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall maintain, repair and replace all Common Elements, except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2. In addition, the Association shall maintain, repair and replace the Perimeter Building Walls. The cost of all such maintenance, repairs and replacements made by the Association shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, 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.

5.2 Duties of Unit Owners. Each Unit Owner shall maintain, repair and replace, at his own expense, all portions of his Unit in a good, clean and sanitary condition, except for the Perimeter Building Walls. In addition, each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements allocated to his Unit pursuant to Subsections 2.8.1(a) and 2.8.1(b) in a good, clean and sanitary condition.

5.3 Repair or Restoration Necessitated by Owner. Each Unit Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Unit Owner or of the Unit Owner's Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of a Unit Owner or of the Unit Owner's Invitees shall be assessed against the Unit Owner pursuant to Subsection 7.2.4.

5.4 Unit Owner's Failure to Maintain. If a Unit Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Unit Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4.

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

the fire alarm system made by the Association and for all other losses or damages resulting from such actions.

ARTICLE 6

THE ASSOCIATION

6.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the affirmative vote of Unit Owners holding more than two-thirds (2/3) of the votes in the Association. 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.

6.2 Directors and Officers.

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners. The initial directors and officers of the Association shall be designated in the Articles, and such designation shall constitute the appointment of such persons by the Declarant. The initial directors and officers shall serve until their death, resignation or removal from office. 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.

6.2.2 The 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 the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

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

6.4 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 all the Unit Owners. Membership in the Association shall be mandatory. A Unit Owner shall automatically, upon becoming a Unit Owner, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his 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.

6.5 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 Community Documents provided such person acted in good faith and without intentional misconduct.

6.6 Utility Service and Refuse Collection. The Association shall acquire and pay for the following: (a) water, sewer, natural gas, electrical and other utility service for the Common Elements; (b) refuse and rubbish collection for the Common Elements and the Units; and (c) natural gas and water and sewer service for the Units. The Units shall be separately metered for electrical service and each Unit Owner shall pay for all electrical service to his Unit. The Rules may contain provisions governing the disposal of refuse and rubbish in the Condominium and may require all refuse and trash to be placed in containers located on the Common Elements.

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budget.

7.1.1 At least thirty (30) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (a) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (b) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (c) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (d) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsection 7.2.4, Subsection 7.2.5 or Section 7.4.

7.1.2 At least ten (10) days before the beginning of each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.2. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2, and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been given to the Unit Owners by the Board of Directors.

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

7.2 Common Expense Assessment.

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsection 7.2.4, Subsection 7.2.5 or Section 7.4) shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6. The amount of the Common Expense Assessment assessed pursuant to this Subsection 7.2.1 shall be in the sole discretion of the Board of Directors. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, the Board of Directors may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Common Expense Assessments shall commence as to all Units on the first day of the month following the conveyance of the first Unit to a Purchaser. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in installments.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 7.2.1. The Common Expenses associated with the maintenance, repair and replacement of the Utility Room within each Building shall be assessed against the Units within that Building with each Unit's share of such Common Expenses being the percentage calculated by dividing the square footage of the Unit by the square footage of all Units within the Building.

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

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

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

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

7.3 Special Assessments. In addition to Common Expense Assessments, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment (other than a Special Assessment levied pursuant to Section 9.1 as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by Unit Owners representing two-thirds (2/3) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners. Any special Assessment shall be assessed against each Unit in proportion to the Unit's Common Expense Liability as set forth in Section 2.6.

7.4 Enforcement Assessment. The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (a) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Unit Owner; (b) any attorney fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Condominium Documents by the Unit Owner or the Unit Owner's Lessees or Invitees; (c) any monetary penalties levied against the Unit Owner; or (d) any amounts (other than Common Expense Assessments and Special Assessments) which become due and payable to the Association by the Unit Owner or the Unit Owner's Lessees or Invitees pursuant to the Condominium Documents.

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

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

7.5.2 All Assessments, monetary penalties and other fees and charges imposed or levied against any Unit or Unit Owner shall be secured by the Assessment Lien as provided for in the Condominium Act. The recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Assessment Lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent assessments, monetary penalties or other fees or charges imposed or levied against a Unit or the Unit Owner which are secured by the Assessment Lien.

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

7.5.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Unit Owner of the Unit have been paid in full.

7.5.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in any manner allowed by law including, but not limited to: (a) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without

waiving the Assessment Lien securing any such delinquent amounts; or (b) bringing an action to foreclose the Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

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

7.7 **Certificate of Payment.** The Association upon written request shall furnish to a lien holder, Unit Owner or person designated by a Unit Owner a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

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

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

7.10 **Reserve Contribution.**

7.10.1 Except as provided in Subsection 7.10.2, each Person who purchases or otherwise purchases or otherwise becomes the Owner of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.13. The amount of the initial Reserve Contribution shall be set by the Board of Directors prior to the conveyance of the first Unit to a Purchaser. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

7.10.2 No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which even a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Unit as a result of the

foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

7.10.3 All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.13. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

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

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

7.13 Reserves. The Board of Directors shall establish a separate bank account (the 'Reserve Account') for Association funds designated by the Board of Directors as reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements. Until the expiration of the Period of Declarant Control, the reserves shall consist solely of the Reserve Contributions paid by Purchasers pursuant to Section 7.10. The Declarant makes no representation or warranty that the amount of the Reserve Contributions paid pursuant to Section 7.10 will fully or adequately fund the reserves required for the future periodic maintenance, repair or replacement of the major components of the Common Elements. Neither the Declarant nor any member, director, officer, employee or agent of the Declarant nor any person serving as a director or officer of the Association during the Period of Declarant Control shall be liable to the Association, any Member or any other Person as a result of such reserves not being funded during the Period of Declarant Control in excess of the amount of the Reserve Contributions paid by Purchasers pursuant to Section 7.10. Within ninety (90) days after the expiration of the Period of Declarant Control, the Board of Directors shall obtain a reserve study which shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. Upon receipt of the reserve study, the Board of Directors shall determine what additional funding, if any, of the reserves is required. The Board of Directors shall obtain an update of the reserve study at least once every three years thereafter. The reserves may be funded from the Reserve Contributions paid pursuant to Section 7.10, from the Common Expense Assessments or from any other revenues of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage.

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

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

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

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

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

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

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

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

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

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

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

8.1.2 The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 8.1 in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

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

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

8.1.5 The Board of Directors shall determine annually whether the amounts and types of insurance the Association has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Condominium is located, or any other factor which

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

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

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

8.4 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholder its their interests may appear, and the proceeds shall be disbursed and applied as provided for in A.R.S. § 33-1253.

8.5 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under at 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 non-renewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a Deed of Trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

8.6 Annual Insurance Review. The Board of Directors shall determine annually whether the amounts and types of insurance it has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Condominium is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association.

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

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

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

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

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

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

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

ARTICLE 10

EMINENT DOMAIN

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

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

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

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

10.5 Priority and Power of Attorney. Nothing contained in this Article 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 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 II

DISPUTE RESOLUTION

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

(a) **"Alleged Defect"** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.

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

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

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

11.3 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a 'Claimant') against any other Bound Party (a 'Respondent') shall notify each Respondent in writing of the Claim (the 'Claim Notice'), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to

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

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

11.5 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 11.5. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 11.5, the arbitration shall be conducted in accordance with the following rules:

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

(b) Governing Procedures. The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 11.5, the provisions of this Section 11.5 shall govern.

(c) Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 11.5 as the 'Arbitrator'.

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

(e) Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 11.5.(c).

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

(g) Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other

matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

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

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

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

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

11.6 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 11.6 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the

sale of the Units. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

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

11.8 Approval of Unit Owners. The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 11.3.

11.9 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 11.5. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

11.10 Conflicts. In the event of any conflict between this Article 11 and any other provision of the Condominium Documents, this Article 11 shall control.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

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

ARTICLE 12

GENERAL PROVISIONS

12.1 Enforcement. The Association may enforce the Condominium Documents in any manner provided for in the Condominium Documents or by law or in equity, including, but not limited to:

(a) imposing reasonable monetary penalties after notice and an opportunity to be heard is given to the Unit Owner or other violator. A Unit Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Occupant of the Unit Owner's Unit or by any Invitee of the Unit Owner or any Lessee or Occupant;

(b) suspending a Unit Owner's right to vote;

(c) suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(d) suspending any services provided by the Association to a Unit Owner or the Unit Owner's Unit if the Unit Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owed to the Association;

(e) exercising self-help of taking action to abate any violation of the Condominium Documents in a non-emergency situation;

(f) requiring a Unit Owner, at the Unit Owner's expense, to remove any structure or Improvement on such Owner's Unit in violation of this Declaration and to restore the Unit to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) without liability to any person, prohibiting any contractor, subcontractor, agent, employee or other invitee of a Unit Owner who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities of the Condominium;

(h) towing vehicles which are parked in violation of this Declaration or the Rules; and

(i) filing a suit at law or in equity to enjoin a violation of the Condominium Documents, to compel compliance with the Condominium Documents, to recover monetary penalties or money damages or to obtain such other relief as to which the Association may be entitled;

(j) recording a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents.

The Association shall not be obligated to take any enforcement action if the Board of Directors determines, in its sole discretion, that because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board of Directors, enforcement action would not be appropriate or in the best interests of the Association.

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.

All rights and remedies of the Association under the Condominium Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy. The failure of the Association or a Unit Owner to take enforcement action with respect to a violation of the Condominium Documents shall not constitute or be deemed a waiver of the right of the Association or any Unit Owner to enforce the Condominium Documents in the future. If any lawsuit is filed by the Association or any Unit Owner to enforce the provisions of the Condominium Documents or in any other manner arising out of the Condominium Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

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 Owners of Commercial Units holding at least eighty percent (80%) of the votes in the Association allocated to Commercial Units and Owners of Residential Units holding at least eighty percent (80%) of the votes in the Association allocated to Residential Units. An agreement to terminate the Condominium must be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed by the requisite number of Owners.

12.5 Amendment.

12.5.1 Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under Section 33-1220 of the Condominium Act, by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

12.5.2 Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated Interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners. After the expiration of the Declarant Control Period, no amendment to any provision of Article II or this Subsection 12.5.2 shall be effective in the absence of the unanimous consent of the Unit Owners. In addition, no amendment to any provision of Article II or this Subsection 12.5.2 shall be effective unless the amendment is approved in writing by the Declarant even if the Declarant no longer owns any Unit at the time of the amendment.

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 the Declarant approves the amendment in writing.

12.5.4 During the Period of Declarant Control, the 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; or (b) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner.

12.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 12.5.1 shall be signed by the President or Vice President of the Association and shall be Recorded. Any amendment made by the Declarant pursuant to Subsection 12.5.4 or the Condominium Act shall be executed by the 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 Unit 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 pursuant to this Section. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

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

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 next day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

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

required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

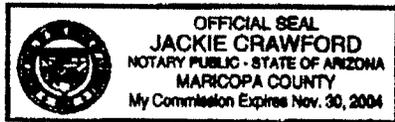
Desert Foothills JV, LLC,
an Arizona Limited Liability Company:

Jim Riggs
By: Jim Riggs
Its: Manager

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 28th day of July, 2004, by Jim Riggs, Manager of Desert Foothills JV, LLC, an Arizona limited liability company, on behalf of the company.

Jackie Crawford
Notary Public



My Commission Expires: 11/30/04

EXHIBIT A

LEGAL DESCRIPTION OF
PROPERTY SUBMITTED TO CONDOMINIUM

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 34;

THENCE NORTH 89 DEGREES 54 MINUTES 22 SECONDS WEST ALONG A PROJECTION OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 34, A DISTANCE OF 6322.41 FEET;

THENCE SOUTH 00 DEGREES 05 MINUTES 38 SECONDS WEST, 90.49 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 34 DEGREES 05 MINUTES 56 SECONDS EAST, 29.91 FEET TO A POINT MARKING THE BEGINNING OF A NON-TANGENT-CURVE, THE CENTRAL POINT OF WHICH BEARS NORTH 78 DEGREES 26 MINUTES 45 SECONDS WEST, 582.00 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 15 DEGREES 25 MINUTES 20 SECONDS, HAVING AN ARC DISTANCE OF 15 1.27 FEET, TO A POINT OF COMPOUND CURVATURE MARKING THE BEGINNING OF A TANGENT CURVE, THE CENTRAL POINT OF WHICH BEARS NORTH 63 DEGREES 01 MINUTES 24 SECONDS WEST, 620.82 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 30 DEGREES 13 MINUTES 57 SECONDS, HAVING AN ARC DISTANCE OF 327.58 FEET;

THENCE SOUTH 57 DEGREES 12 MINUTES 33 SECONDS WEST, 145.38 FEET; THENCE NORTH 32 DEGREES 47 MINUTES 27 SECONDS WEST, 148.92 FEET; THENCE NORTH 23 DEGREES 11 MINUTES 23 SECONDS EAST, 480.48 FEET TO A POINT MARKING THE BEGINNING OF A NON-TANGENT CURVE, THE CENTRAL POINT OF WHICH BEARS NORTH 22 DEGREES 18 MINUTES 30 SECONDS EAST, 14 95.00 FEET;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10 DEGREES 35 MINUTES 03 SECONDS, HAVING AN ARC DISTANCE OF 276.17 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, HELIUM OR OTHER SUBSTANCES OF A GASEOUS NATURE, COAL, METALS, MINERALS, FOSSILS, AND FERTILIZER OF EVERY NAME AND DESCRIPTION;

TOGETHER WITH ALL URANIUM, THORIUM OR ANY OTHER MATERIAL WHICH IS OR MAY BE DETERMINED BY THE LAWS OF THE UNITED STATES OR OF THIS STATE, OR DECISIONS OF COURTS TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS, WHETHER OR NOT OF COMMERCIAL VALUE, AND THE EXCLUSIVE RIGHT THERETO OR, IN OR UNDER THE ABOVE DESCRIBED LANDS SHALL BE AND REMAIN AND ARE HEREBY RESERVED IN AND RETAINED BY THE STATE OF ARIZONA IN PATENT RECORDED IN DOCKET 15392, PAGE 317.

EXHIBIT B

ALLOCATION OF COMMON ELEMENT
INTEREST, COMMON EXPENSE LIABILITY AND VOTES

	<u>Total Gross Area</u>	<u>Undivided Interest</u>	<u>Votes</u>
Bldg One			
Unit 101	2,118	5.36%	5
Unit 103	6,788	17.17%	17
Unit 203	4,275	10.81%	11
Bldg Two			
Unit 111	8,906	22.52%	22
Unit 211	4,275	10.81%	11
Bldg Three			
Unit 119	6,536	16.53%	17
Unit 121	955	2.41%	2
Unit 123	1,415	3.58%	4
Unit 219	4,275	10.81%	11
TOTAL		100%	100

EXHIBIT C
ALLOCATION OF COVERED PARKING SPACES

<u>Unit No.</u>	<u>No. of Assigned Spaces</u>	<u>Parking Space No.</u>
Unit 101	2	106 and 107
Unit 123	3	102, 129 and 130

20040897427
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is
a full, true and correct
copy of the original record
in this office.

Attest: 9/09/2004 08:08:38 AM

By  Recorder

traci

<http://156.42.40.50/PaidDocs/195A3E10BFB>
09/14/07 04:18 PM



COURTESY RECORDING
NO TITLE LIABILITY

CHICAGO TITLE INSURANCE COMPANY

When recorded, please mail to:
Charles J. Lindgren
8940 E. Raintree Dr. Suite 200
Scottsdale, AZ 85260

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

20041247220 10/25/2004 03:57
ELECTRONIC RECORDING

2404025-5-6-1--
Hoyp

15 2404025-10

SECOND AMENDMENT TO
CONDOMINIUM DECLARATION
FOR
DESERT FOOTHILLS,
A CONDOMINIUM

This Second Amendment to Condominium Declaration for Desert Foothills, a condominium (this "First Amendment") is made as of this 25th day of October, 2004 by Desert Foothills JV, LLC, an Arizona Limited Liability Company (the "Declarant").

RECITALS

A. A Condominium Declaration for Desert Foothills, a condominium, was recorded on July 27, 2004, at Recording No. 2004-0864134, in the official records of the County Recorder of Maricopa County, Arizona (the "Declaration") submitting the real property described on Exhibit A of the Declaration to a condominium pursuant to the Arizona Condominium Act, Arizona Revised Statutes., Section 33-1201 et. seq. The Original Declaration was amended by the First Amendment to Condominium Declaration for Desert Foothills, a Condominium (the "First Amendment") recorded on September 14, 2004 at Recording No. 2004-1070326 in the records of the County Recorder of Maricopa County, Arizona.

B. Unless otherwise defined in this First Amendment, each capitalized term used in this First Amendment shall the meaning given to such term in the Declaration.

C. One of the Development Rights reserved to the Declarant in the Declaration is the right to subdivide Units. Section 2.10 also permits a Unit Owner to subdivide Units owned by the Unit Owner. The Declaration and applicable law requires the Declarant to amend the Plat and the Declaration in order to subdivide Units owned by the Declarant.

D. In order to subdivide certain Units owned by the Declarant, Declarant executed and caused to be recorded in Book 696 of Maps, Page 34, Recording No. 2004-0854550, in the official records of the County Recorder of Maricopa County, Arizona. Declarant executed and caused to be recorded the First Amendment to Condominium Plat for Desert Foothills, a Condominium (the "Amended Plat") recorded in Book 704 Page 28 Recording No. 2004-1070325, which subdivided some of the Units owned by the Declarant. Declarant desires to amend the Declaration to reflect the subdividing of those Units.
of maps

E. Section 12.5.1 of the Declaration provides that, with certain exceptions, the Declaration may be amended only by a vote of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. The Declarant owns Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the Declarant desires to make and has approved certain

* AND SECOND AMENDMENT TO CONDOMINIUM PLAT FOR DESERT FOOTHILLS, a
CONDOMINIUM RECORDED IN BOOK 710 of maps PAGE 20, RECORDING NO. 2004-1236861

amendments to the Declaration in addition to the amendments necessary to reflect the subdivision of certain Units owned by the Declarant.

AMENDMENT

NOW THEREFORE, the Declaration is amended as follows:

1. Section 2.4 of the Declaration is amended in its entirety to read as follows:

Building One - Unit 101
 Building One - Unit 103
 Building One - Unit 105
 Building One - Unit 203

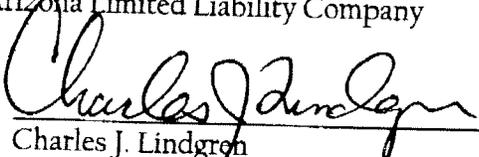
Building Two - Unit 109
 Building Two - Unit 211

Building Three - Unit 119
 Building Three - Unit 121
 Building Three - Unit 123
 Building Three - Unit 219
 Building Three - Unit 221

2. Exhibit B attached to the Declaration is deleted and Exhibit B attached to this Second Amendment is substituted in its place.
3. Exhibit C attached to the Declaration is deleted and Exhibit C attached to this Second Amendment is substituted in its place.

Except as expressly amended by this Second Amendment, the Declaration shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions of this Second Amendment and the Declaration, this Second Amendment shall control.

Desert Foothills JV, LLC,
an Arizona Limited Liability Company

By: 
 Charles J. Lindgren
 Its: Authorized Representative

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 25th day of October 2004, by Charles J. Lindgren, Authorized Representative of Desert Foothills JV, LLC, an Arizona Limited Liability Company, on behalf of the company.

Tonianna Calabrese

Notary Public

 Notary Public State of Arizona
Maricopa County
Tonianna Calabrese
Expires May 13, 2006

My Commission Expires:

May 13, 2006

 Notary Public State of Arizona
Maricopa County
Tonianna Calabrese
Expires May 13, 2006

EXHIBIT B

ALLOCATION OF COMMON ELEMENT
INTERST, COMMON EXPENSE LIABILITY AND VOTES

UNIT NO.	TOTAL GROSS AREA	UNDIVIDED INTEREST (%)	VOTES
Bldg One			
Unit 101	2,118	5.93%	6
Unit 103	3,687	10.33%	10
Unit 105	3,101	8.69%	9
Unit 203	2,995	8.39%	8
Sub-Total	11,901	33.34%	33
Bldg Two			
Unit 109	8,906	24.94%	25
Unit 211	2,995	8.39%	8
Sub-Total	11,901	33.33%	33
Bldg Three			
Unit 119	6,536	18.31%	18
Unit 121	955	2.67%	3
Unit 123	1,415	3.96%	4
Unit 219	1334.5	3.74%	4
Unit 221	1660.5	4.65%	5
Sub-Total	11,901	33.33%	34
TOTAL	35,703	100%	100

EXHIBIT C
ALLOCATION OF COVERED PARKING SPACES

UNIT NO.	NO. OF ASSIGNED SPACES	PARKING SPACE NO.
Unit 101	2	106 & 107
Unit 105	3	105, 108 & 109
Unit 121	1	128
Unit 123	2	129 & 130
Unit 219	2	126 & 127

*THIS EXHIBIT MAY BE AMENDED AT THE SOLE DISCRETION OF THE DECLARANT IN THE EVENT THE CITY OF PHOENIX REDUCES THE TOTAL NUMBER OF COVERED PARKING SPACES DURING THE CONSTRUCTION PHASE OF THE PROJECT.

When recorded, please mail to:
Charles J. Lindgren
14287 N. 87th Street
Scottsdale, AZ 85260

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20050223377 02/24/2005 10:23
LINDAA-5-1-1-
ELECTRONIC RECORDING

**SECOND AMENDMENT TO
CONDOMINIUM DECLARATION
FOR
DESERT FOOTHILLS,
A CONDOMINIUM**



This Second Amendment to Condominium Declaration for Desert Foothills, a condominium (this "Second Amendment") is made as of this 22nd day of February, 2005 by Desert Foothills JV, LLC, an Arizona Limited Liability Company (the "Declarant"), and Desert Foothills Unit Owners Association, an Arizona Nonprofit Corporation (the "Association").

RECITALS

A. A Condominium Declaration for Desert Foothills, a condominium, was recorded on July 27, 2004, at Recording No. 2004-0864134, in the official records of the County Recorder of Maricopa County, Arizona (the "Declaration") submitting the real property described on Exhibit A of the Declaration to a condominium pursuant to the Arizona Condominium Act, Arizona Revised Statutes., Section 33-1201 et. seq. The Original Declaration was amended by the First Amendment to Condominium Declaration for Desert Foothills, a Condominium (the "First Amendment") recorded on August 3, 2004 at Recording No. 2004-0897427 and then re-recorded on September 14th 2004 at recording number 2004-1070326 in the records of the County Recorder of Maricopa County, Arizona.

B. Unless otherwise defined in this Second Amendment, each capitalized term used in this Second Amendment shall give meaning to such term in the Declaration.

C. One of the Development Rights reserved to the Declarant in the Declaration is the right to subdivide Units. Section 2.10 also permits a Unit Owner to subdivide Units owned by the Unit Owner. The Declaration and applicable law requires the Declarant to amend the Plat and the Declaration in order to subdivide Units owned by the Declarant.

D. In order to subdivide certain Units owned by the Declarant, Declarant executed and caused to be recorded in Book 696 of Maps, Page 34, Recording No. 2004-0854550, in the official records of the County Recorder of Maricopa County, Arizona a Condominium Plat for Desert Foothills, A Condominium. Declarant executed and caused to be recorded the First Amendment to Condominium Plat for Desert Foothills, a Condominium (the "1st Amended Plat") recorded in Book 704, Page 28, Recording No. 2004-1070325, which subdivided some of the Units owned by the Declarant. Declarant executed and caused to be recorded the Second Amendment to Condominium Plat for Desert Foothills, a Condominium (the "2nd Amended Plat") recorded in Book 710, Page 20, Recording No. 2004-1236861, which subdivided some of the Units owned by the Declarant. Declarant executed and caused to be

recorded the Third Amendment to Condominium Plat for Desert Foothills, a Condominium (the "3rd Amended Plat") recorded in Book 729, Page 1, Recording No. 2005-0187091, which subdivided some of the Units owned by the Declarant. Declarant desires to amend the Declaration to reflect the subdividing of those Units.

E. Section 12.5.1 of the Declaration provides that, with certain exceptions, the Declaration may be amended only by a vote of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. The Declarant owns Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the Declarant desires to make and has approved certain amendments to the Declaration in addition to the amendments necessary to reflect the subdivision of certain Units owned by the Declarant.

AMENDMENT

NOW THEREFORE, the Declaration is amended as follows:

1. Section 2.4 of the Declaration is amended in its entirety to read as follows:

Building One – Unit 101
 Building One – Unit 103
 Building One – Unit 105
 Building One – Unit 203
 Building One – Unit 205

Building Two – Unit 109
 Building Two – Unit 211

Building Three – Unit 119
 Building Three – Unit 121
 Building Three – Unit 123
 Building Three – Unit 219
 Building Three – Unit 221

2. Exhibit B attached to the Declaration is deleted and Exhibit B attached to this Second Amendment is substituted in its place.
3. Exhibit C attached to the Declaration is deleted and Exhibit C attached to this Second Amendment is substituted in its place.

Except as expressly amended by this Second Amendment, the Declaration shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions of this Second Amendment and the Declaration, this Second Amendment shall control.

EXHIBIT B

**ALLOCATION OF COMMON ELEMENT
INTEREST, COMMON EXPENSE LIABILITY AND VOTES**

Building #:	Unit #	Size	Percentage Undivided Interest	Votes
1	101	2,101 ✓	5.69%	5.69
1	103	3,704 ✓	10.02%	10.02
1	105	3,101 ✓	8.39%	8.39
1	203	2,122 ✓	5.74%	5.74
1	205	1,289 ✓	3.49%	3.49
2	109	8,906	24.10%	24.10
2	211	3,410	9.23%	9.23
3	119	6,536	17.69%	17.69
3	121	955	2.58%	2.58
3	123	1,415	3.83%	3.83
3	219	1,836	4.97%	4.97
3	221	1,574	4.26%	4.26
Totals		36,949	100.00%	100.00

EXHIBIT C
ALLOCATION OF COVERED PARKING SPACES

Unit No.	No. Of Assigned Spaces	Parking Space No.
Unit 101	2	106 & 107
Unit 105	3	105, 108 & 109
Unit 121	1	128
Unit 123	2	129 & 130
Unit 203	1	110
Unit 205	1	111

*THIS EXHIBIT MAY BE AMENDED AT THE SOLE DISCRETION OF THE DECLARANT IN THE EVENT THE CITY OF PHOENIX REDUCES THE TOTAL NUMBER OF COVERED PARKING SPACES DURING THE CONSTRUCTION PHASE OF THE PROJECT.

CONDO DECLARATION ABSTRACT

DESERT FOOTHILLS

ARTICLE	ITEM	DETAIL	REFUNDABLE/ OTHER
2.5	Definition of Unit Boundries	The vertical boundaries are the exterior surfaces of the perimeter walls, doors and windows of the Unit.	
1.2.32	Period of Declarant Control	(a) 90 days after conveyance of 75% of the units or (b) 7 years after ceasing sales of units	
4.15	Leasing	10 days prior to commencement - must provide contacts and lease term to Association	
2.5.1	Glass:	Vertical boundaries are the exterior of the perimeter bldg. walls (& exterior surface of windows or doors in perimeter)	
5.5	Sprinkler/Fire	All aspects of system maintained, repaired and replaced by Association; damage of system charged back to owner	
6.3	Rules & Regs	May be established by Board of Directors or during declarant control.	Not yet established
6.6	Electric and Gas	Association pays for common elements; unit owner pays for their unit electric	
6.6	Trash	Association pays for common elements and the units	
6.6	Water/Sewer	Association pays for common elements and the units	
7.1.1	Budget Preparation	30 days prior to beginning of fiscal year	
7.12	Transfer Fee	Doesn't apply to the 1st sale (from declarant); thereafter, an amount set by the Board and payable to the Association	Non-refundable
7.13	Reserves:	.50 per square foot	Non-refundable
7.9	Initial Working Capital Fund:	1 month of assessments - only upon sale of unit from developer - Do not collect!	Non-refundable
7.2.2	Commencement of Assessment:	1st day of the month following the conveyance of the 1st unit	
7.2.6	Declarant's Common Area Assessment	25% of the assessment until Certificate of Occupancy is issued from the City of Phoenix	Should be changed to COE
7.51	Late Fees (Amt/# of Days)	Bears interest after 15th day and Board of Directors may assess late fee	Not yet established
8.1.1	Insurance	Common elements "all risk" policy not less than \$1M for single occurrence or \$2M aggregate; umbrella set by BOD	Umbrella not yet established
8.1.1 ©	Other:	D&O Insurance required when conveyed to Board of Directors; not less than \$1M cover BOD and Mgmt. agent	
	Other:		

Comments:

When recorded, please mail to:
Jim Riggs
14287 N. 87th Street
Scottsdale, AZ 85260

JRIGGS-5-1-1--
molinam

FOURTH AMENDMENT TO
CONDOMINIUM DECLARATION
FOR
DESERT FOOTHILLS,
A CONDOMINIUM

This Forth Amendment to Condominium Declaration for Desert Foothills, a condominium (this "Forth Amendment") is made as of this 21st day of June, 2005 by Desert Foothills JV, LLC, an Arizona Limited Liability Company (the "Declarant"), and Desert Foothills Unit Owners Association, an Arizona Nonprofit Corporation (the "Association").

RECITALS

A. A Condominium Declaration for Desert Foothills, a condominium, was recorded on July 27, 2004, at Recording No. 2004-0864134, in the official records of the County Recorder of Maricopa County, Arizona (the "Declaration") submitting the real property described on Exhibit A of the Declaration to a condominium pursuant to the Arizona Condominium Act, Arizona Revised Statutes., Section 33-1201 et. seq. The Original Declaration was amended by the First Amendment to Condominium Declaration for Desert Foothills, a Condominium (the "First Amendment") recorded on August 3, 2004 at Recording No. 2004-0897427 and then re-recorded on September 14th 2004 at recording number 2004-1070326 in the records of the County Recorder of Maricopa County, Arizona. The First Amendment to the Declaration was amended by the Second Amendment to Condominium Declaration for Desert Foothills, a Condominium (the "Second Amendment") recorded on October 25th, 2004 at Recording No. 2004-1247220 in the records of the County Recorder of Maricopa County, Arizona. The Second Amendment to the Declaration was amended by the Third Amendment to Condominium Declaration for Desert Foothills, a Condominium (the "Third Amendment") recorded on February 24th, 2005 at Recording No. 2005-0223377 in the records of the County Recorder of Maricopa County, Arizona.

B. Unless otherwise defined in this Forth Amendment, each capitalized term used in this Forth Amendment shall give meaning to such term in the Declaration.

C. One of the Development Rights reserved to the Declarant in the Declaration is the right to subdivide Units. Section 2.10 also permits a Unit Owner to subdivide Units owned by the Unit Owner. The Declaration and applicable law requires the Declarant to amend the Plat and the Declaration in order to subdivide Units owned by the Declarant.

D. In order to subdivide certain Units owned by the Declarant, Declarant executed and caused to be recorded in Book 696 of Maps, Page 34, Recording No. 2004-0854550, in the official records of the County Recorder of Maricopa County, Arizona a Condominium Plat for Desert Foothills, A Condominium. Declarant executed and caused to be recorded the First Amendment to Condominium Plat for Desert Foothills, a Condominium (the "1st Amended Plat") recorded in Book 704, Page 28, Recording No. 2004-1070325, which subdivided some of the Units owned by the Declarant. Declarant

executed and caused to be recorded the Second Amendment to Condominium Plat for Desert Foothills, a Condominium (the "2nd Amended Plat") recorded in Book 710, Page 20, Recording No. 2004-1236861, which subdivided some of the Units owned by the Declarant. Declarant executed and caused to be recorded the Third Amendment to Condominium Plat for Desert Foothills, a Condominium (the "3rd Amended Plat") recorded in Book 729, Page 1, Recording No. 2005-0187091, which subdivided some of the Units owned by the Declarant. Declarant executed and caused to be recorded the Fourth Amendment to Condominium Plat for Desert Foothills, a Condominium (the "4th Amended Plat") recorded in Book 752, Page 45, Recording No. 2005-0753734, which subdivided some of the Units owned by the Declarant. Declarant desires to amend the Declaration to reflect the subdividing of those Units.

E. Section 12.5.1 of the Declaration provides that, with certain exceptions, the Declaration may be amended only by a vote of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. The Declarant owns Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the Declarant desires to make and has approved certain amendments to the Declaration in addition to the amendments necessary to reflect the subdivision of certain Units owned by the Declarant.

AMENDMENT

NOW THEREFORE, the Declaration is amended as follows:

1. Section 2.4 of the Declaration is amended in its entirety to read as follows:

Building One - Unit 101
Building One - Unit 103
Building One - Unit 105
Building One - Unit 203
Building One - Unit 205

Building Two - Unit 109
Building Two - Unit 111
Building Two - Unit 211

Building Three - Unit 117
Building Three - Unit 119
Building Three - Unit 121
Building Three - Unit 123
Building Three - Unit 219

2. Exhibit B attached to the Declaration is deleted and Exhibit B attached to this Forth Amendment is substituted in its place.
3. Exhibit C attached to the Declaration is deleted and Exhibit C attached to this Forth Amendment is substituted in its place.

Except as expressly amended by this Forth Amendment, the Declaration shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions of this Forth Amendment and the Declaration, this Forth Amendment shall control.

Desert Foothills JV, LLC,
an Arizona Limited Liability Company

By: Charles J. Lindgren
Charles J. Lindgren
Its: Authorized Representative

Desert Foothills Condominium Association
an Arizona Non-Profit Corporation

By: Charles J. Lindgren
Charles J. Lindgren
Its: Authorized Representative

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 21st day of June 2005, by Charles J. Lindgren, Authorized Representative of Desert Foothills JV, LLC, an Arizona Limited Liability Company, on behalf of the company.



KRISTIN ANN GIADAGNO
Notary Public - Arizona
Maricopa County
Expires 09/15/08

Kristin Ann Giadagno
Notary Public

My Commission Expires:
09/15/08

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 21st day of June 2005, by Charles J. Lindgren, the Authorized Representative of Desert Foothills Condominium Association, an Arizona Non-profit Corporation, on behalf of the corporation.



KRISTIN ANN GIADAGNO
Notary Public - Arizona
Maricopa County
Expires 09/15/08

Kristin Ann Giadagno
Notary Public

My Commission Expires:
09/15/08

EXHIBIT B

ALLOCATION OF COMMON ELEMENT
INTEREST, COMMON EXPENSE LIABILITY AND VOTES

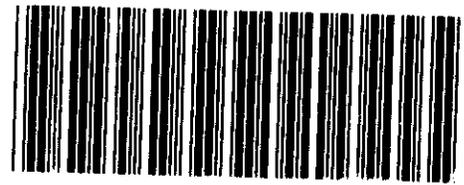
Building #:	Unit #	Size	Percentage Undivided Interest	Votes
1	101	2,101	5.69%	5.69
1	103	3,704	10.02%	10.02
1	105	3,101	8.39%	8.39
1	203	2,122	5.74%	5.74
1	205	1,289	3.49%	3.49
2	109 & 111	8,906	24.10%	24.10
2	211	3,410	9.23%	9.23
3	117	2,540	6.87%	6.87
3	119	3,995	10.81%	10.81
3	121	955	2.58%	2.58
3	123	1,415	3.83%	3.83
3	219	3,410	9.23%	9.23
	Totals	36,948	100.00%	100.00

**EXHIBIT C
ALLOCATION OF COVERED PARKING SPACES**

Unit No.	No. Of Assigned Spaces	Parking Space No.
Unit 101	2	106 & 107
Unit 103	3	102, 103 & 104
Unit 105	3	105, 108 & 109
Unit 203	1	110
Unit 205	1	111
Unit 109 & 111	5	115-119
Unit 211	3	120-121 & 123
Unit 117	2	124 & 125
Unit 119	3	112-114
Unit 121	1	128
Unit 123	2	129 & 130
Unit 219	2	126 & 127

*THIS EXHIBIT MAY BE AMENDED AT THE SOLE DISCRETION OF THE DECLARANT IN THE EVENT THE CITY OF PHOENIX REDUCES THE TOTAL NUMBER OF COVERED PARKING SPACES DURING THE CONSTRUCTION PHASE OF THE PROJECT.

When recorded, please mail to:
Manooch Khajeh
1310 9th Street
Berkeley, CA 94710



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2008-0772619 09/05/08 11:58 AM
2 OF 2

**FIFTH AMENDMENT TO
CONDOMINIUM DECLARATION
FOR
DESERT FOOTHILLS,
A CONDOMINIUM**

GARCING

This Fifth Amendment to Condominium Declaration for Desert Foothills, a condominium (this "Fifth Amendment") is made as of this 4th day of September, 2008 by Quantum Analytical Laboratories, an Arizona Limited Liability Company (the "Building_2_Owner"), and Desert Foothills Unit Owners Association, an Arizona Nonprofit Corporation (the "Association").

RECITALS

A. A Condominium Declaration for Desert Foothills, a condominium, was recorded on July 27, 2004, at Recording No. 2004-0864134, in the official records of the County Recorder of Maricopa County, Arizona (the "Declaration") submitting the real property described on Exhibit A of the Declaration to a condominium pursuant to the Arizona Condominium Act, Arizona Revised Statutes., Section 33-1201 et. seq. The Original Declaration was amended by the First Amendment to Condominium Declaration for Desert Foothills, a Condominium (the "First Amendment") recorded on August 3, 2004 at Recording No. 2004/0897427 and then re-recorded on September 14th 2004 at recording number 2004-1070326 in the records of the County Recorder of Maricopa County, Arizona. The First Amendment to the Declaration was amended by the Second Amendment to Condominium Declaration for Desert Foothills, a Condominium (the "Second Amendment") recorded on October 25th, 2004 at Recording No. 2004/1247220 in the records of the County Recorder of Maricopa County, Arizona. The Second Amendment to the Declaration was amended by the Third Amendment to Condominium Declaration for Desert Foothills, a Condominium (the "Third Amendment") recorded on February 24th, 2005 at Recording No. 2005-0223377 in the records of the County Recorder of Maricopa County, Arizona. The Third Amendment to the Declaration was amended by the Forth Amendment to Condominium Declaration for Desert Foothills, a Condominium (the "Forth Amendment") recorded on June 21st, 2005 at Recording No. 2005-0853096 in the records of the County Recorder of Maricopa County, Arizona.

B. Unless otherwise defined in this Fifth Amendment, each capitalized term used in this Fifth Amendment shall give meaning to such term in the Declaration.

C. One of the Development Rights reserved to the Unit Owners is the right to subdivide Units. Section 2.10 permits a Unit Owner to subdivide Units owned by the Unit Owner.

D. In order to subdivide certain Units owned by the Building_2_Owner, Building_2_Owner executed and caused to be recorded the Fifth Amendment to Condominium Plat for Desert Foothills, a Condominium (the "5th Amended Plat") recorded in Book *, Page 14, Recording No. ~~2005-0772466~~, which subdivided the Units owned by the Building_2_Owner. Building_2_Owner desires to amend the Declaration to reflect the subdividing of those Units. *1003

E. A portion of the balcony adjacent to new Unit 209 will be enclosed, adding approximately 120 square feet to Unit 209. This particular balcony can only be accessed from Unit 209 and serves only Unit 209. This balcony is a limited common element that is allocated exclusively to Unit 209. This reallocation meets Section 33-1218(B) requirements.

AMENDMENT

NOWHEREFORE, the Declaration is amended as follows:

1. Section 2.4 of the Declaration is amended in its entirety to read as follows:

Building One - Unit 101
Building One - Unit 103
Building One - Unit 105
Building One - Unit 203
Building One - Unit 205

Building Two - Unit 107
Building Two - Unit 109
Building Two - Unit 111
Building Two - Unit 113
Building Two - Unit 115
Building Two - Unit 117
Building Two - Unit 207
Building Two - Unit 209

Building Three - Unit 117
Building Three - Unit 119
Building Three - Unit 121
Building Three - Unit 123
Building Three - Unit 219

2. Exhibit B attached to the Declaration is deleted and Exhibit B attached to this Fifth Amendment is substituted in its place.

3. Exhibit C attached to the Declaration is deleted and Exhibit C attached to this Fifth Amendment is substituted in its place.

Except as expressly amended by this Fifth Amendment, the Declaration shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions of this Fifth Amendment and the Declaration, this Fifth Amendment shall control.

Quantum Analytical Laboratories, LLC.
Building #2 Owner
An Arizona Limited Liability Company

By: [Signature]
Manooch Khajeh

Its: Authorized Representative 9-4-08

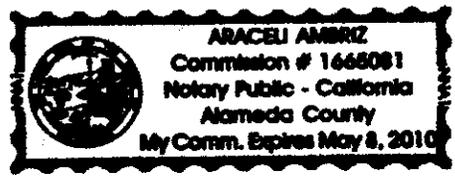
Desert Foothills Condominium Association
An Arizona Non Profit Corporation

By: [Signature] 9-4-08
Manooch Khajeh

Its: Authorized Representative

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this Fifth day of September 2008, by Manooch Khajeh, the Authorized Representative of Quantum Analytical Laboratories, LLC, an Arizona Limited Liability Company.



[Signature]
Notary Public

My Commission Expires:
May 8, 2010

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this Fifth day of September 2008, by Manooch Khajeh, the Authorized Representative of Desert Foothills Condominium Association, an Arizona Non-profit Corporation, on behalf of the corporation.



[Signature]
Notary Public

My Commission Expires:
May 8, 2010

EXHIBIT B**ALLOCATION OF COMMON ELEMENT
INTEREST, COMMON EXPENSE LIABILITY AND VOTES**

Building#:	Unit#:	Size	Percentage Undivided Interest	Votes
1	101	2,101	5.67%	5.67
1	103	3,704	9.99%	9.99
1	105	3,101	8.37%	8.37
1	203	2,122	5.72%	5.72
1	205	1,289	3.48%	3.48
2	107	1,952	5.27%	5.27
2	109	1,676	4.52%	4.52
2	111	2,334	6.30%	6.30
2	113	1,220	3.29%	3.29
2	115	909	2.45%	2.45
2	117	809	2.18%	2.18
2	207	1,604	4.33%	4.33
2	209	1,932	5.21%	5.21
3	117	2,540	6.85%	6.85
3	119	3,996	10.78%	10.78
3	121	955	2.58%	2.58
3	123	1,415	3.82%	3.82
3	219	3,410	9.20%	9.20
	Totals	37,069	100.00%	100.00

EXHIBIT C
ALLOCATION OF COVERED PARKING SPACES

Unit#:	No. Of Assigned Spaces	Parking Space No.
101	2	106, 107
103	3	102, 103, 104
105	3	105, 108, 109
203	1	110
205	1	111
107	1	115
109	1	116
111	1	117
113	1	118
115	1	119
117	1	120
207	1	121
209	1	123
117	2	124, 125
119	3	112, 113, 114
121	1	128
123	2	129, 130
219	2	126, 127
Total	28	

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 _____

[Signature]
 Signature of Document Signer No. 1

[Signature]
 Signature of Document Signer No. 2 (if any)

State of California
 County of Alameda

Subscribed and sworn to (~~or affirmed~~) before me on this
4th day of September, 2008, by
Date Month Year
 (1) Manooch Khajich,
Name of Signer

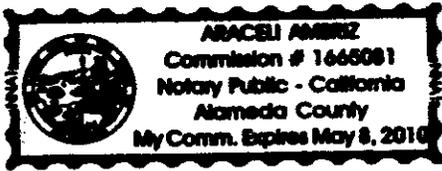
proved to me on the basis of satisfactory evidence
 to be the person who appeared before me (.)

(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence
 to be the person who appeared before me.)

Signature [Signature]
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Declaration Amendment
 Document Date: 9/4/08 Number of Pages: 5
 Signer(s) Other Than Named Above: N/A

