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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**
for
**Papago Ridge,
a Condominium**

MARICOPA COUNTY, ARIZONA

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
for
Papago Ridge**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Papago Ridge, a condominium, is made this 9th day of March, 2006, by Scottsdale City Development III, LLC, an Arizona limited liability company.

**ARTICLE I
DEFINITIONS**

1.0 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 the same may be amended from time to time (the "**Condominium Act**").

1.1 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:

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

(B) "**Assessments**" means individually or collectively, as the context may require, the Common Expense Assessments, Special Assessments, Enforcement Assessments and Reserve Assessments (when applicable as provided in Section 7.14 of this Declaration below) levied and assessed pursuant to Article 7 of this Declaration.

(C) "**Assessment Lien**" means the lien granted to the Association by §33-1256 of the Condominium Act to secure the payment of Assessments, monetary penalties and other charges owed to the Association by a Unit Owner.

(D) "**Association/Name**" means "**Papago Ridge Condominium Owners Association,**" the Arizona nonprofit corporation organized or to be organized by Declarant to administer and enforce the Condominium Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns.

(E) "**Board of Directors**" means the Board of Directors of the Association.

(F) "**Building**" means the buildings located on the Parcel and designated as a building on the Plat, which Building is located at 2228 North 52nd Street, Phoenix, Arizona and is known as Papago Ridge.

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

(H) "Collection Costs" means all costs, fees, charges and expenditures (including, without limitation, attorneys' fees, court costs, filing fees, lien fees, and Recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late charges, interest or other amounts payable to the Association pursuant to this Declaration, without regard to whether a law suit is filed or legal action otherwise undertaken by or on behalf of the Association.

(I) "Common Elements" means all portions of the Condominium other than the Units, including, without limitation, hallways, driveways, parking spaces, sidewalks, community deck areas, lighting and landscaping.

(J) "Common Expenses" means the actual or estimated costs or expenditures incurred or to be incurred by, or financial liabilities of, the Association, together with required allocations to reserves. Common Expenses include, without limitation, the following items:

- (i) the cost of maintenance, repair and replacement of the Common Elements;
- (ii) the cost of maintenance of other areas of the Condominium which are the responsibility of the Association under this Declaration;
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- (iii) the cost of management and administration of the Association, including but not limited to, compensation paid by the Association to managers, accountants, lawyers, attorneys, architects and employees;
- (iv) the cost of utilities, trash pick-up and disposal, landscaping and other services benefiting the Unit Owners and their Units to the extent such services are paid by the Association;
- (v) the cost of all insurance and surety bonds, including but not limited to fire, casualty, liability, and worker's compensation maintained by the Association pursuant to this Declaration;
- (vi) reasonable reserve amounts determined by the Board as provided in Section 7.14 of this Declaration;
- (vii) payments for taxes, liens or encumbrances against the Common Elements, if any, except to the extent directly assessed or allocated to individual Units and their proportionate interest therein;

(viii) 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;

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

(x) any cost incurred by the Association in furtherance of the purposes of the Association, the discharge of the obligations imposed on the Association by the Condominium Documents or the Condominium Act or the exercise by the Association of any of the powers or rights granted to the Association by the Condominium Documents or the Condominium Act; and

(xi) the cost of the performance of any direct or indirect obligations of the Association under any Related Document.

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

(L) "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to Section 2.3 of this Declaration.

(M) "Condominium" means the real property located in Maricopa County, Arizona, which is described in Exhibit A attached to this Declaration and on the Plat, together with the Building and other Improvements^{Unofficial Document} located thereon and all easements, rights, and appurtenances belonging thereto. The name of the Condominium created by this Declaration is "Papago Ridge."

(N) "Condominium Act" means A.R.S. § 33-1201, et. seq., as amended from time to time, or any successor statute which governs the creation and management of condominiums.

(O) "Condominium Documents" means this Declaration, including the Plat, and the Articles, Bylaws, and any Rules.

(P) "Declarant" means SCOTTSDALE CITY DEVELOPMENT III, LLC, an Arizona limited liability company, and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument or who succeeds to any Special Declarant Rights pursuant to A.R.S. §33-1244 of the Condominium Act.

(Q) "Declaration" means this Declaration of of Covenants, Conditions and Restrictions for Papago Ridge, a condominium, as it may be amended from time to time, together with the exhibits, and where appropriate by context, the Plat.

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

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

(ii) add real estate to the Condominium;

(iii) withdraw real estate from the Condominium;

(iv) make the condominium part of a larger condominium or planned community;

(v) subdivide Units; convert Units into Common Elements or convert Common Elements into Units; or

(vi) amend the Condominium Documents during the Period of Declarant Control provided in Section 13.4(D) and Section 13.4(E) below.

(S) "Enforcement Assessment" means an Assessment levied pursuant to Section 7.4 of this Declaration.

(T) "First Mortgage" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust Recorded against title to that Unit.

(U) "First Mortgagee" means the holder of any First Mortgage.

(V) "Improvement" means any and all physical structures, fixtures or facilities existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, the Building, driveways, parking areas, paving, fences, walls, sculptures and signs, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

(X) "Invitee" means any person whose temporary or periodic presence within the Condominium, including any Unit, has been solicited, approved by or arranged for by a particular Unit Owner, Occupant or Lessee, including without limitation, his guests, employees, business invitees, contractors and agents.

(Y) "Lessee" means any Person who is the tenant or lessee under a written lease (including subleases) of a Unit.

(Z) "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 including the private interior hallways, storage units, and parking spaces.

(AA) "Member" means any Person who is or becomes a member of the Association.

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

(CC) "Parcel" means the real property located in Maricopa County, Arizona, which is described in Exhibit A attached to this Declaration and on the Plat, together with the Building and other Improvements located thereon and all easements, rights, and appurtenances belonging thereto.

(DD) "Period of Declarant Control" means the time period commencing on the date this Declaration is Recorded in the Official Records of the Maricopa County, Arizona Recorder, and ending on the earlier of: (i) Ninety (90) days after the conveyance of ninety percent (90%) of the Units to Unit Owners other than Declarant; (ii) Four (4) years after Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) Ten (10) years after the date of Recording of this Declaration.

(EE) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, joint venture, government, government subdivision or agency, or other legal or commercial entity.

(FF) "Plat" means the condominium plat for Papago Ridge, a condominium, Recorded in the Official Records of the County Recorder of Maricopa County, Arizona, on February 28, 2006, in Book 818 of Maps Unofficial Document page 25, and any amendments, supplements or corrections thereto.

(GG) "Purchaser" means any Person, other than Declarant, who by means of a voluntary transfer becomes a Unit Owner, excepting (i) a Person who purchases a Unit and then leases it to Declarant for use in connection with the sale of other Units, or (ii) a Person who, in addition to Purchasing a Unit, is assigned any Special Declarant Rights.

(HH) "Recording" means the act of placing an instrument of public record in the Office of the Maricopa County, Arizona Recorder and "Recorded" means having been so placed of public record.

(II) "Reserve Assessment" means an Assessment levied pursuant to Section 7.14 of this Declaration. The amount of the Reserve Assessment shall not be determined or assessed until after the termination of the Period of Declarant Control. The amount of the Reserve Assessment and how it will be assessed shall be determined as provided in Section 7.14 of this Declaration.

(JJ) "Rules" means any rules and regulations adopted by the Board of Directors, as they may be amended from time to time.

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

- (i) Construct Improvements provided for in this Declaration or shown on the Plat;
- (ii) exercise any Development Right;
- (iii) maintain sales or management offices and signs advertising the Condominium;
- (iv) use easements through the Common Elements for the purpose of making Improvements within the Condominium;
- (v) appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control; and
- (vi) exercise the rights reserved to Declarant pursuant to Section 3.3 of this Declaration.

(LL) "Unit" means a portion of the Building designated for separate ownership or occupancy, the boundaries of which are described in Section 2.1 and shown on the Plat.

(MM) "Unit Owner" ^{Unofficial Document} means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include (i) Persons having an interest in a Unit merely as security for the performance of an obligation, or (ii) a Lessee of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title to a Unit under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Unit, whether legal or equitable, upon payment in full of all monies due under the contract. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract 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. If a Unit is owned by more than one Person, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Unit shall designate by notice to Declarant one of the co-owners to vote and act for all Owners of the Unit (the "Co-Owner Designee"), and unless and until such designation is revoked or a new Co-Owner Designee is appointed, the Co-Owner Designee shall be deemed the Owner of the Unit for purposes of all votes, consents, approvals, waivers, giving or receiving notices and other actions to be taken by or with respect to the Unit or its Owners pursuant to this Declaration. If at any meeting of the Association, and as more specifically set forth in the Bylaws of Papago Ridge, the Co-Owner Designee is not present and one of the remaining multiple Unit Owners of

a Unit is present, such multiple Unit Owner is entitled to cast all the votes allocated to that Unit if the Co-Owner Designee has not already cast a vote on the behalf of the Unit as otherwise provided by law. If more than one of the multiple Unit Owners are present but the Co-Owner Designee is absent and the Co-Owner Designee has not already cast a vote on the behalf of the Unit as otherwise provided by law, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Unit Owners, unless the Declaration otherwise provides. There is majority agreement if any one of the multiple Unit Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Unit Owners of the Unit. If a protest is made, and no majority agreement of the multiple Unit Owner is otherwise obtained, the multiple Unit Owners shall be deemed to have abstained from voting in the matter at hand. Until notice of transfer of a Unit is given to Declarant, the transferring Owner shall (for the purpose of this Declaration only) be the transferee's agent, and any vote of or other action taken by the transferor shall be binding on the transferee.

ARTICLE 2
SUBMISSION OF PROPERTY;
BOUNDARIES AND ALLOCATIONS

2.0 Submission of Property. Declarant is the owner of the Parcel. Declarant hereby submits the real property described on Exhibit A attached to this Declaration and on the Plat, together with all Improvements, easements, rights and appurtenances thereto, to a residential Condominium in accordance with the provisions of the Condominium Act. The Identifying Numbers of the Units submitted to the Condominium are those Units numbered on the Plat as follows:

Units 101 through 145 and Units 201 through 245, Papago Ridge, a Condominium, as further described on Exhibit A..

2.1 Unit Boundaries.

(A) The physical boundaries of each Unit are defined in the Plat as follows:

(i) Vertical Boundaries – The vertical boundaries of Units are defined as the interior finished, but undecorated, surfaces of the perimeter walls.

(ii) Horizontal Boundaries – The horizontal boundaries of Units are defined as the interior finished, but undecorated surfaces of their respective floors and ceilings. Floor and ceiling elevations are shown on the Plat.

(iii) All dimensions to Building are shown to the outside of the exterior walls. Where there are patios or balconies which extend beyond the exterior of the outside walls, the vertical boundaries shall be the planes of the inner edges of the patios or balconies extended between the horizontal boundaries.

All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the walls, floor or ceiling are part of the Unit, and all other portions of the walls, floor and ceiling are part of the Common Elements.

(B) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, heating or air conditioning unit or apparatus or other fixture lies partially within and partially outside the boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Each Unit is hereby allocated the following as a Limited Common Element allocated solely to that Unit or allocated (as indicated below) to fewer than all of the Units and for the exclusive use of the Unit or Units so allocated: each two bedroom Unit shall receive one reserved covered parking space and one reserved uncovered parking space and each one bedroom Unit shall receive one reserved covered parking space. Any gas, electric or water meter which serves only one Unit is allocated as a Limited Common Element to the Unit it serves.

(C) Subject to the provisions of subsection (B) of this section, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are part of the Unit; provided, further that if a Unit Owner acquires part of an adjoining Unit he may remove partitions or create apertures pursuant to the provisions of A.R.S. §33-1221(3), even if the partition in whole or in part is a common element.

(D) Any shutters, awnings, ^{Unofficial Document} window boxes, doorsteps, stoops, porches, entryways, and all other fixtures designed to serve a single Unit, but located outside of the Unit's physical boundaries, are Limited Common Elements allocated exclusively to that Unit. Entry hallways designated for use by a Unit or Units in a Building, but less than all of the Units in the Condominium, and located outside of the physical boundaries of a Unit shall be Limited Common Elements allocated to the Unit or Units in the Building served by such entry walks.

(E) In the event of an inconsistency or conflict between the provisions of this section and the Plat, this section shall control.

(F) The physical boundaries of a Unit shall be considered to be the proper boundaries regardless of the settling, rising or lateral movement of the Building and regardless of any variances between the boundaries shown on the Plat and the actual physical boundaries.

(G) Declarant reserves the right to relocate the boundaries between adjoining Units owned by Declarant and to reallocate each such Unit's Common Elements interest, votes in the Association and Common Expense Liability subject to and in accordance with A.R.S. §33-1222.

(H) Square footages of individual Units as may be referenced by Declarant on the Plat or in marketing materials and brochures are approximate only. Each Purchaser and Unit

Owner shall release and waive all claims against Declarant based upon the square footage representations.

2.2 Allocation of Common Elements Interest. The undivided interests in the Common Elements of the Association shall be allocated in the following manner: Each Unit shall be entitled to an equal and undivided 1/90th share of the Common Interest. 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 Common Element Interest. The undivided Common Element Interest allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description of the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit.

2.3 Allocation of Common Expense Liabilities. The undivided interest in the Common Expense Liability of the Association shall be allocated in the following manner: Each Unit shall be responsible for an equal and undivided 1/90th share of the Common Expense Liability.

2.4 Allocation of Limited Common Elements. During the Period of Declarant Control, Declarant, and thereafter the Board of Directors, shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element by Declarant. Any such allocation shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act. Without limiting the ^{Unofficial Document} foregoing, Declarant, while it owns any Unit, and thereafter, the Board, may allocate one parking space comprising part of the Common Elements as a Limited Common Element to each individual Unit with or without charge of a one-time fee.

2.5 Access Controls. There are access control mechanisms in the Common Elements in order to restrict access to certain areas and provide more privacy for the Unit Owners and other Occupants and Lessees of the Units. The access control mechanisms shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. Each Owner, Lessee and Occupant acknowledges and agrees that the access control mechanisms do not guarantee the safety or security of the Owners, Lessees or Occupants or their families, guests or invitees or guarantee that no authorized person shall gain access to the Condominium. Each Owner, Lessee and Occupant, and their families, guests and invitees, acknowledge that the access control mechanisms may restrict or delay entry into, or access within, certain areas by police, fire department, ambulance and other emergency vehicles or personnel and agree to assume the risk that the access control mechanisms will restrict or delay entry into, or access within such areas by police, fire department, ambulances or other emergency vehicles or personnel. Neither Declarant, the Association nor any director, officer, agent or employee of Declarant or the Association shall be liable to Owner, Lessee or Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the existence, operation or inoperation or maintenance of the access control mechanisms.

ARTICLE 3
EASEMENTS AND DEVELOPMENT RIGHTS

3.0 Utility and Service Company Easements. There is hereby created an easement upon, across, over and under the Common Elements for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, natural gas, water, sewer, telephone, electricity, cable television or other communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company, the Association or Declarant to erect and maintain the necessary utility lines, pipes, facilities and equipment on the Common Elements, but no sewers, electrical lines, gas or water lines, or other utility or service lines may be installed or located on the Common Elements except as initially designed and/or as thereafter approved and constructed by the Board of Directors. This easement shall in no way affect any other Recorded easements on the Common Elements.

3.1 Easements for Ingress and Egress. Subject to Limited Common Element parking areas, there are hereby created easements for ingress and egress for pedestrian traffic over, through and across entries, passages, paths, walks, and lanes that from time to time may exist upon the Common Elements and for pedestrian and vehicular traffic over the driveways of the Common Elements as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Unit Owners, Occupants and Lessees and any conveyance, encumbrance or mortgaging of the Common Elements shall be subject to such easements of ingress and egress.

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3.2 Unit Owners' Easements of Enjoyment.

(A) Every Unit Owner, Lessee and their respective Invitees, shall have a right and easement of enjoyment in and to the Common Elements, except for the Limited Common Elements, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to:

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

(ii) 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, Lessees, or their respective Invitees;

(iii) the right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, in the manner and subject to the limitations set forth in the Condominium Act, with the vote or written assent of at least eighty percent (80%) of the Unit Owners, and with the consent of Declarant during the Period of Declarant Control, and subject to the further provisions of Section 3.1 above; and

(iv) all rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to Declarant by Section 3.3 of this Declaration.

(B) A Unit Owner's right and easement of enjoyment in and to the Common Elements and Limited 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 and Limited 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.

(C) The provisions of this section shall not apply to any of the Limited Common Elements that are allocated to one or more, but less than all, of the Units.

3.3 Declarant's Easements and Reserved Rights.

(A) While Declarant is selling or leasing Units in the Condominium, Declarant shall have the right and an easement to maintain one or more advertising signs and to place management offices, sales offices and/or leasing offices in any Units owned by Declarant or on the Common Elements as Declarant deems appropriate.

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

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

(D) Declarant shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging its obligations and exercising Special Declarant Rights whether arising under the Condominium Act or reserved in this Declaration.

(E) Declarant shall have the right and an easement on, over and under those portions of the Common Elements not located within the Building for the purpose of maintaining and collecting drainage of surface, roof or storm water. The easement created by this subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

(F) So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to reserve parking spaces in the Condominium not allocated as Limited Common

Elements or otherwise assigned to particular Units for use by prospective Unit Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(G) In the event of any conflict or inconsistency between this Section 3.3 and any other provision of the Condominium Documents, this Section 3.3 shall control and prevail over such other provisions. The rights of Declarant set forth in this Section 3.3 shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any other means provided in this Declaration.

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

3.5 Easements in Favor of Association. The Units (including interiors of Units unless otherwise indicated herein) and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(A) For inspection of the exterior of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible.

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

(C) 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.

(D) For correction of emergency conditions in one or more Units or Limited Common Elements or casualties to the Common Elements, the Limited Common Elements or the Units.

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

(F) For inspection, at reasonable times and upon reasonable notice to the Unit Owner, of the Units and the Limited Common Elements to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees, and their respective Invitees.

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

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

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

(C) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the stone, block, brick or other masonry walls bounding the Unit and the Unit side surface of the studs which support the dry wall or plaster perimeter walls bounding the Unit, to the extent such nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements or another Unit or adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(D) For the maintenance of any lighting devices, outlets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only one Unit but which encroach into any part of the Common Elements.

(E) For the performance of the Unit Owner's obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 5.1(B) of this Declaration.

(F) Nothing contained in this Section 3.6(F) shall be construed as limiting or waiving Unit Owner's obligation to obtain Board prior written consent to the Modifications described in Section 4.4 below.

3.7 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, alteration or restoration authorized by this Declaration, settling or shifting, or any reason other than the encroachment onto the Common Elements or any Unit caused by the intentional misconduct or gross negligence of a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, is hereby granted.

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

ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS

4.0 Residential Units. All Units shall be used, improved and devoted exclusively to residential use. No Unit Owner, Lessee or Occupant may store, transport or maintain "hazardous substances" as that term is commonly defined under applicable federal and state laws governing hazardous materials. No trade or business shall be conducted on any Unit or in or from any Unit, except that an Owner, Lessee or Occupant of a Unit may conduct a business activity within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell ^{Unofficial Document} from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (c) the business activity is conducted solely in the Unit; (d) the business activity does not involve solicitation of Owners, Lessees or Occupants; and (e) the business activity is consistent with the residential character of the residential portion of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners, Lessees or Occupants, as may be determined from time to time in the reasonable discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.1 As Build Unit Boundary. In interpreting deeds, leases, declarations and plans, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, lease, declaration or plan regardless of settling or lateral movement of the Condominium Building and regardless of minor variances between boundaries

as shown on the plan or in the deed, lease or declaration and those of the Condominium Building as constructed.

4.2 Antennas. To the fullest extent allowable by law, no antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electro-magnetic radiation shall be erected, used or maintained outdoors on any portion of the Condominium whether attached to a Building or structure or otherwise, unless approved by the Board.

4.3 Utility Service. Except for lines, wires and devices existing on the Condominium on the date the first Unit is conveyed to a Purchaser and maintenance and replacement of the same, no lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are contained in conduits or cables installed and maintained underground or concealed in, under or on Building or other structures approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Building or structures approved by the Board. All utilities not separately metered to the Units shall be paid by the Association as a Common Expense.

4.4 Modifications.

(A) No Person shall ^{Unofficial Document} make any structural additions, alterations or improvements (collectively, "**Modifications**") within a Unit, unless prior to the commencement of each Modification the Unit Owner of the Unit to be modified:

(i) retains an architect or engineer licensed in Arizona who certifies directly to the Board of Directors in accordance with sealed plans and specifications provided to the Board that such Modification will not impair the structural integrity of the Building or the mechanical systems serving the same within which such Modification is to be made;

(ii) provides, at the request of the Board of Directors, the Association with a written indemnity against liability in accordance with the requirements of the Board of the Directors and in a form provided by the by the Board of Directors;

(iii) executes a written acknowledgment that any such Modification may negate or amend any contractual, statutory or common law warranty expressly or implicitly provided by Declarant;

(iv) complies with any additional conditions, if any, imposed by the Board pursuant to this Section 4.4 below; and

(v) receives a formal written approval of the Modification from the Board. The Unit Owner shall, to the extent, permitted by Arizona law, be responsible for any damage to

other Units and to the Common Elements which results from any such Modification. The Unit Owner shall be responsible for any and all construction debris as a result of any modification.

(B) The Board of Directors may condition the approval of any proposed Modification to a Unit in any reasonable manner, including, without limitation: (i) restricting the time during which such work may be performed; (ii) 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; (iii) requiring the Unit Owner causing the Modification to obtain and maintain, prior to commencement and during completion of the Modification, comprehensive general liability insurance in such amounts as may be required by the Board of Directors. The Unit Owner shall designate Declarant, the Association, the Board of Directors and any other Person designated by the Board as additional insureds under the policy.

(C) Any Unit Owner may make nonstructural Modifications within his Unit that do not affect mechanical systems within the Building without the prior written approval of the Board, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such Modifications.

(D) Notwithstanding the foregoing, no Modification within a Unit, whether structural or not, which would be visible from the exterior of the Building shall be made without the prior written consent of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed Modification is aesthetically pleasing and in harmony with the surrounding Improvements.

(E) Any Unit Owner acquiring an adjoining Unit, and, upon receiving the approval of the Board set forth in this Section 4.4, may remove or alter any non-structural common wall or partition between adjoining Units or create apertures therein even if certain elements therein are part of the Common Elements or Limited Common Elements, if such acts do not impair the structural integrity of the Building or its mechanical systems or lessen the support of any part of the Condominium and as further provided in A.R.S. §33-1221(3) of the Condominium Act. Further, no Unit Owner may remove any such common wall or partition between adjoining Units without first obtaining the consent, and satisfying any "fire wall" requirements of, the City of Phoenix, Arizona.

(F) No Unit Owner, Lessee or any of their respective Invitees may 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.

(G) The approvals required of the Board and/or Declarant pursuant to this Section 4.4 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

(H) The Board shall have the right to charge a reasonable fee for reviewing requests for approval of any Modification, which fee shall be payable at the time the application for approval is submitted to the Board. The Board may establish a schedule of architectural review fees as part of any Rules as may be adopted by the Association.

(I) The Association shall have the right to stop any work or Modification that is not in compliance with this Section 4.4 or any Rules of the Association governing Modifications, and, where appropriate, to seek an equitable injunction ordering the removal of a Modification or any portion thereof that does not comply with this Section 4.4. Neither Declarant, the Association, nor any of their respective officers, directors, employees, agents contractors, consultants or attorneys shall be liable to any Unit Owner or other Person by reason of: mistake in judgment; failure to point out or correct deficiencies in any plans or other submissions relating to, without limitation, structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards; negligence; or any other misfeasance, malfeasance or nonfeasance arising out of or in any way connected with or relating to a Modification.

(J) Declarant is exempt from the provisions of this Section 4.4 and need not seek nor obtain the Board's approval of any Improvements or Modifications constructed on the Condominium by Declarant

4.5 Trash Containers and Collection. Subject to the further provisions regarding medical waste and environmentally hazardous materials in Section 4.9 below, each Unit Owner or Lessee of a Unit shall regularly remove all garbage, trash and recyclable materials from his Unit and shall deposit the same in covered collection containers provided by the Board or the City of Phoenix, Arizona at one or more designated collection points on the Common Elements. No garbage or trash shall be placed or kept on the Condominium outside of the Units except in covered containers of a type, size and style which are approved by the Board or as are provided by the City of Phoenix, Arizona. The Board of Directors shall have the right to subscribe to a private trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate Rules regarding garbage, trash, trash containers and collection. No incinerators shall be kept or maintained in any Unit or the Common Elements.

4.6 Machinery and Equipment. No Unit Owner, Lessee or other Invitee may place, operate or maintain machinery or equipment of any kind upon the Condominium other than usual and customary machinery and equipment used in connection with the permitted uses of the Unit and Limited Common Elements. This Section 4.7 shall not apply to any such machinery or equipment which Declarant or the Association may require for the construction, improvement, operation and maintenance of the Common Elements.

4.7 Animals. Except as expressly permitted by this Section no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium. A reasonable number of Permitted Pets may be kept or maintained in a Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. For purposes of this Section, a "Permitted Pet" shall mean a dog, cat, fish or bird of a variety

commonly kept as a household pet. The Board of Directors shall have the absolute authority to determine what constitutes a reasonable number of Permitted Pets. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Unit, or be an annoyance to a person of ordinary sensibilities. All dogs shall be kept on a leash when outside a Unit and all dogs shall be directly under the control of the Owner, Lessee or Occupant at all times. Any person bringing a dog onto the Common Elements shall immediately remove any feces or urine deposited on the Common Elements by the dog. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of any Building or any other Unit. Upon the written request of any Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet makes an unreasonable amount of noise, causes an odor which is detectable outside the Unit or is an annoyance to a person of ordinary sensibilities. Notwithstanding any other provision of this Section, no dog which the Board of Directors determines, in its sole discretion, is of a breed which has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals shall be kept in a Unit or on any other portion of the Condominium. Any dog or other Permitted Pet which has bitten or attacked a person or other animal or any dog or other Permitted Pet which the Board of Directors, in its sole discretion, determines has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners, Lessees or Occupants or their guests shall be removed from the Condominium by the owner of the Permitted Pet within three (3) days after written demand for removal ^{of the} Permitted Pet is given to the owner by the Board of Directors. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Condominium, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets; provide, however, that any rule placing limitations on the height and/or weight of a Permitted Pet must be approved by the affirmative vote of Members having more than fifty percent (50%) of the votes cast with respect to such proposed rule at a meeting of the Members.

Regardless of any rules adopted by the Board, the following breeds shall not be permitted: Pit Bulls, Rottweilers, Dobermans, German Shepherds, Bull Terriers, Bulldogs, wolf-dog hybrids, Chow-Chows and Great Danes or dogs having a predominant percentage of any such breed in them. Nothing in this Section shall be construed as prohibiting a dog which is deemed to be an "assistive animal" under the Arizona or Federal Fair Housing Act.

4.8 Mineral Exploration/Environmental Restrictions. No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind. All Persons occupying or visiting the Condominium shall be responsible for complying with all federal and state environmental and health laws. Without limiting the foregoing, no Unit Owner, Lessee or Invitee may dispose of, transport, or store "hazardous materials" in his Unit or elsewhere in the Condominium other than small amounts of ordinary non-combustible cleaning agents and "medical waste products" disposed of in compliance with all governmental requirements and regulations. In no event may any Unit Owner, Lessee of a Unit or other Invitee

to the Condominium dispose of any hazardous materials, including without limitation, motor oil, hydrocarbons, other petroleum products, or "medical waste products" in or down a dry well or anywhere on or adjacent to the Condominium.

4.9 Diseases and Insects. No Unit Owner, Lessee or Occupant shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious diseases or noxious insects. In addition to any pest control services provided by the Association, each Unit Owner shall perform such pest control activities in his Unit as may be necessary or appropriate to prevent insects, rodents and other pests from being present in the Unit.

4.10 Parking. No parking shall be permitted on the Condominium other than on the on-site paved parking spaces provided. All vehicles must fit within the painted lines of the parking stall when parked, regardless of whether such parking space is allocated as a Limited Common Element. Only a Unit Owner, Occupant or Lessee is authorized to park in the Limited Common Elements parking space allocated to that Unit. The Board may adopt additional parking Rules governing the use of the Limited Common Elements.

4.11 Motor Vehicle Repair/Inoperable Vehicles. Except for emergency repairs, no motorized vehicle of any type or nature shall be maintained, constructed, reconstructed, serviced, repaired or restored, on any portion of the Condominium. In no event may: (i) any inoperable vehicle or (ii) equipment of any kind or nature that is not a motorized vehicle regularly used for transportation, be parked or "stored" within the Condominium. Without limiting the foregoing, a Vehicle or equipment shall be deemed to be stored and/or inoperable if it is covered by a car cover, tarp or other material and/or is not moved on at least a weekly basis.

4.12 Towing of Vehicles. The Board of Directors shall have the right to have any motor vehicle or equipment of any kind parked, kept, maintained, constructed, reconstructed or repaired on the Limited Common Elements in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by a Unit Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner as provided for in this Declaration for the collection of Enforcement Assessments.

4.13 Signs. No signs shall be permitted on the exterior of any Unit or Building or any other portion of the Condominium without the prior written approval of the Board and shall at all times be in compliance with any sign ordinances of the City of Phoenix, Arizona.

4.14 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.

4.15 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 Invitee to the Condominium. No exterior speakers, horns, whistles, bells or other sound devices, except security or other emergency devices used exclusively for security or emergency purposes, shall be located, used or placed on the Condominium.

4.16 Window Coverings. No reflective materials, including, 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. All enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit or Building shall require the prior written approval of the Board unless the items so installed are substantially identical in color, texture and size as previously installed and approved coverings being so replaced.

4.17 Leasing of Units. No Owner of a Unit may lease less than his entire Unit. All leases shall: (i) be in writing; (ii) provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the Lessee and Lessee's Invitees to comply with the terms of the Condominium Documents shall be a default under the lease. At least ten (10) days prior to the commencement date of the lease of his Unit, a Unit Owner shall provide the Association with a signed copy of the Lease. The Unit Owner must also provide the following information if such information is not readily ascertainable from the Lease: (i) the commencement date and termination date of the lease and the names of each Lessee or other Person who will be occupying the Unit during the term of the lease; (ii) the contact address and telephone number of the Unit Owner while the Lease is in effect. Any Unit Owner who leases his Unit must provide the Lessee with copies of this Declaration and any Rules. The Unit Owner shall be liable for any violation of this Declaration or the Rules caused by the Lessee, any his Invitees and, upon demand of the Association, shall immediately take all necessary actions to correct any such violations. Among other remedies, the Association may fine any Unit Owner who leases his Unit without complying with the provisions of this Section 4.18. Nothing contained in this Section 4.18 shall be construed as limiting or in any way affecting any leasing program operated by Declarant in the Condominium with regard to its Units. The provisions of this Section shall not apply to Declarant.

4.18 Variances. The Board may authorize a variance from compliance with any of the provisions of this Declaration, including this Article 4, from time to time, when circumstances such as hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and must be signed by a majority of the Board. If such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision hereof covered by the variance, and only for so long as the special circumstances warranting the variance exist, nor shall it affect in any way the Unit Owner's obligation to comply with all governmental laws and regulations affecting the use of his Unit. The Board shall have the right to condition the granting of a variance as it may determine in the Board's sole discretion,

including, without limitation; making a variance temporary or permanent; or requiring the removal or replacement of a non-permanent or semi-permanent structure upon the sale or other conveyance of a Unit. Moreover, because of the unique facts and circumstances surrounding each variance request, the granting of a variance in one instance or under certain terms and conditions does not mandate the granting of a variance under similar or related circumstances, terms or conditions if the experiences of the Association and the Condominium as a whole or the differences in circumstances (however slight) of a variance request from a previously approved variance lead the Board, in good faith, to disapprove a variance request in such instance.

4.19 Limited Common Element Yards. Furniture, furnishings, pots and plants kept and maintained on any Limited Common Element Yard shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior colors of any Building. No furniture, furnishings, pots, plants or other items which extend above the wall of the Limited Common Element Yard shall be kept and maintained on any Limited Common Element Yard, except as otherwise required by law. No Limited Common Element Yard shall be used as a storage area for items or materials that are not customarily intended for use on a Limited Common Element Yard. No linens, blankets, rugs swimsuits or similar articles may be hung on or from any Limited Common Element Yard. Any plantings initially existing or installed on a Limited Common Element Yard by or at the request of Declarant and any identical replacement plantings subsequently installed pursuant to this Declaration shall not be removed or altered by a Unit Owner or the Association except pursuant to the provisions of this Declaration. Maintenance of Limited Common Element Yards shall be in accordance with Sections 5.1 and 5.2 of this Declaration.

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

ARTICLE 5 MAINTENANCE AND REPAIR OF THE CONDOMINIUM

5.0 Duties of the Association.

(A) The Association shall maintain, repair and make necessary improvements to all Common Elements (including certain Limited Common Elements described herein). Without limiting the foregoing, the Association shall be responsible for maintaining: (i) Building exteriors; (ii) Building roof; (iii) the private water and sewer lines as provided in Section 5.0(C) below; and (iv) other Common Element Improvements and Limited Common Elements including, without limitation, parking, fences, walls, driveways and parking areas and spaces, whether or not allocated as a Limited Common Element of any Unit, and including parking canopy covers, paths, lanes, entries and passages, sidewalks, landscaping, and lighting and light fixtures in the Common Elements. In no event shall any Unit Owner undertake any maintenance, repairs or replacements of the exterior of the Building or of his Unit (if such would be readily

visible from the exterior of the Building), including painting or installing Improvements or Modifications thereto, without the express prior written approval of the Board.

(B) The cost of all such repairs, maintenance and improvements shall be a Common Expense and shall be paid for by the Association. The Board shall be the sole and absolute judge as to the appropriate maintenance of the Common Elements and the Condominium. No Unit Owner, Lessee, or their respective Invitees shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

(C) The Association shall be responsible for maintaining and repairing the private water and sewer lines from the point of connection to each Unit to the point of connection of such lines to the publicly dedicated water and sewer lines maintained by the City of Phoenix, Arizona.

5.1 Duties of Unit Owners.

(A) Each Unit Owner shall maintain, repair, replace and restore, at his own expense, all portions of his Unit. However, the Association shall be responsible for maintaining all other portions of the Building exterior notwithstanding that the Building exterior may be included in the Unit's vertical boundaries and part of the Unit square footage as provided in Section 2.1(A).

(B) Each Unit Owner shall be responsible for the maintenance, repair and/or replacement as necessary of any utility meters, heaters, water heaters, air conditioning units (including compressors and condensers), appliances, wires, or other devices serving only his Unit.

5.2 Repair or Restoration Necessitated by Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage to the Common Elements or the Improvements, or equipment thereon, which results from the negligence or willful misconduct or omission of the Unit Owner. The cost to the Association of any such repair, maintenance or replacement required by such act or omission of a Unit Owner or any of its Invitees shall be paid by the Unit Owner, upon demand, to the Association pursuant to Section 7.1(E) below. The Association may enforce collection of any such amounts in the manner provided in this Declaration for the collection of Enforcement Assessments.

5.3 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 Section 7.1(E) of this Declaration.

ARTICLE 6
THE ASSOCIATION

6.0 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 to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association at the Board's discretion shall have the right to finance capital Improvements in the Condominium by encumbering future Assessments if such action is approved by the written consent or affirmative vote of 60% of the Unit Owners and by Declarant during the Period of Declarant Control. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

6.1 Powers and Duties of Board. For the mutual benefit of the Owners:

(A) The Board shall have the power and duty to operate, repair, replace and maintain the Common Areas and to perform or cause to be performed any other power or duty of Declarant hereunder;

(B) The Board shall have the ^{Unrecorded Document} power (but not the duty) to make reasonable rules and regulations for the operation of the Common Areas and to supplement and amend such rules and regulations from time to time;

(C) The Board shall have the power and duty to enter into agreements or contracts with insurance companies to obtain insurance coverage for the Association (including, but not limited to, its officers and directors) and the Common Areas and to collect or compromise and adjust any claim under any such insurance policy;

(D) The Board shall have the power (but not the duty) to enter into agreements or contracts with utility and other companies with respect to utility installation, consumption and service matters for the Association and the Common Areas and to grant such easements over the Common Areas as may be necessary or appropriate in connection therewith;

(E) The Board shall have the power (but not the duty) to borrow funds to pay the costs of operating the Association and performing its obligations, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit in its sole and absolute discretion, however, the Board may only encumber future Assessments if such action is approved as provided in Section 6.0;

(F) The Board shall have the power (but not the duty) to enter into agreements, contracts or undertakings of every kind and nature, to maintain one or more bank accounts and,

generally, to have all powers necessary or incidental to the operation and management of the Association and satisfaction of its legal obligations;

(G) The Board shall have the power (but not the duty) to sue or defend in any court of law on behalf of the Association;

(H) The Board shall have the power and duty to maintain books of account and records with respect to all aspects of the business of the Association and to the levy, collection, receipt, administration, expenditure and disposition of all assessments of Shared Expenses, and other funds of the Association in accordance with sound accounting practices, and to permit any Owner (or a Person designated by an Owner in writing) to inspect and copy them upon reasonable notice during normal business hours at an office of the Association in Maricopa County, Arizona;

(I) The Board shall have the power and duty to make, or cause to be made, any tax returns, reports or other filings required by federal, state or local governmental authorities;

(J) The Board shall have the power and duty, if insurance proceeds are insufficient, to repair or replace any portion of the Common Area and to assess the Owners for their Pro Rata Share of any deficiency;

(K) The Board shall have the power and duty, pursuant to the provisions of Section 7.14, to provide for and accumulate reserve funds to be used for repairs, replacement, maintenance and/or other appropriate purposes, in such amounts and for such purposes as may be determined by the Board to be necessary or appropriate;

(L) The Board shall have the power and duty to exercise for the Association all powers, duties and authority vested in or delegated to the Board of the Association and not reserved to the Owners by other provisions of this Declaration;

(M) The Board shall have the power (but not the duty) to declare the office of a member of the Board to be vacant in the event that the member is absent from three consecutive regular meetings of the Board without being excused;

(N) The Board shall have the power (but not the duty) to employ an individual or firm to manage the affairs and property of the Association, to employ independent contractors or such employees as the Board may deem necessary or appropriate, and to prescribe their duties and to set their compensation;

(O) The Board shall have the power (but not the duty) to retain the services of legal, accounting, engineering, architectural or other independent professional or consulting services;

(P) The Board shall have the power and duty to enforce the provisions of this Declaration and any rules made hereunder as the Board determines to be in the best interest of

the Association and to enjoin and/or seek damages from any Owner for violation of any such provisions or rules if the Board determines such action to be in the best interest of the Association;

(Q) The Board shall have the power and duty to take any and all other actions and to enter into any and all other agreements or undertakings as the Board may determine to be necessary or proper for the full enjoyment of its rights and fulfillment of its obligations hereunder or for the operation or protection of the Association.

6.2 Voting. Each Unit Owner shall be allotted one vote per Unit owned.

6.3 Directors and Officers.

(A) During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association. Directors and officers appointed by Declarant do not have to be Unit Owners.

(B) Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three (3) Members, each of whom must be a Unit Owner (or, in case the Unit Owner is not a natural person, the Director shall be an officer, partner, member, manager, trustee, beneficiary, or director of the Unit Owner). The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

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(C) Declarant may voluntarily surrender its right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

6.4 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, adopt architectural standards, and restrict and govern the use of Common Elements by any Unit Owner, Lessee, or any Invitee; *provided, however*, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be Recorded.

6.5 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association is mandatory and such Membership and the Allocated Interests thereof are appurtenant thereto, and may not be separated from, ownership of the Unit; *provided, however*, the Allocated interests of Units from time to time may be modified

or changed as expressly permitted in this Declaration and authorized under the Condominium Act. No Owner during his ownership of a Unit shall have the right to relinquish or terminate his membership in the Association.

6.6 Personal Liability. Neither Declarant nor any member of the Board or of any committee of the Association, any officer of the Association nor any manager or other employee of the Association, shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of Declarant, the Association, the Board, the managing agent, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 6.6 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

ARTICLE 7 ASSESSMENTS

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7.0 Preparation of Budget.

(A) At least thirty (90) days (or soon thereafter as feasible) before the beginning of the first full fiscal year of the Association after the first Unit is conveyed to a Purchaser and each fiscal year thereafter, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) at such time as required by Section 7.14 below, such amounts as are necessary to provide general operating reserves and reserves for contingencies and replacements as provided in Section 7.14 below. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Section 7.1(E) or Section 7.1(F) below and must include, after the termination of the Period of Declarant Control and pursuant to the provisions of Section 7.14 below, an adequate allocation to reserves as part of the Common Expense Assessment.

(B) At least ten (30) 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 7.1 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.1 of this Declaration and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

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

7.1 Common Expense Assessment

(A) For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against fewer than all of the Units pursuant to Section 7.1 (E) and Section 7.1(F) below) shall be assessed against each Unit in the Condominium in proportion to the Unit's Common Expense Liability as set forth in Section 2.3 (subject to reduction regarding Units owned by Declarant). The amount of the Common Expense Assessment assessed pursuant to this subsection (A) ^{Unofficial Document} shall not exceed the maximum Common Expense Assessment for the fiscal year as computed pursuant to Section 7.1(B) below. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors, except that no increase in the Common Expense Assessment assessed pursuant to this subsection (A) exceeding the maximum Common Expense Assessment for such fiscal year shall become effective unless approved by the requisite number of Members provided in Section 7.1(B) below.

(B) The maximum Common Expense Assessment for each fiscal year of the Association after the first full or partial fiscal year thereof shall not be greater than an amount equal to one hundred twenty-five percent (125%) of the greater of the previous year's annualized Common Expense Assessment established by the Board and assessed against the Units, or the yearly average of the prior Common Expense Assessments not exceeding the last six (6) years. From and after January 1 of the year immediately following the conveyance of the first Unit to a Purchaser, the Common Expense Assessment for any fiscal year of the Association may be increased by an amount greater than the maximum increase allowed in this Section 7.1(B), only by a vote of Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. The maximum Common Expense Assessment limitations herein contained shall apply only to the

amount of the Common Expense Assessment assessed pursuant to subsection (A) of this section and shall not apply to the amount of Common Expenses assessed pursuant to Section 7.1 (E) or 7.1(F) below.

(C) The Common Expense Assessments shall commence as to all Units in the Condominium 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. Unless otherwise directed by the Board, Common Expense Assessments shall be paid in monthly installments and shall be due and payable on the first day of each month.

(D) 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, and reserves for Common Expenses shall be assessed against all of the Units in accordance with Section 7.1(A) above.

(E) If any Common Expense is caused by the negligence, omission or willful misconduct of any Unit Owner or any of its Invitees, the Association shall assess that Common Expense exclusively against his Unit.

(F) 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 Liability. Unofficial Document

(G) The Common Expense Assessment for any Unit in the Condominium on which construction has not been substantially completed (as defined hereinbelow) shall be an amount equal to twenty-five percent (25%) of the Common Expense Assessment for Units which have been substantially completed. So long as any Unit owned by Declarant qualifies for the reduced Common Expense Assessment provided for in this subsection (G), and, only if Declarant elects to pay such reduced Assessment, Declarant shall be obligated to pay to the Association any deficiencies in the monies resulting from Declarant having paid a reduced Common Expense Assessment and necessary for the Association to be able to timely pay all Common Expenses. Without limiting the foregoing, "substantial completion" of a Unit shall mean a Unit that is ready for immediate occupancy by a Unit Owner or Lessee, including installation of carpeting and tenant improvements and a certificate of occupancy has been issued for such Unit.

(H) All monetary penalties, late charges, interest, Collection Costs, 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 monetary penalties, late charges, interest, Collection Costs, or other fees and charges became due. The personal obligation of a Unit Owner for, monetary penalties, late charges, interest, Collection Costs, 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.

7.2 Special Assessment. In addition to Common Expense Assessments, the Association may levy, in any fiscal year of the Association, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose (a "Special Assessment"). Any Special Assessment (other than a Special Assessment levied pursuant to Section 8.5 of this Declaration) shall have first been approved by Unit Owners representing two-thirds (2/3) of the votes in the Association and who are voting in person or by proxy at a meeting duly called for such purpose and approved by Declarant, while Declarant owns any Units. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

7.3 Notice and Quorum for Any Action Under Section 7.1 or 7.2. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of Members is required under Sections 7.1 or 7.2 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members entitled to cast sixty percent (60%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than fifty (50) days following the preceding meeting.

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7.4 Enforcement Assessment. The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (i) any Collection Costs, including attorneys' fees (whether or not a law suit is filed), incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Unit Owner; (ii) any Collection Costs, including attorneys' fees (whether or not a law suit is filed), incurred by the Association with respect to any violation of the Condominium Documents by the Unit Owner, his Lessee or any other Invitee to his Unit; (iii) any monetary penalties levied against the Unit Owner; or (iv) any amounts (other than Common Expense Assessments or Special Assessments) which become due and payable to the Association by the Unit Owner, his Lessee or any other Invitee to his Unit pursuant to the Condominium Documents.

7.5 Effect of Nonpayment of Assessments; Association Remedies.

(A) Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of the delinquency at the rate of interest established from time to time by the Board of Directors. In addition, the Board of Directors may establish a reasonable late charge to be charged to a Unit Owner and assessed against his Unit as part of the Assessment Lien for each installment of an Assessment that is deemed delinquent.

(B) All Assessments, monetary penalties, late charges, interest, Collection Costs, 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 Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any municipal or other governmental body; and (iii) the lien of any First Mortgage. 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 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, late charges, interest, Collection Costs, or other fees or charges imposed or levied against the Unit or the Unit Owner which are secured by the Assessment Lien. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, monetary penalties, late charges, interest, Collection Costs and all other sums payable to the Association by the Unit Owner of the Unit have been paid in full.

(C) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties, late charges, interest, Collection Costs, and all other fees and charges owed to the Association in any manner allowed by law, including, but not limited to: (i) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts which came due at the time he was the Owner thereof and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts, provided, however, that the personal obligation to pay delinquent Assessments which came due prior to the transfer of ownership shall not pass to successors in title; (ii) bringing an action to foreclose its Assessment Lien against the Unit in ^{Unofficial Document} the manner provided by law for the foreclosure of a realty mortgage; and (iii) suspending voting and Common Element use rights as provided in this Declaration and/or in the Bylaws. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

7.6 Subordination of Assessment Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage. Any First Mortgagee or any other party acquiring title or coming into possession of a Unit through foreclosure of a First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments, monetary penalties and other charges and fees against the Unit which became payable prior to such sale or transfer. Any delinquent Assessments, monetary penalties and other fees and charges which are extinguished pursuant to this section may be reallocated and assessed to all Units as a Common Expense. Any Assessments, monetary penalties, Collection Costs, and other fees and charges against the Unit which accrue prior to such sale or transfer shall remain the obligation of the defaulting Unit Owner.

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

7.8 Certificate of Payment. The Association, on written request, shall furnish to a lienholder, Unit Owner or Person designated by a Unit Owner, a recordable statement setting forth the amount of unpaid Assessments, monetary penalties, late charges, interest, and Collection Costs against his Unit. The statement shall be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement. In addition, the Association shall furnish such statements as may be required under A.R.S. §33-1260 of the Condominium Act within the time frames set forth therein for compliance.

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

7.10 Working Capital. Each Purchaser of a Unit from Declarant shall pay to the Association, immediately upon becoming the Owner of the Unit, a sum equal to three (3) monthly installments of the Regular Assessment for the Unit (the "Working Capital"). Each subsequent purchaser of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a sum equal to two (2) monthly installments of the regular Assessment for the Unit. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration. This Working Capital Fund shall be used and applied for start-up costs and as a working capital fund in connection with the initial operating expenses for the Common Elements. The Board of Directors (including the Board of Directors appointed by Declarant during the Period of Declarant Control), shall have the right, power and authority to use the Working Capital Fund to purchase and/or reimburse for any and all furniture, equipment and other miscellaneous items, including, but not limited to, common element furniture, pool furniture (if any), party room furniture (if any), exercise equipment (if any), business center equipment and furniture (if any), bicycle racks, decorations (paintings, plants, etc.), underground sprinkler system, common element window blinds, trash compactor(s), floor mats, safety mirrors, key boxes, and any and all other miscellaneous initial operating equipment and labor to install same. In addition, Working Capital Funds may be used to pay any of the Association's expenses, including, but not limited to, expenses related to maintenance, repair and replacement of any of the Common Elements, satisfy any of the Association's obligations under the related documents or any other obligations of the Association.

7.11 Surplus Funds. Surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of reserves (after the creation of a reserve account pursuant to Section 7.14) may in the discretion of the Board of Directors either be returned to the Unit Owners pro rata in accordance with each Unit Owner's Common Expense

Liability, be credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expense Liability or placed into the reserve account.

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

7.13 Transfer Fee. Each Purchaser of a Unit shall pay to the Association immediately upon becoming a Unit Owner a transfer fee in such amount as is established from time to time by the Board of Directors, which fee may be paid to the managing agent of the Association, other than Declarant, as partial compensation for maintaining the books and records of the Association. Any transfer fee established pursuant to this Section 7.13 is in addition to and not part of or in lieu of the fee which the Association is entitled to charge for the Certificate provided pursuant to Section 7.8 of this Declaration and A.R.S. §33-1260(C) of the Condominium Act. The transfer fee provided herein shall be waived upon the initial sale and transfer from Declarant to the original Unit Owner.

7.14 Reserve Assessments. After the termination of the Period of Declarant Control, and upon the performance of the tasks set forth herein by the Board of Directors, the Assessments provided for in Section 7.1 above shall include reasonable amounts as determined by the Board of Directors collected as reserves for the future Periodic maintenance, repair or replacement of all or a portion of the Common Elements, or any other purpose as determined by the Board of Directors. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board of Directors in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds 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. Withdrawal of funds from the Association's reserve account shall require the signature of either (a) two (2) members of the Board of Directors; or (b) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. Within ninety (90) days after the termination of the Period of Declarant Control, the Board of Directors shall obtain a reserve study, and at least once every three (3) years thereafter shall obtain a new reserve study, which study 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 which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (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, and 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. The Association shall waive any claims associated with or arising from the Reserve Assessments against the Declarant and any Member, director, officer, employee or agent

of the Declarant should the Declarant fail to act in compliance with the provisions in this Section 7.14.

ARTICLE 8 INSURANCE

8.0 Scope of Coverage.

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

(i) Property insurance on the Common Elements and Units, exclusive of Improvements and betterments which were not part of the original construction and were supplied or installed by Unit Owners and furniture, furnishings or personal property of the Unit Owners. The policy is to be issued on blanket causes of loss - "Special Form" policy or its equivalent. 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) (subject, however, to the loss payment adjustment provisions in favor of the Insurance Trustee) in an amount equal to one hundred percent (100%) of the current replacement cost of the Condominium, exclusive of 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 ^{Uniformal Document} 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.

(ii) Broad form Comprehensive General Liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000.00 for any single occurrence and \$2,000,000 general aggregate. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy may include, at the discretion of the Board, medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles and coverage for any legal liability that results from law suits related to employment contracts in which the Association is a party.

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and a policy of employer's liability insurance with coverage limits as the Board may determine from time to time, if the Association employs any Persons.

(iv) Directors' and officers' liability insurance covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

(v) Blanket fidelity bond coverage for all officers, directors, trustees and employees of the Association and all other Persons handling or responsible for funds of or administered by the Association including, without limitation, any management company, whether or not they receive compensation for their services. The total amount of the fidelity bonds maintained by the Association shall be based on the best business judgment of the Board, but shall not be less than the estimated funds, including the Reserve Account, in the custody of the Association or management agent, as the case may be, at any given time during the term of the bond or the sum equal to three (3) months' aggregate Common Expense Assessments on all Units plus the Reserve Account amount. Fidelity bonds obtained by the Association shall name the Association as an obligee, shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees" or similar terms or expressions; shall provide that they may not be cancelled or substantially modified without at least ten (10) days' prior notice to the Association and each First Mortgagee named in the bond. In the case the Association employs a management company to manage the Common Elements and to handle the general affairs of the Association, the Board of Directors shall require the management agent to maintain the fidelity bond required of the Association pursuant to this Section 8.0(A).

(vi) 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, or the Unit Owners, including, without limitation, umbrella general liability insurance which would provide general liability coverage in excess of the coverage provided by the policy to be obtained pursuant to Section 8.0(A)(ii).

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(B) 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) There shall be no subrogation with respect to the Association, its agents, servants, its Board of Directors or officers thereof, and employees against Unit Owners and members of their household.

(iii) 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.

(iv) The coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their mortgagees or beneficiaries under deeds of trust.

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners.

(vi) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer).

(vii) 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 thirty (30) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(viii) Any Insurance Trust Agreement will be recognized by the insurer.

(ix) Such coverage shall not be contingent upon action by the insurance carrier's board of directors, policyholders or members or permit claims for contribution or assessments to be made against Unit Owners or their First Mortgagees.

(x) If the Condominium is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket policy" of flood insurance on the Condominium in the lesser of one hundred percent (100%) of the current replacement cost of the Building and any other property covered on the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended.

(xi) "Agreed Amount and Inflation Guard," and "Building Ordinance or Law" endorsements, except where expressly not applicable or not available.

8.1 Payment of Premiums/Deductibles. Premiums for all insurance obtained by the Association pursuant to this Article and all deductibles thereunder shall be Common Expenses and shall be paid for by the Association; provided, however, the Association may assess to a Unit Owner any deductible amount expended as a result of the negligence, misuse or neglect for which such Unit Owner is legally responsible under this Declaration and Arizona law. The Board of Directors may select deductibles in reasonable amounts applicable to the insurance coverage maintained by the Association pursuant to Section 8.0(A) above to reduce the payments payable for such insurance.

8.2 Insurance Obtained by Unit Owners/Non-Liability of Association. The issuance of insurance policies to the Association pursuant to this Article 8 shall not prevent a Unit Owner from obtaining insurance for his own benefit and at his own expense covering his Unit (including all additions, alterations and Improvements thereto), his personal property and providing personal liability coverage and such other coverages as are not provided by the Association pursuant to this Article 8. Notwithstanding the obligation of the Association to obtain insurance coverage as stated in this Declaration, neither Declarant nor the Association, or their respective officers, directors, employees and agents, shall be liable to any Unit Owner or

any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of the insurance is not adequate, and it shall be the responsibility of each Unit Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Unit Owner may desire. All policies of property insurance carried by Unit Owners shall be without contribution with respect to the policies of property insurance obtained by the Board of Directors for the benefit of all Unit Owners pursuant to Section 8.0(A) above. For purposes of this Section 8.2, "additions, alterations and Improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including, without limitation, carpeting, flooring, wall coverings, paint and paneling.

8.3 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article 8 shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in §33-1253 of the Condominium Act.

8.4 Insurance Trust. Notwithstanding any of the other provisions of this Article 8 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 ^{Unofficial Document} 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: (i) the collection and appropriate disposition of the proceeds thereof; (ii) the negotiation of losses and execution of releases of liability; and (iii) the execution of all documents; (iv) the performance of all other acts necessary to accomplish such purposes.

8.5 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 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 7.2 of this Declaration.

8.6 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article 8 of the Declaration shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a Deed of Trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty

(30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known address.

ARTICLE 9 RIGHTS OF FIRST MORTGAGEES

9.0 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee informing the Association of its correct name and mailing address and number or address of the Unit to which the request relates, the Association shall provide such First Mortgagee with timely written notice of the following:

(A) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage; (b) Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage or any obligation under the Condominium Documents, which delinquency or default remains uncured for the period of sixty (60) days; (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (d) Any proposed action which requires the consent of a specified percentage of First Mortgagees and (e) the date and time of all meetings of the Members of the Association and such First Mortgagee shall be permitted to designate a representative to attend all such meetings.

9.1 Prohibition Against Right of First Refusal. Unofficial Document The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction. This provision may not be amended without the written consent of all First Mortgagees then of record.

9.2 Right of Inspection of Records. Any Unit Owner or First Mortgagee shall, upon written request, be entitled to inspect, during normal business hours, the current copies of the Condominium Documents and the books, records and any financial statements of the Association as have been prepared or are available as provided in A.R.S. §10-11602. Notwithstanding the foregoing, the Board of Directors may withhold from disclosure such books, records and documents of the Association, or portions thereof, designated under A.R.S. §10-11602(F). In addition, all First Mortgagees shall be entitled to receive, within a reasonable time after request, an audited financial statement of the Association for the immediately preceding fiscal year of the Association at the expense of the requesting party if an audited financial statement has not otherwise been previously prepared. The Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of any information requested under this Section 9.2 or Arizona law.

9.3 Prior Written Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least 80% of all First Mortgagees (based upon one vote for each First Mortgage owned) or 80% of the Unit Owners (other than Declarant have given their prior written approval, the Association shall

not be entitled to: (i) by act or omission, seek to abandon or terminate this Declaration or the Condominium; (ii) change the pro rata interest or obligations of any individual Unit for the purpose of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or determining the pro rata share of ownership of each Unit in the Common Elements; (iii) partition or subdivide any Unit; (iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this subsection; or (v) use hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

9.4 Liens Prior to First Mortgage. All taxes, assessments, and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Unit and not to the Condominium as a whole.

9.5 Condemnation or Insurance Proceeds. No Unit Owner, or any other party, shall have priority over any rights of any First Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements. Subject to the foregoing, the allocation of awards for the exercise of eminent domain, or deeds in lieu thereof, shall be governed by the provisions of §33-1206 of the Condominium Act.

9.6 Limitation on Partition and ^{Unofficial Document} Subdivision. No Unit shall be partitioned or subdivided without the prior written approval of any First Mortgagee and Unit Owner of that Unit.

9.7 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article 9 and any other provision of the Condominium Documents, the provisions of this Article 9 shall prevail; provided, however, that in the event of any conflict or inconsistency between the different sections of this Article 9 and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners or First Mortgagees that must consent to (i) an amendment to any of the Condominium Documents; (ii) a termination of the Condominium; or (iii) certain actions of the Association, the provision requiring the consent of the greatest number or percentage of Unit Owners or First Mortgagees shall prevail except to the extent that Declarant may unilaterally undertake certain amendments and other acts as a Development or Special Declarant Right.

ARTICLE 10 ENFORCEMENT

10.0 General Right of Enforcement. Subject to the further provisions of Article 11, the Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter

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

10.1 Items of Construction/Equitable Relief. As provided in Section 4.4(I) and Section 10.2 of this Declaration, Declarant, the Association, and/or any Unit Owner shall have the right to use summary abatement or similar means to enforce the restrictions set forth in this Declaration, provided, however, a judicial decree authorizing such action must be obtained before any items of construction or any Modification can be altered or demolished by any Person other than the Unit Owner who caused the Modification to be made. Each Unit Owner shall be subject to all rights and duties assigned to Unit Owners under this Declaration.

10.2 Enforcement by Association. 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 hearing as provided in the Bylaws. A Unit Owner shall be responsible for payment of any fine levied or imposed against a Unit Owner as a result of the actions or omissions of the Unit Owner, his Lessee, or their respective Invitees;

(B) suspending a Unit Owner's right to vote for as long as the Unit Owner is in violation of any provision of these Condominium Documents;

(C) suspending any Person's right to use any facilities within the Common Elements, provided, however, that nothing shall authorize the Board to limit ingress or egress to or from a Unit or to an allocated parking space Limited Common Element by a Person to park in that space;

(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 or taking action to abate any violation of the Condominium Documents or to remove any structure of Improvement further subject to any limitations of Arizona law and the provisions of Section 10.2 of this Declaration;

(F) without liability to any Person, prohibiting any Invitee of a Unit Owner or Lessee who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities on the Condominium;

(G) towing Vehicles which are parked in violation of this Declaration or the Rules as further provided in Section 4.11 of this Declaration;

(H) 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 Assessments, monetary penalties, Collection Costs or damages or to obtain such other relief as to which the Association may be entitled, including the remedies provided for in Section 7.5 of this Declaration;

(I) Recording a written notice of violation by any Unit Owner of any restriction or provision of the Condominium Documents as further provided in Section 13.16 of this Declaration; and

(J) Recording an Assessment Lien against a Unit as provided in Section 7.5(B) of this Declaration and the Condominium Act.

10.3 Limited Enforcement Obligation. 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.

ARTICLE 11 CONSTRUCTION CLAIMS PROCEDURES

11.0 Right to Cure Alleged Defects. It is Declarant's intent that to the extent the Declarant or its agents performs any construction on or to the Common Elements, a Unit, any Building or other Improvements constructed within the Condominium, that such work be performed in compliance with all applicable building codes and ordinances and that they be of a quality that is consistent with good construction and development practices for residential condominiums of this type in the Phoenix market. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, Board and all Owners shall be bound by the following claim resolution procedure:

(A) In the event that the Association, Board, or any Owner or Owners (collectively, "**Claimant**") claim, contend or allege that any portion of the Common Elements, any Unit, and/or any other Improvements constructed within the Condominium are defective, or that Declarant, its agents, consultants, brokers, contractors or subcontractors (collectively, "**Agents**") were negligent or otherwise violated any contractual, statutory or other obligation imposed by tort, equity or otherwise in the planning, design, engineering, grading, construction, selling or other development thereof (collectively, an "**Alleged Defect**"), Declarant hereby reserves the right for itself, and any Agent of Declarant, to inspect, repair and/or replace such Alleged Defect as set forth herein. In the event that a Claimant discovers any Alleged Defect,

Claimant shall notify Declarant in writing within thirty (30) days of discovery of the Alleged Defect of the specific nature of such Alleged Defect ("*Notice of Alleged Defect*"). Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservation of rights hereunder, Declarant, and any of its Agents, shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements (including Limited Common Elements) or any Unit for the purposes of inspecting and/or conducting testing and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacements, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(B) Nothing set forth in this Section 11.0 shall be construed to impose any obligation on Declarant or any of its Agents to inspect, test, repair or replace any item or Alleged Defect for which Declarant or such other Person is not otherwise obligated under applicable law or any limited warranty provided by Declarant or such other Person in connection with the sale of Units. The right of Declarant and its Agents 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 Declarant. In no event shall any statute of limitations be tolled during the period in which Declarant and/or its Agents conduct any inspection or testing of any Alleged Defects.

11.1 *Legal Actions.* All legal actions initiated by Claimants (as defined in Section 11.0 above) shall be brought in accordance with and subject to Sections 11.2 and 11.3 below. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant or any Agent of Declarant alleging damages for: (i) an Alleged Defect, (ii) the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith 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. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any legal action, cause of action, proceeding, or arbitration against Declarant or any Agent of Declarant, which notice shall (at a minimum) include (i) a description of the Alleged Defect, (ii) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (iii) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (iv) the estimated cost to repair such Alleged Defect, (v) the name and professional background of the attorney retained by the Association to pursue the claim against Declarant and a description of the relationship between such attorney and the member(s) of the Board, (vi) a description of the fee arrangement between such attorney and the Association, (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (viii) the estimated time necessary to conclude the action against Declarant, and (ix) an affirmative statement from the Board that the action is in the best interests of the

Association and its Members. In the event the Association recovers any funds from Declarant (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

11.2 Approval of Litigation. The Board shall not be authorized to incur legal expenses, including without limitation, attorneys' fees or bring any legal proceeding of a material nature for which the claimed or alleged damages or the current economic value of other available remedies would exceed \$25,000 in the aggregate, unless the Association has received the consent of not less than eighty percent (80%) of the votes allocated in the Membership (other than votes allocated to Declarant or any other Unit Owner who would be a defendant in such proceedings) to commence such an action or to incur such expenses. The foregoing restriction shall not apply to: (i) actions to enforce the collection of Assessments or an Assessment Lien; (ii) actions to challenge ad valorem taxation or condemnation proceedings; (iii) actions to defend claims filed against the Association or to assert mandatory counterclaims therein; (iv) actions to enforce any specific covenant hereunder; or (v) or claims brought by an Owner in his individual capacity concerning his Unit and Improvements located solely within his Unit; provided, further that each Unit Owner shall be bound by the mandatory arbitration provisions set forth herein and in any contract of purchase. In the event of any conflict between the arbitration provisions of this Article 11 and the contract of purchase, the contract of purchase shall control. Otherwise, all provisions of this Article 11 shall be binding upon the Unit Owner. The Association must finance any legal proceeding with monies that are specifically collected for same and may not borrow money or use reserve funds or other monies that are collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Owners must notify prospective purchasers of such legal proceedings and must provide such prospective purchasers with a copy of the Notice of Alleged Defect provided to Declarant in accordance with Section 11.0 above.

11.3 Binding Arbitration. In the event of a dispute between Declarant or its Agents, and any Unit Owner(s) or the Association regarding any controversy or claim, including any claim based on contract, tort or statute, and including but not limited to any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Unit, the Common Elements, the Limited Common Elements, or any other part of the Condominium, including without limitation, any claim or cause of action that the Unit, Common Elements or Limited Common Elements are defective or that Declarant, its agents, contractors, employees, members, subcontractors, architects, engineers, consultants or similar parties were negligent in the planning, design, engineering, grading, construction or development thereof, or any claim or cause of action against 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, or arising out of or in any way related to the rights or duties of the parties under this Declaration, the design or construction of the Condominium, or an Alleged Defect, the matter will be resolved by binding arbitration which shall be conducted in accordance with the following rules:

(A) The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules"). 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 11.3, the provisions of this Section 11.3 shall govern. In the event of a conflict between this Article 11 and any other provision of the Condominium Documents, this Article 11 shall control.

(B) The parties shall appoint a single arbitrator by mutual agreement; provided, however, that if the amount of the Alleged Defect exceeds \$150,000, then the matter shall be arbitrated by a panel of three arbitrators. 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 (or arbitrators) willing to serve, the AAA shall appoint a qualified arbitrator or arbitrators to serve. Any arbitrator chosen in accordance with this Section 11.3 is referred to herein as the "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. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts 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 this Section 11.3. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's hourly rate not to exceed Three Hundred Dollars (\$300.00) per hour, ^{Unofficial Document} 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.

(C) The Arbitrator actively shall manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation. All papers, documents, briefs, written communications, testimony and transcripts, as well as any 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. Hearings may be held at any place within Maricopa County, Arizona designated by the Arbitrator and mutually agreed to by the parties 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. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section 11.3 shall apply to the commencement of arbitration proceedings under this Section 11.3. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

(D) 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 proceedings.

(E) The Arbitrator shall promptly (within sixty (60) days of 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 shall not award any punitive damages nor any indirect, consequential or special damages regardless of whether the possibility of such damages or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party, but each party shall bear the cost of its own attorneys' fees and expert witness fees.

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 AN ^{Unrecorded Document} FOR ALLEGED DEFECT RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE DECLARANT OR ANY DECLARANT AGENTS IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS FOR ALLEGED DEFECTS 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 FOR ALLEGED DEFECT 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 IN ANY WAY TO A CLAIM FOR ALLEGED DEFECT.

ARTICLE 12 CONDEMNATION

12.0 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,

such taken 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.

12.1 Partial Taking of a Unit. Except as provided in Section 12.1, 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.

12.2 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.

12.3 Taking of Entire Condominium. ^{Unofficial Document} 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 shall apply.

12.4 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. Such power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any Owner and his heirs, personal representatives, successors and assigns.

ARTICLE 13 GENERAL PROVISIONS

13.0 Contract Limitations.

(A) Any agreement for professional management of the Condominium entered into by or on behalf of the Association must provide for termination by either party without cause and without payment of a termination fee upon ninety (90) days or less written notice.

(B) During the Period of Declarant Control, any: (i) employment contract; (ii) lease; and (iii) or agreement of any nature with Declarant, or any member, agent or representative of Declarant providing for services of Declarant and/or its affiliates, entered into by or on behalf of the Board or the Association also must provide for termination of such contract, lease or agreement by any Board elected by the Unit Owners after the Period of Declarant Control has expired or is terminated. The foregoing limitations shall not apply to bulk service provider contracts such as, without limitation, telephone, communications, satellite or cable TV or other similar service contracts, as long as Declarant, and its affiliates, are not the parties providing such services.

13.1 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.

13.2 Duration. Unless terminated as provided in Section 13.3 of this Declaration, the covenants and restrictions of this Declaration, as amended from time to time, shall run with the land and bind the Condominium in perpetuity.

13.3 Termination of Condominium. Subject to the further provisions of this Declaration regarding Mortgagee notice and consent requirements, the Condominium may be terminated only in the manner provided for in A.R.S. § 33-1228 of the Condominium Act.

13.4 Amendment.

Unofficial Document

(A) Except in cases of amendments that may be executed by Declarant in the exercise of its Development Rights under this Declaration or under §§33-1220 of the Condominium Act, by the Association under §§ 33-1206 or 33-1216(D) of the Condominium Act or this Declaration, or by certain Unit Owners under §§ 33-1218(B), 33-1222, 33-1223 or 33-1228(B) of the Condominium Act, and except to the extent permitted or required by other provisions of the Condominium Act or this Declaration, both the Declaration and the Plat, may be amended only by a vote of the Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated. Such amendment pursuant to this Section 13.4(A) may be made at any time and without regard to whether such amendment has uniform application to the Units or the Condominium as a whole.

(B) Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the Allocated interest of a Unit, or the use as to which any Unit is restricted, in the absence of a vote of the Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated.

(C) No amendment to Article 11 of the Declaration or purporting to terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control shall be effective unless Declarant approves the amendment in writing, regardless of whether Declarant owns any Units at the time of such amendment; *provided, further, however,*

that if Declarant is deemed by any court of applicable jurisdiction not to have such an interest, then, in no event may Article 11 of this Declaration be amended without the consent of one hundred percent (100%) of the then Unit Owners.

(D) During the Period of Declarant Control, Declarant shall have the right to amend the Declaration, including any Recorded Plat, to comply with: (i) the Condominium Act; (ii) the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, FHA and VA; or (iii) the rules or requirements of any federal, state or local governmental entity or agency whose approval of the Condominium, the Plat or any other Condominium Document is required by law or requested by Declarant.

(E) During the Period of Declarant Control, Declarant shall have the right to amend the Condominium Documents to: (i) comply with applicable law or correct any error or inconsistency therein if the amendment does not adversely affect the rights of any Unit Owner or (ii) to exercise any Development Right or Special Declarant Right reserved herein in the manner provided in A.R.S. §33-1220 of the Condominium Act.

(F) Any amendment adopted by the Unit Owners pursuant to subsection (A) above shall be signed by the President or Vice-President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this section. Any amendment made by Declarant ^{Unofficial Document} pursuant to subsection (D) or (E) of this section or the Condominium Act shall be executed by Declarant and shall be Recorded.

13.5 Remedies Cumulative. Each remedy provided in Article 10 and elsewhere in this Declaration is cumulative and not exclusive and the exercise of one right or remedy shall not waive the right to exercise another right or remedy.

13.6 Notices. All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed as follows: (i) if to a Unit Owner, at the address at which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner or (ii) if to the Association (during the Period of Declarant Control) or to Declarant, to Attention: Ron Fried, c/o Daniel L. Kloberdanz, Esq., 7047 East Greenway Parkway, Suite 140, Scottsdale, Arizona, 85254. 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. Notices to the Association and/or Declarant shall be sent to the known business address of such Person on file with the Arizona Corporation Commission, and if such address is no longer valid, then to the address of the statutory agent of such Person.

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

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13.8 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 to either entities or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

13.9 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.

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

13.11 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the provisions of any other Condominium Document, the provisions of this Declaration shall prevail.

13.12 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.

13.13 Third Party Compliance. Each Unit Owner shall, to the extent permitted by Arizona law, be responsible for compliance by each of his Lessees and their respective Invitees with the provisions of the Condominium Documents. A Unit Owner's failure to ensure compliance by such Persons shall be grounds for the same action of enforcement to be available to the Association or any other Unit Owner desiring to enforce this Declaration against such Persons. Notwithstanding the foregoing, no provision of the Condominium Documents shall be interpreted or construed as imposing on Unit Owners absolute liability for damage to the Common Elements or the Units. Unit Owners shall only be responsible for damage to the Common Elements or Units caused by the negligence or intentional acts of the Unit Owners, Lessees or other Persons for whom they are legally responsible under Arizona law.

13.14 Attorneys' Fees. In the event Declarant, the Association or any Unit Owner employs an attorney or attorneys to enforce an Assessment 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 or in any other manner arising out of the Condominium Documents or the operations of the Association as provided in Article 10 and elsewhere in this Declaration, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorneys' fees incurred in the action. Notwithstanding this provision, in any litigation between the Unit Owners and/or the Association against the Declarant commenced after the termination of the Period of Declarant Control, ^{Unofficial Document} each party shall bear their own attorneys' fees and costs.

13.15 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 Federal/State holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or Federal/State holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or Federal/State holiday.

13.16 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent Purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the recordation of such Notice, it is determined by the Association that the violation referred to in the Notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was recorded, the Recording data of the Notice

of Violation, and shall state that the violation referred to in the Notice of Violation has been cured, or if such be the case, that it did not exist.

13.17 Declarant's Disclaimer of Representations. While Declarant has no reason to believe that any of the provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any provisions of this Declaration. Any Unit Owner acquiring a Unit in reliance on one or more of the provisions in this Declaration shall assume all risks of the validity and enforceability thereof and by acquiring the Unit agrees to hold Declarant harmless therefrom.

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

13.19 Association's Indemnification of Declarant, Board of Directors and Others. To the extent permitted by law, the Association shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, in an action by or in the right of the Association or otherwise, by reason of the fact that he is or was the Declarant, or a Member, director, officer, employee or agent of the Association or is or was serving at the request of the Association as a member, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, and against judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted, or failed to act, in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

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

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

regulations applicable thereto.

13.22 Legal Proceedings. Except for any legal proceedings initiated to (a) enforce any use restrictions, easement rights or nonmonetary obligations of Owners (other than legal proceedings against Declarant) expressly set out in this Declaration; (b) enforce any Rules (other than legal proceedings against Declarant); (c) collect any unpaid assessments levied pursuant to this Declaration; or (d) pursue or resolve any "small claims" (i.e., matters in which the amount in controversy could not reasonably be expected to exceed \$25,000.00), and except as otherwise provided in and limited by Article 11, the Association (and Board of Directors) shall not initiate legal proceedings or join as a plaintiff in legal proceedings without the prior approval of Owners representing eighty percent (80%) or more of the votes in the Association. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be funded by the Association with monies that are specifically collected for that purpose and the Association shall not borrow money, use reserve funds or use monies collected for other specific Association obligations for such purpose. With respect to matters involving property or improvements to property, the Association (and the Board of Directors) additionally shall not initiate legal proceedings or pay for legal proceedings or join as a plaintiff in legal proceedings unless (1) the Association has the maintenance responsibility for such property or improvements pursuant to this Declaration; or (2) the Owner who owns such property or improvements consents in writing to the Association initiating or joining such legal proceeding. Nothing in this section shall preclude the Board of Directors from incurring expenses for legal advice in complying with statutes or regulations related to the operation of the Association or otherwise in the normal course of operating the Association when legal proceedings are not involved. Notwithstanding anything herein to the contrary, Section 13.22 nor the provisions of Section 11 may not be modified or amended without the prior approval of Owners representing eighty percent (80%) or more of the votes in the Association.

ARTICLE 14 DISCLOSURES

14.0 Noise. Each Owner understands that its Unit is part of a multifamily development and shares common walls, floors and/or ceilings with other Units within the Condominium and that noise, sound transmission and vibrations (collectively, "Acoustic Conditions") from outside the Unit will likely be heard and felt in the Unit. Certain Units, because of their locations, may be subject to higher levels of Acoustic Conditions than other Units. Each Owner, by purchasing a Unit, assumes all consequences of Acoustic Conditions in, around and near its Unit (from any source within or outside the Unit, whether next to, in the vicinity of, above or below the Unit), whether or not such Acoustic Conditions are apparent or known to Owner. Each Owner acknowledges that it has taken the location of its Unit and all known or unknown Acoustic Conditions into consideration in selecting its Unit and determining to buy its Unit. Acoustic Conditions between adjacent Units and between Units and Common Elements are unavoidable and are to be expected.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first above written.

DECLARANT:

Scottsdale City Development III, LLC,
an Arizona limited liability company

By: Glick, LLC,
an Arizona limited liability company
Its: Managing Member



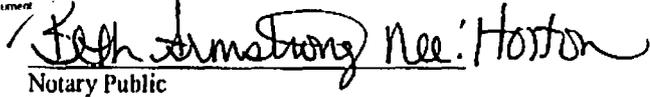
By: Ronald Fried
Its: Managing Member

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 9th day of March, 2006, the undersigned notary public in and for said county and state, by Ronald Fried, the managing member of Scottsdale City Development III, LLC, an Arizona limited liability company, for and on behalf of said limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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Notary Public

My Commission Expires:



BETH HORTON
Notary Public - Arizona
Maricopa County
Expires 04/21/06

Exhibit A

Legal Description of the Condominium

Units 101 through 145 and Units 201 through 245, Papago Ridge, a Condominium, recorded on February 28, 2006, in Book 818 of Maps, page 25, in the Official Records of Maricopa County, Arizona, together with an undivided interest in the Common Elements.

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