

When Recorded Return to:  
Arrowhead West Condominium Owners Association  
Attn: Caroline Hart  
CIO Hart's HOA Management Co  
P.O. Box 1838  
Flagstaff, AZ 86002-1838

Official Records of Coconino County  
Candace Owens - Recorder 10/22/2012 01:05 PM  
ARROWHEAD WEST CONDOMINIUM OWNERS A SR  
3642674  
Pgs: 2  
\$10.00

**AMENDMENT OF  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
ARROWHEAD WEST CONDOMINIUM OWNERS ASSOCIATION, Inc.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is amended as of the 17th day of August, 2012 by Arrowhead West Condominium Owners Association, Inc. Board of Director's.

**RECITALS**

A. WHEREAS, Paragraph 5 (Amendment) of Article 11 (General Provisions) of the Declaration authorizes amending the Declaration by an affirmative vote of seventy-five percent (75%) or more of the total number of eligible votes in the Association at a duly called regular or special meeting of the Association;

B. And WHEREAS, at a duly called special meeting of the Association held on July 22, 2012, for the purpose of voting on this amendment to the Declaration, there were sufficient affirmative votes to pass this amendment;

C. And WHEREAS this amendment to the Declaration is meant to repeal and replace the Second Amendment to the Declaration (Paragraph 8.12);

D. And WHEREAS, the Board of Directors, Arrowhead West Condominium Owners Association, Inc., being the governing body of an Arizona Non-Profit Corporation, does hereby amend **Declaration of Covenants, Conditions and Restrictions Amendment** document, Coconino County Recorder document #3405179, recorded the 2<sup>nd</sup> day of October, 2006. This amendment is to remove the restriction for "Owner Occupied" and to allow for the leasing of individual units.

**Amendment**

**8.12 Leasing.** Nothing in this Declaration shall be deemed to prevent the leasing or renting of a Unit for Residential Use from time to time by the Owner/Member of the Unit, subject to all provisions of the Project Documents, and further subject to the restrictions that no lease or rental of a Unit may be for a lease or rental term of less than six (6) months and no more than twelve (12) months. Any Owner/Member who wishes to lease his or her Unit shall promptly notify the Board of the Association in writing. Along with the written Notification of Renting, the Owner shall submit a copy of the Lease Agreement to be approved by the Board. All Lease Agreements will be

accepted within seven (7) business days or denied within fifteen (15) business days. Failure to register disapproval in writing within fifteen (15) business days from the date of receipt of said lease shall be deemed approval. All denied Lease Agreements will be accompanied by a written letter of explanation by the Board of the Association. The Lease Agreement for the lease of any Unit must contain a provision whereby the tenant acknowledges receipt of a copy of the Project Documents (with the exception of Plat) and agrees to fully abide by all provisions of the Project Documents. The Owner of the leased Unit shall be fully responsible and liable to the Association for the actions of the Owner's tenants. No Lessees of any Owner's Unit may sub-lease the Owner's Unit. No Owner shall be permitted to lease the Owner's Unit for transient or hotel purposes. Violations of this section will constitute a fine designated by the Board of the Association.

IN WITNESS WHEREOF, the Chairman has caused the Amended Declaration to be duly executed as of the first above written.

**Arrowhead West Condominium Owners Association, Inc.,**  
an Arizona Non-Profit Corporation

  
Avtar Khalsa — President, Board of Directors


STATE OF ARIZONA

SS.

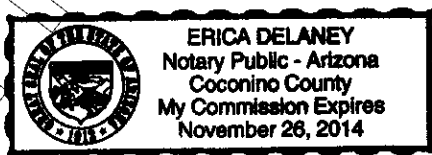
County of Coconino

On this 17 day of August, 2012, before me, the undersigned officer, Avtar Khalsa, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person described and whose name is subscribed to the foregoing instrument, who acknowledged before me that he is the President, Board of Director's of Arrowhead West Condominium Association, Inc., an Arizona Non-Profit Corporation, and that he, in such capacity, being authorized so to do, executed the foregoing instrument, for the purpose therein stated, on behalf of the corporation, and that the instrument is the act of the corporation for the purposes therein stated.

IN WITNESS THEREOF, I have hereunto set my hand and official seal

  
Notary Public

Notary Seal:



Regarding Subdivision: Arrowhead West Condominium

**WHEN RECORDED RETURN TO:**

Gregory C. Danforth  
President, Arrowhead West Condominium  
Owners' Association, Inc.  
1731 E. Arrowhead, Unit 1  
Flagstaff, Arizona 86001

**SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM  
AND  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ARROWHEAD WEST CONDOMINIUMS**

This Second Amendment to Declaration of Condominium and Covenants, Conditions and Restrictions of Arrowhead West Condominiums ("Second Amendment") is made as of the 1<sup>st</sup> day of February, 2006, ("Second Amendment Date") by the Arrowhead West Condominium Owners' Association, Inc. ("AWCOA").

**Recitals**

A. Declarant is the Association responsible for the ownership and operation of the property under the Declaration of Condominium and Covenants, Conditions and Restrictions of Arrowhead West Condominiums, dated October 1, 2002, and recorded on October 7, 2002, at Document No. 3163203, Official Records of Coconino County, Arizona ("the Declaration").

B. As of the Amendment Date, the Declarant has the right to amend the Declaration, pursuant to the provisions of Paragraph 11.5 of the Declaration.

C. Declarant desires to amend the Declaration in accordance with the provisions of this Second Amendment.

D. All capitalized terms and phrases used in this Second Amendment that are not otherwise defined herein shall have the meaning or meanings given to such terms and phrases in the Declaration.

**AMENDMENT**

1. Paragraph 8.12 of the Declaration is hereby amended to read as follows:

**Owner Occupied.** All Units shall be owner occupied. No Owner shall be permitted to lease or rent individual rooms for transient or commercial hotel purposes. Owners shall be fully responsible and liable to the Association for the actions of any non-Owner occupants residing in the Owner's Unit.

2. Except as set forth above, the Declaration, as previously executed and recorded, remains in full force and effect.

EXECUTED as of the Amendment Date:

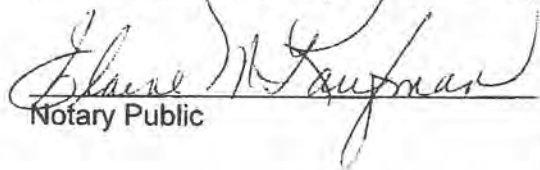
ARROWHEAD WEST CONDOMINIUM OWNERS' ASSOCIATION, INC., an Arizona not for profit corporation

By:   
Gregory C. Danforth

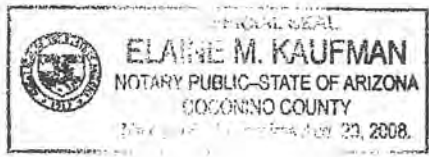
Its: President

STATE OF ARIZONA     )  
  ) ss  
County of Coconino     )

The foregoing instrument was sworn to and subscribed before me, the undersigned Notary Public, this 27<sup>th</sup> day of September, 2006, by Gregory C. Danforth, who executed this instrument as the President of, and on behalf of the Arrowhead West Condominium Owners' Association, Inc., an Arizona not for profit corporation, being authorized to do so as President of the corporation for the purposes therein contained.

  
Notary Public

My Commission Expires: 8/29/08



WHEN RECORDED RETURN TO:

M. Steven Mattia  
Attorney at Law  
P.O. Box 940  
Flagstaff, Arizona 86002-0940



3273751  
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**FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM  
AND  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ARROWHEAD WEST CONDOMINIUMS**

This First Amendment to Declaration of Condominium and Covenants, Conditions and Restrictions of Arrowhead West Condominiums ("First Amendment") is made as of the 30 day of April, 2004, ("First Amendment Date") by Winrick, L.L.C., an Arizona limited liability company ("Declarant").

**Recitals**

A. Declarant is the Declarant under the Declaration of Condominium and Covenants, Conditions and Restrictions of Arrowhead West Condominiums, dated October 1, 2002, and recorded on October 7, 2002, at Document No. 3163203, Official Records of Coconino County, Arizona ("the Declaration").

B. As of the Amendment Date, the Declarant has the unilateral right to amend the Declaration pursuant to the provision of Paragraphs 3.2(b) and 11.9 of the Declaration.

C. Declarant desires to amend the Declaration in accordance with the provisions of this First Amendment.

D. All capitalized terms and phrases used in this First Amendment that are not otherwise defined herein shall have the meaning or meanings given to such terms and phrases in the Declaration.

**AMENDMENT**

1. Paragraph 4.4(a) of the Declaration is hereby amended to read as follows:

"(a) The initial assessment, upon purchase of a Unit from Declarant, for each Ownership Unit shall be \$425.00 per year, which shall be payable to the

Association, except as provided in Section 4.9 below, upon and out of the close of escrow for each such Unit. Effective January 1, 2005, the annual assessment for each Ownership Unit shall be \$600.00 per year, which amount shall be payable to the Association upon and out of escrow for all units purchased from Declarant and directly to the Association by all other Unit Owners."

2. Except as set forth above, the Declaration, as previously executed and recorded, remains in full force and effect.

EXECUTED as of the Amendment Date.

DECLARANT (Winrick, L.L.C.):

By: *Ricky J. Natenberg*  
Ricky J. Natenberg, Member/  
Manager

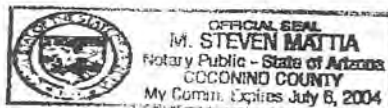
STATE OF ARIZONA            )  
  :SS  
County of Coconino         )

The foregoing instrument was sworn to and subscribed before me, the undersigned Notary Public, this 30 day of April, 2004, by RICKY J. NATENBERG, who executed this instrument for an on behalf of Winrick, L.L.C., an Arizona limited liability company, being authorized to do so as its managing member for the purposes therein contained.

*Steven Mattia*  
Notary Public

My Commission Expires:

July 6, 2004



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Page 2 of 2  
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**DECLARATION OF CONDOMINIUM  
AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
ARROWHEAD WEST CONDOMINIUMS**

This Declaration of Covenants, Conditions and Restrictions for Arrowhead West Condominiums is made this 15<sup>th</sup> day of Oct, 2002, by Winrick, L.L.C., an Arizona limited liability company ("Declarant").

**Recitals**

Declarant is the owner of certain real property, located in the City of Flagstaff, Coconino County, Arizona, depicted on the Plat and described more particularly as follows:

See **Exhibit A** attached hereto, which is incorporated herein by this reference.

Declarant provides hereby for the phased development and construction of a condominium project consisting of condominium units, common areas, and limited common areas. The benefits, covenants, conditions and restrictions described in this Declaration will be imposed and enforced upon only those Phases of the Project as may be incorporated into the Project by completion of construction and through the irrevocable annexation of the Phase, as provided hereinbelow. Declarant intends that this Declaration and other Project Documents will facilitate a general plan for the development of the Property.

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS** that Declarant hereby declares that all Units, Common Areas and Limited Common Areas described in this Declaration as the Project shall be held, owned, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, transferred and otherwise conveyed subject to the following reservations, easements, limitations, servitudes, covenants, conditions, restrictions, assessments, charges and liens (collectively the "Covenants, Conditions and Restrictions"). These Covenants, Conditions and Restrictions are set forth and imposed for the purpose of protecting and enhancing the value, attractiveness and desirability of the Property. The Covenants, Conditions and Restrictions shall benefit, burden, run with the title, and be appurtenant, to the Property and shall inure to the benefit of and be binding upon each Owner and all parties having any right, title or interest in or to any part of the Property, their heirs, successors, and assigns. The Declarant further declares as follows:

## ARTICLE 1

### DEFINITIONS

- 1.1 "Act" shall mean the Arizona Condominium Act, A.R.S. §33-1201 et seq., as amended.
- 1.2 "Articles" refers to the Articles of Incorporation of the Association, that have been or will be filed with the Arizona Corporation Commission, as may be amended from time to time.
- 1.3 "Assessment" means any assessment(s) authorized by this Declaration or the Association's bylaws. "Assessment" shall also include the terms "annual assessment" and "special assessment" (and the plural of each).
- 1.4 "Association" refers to the Arrowhead West Condominium Association, Inc., that has been or will be incorporated by Declarant as a non-profit Arizona corporation, and its successors and assigns.
- 1.5 "Association Rules" means any rules, regulations, design guidelines or requirements, adopted or amended by the Association from time to time.
- 1.6 "Board" means the Board of Directors of the Association.
- 1.7 "Building" means any of the buildings actually constructed from time to time and existing on the Property. A Building may contain one or more Units. The horizontal boundaries of a Building shall be the plane of its top elevation, as actually constructed, and the plane of its base elevation, as actually constructed. The vertical boundaries of a Building shall be the exterior of the finished, outside perimeter walls of each Building, as actually constructed.
- 1.8 "Bylaws" shall mean the bylaws of the Association, as may be amended from time to time by the Association.
- 1.9 "Common Area" see "Common Elements".
- 1.10 "Common Elements" refers to all the areas of the Project that are not included within the description of the Units including but not limited to the on-site utility systems and means of ingress to and egress from the Property, and to and from each Unit. Unless otherwise specified in this Declaration, the Limited Common Elements or Limited Common Areas are included in and considered part of the Common Elements.
- 1.11 "Condominium Unit" shall mean a residential condominium unit designed and designated for separate ownership or occupancy, together with all Easement Rights associated with or appurtenant to each residential condominium unit and the Fractional Interest of the condominium unit in and to the Common Area. The physical boundaries of the Unit shall be: (i) the underside of the finished but undecorated ceiling; (ii) the top of the finished but undecorated floor; and (iii) the interior of the finished but undecorated walls. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, texture, paint, trim, finished flooring, and any other material constituting any part of the finished, decorated and improved surfaces, and garage door openers, are part of the "Unit", but all walls, floors, ceilings, exterior doors and windows, including garage





doors, and similar structural elements, as described above, are part of the Common Area. All interior and non-structural partitions, fixtures and improvements located within the physical boundaries of a Unit are considered part of the Unit. A Unit shall be referred to by the identifying number as shown on the Plat by the applicable designated number.

1.12 "Declarant" shall mean Winrick, L.L.C., an Arizona limited liability company, formed for the purpose of carrying on and completing the development of the Property, the construction of the condominium units and utility systems, and the carrying on of the initial business of the Association. The term "Declarant" includes all successors and assigns of Winrick L.L.C., if the successors or assigns (a) acquire more than one (1) Unit or any Phase from the Declarant for the purpose of resale or development; and (b) record a supplemental declaration executed by the then-Declarant declaring the successor or assignee as the succeeding Declarant under this Declaration.

1.13 "Declaration" means this Declaration of Covenants, Conditions and Restrictions and the covenants, conditions and restrictions set forth in this document (either in their entirety or by specific reference) as may be amended from time to time.

1.14 "Easement Rights" refers to the beneficial right of the Owners of the Units to use and enjoy the applicable easements created and reserved in this Declaration or the Plat, and any amendments thereto, over and through the Common Elements and Common Areas, whether created or reserved solely for the use and benefit of one (1) Owner or multiple Owners.

1.15 "Eligible Mortgage Holder" refers to a First Mortgagee that has informed the Association by separate written notice of the First Mortgagee's address and that has requested notification from the Association of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

1.16 "First Mortgage" means a Mortgage that is the first and most senior of all mortgages on or against the applicable Lot or Unit.

1.17 "First Mortgagee" means a Mortgagee that is the first and most senior of all Mortgagees upon or against an applicable Lot or Unit.

1.18 "Fractional Interest" shall mean the appurtenant and undivided percentage interest in the Common Elements allocated to each Unit, determined as follows: divide the number one (1) by the total number of Units irrevocably annexed to the Project. The Fractional Interest of each Unit may change as additional Phases are irrevocably annexed to the Project. When and if all currently contemplated Phases are annexed, the Fractional Interest allocated to each Unit shall be one eleventh (1/11) of a whole, but this Fractional interest may change further based upon the annexation of any additional Annexable or Convertible Property to the Project.

1.19 "Initial Phase" means only the Units and Common Elements or Common Areas described as Phase 1 on Exhibit B attached hereto. See "Phase" below.

1.20 "Institutional Guarantor" refers to any governmental insurer, guarantor, or secondary market mortgage purchaser such as the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal National Mortgage Association (FNMA or Fannie Mae), and the Federal Home Loan Mortgage Corporation (FHLMC) that insures, guarantees or purchases any note or similar debt instrument secured by a First Mortgage. An Institutional Guarantor will be entitled to vote on those matters that require the approval or consent of the Institutional Guarantors if the Institutional Guarantor notifies the Association in writing and in



advance of any such vote of its desire to vote and provides its address for delivery of notices from and by the Association.

1.21 "Inventory Unit" means a Unit owned by the Declarant in any stage of construction.

1.22 "Limited Common Elements" shall mean (i) any stairways, entryways or walk-ways designated for use by one or more, but not all, Units and any balconies and patios designed to service a single Unit (but located outside the physical boundaries of that Unit); (ii) any shutters, awnings, window boxes, door steps, exterior doors to the Unit(s), windows, exterior window coverings, and other similar features designated to service a single Unit (but located outside the physical boundaries of that Unit); (iii) the heater, furnace, air handler and water heater servicing a single Unit; (iv) all sewer and drainage pipes, water lines and other utility lines and utility systems components servicing a single Unit as are located between the point of entry into the Unit and the point of connection with joint or common utility lines, and (v) any chimney, flue, chute, vent, duct, or other similar improvement that lies partially within and partially outside of the physical boundaries of a Unit and that service only a single Unit. Any item of the type described in subparagraph (v) that services or is intended to service more than one (1) Unit shall be deemed a part of the Common Elements and not a Limited Common Element.

1.23 "Member" means the record title Owner of a Unit located within the Project.

1.24 "Mortgage" means the consensual conveyance or assignment of any Unit, or the creation of a consensual lien on any Unit, to secure the performance of an obligation, and shall include a deed of trust, mortgage, assignment, agreement of sale, or any other agreement for the purpose of creating a lien to secure an obligation and also includes the instrument evidencing the obligation.

1.25 "Mortgagee" means a person or entity to whom a Mortgage is made or given and shall include a holder of a promissory note when given a mortgage lien, a beneficiary under a deed of trust, or a seller under an agreement of sale.

1.26 "Mortgagor" means a person or entity who is a maker of a promissory note who as given a mortgage lien to the holder of the promissory note and includes the trustor of a deed of trust or the buyer under an agreement of sale.

1.27 "Owner" means the record owner, whether one or more persons or entities, of a fee simple legal title to any Unit. An Owner shall not include those persons having any interest in an Unit merely as security for the performance of an obligation or duty (i.e. mortgagee, trust deed beneficiary or trustee, etc.). In the case where fee simple title to a Unit is vested of record in a trustee pursuant to A.R.S. §§33-801 et seq., the Owner of the Unit shall be deemed to be the trustor.

1.28 "Owner's Permittees" refers to all family members, guests, tenants, licensees, invitees, agents and representatives that use, occupy or visit the Owner's Unit or other portions of the Property (including Common Areas) with the implied or express consent of an Owner.

1.29 "Ownership Unit" means any Unit or Units owned by a particular Owner.

1.30 "Person" means a natural person, or a corporation, partnership, trust, limited liability company, an estate, or any other legal entity.

1.31 "Phase" means each of the two (2) contemplated phases depicted on the Plat and described on Exhibit B hereto and may, as the context dictates, refer to either or both of the two (2) phases. The term



"Phase" may also refer to any such additional phases of construction undertaken by Declarant upon irrevocable annexation of other contiguous property to the Project with the intent that the condominiums constructed on such irrevocably annexed property become part of the Arrowhead West Condominiums.

1.32 "Flat" means the condominium plat for Arrowhead West Condominiums, recorded on 10-7-02, 2002, at Document No. 062-8, Official Records of Coconino County, Arizona, as it may be amended from time to time. maps 87, 87A & 87B

1.33 "Project" is defined as all Phases of condominium construction that may, from time to time, be undertaken by Declarant on property irrevocably annexed to and intended to become part of the Arrowhead West Condominiums.

1.34 "Property" means the property described in Exhibit A hereto and any other property that may from time to time be irrevocably annexed to the Project with the intent that any condominiums constructed thereon shall become part of the Arrowhead West Condominiums.

1.35 "Project Documents" means this Declaration, the Articles, Bylaws, the Association's Rules, and the Plat, collectively, as any or all of which may be amended from time to time.

1.36 "Single Family" shall mean either (i) a group of one or more persons each related to the other by blood, marriage, or legal adoption; or (ii) a group of persons, at least one of whom is an adult, not all so related who maintain a common household in a Unit not exceeding in quantity two (2) times the number of bedrooms contained in the particular Unit.

1.37 "Single Family Residential Use" means the occupancy or use of a Unit by a Single Family in conformity with the Project Documents and the requirements imposed by applicable zoning laws or other federal, state, county, municipal or other local laws, rules, regulations, ordinances, codes and statutes.

1.38 "Unit" see "Condominium Unit" above.

## ARTICLE 2

### RIGHTS TO COMMON AREAS/ELEMENTS

2.1 **Project Description.** When and if both Phases of the Project are completed, this Project will consist of eleven (11) Units. Until completion of Phase 2, the Project will consist of only six (6) Units. After completion of Phase 2 of the Project, Declarant may, but is not obligated to, irrevocably annex other contiguous property to the Project; and, in such event, the Project may ultimately consist of more than eleven (11) Units.

2.2 **Grant of Exclusive Use.** Subject to the terms of the Project Documents, each Owner of a Unit shall have the exclusive right to use (i) the Ownership Units; (ii) any balcony or patio designed to service the Unit; and (iii) those Limited Common Elements described in subparagraphs (ii), (iii), (iv) and (v) of Section 1.22 hereof.

2.3 **Interpretation of Physical Boundaries.** When interpreting the Plat, this Declaration, and the Project Documents, the existing physical boundaries of an Ownership Unit (as either originally built or reconstructed in substantial conformity with the original plans) shall conclusively be presumed to be its actual



boundaries regardless of settling, shifting, or any lateral or other movement of any of the Buildings, and regardless of minor variations between the actual boundaries of an Ownership Unit and those boundaries shown on the Plat, this Declaration, or other Project documents.

**2.4 Owner's Easement of Enjoyment.** Except as provided in this Declaration regarding Limited Common Elements, each and every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, in common with all other persons entitled to use such Common Elements. An Owner's right and easement to use and enjoy the Common Elements shall be appurtenant to and pass with the title to each Unit and shall be subject to the following:

(a) **Charges and Regulations.** The right of the Association to: (i) charge reasonable fees for the use and upkeep of the Common Areas and regulate the use of all Common Elements; (ii) limit the number of Owner's Permittees who use the Common Areas; (iii) limit the number and type of pets that use and go upon the Common Areas; (iv) hold the Owners accountable for the conduct of the Owner's Permittees and pets;

(b) **Suspension of Voting and Usage Rights.** The right of the Association to: (i) suspend the voting rights of any Owner, and (ii) suspend the right of any Owner and the Owner's Permittees to use the Common Areas for any period during which any assessment against the Owner or any Ownership Unit remains unpaid or, in the case of any non-monetary infraction of the Project Documents, for any period during which the infraction remains outstanding and/or uncured.

(c) **Dedication or Grant of Superior Easement.** The right of the Association to dedicate or grant an easement covering all or any part of the Common Area, including any of the Common Elements, to any utility provider or municipality for the purposes, and subject to the conditions that may be established by the Declarant during the period of Declarant Control (see Section 3.2(c) hereof) and, after the period of Declarant Control, by the Board. Except for those easements reserved or created in this Declaration or by the Plat, or by any separately recorded easement or map of dedication affecting all or part of the Property, no dedication or grant of easement over all or any part of the Common Area to any municipality or utility provider shall be effective unless the dedication or grant is approved at a duly called regular or special meeting by an affirmative vote in person or by proxy of eighty percent (80%) or more of the total number of eligible votes in each class of Members and unless the document evidencing the dedication or grant is executed by an authorized officer of the Association and recorded in the Official Records of Coconino County, Arizona; and

(d) **Declarant's Use.** The right of Declarant, and its agents and representatives, in addition to their rights set forth elsewhere in this Declaration and other Project Documents, to the non-exclusive use, without extra charge, of the Common Elements, for sales, display and exhibition purposes, both during and after the period of Declarant Control.

**2.5 Delegation of Use.** Subject to and in accordance with the Project Documents, any Owner may delegate its right of use and enjoyment of the Common Areas to the Owner's Permittees.

### ARTICLE 3

#### MEMBERSHIP AND VOTING

**3.1 Membership.** Every Owner of an Ownership Unit, by accepting a deed for that Ownership Unit (whether or not expressed in the deed or other conveying instrument) or otherwise becoming an Owner, shall be a Member of the Association and shall be bound by the provisions of the Project Documents, shall be



deemed to have personally covenanted and agreed to be bound by all covenants, conditions and restrictions contained in the Project Documents, and shall be deemed to have entered into a contract with the Association and each other Owner for the full performance of the respective covenants, conditions and restrictions. The personal covenant of each Owner shall be in addition to the real covenants and equitable servitudes created by this Declaration, and this personal covenant of each Owner shall not limit or restrict the intent that this Declaration benefit and burden, as the case may be, and run with the title to, all Ownership Units and Common Elements covered by this Declaration. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Ownership Unit that is subject to assessment. Upon the permitted transfer of an Ownership Unit, the new Owner shall automatically become a member of the Association. With the exception of Declarant, membership in the Association shall be restricted solely to the Owners of Units.

**3.2 Voting. Classes of Membership.** The Association shall have two (2) classes of voting membership:

(a) **Class A Membership.** All Owners, with the exception of the Declarant during the period of Declarant Control (see below), shall be Class A members. Class A members shall be entitled to one (1) vote for each Unit owned. When more than one person holds an interest in a Unit, all joint owners shall be Members; however, for all voting and quorum purposes, they shall be considered together as one (1) Member. The vote for a jointly owned Unit shall be exercised as the joint owners determine, but in no event shall more than one (1) vote be cast with respect to or on behalf of any one Unit. Any attempt to cast multiple votes for a given Unit shall immediately result in the invalidity and voidance of all votes cast for that Unit.

(b) **Class B Membership.** The Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Unit owned. The time during which Declarant's Class B membership is in existence shall be referred to in this declaration as the period of "Declarant Control". Upon conversion of Declarant's Class B membership to Class A membership (see Section 3.2(c) below), Declarant will be entitled to only one (1) vote for each Unit owned by Declarant.

(c) **Termination of Class B Membership.** Declarant's Class B membership shall cease and be converted to Class A membership upon the happening of the earliest of any of the following events: (i) four (4) months after the date when the total outstanding Class A membership votes equal or exceed the total outstanding Class B membership votes; (ii) five (5) years after the date of the close of escrow on the first Unit sold by Declarant; or (iii) when Declarant notifies the Association in writing that he or it relinquishes his or its Class B membership. In determining when the total votes outstanding in the Class A membership first equals or exceeds the total votes outstanding in the Class B membership under subparagraph (i) above, the number of votes in the Association shall be based upon the total number of Units within all Phases of the Project, whether irrevocably or conditionally annexed to the Project, plus the total number of Units within the Annexable or Convertible Property when and if the Annexable or Convertible Property is conditionally annexed to the Project by the recordation of an Annexation Amendment.

**3.3 Transfer of Control.** When the period of Declarant Control expires, the Class A Members shall accept control of the Association from the Declarant and full responsibility for the operation of the Association and administration of the Property as provided in the Project Documents, and Declarant shall have no further responsibility for any future acts or omissions with respect to the operation of the Association and administration of the Property (other than the payment of assessments on Ownership Units that Declarant still owns). Any claims that the Association or any Owners have or may have against Declarant for present or past acts or omissions of Declarant or its members, directors, shareholders or officers, with respect to the operation of the Association or the administration of the Property (including the availability or sufficiency of any reserves) shall be waived and foregone, and be deemed unenforceable and released, if not commenced within one (1) year from the expiration of the period of Declarant Control.



## ARTICLE 4

### ASSOCIATION ASSESSMENTS

4.1 **Personal Obligation for Assessments.** Each Owner and joint Owner of any Ownership Unit, by accepting a deed for an Ownership Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner is deemed personally to covenant and agree to be bound by all covenants, conditions and restrictions in this Declaration, and all duties and obligations, and provisions of the Project Documents, and to pay to the Association:

(a) Annual assessments or charges;

(b) Special assessments for capital improvements, pursuant to Section 4.4 hereof, unexpected or extraordinary expenses for repairs of the Common Areas and Common Elements, or other Association matters;

(c) An amount sufficient, on demand, to indemnify and hold the Association harmless for, from and against all obligations undertaken or incurred by the Association for, on behalf, or on account of, that individual or joint Owner's special request and to repay the Association for all expenditures made as a result of the special request;

(d) An amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner, pursuant to the provisions of the Project Documents, that the Owner has failed to timely pay or perform; and

(e) All other assessments as may be fixed, established, charged, or collected, from time to time, by the Association in accordance with this Declaration or other Project Documents including, without limitation, any accrued interest, late fees, fines, penalties, taxable court costs, attorney's fees, or other charges.

(f) The assessment items described above, together with all accrued interest, late fees, court costs, legal fees, and all other charges or expenses incurred by the Association in connection with assessment(s) made, and the collection thereof, whether or not a lawsuit is filed or other legal action is undertaken, shall be referred to in the Project Documents, and be collectible by the Association, as an assessment.

4.2 **Consensual and Continuing Lien.** Pursuant to A.R.S. §33-1807, the Association shall have a consensual and continuing lien upon the Ownership Unit against which the assessment is made or has been incurred for the payment of all assessments. Payment of each assessment shall also be the personal, joint and several obligation of each person who was the Owner or joint Owner of the Ownership Unit at the time when the assessment became due or the charge was incurred. The personal obligation for delinquent assessments shall not pass to the Owner's successors in interest or title unless expressly assumed by the successors; however, the personal obligation of the prior Owner for the delinquent assessments or charges shall not be deemed to be released or discharged by reason of any assignment, conveyance, or transfer of title to an Ownership Unit. Nonetheless, in the event of an assignment, conveyance or transfer of title to any Ownership Unit for which the prior Owner owes to the Association all or part of one or more prior assessments or charges, the delinquent assessment shall continue as a consensual lien against the Ownership Unit in the hands or title of the successor or subsequent Owner, except as provided in Section 4.11 below. The recordation of this



Declaration shall constitute record notice and perfection of any assessment or assessment lien and, notwithstanding the provisions of Section 4.12 below, further recordation of any claim of lien (or Notice of Claim of Lien) for assessments shall not be required for perfection or enforcement.

**4.3 Purpose and Use of Annual Assessments.** The annual assessments fixed by the Association shall be levied and used for the following purposes:

- (a) Promotion of the health, safety, welfare, and desirability of the Property for its Owners;
- (b) Operation of the Common Areas, which includes the payment of all taxes, utilities, maintenance, snow removal costs, trash collection fees, and other service or operational charges, if any, and if not individually billed to the Owners;
- (c) Insurance for, and maintenance, repair, replacement and installation of improvements in the Common Areas, which is intended to include the creation and maintenance of any reserves or reserve funds for the foregoing;
- (d) Enhancement and protection of the value, desirability, and attractiveness of the Ownership Units and Common Areas.

**4.4 Initial and Annual Assessments.** The Association may fix assessments each year as follows:

(a) The initial assessment, upon purchase of a Unit from Declarant, for each Ownership Unit shall be \$ 4250<sup>00</sup>, which shall be payable to the Association, except as provided in Section 4.9 below, upon and out of the close of escrow for each such Unit.

(b) Thereafter, the Association may fix the amount of each annual assessment to the Owners for each Ownership Unit as it sees fit and deems necessary and expedient to cover the costs of the Association's operations, including the establishment of reserves, subject to the following:

(i) Declarant shall not be assessed or required to pay an initial assessment or the full fixed annual assessment set by the Association for a Unit held or owned by Declarant unless the Unit was initially sold by Declarant to an Owner and then either repurchased or foreclosed upon and repossessed by Declarant; except, however, that Declarant shall pay the full annual assessment amount as set by the Association for any Unit or Units, owned or retained by Declarant in each Phase (on which construction has been completed) after the expiration of sixty (60) days from the sale and close of escrow of the first Unit in that Phase. Declarant shall pay reduced assessment rates on Inventory Units as provided in Section 4.7 below.

(ii) The annual assessment amount may not be increased by the Association over the annual assessment amount for the preceding year by more than twenty percent (20%) unless a greater increase is approved by the Members at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of a simple majority (50% plus one) or more of the total, aggregate number of eligible votes cast at that meeting in all classes of Members.

**4.5 Special Assessments.** The Association, at any time and from time to time in any assessment year, in addition to the annual assessments authorized above or any other assessments authorized elsewhere in this Declaration, may levy and fix a special assessment against all of the Owners for the purpose of defraying, in whole or in part: (i) the cost of construction, reconstruction, repair, or replacement (whether or not due to destruction, casualty, governmental taking, or otherwise) of a capital improvement upon, under or about the Common Areas or Elements including fixtures and personal property related to the Common Elements; or (ii)



the cost of any other unexpected or extraordinary expenses for repair of the Common Elements or other Association matters. Provided, however, any such special assessment must be approved at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of two-thirds (2/3) or more of the aggregate number of eligible votes cast at that meeting in all classes of membership. Notwithstanding the foregoing, no approval of the Owners shall be needed to levy assessments on or against any particular Owner that arise out of or in connection with that Owner's failure to comply with the Project Documents including, without limitation, any assessment levied pursuant to Sections 4.1(c), 4.1(d), 4.7, 5.2, 5.4 or 8.19 of this Declaration.

**4.6 Notice of Meetings and Quorum Requirements.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.4 or 4.5 hereof shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first meeting called regarding any given proposal, the presence (at the beginning of the meeting) of Members or proxies entitled to cast at least a simple majority (50% plus 1) of the total number of eligible votes of the Association, regardless of class of membership, shall constitute a quorum for the transaction of such Association business. If the required quorum is not present, one other meeting for the same purpose may be called subject to the same notice requirement, and the required quorum at the second meeting shall be at least thirty percent (30%) of the total number of eligible votes of the Association, regardless of class of membership. No such second meeting shall be held more than sixty (60) days following the preceding meeting. In the event that the required quorum is not present at the second such meeting, then the Board may vote upon, levy and fix the assessments, and in the amounts, it sees fit.

**4.7 Uniform Rate of Assessment.** Both annual assessments and special assessments must be fixed at a uniform rate for all assessable Ownership Units; however, the rate of assessment for Inventory Units shall be twenty-five percent (25%) of the rate for completed and sold or occupied Units owned by an Owner other than the Declarant. Notwithstanding Declarant's reduced assessment rate on Inventory Units, Declarant shall be obligated each year to pay the Association for any shortages or deficiencies in the Association's operating budget caused by reason of the reduced assessment rate on Declarant's Inventory Units for that year; however, Declarant's maximum obligation for such shortages or deficiencies shall be equal to the uniform rates of assessment on all Units for the given year multiplied by the number of Inventory Units for which Declarant paid a reduced assessment in the given year, less all amounts previously paid that year by Declarant as reduced assessments. Annual assessments may be collected in installments during the year as the Board of Directors may determine. The provisions of this Section 4.7 shall not prevent the Association from making a separate or additional charge to, or special assessment upon or against an Owner for or on account of special services or benefits rendered to, conferred upon, or obtained by, or for that Owner or the Owner's Ownership Unit. If any expense incurred by the Association is caused by the misconduct of an Owner or the Owner's Permittees, the Association may specially assess that expense exclusively to and against the offending Owner and/or Ownership Unit.

**4.8 Commencement of Assessments.** The annual assessments established in this Declaration regarding the Ownership Units in any given Phase subject to this Declaration shall commence on the first day of the month following commencement of construction on the Units of that Phase. Once sold and conveyed, the Owner of each Ownership Unit shall continue to pay without interruption or cessation the annual assessments as theretofore and thereafter set by the Association. The initial annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall endeavor to fix the amount of the annual assessment against each Ownership Unit at least thirty (30) days in advance of each annual assessment period; however, the annual assessment shall be binding notwithstanding any delay. Written notice of the annual assessment amount and of any special assessments shall be sent to every Owner subject to the assessment(s). The due dates and payment schedules, if any, shall be established by the Board. The Association, acting through the Board of Directors, upon written demand and for a reasonable charge,





shall furnish to any Owner, or the Owner's authorized representative, a certificate signed by an officer of the Association setting forth whether the assessments and charges on and against a specified Ownership Unit have been paid and setting forth any other matters as may be required from time to time by Arizona law. A properly executed certificate of the Association as to the status of assessments on or against an Ownership Unit and any other required matters shall be binding upon the Association as of the date of issuance of the certificate and for the time period specified in the certificate. Assessments shall be payable in the full amount specified by the assessment notice, and no offsets against such amount (other than the prepayment thereof) shall be permitted for any reason whatsoever including, without limitation, abandonment of the Ownership Unit, a claim that the Association is not properly exercising its duties of maintenance or enforcement, a claim against the Declarant or its affiliates, or the non-use or claim of non-use by an Owner of all or any portion of the Common Area or Elements. Assessments may be collected in advance or in arrears as the Board of Directors shall determine in their sole discretion.

**4.9 Initial Working Capital and Reimbursement.** Notwithstanding anything to the contrary in this Article 4, the Declarant shall establish and fund the initial working capital of the Association, to meet unforeseen expenditures or to purchase any additional equipment or services deemed necessary by the Declarant (during the period of Declarant Control) or by the Association (after the period of Declarant Control has ended), in an amount equal to two (2) months of the estimated monthly common charges for each Unit in the Phase. The initial working capital fund for each Phase shall be established (and funded) by the Declarant no later than the conveyance of the first Unit in each such Phase. For all Phases after the Initial Phase, Declarant shall pay the required amount to the Association as the initial working capital for the succeeding Phase or Phases. Declarant shall not use any of the initial working capital funds to defray any of Declarant's expenses, reserve contributions, or construction costs, or to make up any budget deficits during the period of Declarant Control. Any amount advanced by Declarant as initial working capital of each Phase shall not be considered to be advance payments of regular assessments of the Units as set by the Association. Declarant shall be reimbursed in full for any and all such contributions to the Association's initial working capital as follows: each Unit's share of the working capital contributions made by Declarant shall be collected from the purchaser, as a special assessment by the Association, directly from or out of the sale escrow at the time the initial sale of the Unit is closed. Declarant shall transfer the working capital fund to the Association, for deposit by the Association to a segregated account, when control of the Phase is transferred to the Association pursuant to Section 3.3. hereof.

**4.10 Non-Payment of Assessments, Association Remedies.** Any assessment that is not paid within fifteen (15) days after the due date shall be subject to a one-time late charge of Forty-Five Dollars (\$45) and, additionally, shall bear interest from the due date at the minimum rate of twelve percent (12%) per annum or any other legal rate approved by the Board of Directors and permitted under the requirements of any applicable Institutional Guarantor. Each Owner of an Ownership Unit, by accepting a deed for that Ownership Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an Owner, vests in the Association and its agents the right and power to bring all actions against the Owner personally for the collection of all assessments due under the Project Documents as a debt and to enforce the lien securing the assessment by all methods available for the enforcement or foreclosure of liens. If an Owner fails to make payments required under any Mortgage or fails to pay taxes or other governmental assessments or levies on an Ownership Unit, the Association may make payments of the amounts due under any mortgage or may make the required payment for taxes or other governmental assessments and levies on the Ownership Unit, and the amount of all such payments shall be due and payable immediately as a special assessment on and against the Owner of the Ownership Unit and shall be added to the lien in favor of the Association. The Association shall have the power to bid in any foreclosure sale, sheriff's sale, trustee's sale, or similar sale (whether or not the foreclosure was initiated by the Association or some other person) and to acquire, hold, lease, mortgage and convey the Ownership Unit purchased. The Association may initiate suit to recover a money judgment for unpaid assessments of the Owner against the Owner, without being required to foreclose its lien on the



Ownership Unit and without waiving the lien that secures the unpaid assessments. Any foreclosure action may be initiated without regard to the value of the Ownership Unit, the solvency of the Owner, or the relative size of the Owner's default. The assessment lien and the rights of enforcement under this Declaration shall be in addition to and not in substitution or lieu of all other rights and remedies that the Association may have under the Project Documents or Arizona law.

**4.11 Subordination of Lien To Mortgages.** Except as provided in A.R.S. §33-1807(C), and regardless of whether a Notice and Claim of Lien has been recorded, the lien for the assessments established in this Declaration shall be superior to all liens, charges, homestead exemptions, and encumbrances that are imposed or recorded against any Ownership Unit after the date of recordation of this Declaration. The lien for the assessments established in this Declaration, however, shall be automatically subordinate to: (i) the lien of any Mortgagee holding a Mortgage that was recorded before the date on which the assessment sought to be enforced became delinquent except for the amount of any assessment(s) that accrued from and after the date upon which the Mortgagee acquired title to or came into possession of any Unit and except for amounts due to the Association as described in Sections 5.4 or 8.19 below; and (ii) any liens for real estate taxes or other governmental assessments or levies that by law are prior and superior to the assessment lien. The sale or transfer of any Ownership Unit shall not affect the lien for assessments or the personal obligation of the Owner to pay all assessments arising during the Owner's ownership of the Ownership Unit; however, the sale or transfer of any Ownership Unit pursuant to a judicial foreclosure or trustee's sale by a Mortgagee shall extinguish that portion of the lien on the Ownership Unit (but not the personal obligation) that became due prior to the judicial foreclosure or trustee's sale. In the case of a sale or transfer by judicial foreclosure or trustee's sale by a Mortgagee, the Mortgagee or other successor Owner shall not be liable for any assessments that became due prior to the sale or transfer by the Mortgagee. No sale or transfer pursuant to a judicial foreclosure or trustee's sale of any Mortgagee shall relieve the foreclosed Owner from personal liability or act to release the lien for any assessments that may become due or arise after the judicial foreclosure or trustee's sale. A sale or transfer pursuant to a judicial foreclosure or trustee's sale, however, shall not be construed to release any Owner or previous Owner from the Owner's personal obligation to pay any assessment arising during the Owner's or previous Owner's ownership of the Ownership Unit, and the Association may enforce the personal obligation to pay the assessments arising during the Owner's ownership of the Ownership Unit in any manner permitted under Arizona law or the Project Documents.

**4.12 Notice of Lien.** Without affecting the priority and perfection of any assessment that has been perfected as of the date of recordation of this Declaration, the Association may give, but is not obligated to give, notice to any Owner whose assessment is due and unpaid by mailing to the Owner a copy of a "Notice and Claim of Lien" which may state, among other things, the following: (i) the last known name of the delinquent Owner or joint Owners; (ii) the legal description or street address of the Ownership Unit against which the claim of lien is made; (iii) the amount claimed to be due and owing from the Owner(s) and assessed against the Ownership Unit; and (iv) a statement that the claim is made by the Association pursuant to the terms of this Declaration and/or other Project Documents. Each default in the payment of any assessment shall constitute a separate basis for a claim of lien, but any number of defaults may be included within a single Notice and Claim of Lien against the delinquent Owner's or Owners' Ownership Unit. The Notice and Claim of Lien may be executed by any officer of the Association, the managing agent for the Association, or legal counsel for the Association, but in all events the lien will remain that of the Association.

**4.13 Initial Working Capital Contributions by Owners.** Upon acceptance of a deed for an Ownership Unit, (whether or not expressed in the deed or conveying instrument) or otherwise becoming and Owner, each Owner (except for Declarant) shall contribute to the working capital of the Association an amount equal to one-sixth (1/6) of the annual assessment then in effect as determined in accordance with Section 4.9 in this Article 4. This amount shall be deposited by the buyer into the purchase/sale escrow and, in the case of the initial buyers of each Ownership Unit, disbursed from escrow directly to the Declarant as reimbursement



of Declarant's contribution to the initial working capital of the Association and, in the case of all subsequent buyers of each Ownership Unit, to the Association. Except for those amounts paid or advanced by Declarant, all amounts paid by Owners as working capital shall be non-refundable and shall not act as a credit against any assessment payable by an Owner pursuant to this Declaration or action taken by the Association's Board of Directors.

## ARTICLE 5

### **COMMON ELEMENTS (AREA) AND UNIT MAINTENANCE**

5.1 **Common Elements.** Except as set forth in Sections 5.2 or 5.3 below, the Association shall be responsible for the maintenance, repair and replacement of the Common Elements (including the private portions of the water and sewer systems on the Project, the exterior and the structural elements of all Buildings such as walls, patios and balconies, and the roofs. Without any approval of the Owners, the Association may: (i) reconstruct, repair, replace and refinish any Common elements; (ii) maintain, repair and landscape any shared entry area for the Project (whether established through easement, license, or otherwise); and (iii) do any other acts deemed necessary to preserve, beautify and protect the Common Areas and Elements of the Project in accordance with the general purposes specified in the Project Documents. The Board of Directors of the Association shall be the sole and absolute judge as to the appropriate maintenance of the common Elements. Notwithstanding anything contained in this Section 5.1 to the contrary, the Association will have no obligation to perform any maintenance or repair work that is performed by any municipality or utility provider responsible for the maintenance of any utilities or improvements located within any Common Area. No Owner may alter remove, injure, damage or interfere in any way with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like, if any, placed on or about the Common Areas.

5.2 **Repairs Necessitated by Owner.** In the event that the need for maintenance or repair to, or restoration of, the Common Elements is caused by or through the acts or omissions (including negligent acts or omissions) of an Owner, the Owner's Permittees, or any pet of the Owner, the cost of the maintenance, repairs, or restoration, including the deductible portion of any applicable insurance policy, shall be added to and become a part of the assessment against all Ownership Units owned by that Owner, without regard to the availability or collection of any insurance proceeds payable to the Association for the cost of the maintenance, repair or restoration work. In addition to the foregoing, if the Owner of any given Ownership Unit is held liable to the Association or another Owner by a court of competent jurisdiction for maintenance, repair or restoration work performed by the Association to any other Ownership Unit (i.e. an Ownership Unit not owned by that Owner), the amount of that judgment shall be added to and become a part of the assessment against all Ownership Units owned by that Owner.

5.3 **Maintenance of Ownership Units.** Each Owner shall maintain, repair, and replace, at the Owners' expense and without disturbance to the rights of other Owners:

- (a) All portions of the Owner's Ownership Units;
- (b) The interior portions of the Ownership Unit including without limitation: (i) service equipment and appliances such as the dishwasher, laundry, refrigerator, microwave oven, range, whether or not these items are built-in fixtures; (ii) interior fixtures such as electrical and plumbing fixtures, tubs, toilets, sinks, floor coverings, and surfaces, except the floor slab or the existing floor or subfloor; and (iii) all interior surfaces including but not limited to windows, doors, inside paint and other interior wall finishes;
- (c) All windows and doors (including the cleaning of the interior and exterior of any windows



and the glass portions of doors), and the garage door and garage door opener;

(d) The heater, furnace, air handler, and hot water heater servicing the Unit;

(e) The decorating within the Ownership Unit including, without limitation, the painting, wallpaper, paneling, floor coverings, draperies, window shades, curtains, light fixtures and lamps, and other furniture and interior decorating. Subject to the provision of this Declaration, each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter and interior walls, floors, and ceilings within the Owner's Ownership Unit, and each Owner shall maintain these surfaces in good condition at the Owner's sole expense. Maintenance of all such surfaces by the Owners may be subject to the rules and regulations of the Association as may be necessary for the common good of the Property and all other Owners;

(f) To the extent not already included within the categories identified in this Section 5.3, the Limited Common Elements of the type described in subparagraphs (iii) and (vi) of Section 1.22 of this Declaration.

**5.4 Owner's Failure To Maintain.** If an Owner fails to perform any items of maintenance or repair required under the terms of this Article 5, then, upon the vote of a majority of the Board of Directors and after not less than thirty (30) days prior written notice to that Owner, the Association shall have the right (but not the obligation) to enter upon or into that Ownership Unit and to provide the required maintenance or make the required repairs or replacements. Any entry by the Association or its agents shall not be considered a trespass. The cost of such maintenance or repairs shall be added to the assessments charged to the Owner, shall be paid immediately to the Association by that Owner as a special assessment or otherwise, and shall constitute a lien upon all Ownership Units owned by that Owner. The rights of the Association described above are in addition to any other remedies available to the Association under the Project Documents or Arizona law. If, concurrent with the delivery of the thirty (30) day written default notice to an Owner for a failure of the Owner to perform its obligations required under the terms of this Article 5, the Association delivers written notice to any holder of a mortgage, the lien in favor of the Association shall constitute a "lien for other assessments" of the Association pursuant to A.R.S. §33-1807(C), and shall have priority as to any notified Mortgagee solely with respect to the special assessment made for the costs of the maintenance and/or repairs performed by the Association.

**5.5 Access at Reasonable Times.** Solely for the purpose of performing maintenance, repairs, replacement or restoration work permitted in accordance with Section 5.4 hereof, the Association and the Association's agents or employees shall have the right, after reasonable notice to an Owner (except in the case of emergency, in which event no notice is required or need be given), to enter upon or go into the Owner's Ownership Unit at any reasonable time. For the purpose of performing the maintenance authorized by Sections 5.1 and 5.2 hereof upon any portion of the Common Areas or Elements, the Association and the Association's agents or employees may enter the Common Areas and shall have access to the Common Elements at reasonable hours without notice to any Owner.

**5.6 Exterior Repairs.** Notwithstanding the fact that Owners may be required to maintain certain Limited Common Elements that are or may be outside of the physical boundaries of the Ownership Unit, no Owner will be permitted to change any exterior color, style, or condition of the Limited Common Elements without the prior written approval of the Board.

**5.7 General Standards.** Except as may be otherwise provided in this Declaration or other Project Documents, each Owner of an Ownership Unit shall maintain the area(s) for which he, she or they are respectively responsible at a level of general maintenance at least equal to that prevailing with respect to areas of a similar nature located in residential communities commonly and generally deemed to be of the



same quality as the Project.

5.8 **Utilities.** Except for those utility costs that are metered collectively for the Common Elements and paid by the Association as a common expense, all utilities for the Units will be metered separately to and for each Unit, payment of which will be the responsibility of the respective Owners.

## ARTICLE 6

### DUTIES AND POWERS OF THE ASSOCIATION

6.1 **Duties and Powers.** In addition to the duties and powers enumerated or contained in other Project Documents or elsewhere in this Declaration, the Association, through its Board of Directors, shall have the power and authority to:

(a) **Common Elements.** Maintain and otherwise manage the Common Areas and Elements and all other real and personal property that may be acquired by the Association;

(b) **Legal and Accounting Matters.** Obtain legal, accounting, and other professional services, deemed by the Board, in its discretion, to be necessary or desirable in the operation of the Association and the Common Areas;

(c) **Easements.** Subject to the limitations, if any, imposed by the Project Documents, grant easements where necessary for utilities, sewer facilities and cable services on, under, over, through, upon, across or about the Common Elements to serve the Common Elements or any Ownership Unit(s);

(d) **Management of Association Business.** Employ affiliated or third-party managers or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;

(e) **Insurance.** Purchase and maintain insurance to cover risks associated with the Common Elements with or from companies, and in amounts, as the Board determines to be necessary, desirable, or beneficial, subject to the provisions of Section 6.2 below;

(f) **Other.** Perform other acts authorized expressly or by implication under this Declaration and other Project Documents including, without limitation, the right to construct or install improvements on or to the Ownership Units and Common Elements;

(g) **Enforcement.** Enforce the provisions of this Declaration and the other Project Documents by all legal means including, but not limited to, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, and the establishment of a system of fines or penalties, for the enforcement of this Declaration and the other Project Documents.

6.2 **Insurance.** The Common Areas of the Property, and all Common Elements, shall be insured at all times, as follows:

(a) **Liability Insurance.** Prior to the first conveyance of a Unit to an Owner other than Declarant, comprehensive general liability insurance covering all of the Common Elements shall be purchased and obtained by the Board, or acquired by assignment from Declarant promptly following the Board's election, and shall be maintained in force at all times. The premiums shall be paid out from the



Association's funds. The insurance shall be carried with reputable companies authorized and qualified to do business in Arizona. The minimum amounts of coverage shall be \$3,000,000.00 for bodily injury and property damage on a combined single limit basis. The policy shall name as insured the Owners, the Association (along with its directors, officers, employees, and agents in the scope of their employment or duties), and the Declarant (along with his or its directors, officers, managers, members, employees, and agents in the scope of their employment or duties) for so long as Declarant owns or retains any Ownership Unit. The insurance policy shall include, but need not be limited to, insurance against injury or damage occurring in, on, or as a result of, the Common Elements or their existing condition.

(b) **Hazard, Casualty, and Multi-Peril Insurance.** A master or blanket hazard, casualty and multi-peril insurance policy shall be purchased, obtained, or acquired by assignment from Declarant promptly following the construction of any Building or any permanent structure of, on or within the Common Elements. Once purchased, obtained or acquired, this master insurance policy shall be maintained in force at all times by the Association. The premiums shall be paid from Association funds as a common expense of the Owners. The master insurance policy shall be carried with reputable companies authorized and qualified to do business in the State of Arizona and shall insure against loss from fire and other hazards or casualties covered by the standard extended coverage endorsement and "all risk" endorsement to the hazard, casualty and multi-peril insurance policy for the full replacement cost of all Common Elements (excluding land, foundations, excavations, and other items that are usually excluded from insurance coverage), Limited Common Elements and, if required by any Institutional Guarantor, the fixtures, equipment, appliances and other personal property inside an Ownership Unit (whether or not part of the Common Elements). The master hazard insurance policy shall name the Declarant (for so long as Declarant owns or retains an Ownership Unit), the Association, and any First Mortgagee of, and having a mortgage lien on, the insured permanent improvements on, within, or included in, the Common Element(s) as insureds, as their respective interests may appear.

(c) **Required Provisions.** The comprehensive general liability insurance referred to in subparagraph (a) above and, if applicable, the hazard, casualty and multi-peril insurance policy referred to in subparagraph (b) above, shall contain the following provision (to the extent available at a reasonable cost):

- (1) Any "other insurance" clause shall exclude insurance purchased by any Owners or First Mortgagees;
- (2) The coverage afforded by the policies shall be primary and shall not be brought into or require contribution or proration with or by any insurance that may be purchased by any Owners or First Mortgagees;
- (3) The acts or omissions of any one or more of the Owners, or an Owner's Permittees, shall not constitute grounds for avoidance of liability or coverage on the policies and shall not be a condition to recovery under the policies;
- (4) A "severability of interest" endorsement that precludes the insurer from denying the claim based upon negligent acts or omissions of the Association or Owners;
- (5) If a policy of property insurance giving the carrier the right to elect to restore damaged areas or elements in lieu of a cash settlement is obtained, such policy must also provide that this election is not exercisable without the prior written consent of the Association;
- (6) Each insurer shall waive its rights to subrogate under each policy against the Association (and its directors, officers, agents and employees) and any Owner (or the Owner's Permittees);



(7) A standard mortgagee clause to be included and endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of First Mortgagee(s) as their interest(s) may appear, or endorsed to fully protect the interest(s) of First Mortgagee(s) and their successors and assigns;

(8) Any insurance trust agreement shall be recognized; and

(9) "Agreed Amount", "Construction Code", "Steam Boiler and Machinery", "Special Condominium" and "Inflation Guard" endorsements shall be obtained, when available.

(d) **Other Insurance.** The Board may (but is not obligated to) purchase additional insurance as the Board may determine to be advisable or necessary including, without limitation, workmen's compensation insurance, boiler or furnace explosion insurance, demolition insurance to remove improvements that are not rebuilt, flood insurance, fidelity bonds, director and officer liability insurance, and insurance on personal property owned by the Association. All premiums for such insurance and bonds shall be paid out of Association funds. The Association may assess the Owners in advance for the estimated cost of such insurance. By virtue of owning an Ownership Unit subject to this Declaration, each Owner covenants and agrees with all other Owners and the Association that each Owner shall carry "all-risk" casualty insurance on all Ownership Units owned by the Owner. Without limiting any other provision of this Declaration, it shall be each Owner's sole responsibility to secure comprehensive personal liability insurance, theft, fire, multi-peril, and other hazard insurance covering loss or damage to the Owner's personal property, furniture, fixtures and any other insurance not carried by the Association that the Owner desires.

(e) **General Insurance Provisions.** The Board of Directors is granted the authority to negotiate loss settlements with the appropriate insurance carriers, or their agents, in regards to insurance purchased and obtained by the Association pursuant to Paragraph 6.2 hereof. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and their signatures shall bind the Association and the Members. Any policy of insurance obtained by the Association may contain a deductible no higher than that permitted by an Institutional Guarantor. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and, in the event multiple parties are responsible, but without waiving any right to enforce joint and several liability, the deductible shall be allocated in relation to the amount each party's responsibility bears to the total loss as determined by the Board. Where possible, each insurance policy maintained by the Association must require the insurer to notify the Association in writing at least ten (10) days before the cancellation or any substantial change to the Association's insurance coverage.

(f) **Non-Liability of Association.** Notwithstanding the requirement that the Association obtain insurance coverage as stated in this Declaration, neither the Declarant (or its officers, directors, partners, members, managers or employees), nor the Association (or any director, officer or agent of the Association), shall be liable to any 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 insurance is not adequate; and it shall be the responsibility of each 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 Owner may desire.

(g) **Coverage Requirements.** Notwithstanding anything to the contrary contained in this Section 6.2, the Association shall maintain any other forms or types of insurance as may be required from time to time by any applicable guidelines issued by any Institutional Guarantor. Additionally, all insurance maintained by the Association must meet the rating requirements of any Institutional Guarantor.

6.3 **Other Duties and Powers.** The Association, acting through the Board, and if required by this



Declaration or by law or if deemed necessary or beneficial by the Board for the operation of the Association or enforcement of this Declaration, shall obtain, provide and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments. If, however, any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are specifically provided or apply to particular Ownership Units, the cost shall be specially assessed to the Owners of such Ownership Units.

6.4 **Association Rules and Regulations.** By a majority vote of the Board, the Association, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal rules and regulations for the Project. The Association Rules may restrict and govern the use of any area by any Owner, the Owner's Permittees, or the Owner's pets, and additionally may establish a system of fines and charges for violations of the provisions of the Project Documents; however, the Association Rules may not discriminate among or between Owners. A copy of the Association Rules shall be available for inspection by the Members at reasonable times. The Association Rules shall not be interpreted in a manner inconsistent with this Declaration or the Articles or Bylaws and, upon adoption, the Association Rules shall have the same force and effect as if they were set forth in, and were a part of, this Declaration.

6.5 **Conservation and Protection of Resources.** Notwithstanding anything to the contrary contained in this Declaration, the Association shall maintain and manage the Common Areas and Elements in compliance with all applicable rules and regulations regarding the protection of forest and other natural resources.

## ARTICLE 7

### CONDEMNATION

7.1 **Taking.** If, at any time during the term of this Declaration, all or any part of the Project or Property is taken or condemned by a public authority or sold or otherwise disposed of in lieu or in advance of any taking (referred to as "taking", "taken", or "condemned"), the provisions of this Article shall apply.

7.2 **Award.** All compensation, damages, or other proceeds from the taking shall be payable to the Association. The compensation, damages, and other proceeds, less the amount of reasonable and necessary costs and expenses including, without limitation, attorney's fees, appraisal charges, and court costs incurred by the Association in connection with the taking, are referred to herein as the "Award".

7.3 **Total.** In the event that the entire Project or Property is taken or condemned, the Condominium shall terminate. The Award shall be apportioned among the Owners ratably according to their Fractional Interests; however, if a different standard is employed in the valuation used to measure the Award in the negotiation, judicial decree, or otherwise, the same standard shall be employed to determine the apportionment among the Owners to the extent it is relevant and applicable. On this basis, the Association, as soon as practical, shall determine the share or the Award to which each Owner is entitled. All shares shall be paid into a separate account and shall be disbursed as soon as practicable by check payable jointly to the Owners and their respective First Mortgagees.

7.4 **Partial.** In the event that less than the entire Project or Property is taken or condemned, the Condominium shall not terminate. In such an event:

(a) Each Owner shall be entitled to a share of the Award to be determined in the following manner: (i) the Board shall allocate that portion of the Award attributable to the taking of or injury to a particular Ownership Unit and/or improvements an Owner made within his or her own Ownership Unit to the





particular Ownership Unit involved; (ii) as soon as practical, the Board shall reasonably and in good faith allocate that portion of the Award attributable to the taking of or injury to the Common Elements and apportion that amount among the Owners in accordance with their Fractional Interests in the Condominium; (iii) the Board shall allocate that portion of the Award attributable to severance damages among those Units that were not taken or condemned; and (iv) the remainder of the Award shall be apportioned as the Association determines to be equitable under the circumstances. If an allocation of the Award is already established by negotiation, judicial decree, or otherwise, the Association shall employ the same allocation to determine the apportionment among the Owners to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by check payable jointly to the Owners and their respective First Mortgagees.

(b) Notwithstanding anything to the contrary, if any Ownership Unit is acquired by condemnation or a taking, or if part of an Ownership Unit is acquired by condemnation or a taking that leaves the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the Award must compensate the Owner for the Ownership Unit and, in the case of the taking of an Owner's Unit, its Fractional Interest in the Common Elements, regardless of whether any Common Elements are taken or condemned. Unless a judicial decree or the negotiation provide otherwise, upon acquisition of the Unit (or a portion of a Unit that leaves a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration), the Unit's Fractional Interest shall automatically be reallocated to the remaining Units in accordance with the formula set forth in Section 1.18 hereof. Any remnant of any Ownership Unit remaining after part of an Ownership Unit is taken becomes a Common Element.

(c) If any part of the Common Elements is acquired by condemnation or a taking, the portion of the Award attributable to the Common Elements taken shall be paid to the Association for the benefit of the Unit Owners.

**7.5 Effect.** Without limiting Section 7.4 above, in the event a partial taking results in the taking of all of a Building or part of a Building with the result that the remainder of the Building cannot reasonably be restored to an architectural whole, the Owners of the Units located in each applicable Building (regardless of whether all or any portion or portions of the Owners' undivided Units were taken) automatically shall cease to be Members of the Association as of the time of the taking which, for the purposes of this Article 7, shall be the date upon which possession is acquired by the condemnor or the date upon which title is conveyed to the condemnor, whichever occurs first. Thereafter, the Board shall reallocate the Fractional Interests of the remaining Owners in the Condominium pursuant to the formula described in Section 1.18 hereof so that the total percentage of all remaining Units shall be one hundred percent (100%).

**7.6 Reconstruction.** Any reconstruction and repair necessitated by a partial taking shall be governed by the procedures specified in Article 9 of this Declaration.

**7.7 Separate Compensation.** Nothing contained in this Article 7 shall restrict the rights of lessees, mortgagees, the Declarant, or any other person holding an interest in an Ownership Unit or its Fractional Interest in the Common Elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this Article 7 and A.R.S. §33-1206 (as may be amended from time to time).

## ARTICLE 8

### RESTRICTIONS ON USE

**8.1 Restricted Use.** Except as otherwise provided in this Declaration, a Unit and all Common Areas and Elements shall be used only by a Single Family and only for Single Family Residential Use.



**8.2 Business and Related Uses.** No Ownership Unit, or any of the Common Areas or Elements shall ever be used, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, commercial storage, vending, or other similar uses or purposes; however, Declarant and its agents, representatives, employees, independent contractors, successors, or assigns may use the Property or Ownership Units for any of the foregoing uses as may be required, convenient, or incidental to the construction, marketing and sale of Ownership Units including, without limitation, a business or management office, storage area, construction yard, signage location, model homes or sites, and display and sales office(s) during the construction and sales period. The foregoing restriction shall not prevent an Owner from conducting his or her personal affairs on or in the Unit and shall not be deemed to prevent an Owner from using the Unit for business purposes that: (i) utilize a minimal portion of the Unit; (ii) do not result in the use of the Unit for business meetings, appointments, gatherings, or day care; (iii) do not result in shipping or receiving from or to the Unit; (iv) do not result in an increase of noise, lighting, rubbish, traffic or other nuisances or dangers that could reasonably disturb the peaceful enjoyment of other Owners; and (v) do not otherwise violate local zoning and use laws.

**8.3 Signs.** No emblem, logo, design, or billboard of any kind shall be displayed on or in any of the Ownership Units or the Common Elements so as to be visible from a neighboring property, except for: (i) signs used by Declarant to advertise Declarant's business or office hours, or the Ownership Units for sale or lease; (ii) signs on the Common Elements as may be placed and approved by the Declarant during the period of Declarant Control, or by the Board after the period of Declarant Control; (iii) one sign advertising a Unit for sale or rent of a size and style approved by the Board and placed in a location designated by the Board; (iv) any signs as may be required by legal proceedings; and (v) signs (including political signs and symbols) as may be approved in advance by the Board in terms of number, type and style. The foregoing will not be deemed to prevent the right of any Owner to display religious and holiday signs, symbols, and decorations of the type customarily and typically displayed inside or outside Condominium units, subject to the authority of the Board or the Architectural Committee, if such a committee is appointed, to adopt reasonable time, place and manner restrictions for the purpose of minimizing damage to the Units or Common Elements and disturbance to other Owners (including disturbance from pedestrian and vehicle traffic coming on the property to view the signs, symbols and decorations).

**8.4 Noxious or Offensive Activities.** No noxious or offensive activity shall be engaged in (or permitted to be engaged in) on, in or about any Ownership Unit. No act or use may be performed on, in or about any Ownership Unit that is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically, or that interferes with the use and quiet enjoyment of any of the Owners and/or the Owners' Ownership Units. No Owner shall permit any thing or condition to exist upon, within, or about any Unit or Common Area or Element that induces, breeds, harbors or causes infectious plant diseases or infectious or noxious insects, odors or debris.

**8.5 Animals.** No animals, livestock, horses, birds, or poultry of any kind shall be raised, bred, or kept on or within any Ownership Unit or structure in an Ownership Unit; however, an Owner may keep up to two (2) dogs, which may not exceed a weight of forty (40) pounds each or two (2) cats, or two (2) other common household pets or two (2) of any combination of permitted dogs, cats, or other common household pets in the Unit if permitted under local zoning ordinances. Additional pets are prohibited unless approved in advance by the Board. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets shall be allowed for only so long as they are not kept, bred, or maintained for any commercial purpose and for only so long as they do not result in any annoyance, nuisance or danger to other Owners. No pets shall be permitted to move about unrestrained in the Project or on the Property, Common Elements and any public or private street or way within the Project or Property. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the



Owner's pets from the Project, Property, Common Elements or public or private streets or ways. Owners shall be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing and the Board will be the sole judge for determining whether a pet is a common household pet or whether any pet is an annoyance, nuisance or danger to others.

**8.6 Trash.** All rubbish, trash, and garbage shall be regularly removed from the Ownership Units and Limited Common Elements and shall not be allowed to accumulate on, in or around any Ownership Unit or the Limited Common Elements. All Owners shall be responsible for appropriately depositing all such rubbish, trash and garbage in either of the trash or recycling containers provided by the City of Flagstaff for such purpose. All Owners shall be further responsible for ensuring that such City-provided trash and recycling containers are placed in or moved to the appropriate location for City trash pick up on or before the day of each week scheduled for the City's trash or recycling pick up, as the case may be. In the case of an Owner who allows trash to accumulate on, in or around the Owner's Ownership Unit or on any Limited Common Elements, the Board, on behalf of the Association, may arrange and contract for the removal and cleanup of the trash, and the cost thereof shall become a special assessment to that Owner and all Ownership Units owned by that Owner. No incinerator shall be kept or maintained on or in any Ownership Unit.

**8.7 Use of Unit Decks.** Each Ownership Unit shall have an attached, above-ground deck (or balcony) which shall be included as part of the Limited Common Elements. Nothing but all-weather, outdoor furniture shall be kept, maintained or stored upon the deck (or balcony) of any Ownership Unit at any time. No Unit Owner, or the Owner's Permittees, shall hang laundry, clothes, signs, posters or any other material, or store any possessions or goods, whether boxed or unboxed, covered or uncovered, freestanding or otherwise, including food, firewood, bicycles or other recreational or sports-related vehicles or equipment, parts, or furnishings of any type or form, from, on or within a deck or balcony of any Ownership Unit.

**8.8 Use of Unit Backyards.** Each Owner shall have the use of a backyard, contained by a fence of 6' height, adjacent to the Ownership Unit as part of the Limited Common Elements. In addition to other restrictions on use set forth in this Article 8, the Owner of an Ownership Unit, or the Owner's Permittees, may use the backyard in any way that will not disturb the peace, quiet, use or enjoyment of any other Owner; provided, however, that no use of a backyard may be made such that any part, element or accoutrement of such use, nor any structure, good, or other stored possession, shall be visible or audible from either the street fronting the Property or any part of the Common Area.

**8.9 Woodpiles and Storage Areas.** Other than as provided in this Article 8, woodpiles and open storage areas may not be maintained upon any Ownership Unit, the Limited Common Elements or the Common Area. At no time may an Owner maintain any storage on the Project or Property of a commercial nature, and no commercial, recreational or family vehicles shall be stored on the Property other than in the Owner's attached garage. Notwithstanding the foregoing, an Owner may store a reasonable quantity of firewood within the backyard of the Owner's Unit provided that such firewood is for the Owner's personal use in the Unit and the firewood stored is placed and maintained at least a foot (12") from any wood wall or structure, and further provided that the stored firewood is not visible from either the street fronting the Property or any part of the Common Area.

**8.10 Antennas.** Except as originally installed by Declarant, no external radio, direct television, television antenna, or satellite dish may be installed or constructed on any Ownership Unit, the Limited Common Elements, or the roof of any Ownership Unit or Building.

**8.11 Windows and Window Coverings.** Sheets, newspapers, and similar items may not be used as temporary window coverings. No aluminum foil, reflective screens, awnings, reflective glass, mirrors, or similar reflective materials of any type shall be placed or installed inside or outside of any windows of a Unit



without the prior written approval of the Board. No air conditioners, swamp coolers or similar units may be placed in any window of a Unit. Only curtains, blinds and draperies customarily and typically designed for and used to cover the inside of windows shall be permitted in any Unit.

**8.12 Leasing.** Nothing in this Declaration shall be deemed to prevent the leasing or renting of a Unit to a Single Family for Single Family Residential Use from time to time by the Owner of the Unit, subject to all provisions of the Project Documents, and further subject to the restriction that no lease or rental of a Unit may be for a lease or rental term less than six (6) months. Any Owner who leases his or her Unit shall promptly notify the Association and shall advise the Association of the lease or rental period and the name of each lessee. The lease agreement for the lease of any Unit must contain a provision whereby the tenant acknowledges receipt of a copy of the Project Documents (with the exception of the Plat) and agrees to fully abide by all provisions of the Project Documents. The Owner of the leased Unit shall be fully responsible and liable to the Association for the actions of the Owner's tenants. No Owner shall be permitted to lease the Owner's Unit for transient or hotel purposes.

**8.13 Machinery.** No machinery of any kind shall be placed, operated, or maintained upon or adjacent to any Ownership Unit or Limited Common Element other than machinery that is usual and customary in connection with the operation and maintenance of an Ownership Unit (such as household appliances) for Single Family Residential Use, and other machinery that Declarant or the Association may require for the operation, maintenance, or construction of the Ownership Units or the Property.

**8.14 Increased Risk Prohibited.** Nothing shall be done or kept in, on or around any Ownership Unit or the Common Elements that will increase the risk of hazard or injury or the rate of insurance on the Common Elements without the prior written consent of the Board. No Owner shall permit anything to be done or kept on, in or around the Owner's Ownership Units or the Common Elements that will or could result in the cancellation of insurance on any Ownership Unit or any part of the Common Elements or that would be in violation of any law or the provisions of the Project Documents.

**8.15 Outdoor Burning and Lighting Prohibited.** There shall be no outdoor burning of trash, debris, wood or other material; however, outdoor barbecues in the designated backyards of the Owners' Units shall be permitted. Without limiting the provisions of Section 8.4 above, and except as originally installed by Declarant, or as otherwise approved by the Board, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Ownership Unit so that the light is directed or reflected upward or at, on or in the direction of any Common Element or any other Ownership Unit.

**8.16 Hazardous Wastes.** Except as may be necessary for normal household, landscaping, or automotive uses, no Owner shall permit any hazardous wastes (as defined by and under all applicable state and federal laws), asbestos, asbestos containing material, or any petroleum products or by-products to be kept, dumped, maintained, stored or used in, on, under, over, or around any Ownership Unit or the Common Elements. No gasoline, kerosene, similar cleaning solvents, or other flammable liquids may be stored in the Ownership Units or the Common Elements; provided, however, that an Owner may store in the Owner's Unit such cleaning materials as may reasonably be required by the Owner in connection with his or her Family Vehicle(s).

**8.17 Vehicle Parking.** Each Unit has an attached double car garage with an installed a garage door and garage door opener. All Owners shall park their motorized and other vehicles in the garage of the Owners' respective Ownership Unit. No vehicle of any kind or nature shall be parked or stored anywhere on the Property other than in a garage, and only such vehicles that reasonably fit into the garage of an Ownership Unit as constructed, without removal or disassembly of the garage door or its track or other parts, or the garage door opener, may be stored on the Property by and Owner or an Owner's Permittees.



8.18 **Vehicle Repair.** Routine maintenance and repairs of family vehicles may be performed within the attached garage of an Owner's Unit, but not anywhere else within the Project or on the Property. No vehicles of any type may be constructed, reconstructed, or assembled or disassembled anywhere within the Project or on the Property.

8.19 **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of model homes, structures, improvements, construction equipment (including all types of machinery, vehicles and trailers), or signs necessary or convenient to and for the construction, development, identification, sale, or lease of Ownership Units or other property with the Project.

8.20 **Owner's Failure to Comply with Use Restrictions.** If an Owner fails to comply with any of the use restrictions described in this Article 8, then, upon the vote of a majority of the Board of Directors and after not less than thirty (30) days prior written notice to that Owner, the Association shall have the right (but not the obligation) to enter upon or into that Ownership Unit and take all such actions as may be required to remedy the non-compliance. Any entry by the Association or its agents shall not be considered a trespass. The cost of the actions required to remedy the non-compliance shall be added to the assessments charged to the Owner, shall be paid immediately to the Association by that Owner as a special assessment or otherwise, and shall constitute a lien upon all Ownership Units owned by that Owner. The rights of the Association described above are in addition to any other remedies available to the Association under the Project Documents or Arizona law. If, concurrent with delivery of the thirty (30) day written default notice to an Owner for a failure of the Owner to perform his or her obligations required under the terms of this Article 8, the Association delivers written notice to any holder of a mortgage, the lien in favor of the Association shall constitute a "lien for other assessments" of the Association under A.R.S. §33-1807(C) and shall have priority as to any notified Mortgagee solely with respect to the special assessment made for the costs of the actions taken by the Association.

8.21 **Access at Reasonable Times.** For the purpose of performing the actions permitted under Section 8.20 above, the Association and the Association's agents or employees shall have the right, after reasonable notice to an Owner (except in the case of emergency, in which case no notice need be given), to enter upon or into the Owner's Ownership Unit at any reasonable time.

## ARTICLE 9

### CASUALTY DAMAGE

9.1 **Attorney-in-Fact.** The Owners irrevocably appoint the Board as their true and lawful agent and attorney-in-fact (in their respective names, places and steads) for the purpose of dealing with the Project in the event of its damage or destruction including, but not limited to, the right to negotiate with any insurer and adjust any loss covered by the insurance required by this Declaration. Each Owner, by becoming an Owner of an Ownership Unit, shall automatically constitute and appoint the Board as his or her agent and attorney-in-fact for the purposes outlined in this Declaration.

9.2 **Restoration.** The Board shall have the full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner that may be necessary or appropriate to exercise the power granted to the board in this Declaration. Repair and reconstruction of the improvements, as used in this Article 9, means restoring the Project to substantially the same condition that existed prior to the damage and with each Ownership Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance



collected shall be used by the Board for the purpose of repair and reconstruction unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) eighty percent (80%) of the Owners (without regard to any weighted voting of the Declarant), including every Owner of a Unit that will not be rebuilt, vote not to rebuild (the foregoing are collectively referred to as "Events of Non-Repair"). If the damaged property is to be repaired and restored, no Owner or lienholder shall be entitled to receive payment of any portion of the proceeds of any insurance unless there is a surplus of proceeds after the damaged property has been completely repaired or restored and the costs thereof have been fully paid.

**9.3 Damage Events.** For purposes of this Article 9, the below-stated terms shall have the indicated meanings:

(a) "Casualty Event" means any event causing damage or destruction of or to all or part of the Project or Property;

(b) "Total Destruction" means damage or destruction to the Project or Property that renders eighty percent (80%) or more of the Units uninhabitable in the judgment of the Board;

(c) "Partial Damage" means any damage or destruction that is less than Total Destruction.

**9.4 Estimates of Cost.** As soon as practicable after a Casualty Event, the Board shall obtain estimates, that it deems reliable and complete, of the cost to repair or reconstruct the Project or that portion of the Project or Property that was damaged or destroyed.

**9.5 Partial Damage.** Unless there occurs an Event of Non-Repair, any Partial Damage to the Project shall be repaired as promptly as possible by the Board as attorney-in-fact for the Owner or Owners, whether insurance proceeds are sufficient to cover the partial damage or not, and any cost of the repair or reconstruction in excess of insurance proceeds available and reserves set aside for such purpose, if any, shall be assessed as a Common Expense. If the Unit Owners vote not to rebuild any Unit pursuant to Section 9.2(iii), the unrepaired Unit's Fractional Interest shall automatically be reallocated to the remaining Units.

**9.6 Total Destruction.** In the event of Total Destruction, the following provisions shall govern:

(a) Unless an Event of Non-Repair occurs, the repair and reconstruction shall be promptly performed by the Board as attorney-in-fact for the Owners.

(b) In the event that insurance proceeds (as estimated by the Board) are insufficient to cover the cost of repair and reconstruction in the judgment of the Board and there has not previously occurred an Event of Non-Repair, the Board shall advise all Owners of this estimate and shall give notice of a special meeting of Owners to be held as soon as reasonably possible after the date of the Casualty Event for the purpose of determining whether or not the repair or reconstruction should be performed. The Condominium Project shall be reconstructed unless at least eighty percent (80%) of the Owners (without regard to any weighted voting of the Declarant) agree in writing to sell the entire remaining Project as provided below. Any necessary assessment made in connection with the repair and reconstruction shall be charged as an assessment to each Owner during the course of reconstruction at the times deemed necessary or desirable by the Board.

(c) If at least eighty percent (80%) of the Owners (without regard for any weighted voting by the Declarant) agree in writing, the Project shall be sold by the Board, as attorney-in-fact for each of the Owners, free and clear of the provisions contained in this Declaration and all other Project Documents. In this



case, the insurance proceeds payable as a result of the Casualty Event and the sale proceeds shall be apportioned among the Owners ratably according to their Fractional Interests, and all proceeds shall be paid into separate accounts, each account representing one Unit. Each account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner or Owners. As attorney-in-fact, the Board shall use and disburse the total amount of each separate account without contribution from one account to another as follows: (i) for payment of taxes and special assessment liens in favor of any assessing entity and customary expenses of sale; (ii) for payment of the entire balance of the lien of any First Mortgage encumbering the Ownership Unit; (iii) for payment of unpaid assessments and all costs, expenses and fees incurred by the Association and owed by the Owner; (iv) for payment of valid junior liens and encumbrances in the order and to the extent of their priority; and (v) the balance remaining, if any, shall be paid to the Owner.

**9.7 Insurance Trustee and Insurance Proceeds.** Except for loss or damage representing less than one percent (1%) of the value of the Project, as estimated by the Board, all insurance proceeds payable on account of damage or loss to the Project shall be adjusted with the Association and shall be paid to any bank in Arizona that is selected by the Board as the "Insurance Trustee". The Insurance Trustee shall not be liable for payment of premiums, or for the renewal or the sufficiency of policies of insurance or for the failure to collect any insurance proceeds (which shall be the duty of the Association through the Board). Insurance proceeds payable on account of loss or damage that equals or is less than one percent (1%) of the value of the Project shall be payable to and be used by the Association to repair the loss or damage in accordance with the provisions of this Article 9. The duty of the Insurance Trustee shall be to receive the insurance proceeds that are paid, and to hold them in trust for the benefit of the Owners and the First Mortgagees as their interests may appear as follows: (i) unless there occurs an Event of Non-Repair, an undivided share of the proceeds on account of damage to the Common Elements shall be allocated to the Owners according to their Fractional Interests; and (ii) proceeds, if any, on account of damage to Ownership Units shall be held for the Owners of the damaged Ownership Units in proportion to the cost of repairing the damage suffered by each Owner, as determined by the Board. In the event a mortgagee endorsement has been issued as to an Ownership Unit, the share of the Owner shall be held in trust for the First Mortgagee and Owner as their interests may appear.

**9.8 Disbursement of Insurance Proceeds.** The proceeds from assessments and insurance received by the Insurance Trustee shall be disbursed as follows:

(a) The portion of the insurance proceeds, if any, representing damage, the reconstruction and repair of which is the responsibility of the Owner, shall be paid by the Insurance Trustee to the Owner or, if there is a mortgagee endorsement, then to the Owner and the First Mortgagee jointly, who may use such proceeds as they may determine; provided, however, to the extent that any damage to an Ownership Unit affects in any way the Common Elements or any other Owner's Ownership Unit or the Building of which the Owner's Ownership Unit is part, the proceeds must be used for reconstruction and repair of such damage.

(b) The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of an Owner, shall be disbursed in payment of the costs of the repair and reconstruction in the manner required by the Board and upon approval of an architect qualified to practice in Arizona and employed by the Board to supervise the work.

(c) The Insurance Trustee shall not be required to determine whether a disbursement is to be made, the identity of the payee, or the amount to be paid, but may rely upon a certificate of the Board or of an architect acting for and on behalf of the Association stating all such information.

**9.9 Licensed Contractor Required.** All repair and reconstruction work shall be done by licensed contractors of good reputation. Payment bonds, performance bonds, and statutory lien bonds may be



required in the discretion of the Board, but all work shall be done under written contracts.

9.10 **Termination.** If it is determined that none of the Buildings shall be repaired or reconstructed because of damage or destruction, this Project shall be terminated and all of the Owners and all of the mortgagees and lienholders of record of all of the Ownership Units shall, and under such circumstances do hereby, appoint the Board, and each of the Association's directors, as their lawful attorney-in-fact for the purpose of executing, acknowledging and recording a declaration withdrawing the Property from the Condominium.

9.11 **Non-Repair.** If one or more portions of the entire Condominium are not to be repaired, restored or replaced, the following shall apply:

(a) The insurance proceeds attributable to the damaged Common Elements in proportion to their undivided percentage interests shall be used to restore the damaged area to a condition comparable with the remainder of the Condominium;

(b) The insurance proceeds attributable to Ownership Units (including the undivided percentage interests in the Common Elements) that are not rebuilt shall be distributed proportionately according to their undivided percentage interests to the Owners of those Ownership Units or to lienholders, as their respective interests may appear; and

(c) The remainder of the insurance proceeds shall be distributed to all of the Owners or lienholders as their interests may appear in proportion to the Common Elements interests of all the Units.

## ARTICLE 10

### **RESERVATION OF EASEMENTS**

10.1 **Public Utility Easements.** Declarant grants and creates a permanent and non-exclusive easement upon, across, over and under those portions of the Common Elements depicted and described on the Plat as a public utility easement ("p.u.e.") for the installation and maintenance of utilities servicing the Project including electricity, telephone, water, gas, cable television, drainage facilities, sanitary sewer, or other utility lines. All public utility easements depicted and described on the Plat may be used by the utility provider(s) and municipality without the necessity of any additional recorded easement instrument(s). While it holds a Class B membership, the Declarant may permit, through a recorded instrument, any person to use the public utility easements for the installation and maintenance of utilities servicing any neighboring property. Unless otherwise provided, the recorded easements affecting the Project, and the term of this p.u.e., shall be perpetual. All utilities and utility lines shall be placed underground, but no provision of this Declaration shall be deemed to forbid the use of temporary power, water, sewer or telephone structures incident to the construction of buildings or structures as needed by Declarant. Public or private sidewalks or walkways may be located in the public utility easements.

10.2 **Temporary Construction Easements.** Declarant reserves a non-exclusive easement, during the period of Declarant's construction activities within the Project, for the benefit of itself and its agents, employees and independent contractors on, over, and under those portions of the Project and Property that are reasonably necessary to construct improvements on the Project. The temporary easement will terminate automatically upon Declarant's completion of all construction activities at the Project. Declarant shall use (and cause its agents, employees and independent contractors to use) reasonable care to avoid damage to any Ownership Units and the Common Elements.





10.3 **Easement for Encroachments.** Each Ownership Unit and the Common Elements are subject to a reciprocal and appurtenant easement benefitting and burdening the Ownership Unit or the Common Elements, respectively, for minor encroachments created by construction, settling, balconies and overhangs as originally designed or constructed by Declarant. This easement will remain in existence for so long as any encroachment of the type described in the preceding sentence exists and will survive the completion of construction activities and termination of the Declaration or other Project Documents. This easement is non-exclusive of other validly created easements. This easement for encroachments and maintenance is reserved by Declarant by virtue of the recordation of this Declaration for the benefit of any encroaching Ownership Unit and its Owner or the Association, as applicable.

10.4 **Easements for Ingress and Egress.** A perpetual and non-exclusive easement for pedestrian ingress and egress is hereby created and reserved by Declarant for the benefit of the Declarant and all Owners over, through, and across all sidewalks, paths, driveways, roadways, walks and lanes that from time to time may be constructed within the Project. The right of access described in this Section 10.4 is and will remain at all times an unrestricted right of ingress and egress.

10.5 **Water and Sewer Easements.** Without limiting any other provision of his Declaration or the Plat, there is hereby granted to the City of Flagstaff a permanent, non-exclusive and blanket easement across the Property for the purpose of installing, repairing, reading, and replacing water meter boxes and public water and sewer lines.

10.6 **Repair Easement.** To the extent necessary to complete any repairs, maintenance, replacements or restoration authorized or required by or pursuant to this Declaration and the other Project Documents, Declarant grants to the Association and the Owners and reserves on behalf of the Declarant and the Association, as the case may be, a non-exclusive easement during the term of this Declaration for the maintenance, repair, replacement or restoration of the items authorized or required; however, the maintaining, repairing or restoring party shall be responsible for any damage done to the Common Elements or the Ownership Units as a result of the acts or omissions of that party or its agents or contractors.

## ARTICLE 11

### GENERAL PROVISIONS

11.1 **Association To Maintain Project Documents.** The Association shall keep at its principal office current copies of all Project Documents including, but not limited to, this Declaration, the Plat, the Articles, Bylaws, Association Rules, and official Minutes of Association meetings. Such documents shall be made available by the Association, upon request of an Owner, at reasonable times.

11.2 **Enforcement.** The Association, in the first instance, or any Owner should the Association fail to act within a reasonable time, shall have the right to enforce by any proceeding at law or in equity all covenants, conditions, restrictions and reservations now or hereafter imposed by the provisions of this Declaration or the other Project Documents, or by the Association pursuant to the powers and authority granted thereto by these documents. Failure of the Association or any Owner to enforce any covenant, condition, restriction or reservation in this Declaration or in the other Project Documents shall not be deemed a waiver of the right to do so thereafter. No act or omission by Declarant shall act as a waiver or defense to the enforcement of this Declaration by the Association or any Owner. Deeds of conveyance of the Property or any part of the Property, or to or for any Ownership Unit, may incorporate the covenants, conditions, restrictions and reservations by reference to this Declaration; however, each and every covenant, condition, restriction



and reservation shall be valid and binding upon the respective grantees whether or not any specific or general reference is made in the deed or conveying instrument. Violators of any one or more of the covenants, conditions, restrictions or reservations may be restrained by any court of competent jurisdiction and damages awarded against the violator(s). The remedies established in this Declaration may be exercised jointly, severally, cumulatively, successively, and in any order. A suit to recover a money judgment for unpaid assessments, interest, rent, costs, attorney's fees, or in other amounts due, to obtain specific performance, or to obtain injunctive relief may be maintained without foreclosing, waiving, releasing, or satisfying the liens created under this Declaration.

**11.3 Severability.** Invalidation of any one or more portions of these Covenants, Conditions and Restrictions by judgment or court order shall not affect the validity of any other or the remaining provisions of this Declaration and the other Project Documents, which shall remain in full force and effect.

**11.4 Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of five (5) years for so long as the Units continue to be used for Single Family Residential Uses or unless terminated under Article 14 below.

**11.5 Amendment.** This Declaration and/or the Plat may be amended as provided in this Declaration. During the first twenty (20) year term of this Declaration and except as otherwise provided in Sections 11.9 and 12.7, amendments shall be made only by a recorded instrument executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of such a designation, by the President of the Association, and any amendment shall be deemed adopted if approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of seventy-five percent (75%) or more of the total number of eligible votes in the Association. After the initial twenty (20) year period, amendments shall be made by a recorded instrument approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of sixty-seven percent (67%) or more of the total number of eligible votes in the Association, and the amendment shall be executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of such designation, by the President of the Association. Subject to any limitations described in Section 11.8 below, Declarant may unilaterally amend this Declaration or the Plat, or other Project Documents prior to the recordation of the first deed for any Unit within the Project to an Owner other than Declarant or the recordation of a contract to sell a Unit to an Owner other than Declarant. In addition to and notwithstanding the foregoing, any amendment to the uniform rate of assessments established under Section 4.4 above, shall require the prior written approval of sixty-seven percent (67%) or more of the holders of First Mortgages on the Units.

**11.6 Government Financing or Guaranteed Loans.** If the financing of any Institutional Guarantor is applicable to the Property, any amendment to the declaration made by the Declarant pursuant to the last sentence of Section 11.8 shall contain either: (i) the approval of the Institutional Guarantor, or (ii) an affidavit that the Institutional Guarantor's approval has been requested in writing and that it has not either approved or disapproved the amendment or annexation within thirty (30) days of Declarant's request.

**11.7 Construction.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a residential condominium project consisting of Ownership Units and Common Elements with maintenance as provided in this Declaration and the other Project Documents. The provisions of this Declaration shall be construed in a manner that will effectuate the inclusion of additional Ownership Units pursuant to Article 12. Section and Article headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms), regardless of the number and gender in which they are used, shall be deemed and construed to include any other number and



any other gender as the context or sense of this Declaration may require, with the same effect as if such number and words had been fully and properly written in the required number and gender. Whenever the words and symbols "and/or" are used in this Declaration it is intended, if consistent with the context, that this Declaration be interpreted and the sentence, phrase, or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word "and" and once with the word "or" inserted in the place of the words and symbol "and/or". Any reference to this Declaration shall automatically be deemed to include all amendments to this Declaration.

**11.8 Notices.** Except as may be expressly and specifically required under the rules applicable to any Institutional Guarantors, any notice that is permitted or required under this Declaration may be delivered either personally, by mail, or by express delivery service. If delivery is made by mail, it shall be deemed to have been delivered and received two (2) business days after a properly addressed copy of the notice has been deposited in the United States mail, postage prepaid. If delivery is made by express delivery service, it shall be deemed to have been delivered and received on the next business day after a copy of the notice has been deposited with an "overnight" or "same-day" delivery service, properly addressed. If an Owner fails to provide the Association with an address for purposes of receiving notices, the Association may mail or deliver any Association notice to the address of any Unit owned by the Owner and such mailing or delivery will be sufficient to comply with the requirements of this Section 11.8. For purposes of notice to the Association or the Board, notice must be sent to both the principal office of the Association, as specified in the Articles, and to the statutory agent for the Association. The address for delivery of any notice to any Owner or the Association may be changed from time to time by written notice delivered to the other party specifying the new notice address.

**11.9 General Declarant Rights.** Declarant specifically reserves the right to exercise any special Declarant rights identified in A.R.S. §33-1202(21), to construct such improvements to the Units or Common Elements as are consistent with this Declaration or the Plat, and to change the design and/or layout of the Ownership Units described in the Declaration or the Plat, without the vote of any Members. Declarant also reserves the right, during any period of Declarant Control, to amend the Declaration or Plat, without the vote of any Members, to comply with applicable law or correct any error or inconsistency in the Declaration, provided the amendment does not materially and adversely affect the rights of any Owner. Declarant reserves the right, during any period of Declarant Control, to amend the Declaration to conform with any rules or guidelines of any Institutional Guarantor. Declarant reserves the right, during any period of Declarant Control, without the vote of any Members (but with the consent of the Institutional Guarantors, if applicable), to withdraw the Property or portions of the Property from this Declaration and subdivide Ownership Units, convert Ownership Units into Common Elements and convert Common Elements into Ownership Units.

**11.10 Management Agreements.** Any management agreement entered into by the Association or Declarant may be made with an affiliate of Declarant or a third party manager and, in any event, shall be terminable by the Association with or without cause and without penalty upon thirty (30) days written notice. The term of any management agreement entered into by the Association or Declarant may not exceed one year and may be renewable only by affirmative agreement of the parties for successive periods of one year or less. Any property manager for the Project or the Association will be deemed to have accepted these limitations, and no contrary provision of any management agreement will be enforceable.

**11.11 No Partition.** There shall be no partition of any Ownership Unit, nor shall Declarant or any Owner or other person acquiring any interest in any Ownership Unit, or any part of the Ownership Unit, seek any partition.

**11.12 Declarant's Right To Use Similar Name.** The Association irrevocably consents to the use by any other profit or nonprofit corporation that is or may be formed or incorporated by Declarant of a corporate



name that is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of the other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign all letters, documents, or other writings as may be required by the Arizona Corporation Commission (or any other governmental department or agency) to allow the use by any other corporation formed or incorporated by Declarant, or by Declarant, of such same or deceptively similar name.

11.13 **Joint and Several Liability.** In the case of joint ownership of an Ownership Unit, the liabilities and obligations of each of the joint Owners as set forth in or imposed by this Declaration and the other Project Documents shall be joint and several.

11.14 **Construction.** In the event of any discrepancies, inconsistencies, or conflicts between the provisions of this Declaration and the Articles, Bylaws, Plat, Association Rules, or any Architectural Committee rules, the provisions of this Declaration shall prevail in all instances.

11.16 **Survival of Liability.** Termination of membership in the Association shall not relieve or release any former Member from any liability or obligation incurred pursuant to or under this Declaration, or in any way connected with the Association, during the period of membership or impair any rights or remedies that the Association may have against the former Member arising out of or in any way connected with the membership and/or the former Member's violation of, the covenants and obligations incident to the membership.

11.16 **Waiver.** The waiver or failure to enforce any one or more breaches or violations of the Project Document shall not be deemed a waiver or abandonment of any provision of the Project Documents or a waiver of the right to enforce any subsequent breach or violation of the Project Documents. The foregoing shall apply regardless of whether any person affected by the Project Documents (or having the right to enforce the Project Documents) has or had knowledge of the breach or violation.

11.17 **Attorney's Fees.** Without limiting the power and authority of the Association to incur and assess attorney's fees as part of the creation or enforcement of any assessment (whether or not a formal legal action is commenced), in the event an action is commenced to enforce any of the provisions contained in this Declaration or the other Project Documents, the party prevailing in any such action shall be entitled to recover from the other party all reasonable attorney's fees and court costs. In the event the Association is the prevailing party in the action, the amount of attorney's fees and court costs may be deemed all or part of a special assessment against the Unit and Owner involved in the action.

11.18 **Security.** Each Owner understands and agrees that neither the Association (or its officers, directors, employees or agents) nor the Declarant (or its officers, directors, members, managers, employees or agents) are responsible for the acts or omissions of any third parties or of any other Owner or the Owner's Permittees resulting in damages or injury to person or property. Any entry gate or common security measures that may be used at the Project will commence and be maintained by the Association solely through a majority vote of the Board, and each Owner understands that any entry gate features or security measures that are in effect at the time he or she accepts a deed for an Ownership Unit (or otherwise becomes an Owner) may be abandoned, terminated, or modified by a majority vote of the Board. The commencement of the use of security devices, gates or controls shall not be deemed to be an assumption of any duty on the part of the Association or the Declarant to the Project or its Owners.

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## ARTICLE 12

### DEVELOPMENT PLAN AND ANNEXATION

12.1 **Proposed Development.** Declarant currently contemplates the development of a residential condominium project that, if completed, may encompass more Phases and real property than the Initial Phase of the Property. The foregoing, however, is not a representation, warranty, or assurance by Declarant that the contemplated development will be completed in its entirety. Each Owner of an Ownership Unit, by acceptance of a deed for the Ownership Unit (or otherwise becoming an Owner), acknowledges that he, she or it has not relied upon any representation, warranty or expression, written or oral, made by Declarant or any of its brokers or agents regarding: (i) whether the entire contemplated development will be completed or carried out; (ii) whether any land now or in the future owned by Declarant will be subject to this Declaration or developed for a particular use; (iii) whether any Phase will be irrevocably annexed into the Project; or (iv) whether any land now or in the future owned by Declarant was owned, used, is used, or will be used, for a particular use or whether any prior or present use will continue in effect. Declarant need not construct Ownership Units or Buildings in any particular order or progression; and Declarant may build Ownership Units or Buildings in any order or progression that Declarant desires to meet its needs or desires or the needs or desires of one or more potential purchasers.

12.2 **Variable Ownership Unit Plans.** To achieve optimum marketing and sales of the Ownership Units, Declarant has chosen a specific floor plan for the Buildings and Ownership Units in accordance with the general depiction shown on the Plat. Based on marketing and sales requirements, as dictated by home buyer interests, Declarant will ultimately determine the order in which the Buildings and Ownership Units within each Phase are to be built and the specific design or floor plan to be used. Declarant reserves the right and option to adjust the order of construction and the construction design to be used as Declarant may determine is best. Once an Ownership Unit is actually constructed, the floor plan of the Ownership Unit shall be deemed to be fixed irrevocably and only that floor plan of Ownership Unit may be constructed or reconstructed on that location.

12.3 **Phases.** Declarant conditionally annexes all Phases into the Project by its recordation of this Declaration. Each of the Phases, however, will remain conditionally annexed until the earlier of: (i) the time of conveyance of the first Unit within a substantially complete Phase to an Owner other than the Declarant; or (ii) the withdrawal of the Phase from the Project by the Declarant. At the time of conveyance of the first Unit within a Phase to any Owner other than the Declarant, the entire applicable Phase will be automatically and irrevocably annexed into the Project. Until irrevocably annexed, all conditionally annexed Phases are subject to the right of the Declarant to withdraw all or any of the conditionally annexed Phases under Section 12.4 below.

#### 12.4 **Annexation or Withdrawal.**

(a) **Withdrawal.** At any time prior to the date that is five (5) years after the date of recordation of this Declaration, the Declarant, without the vote or consent of the Members, Institutional Guarantors, or First Mortgagees, may withdraw from the Project any Phase that has not been irrevocably annexed to the Project pursuant to the provisions of this Declaration. Any withdrawal of a Phase from the Project shall be accomplished by the recording, in the Official Records of Coconino County, Arizona, a "**Declaration of Withdrawal**" executed by the Declarant describing the Phase being withdrawn. Any Phase that is not irrevocably annexed to the Project by the Declarant during the five (5) years after the date of recordation of the Declaration shall be deemed to be automatically withdrawn from the Project and shall not be subject to the Project Documents.



(b) **Voting.** The voting rights of the Owners (including the weighted voting rights of Declarant) of built, or planned but unbuilt, Units within any Phase that is conditionally annexed to the Project shall be effective as of the date this Declaration is recorded.

(c) **Assessments on Phases.** Any assessments for Ownership Units within Phases that are conditionally annexed shall commence on the first day of the first month following the date that the Phase becomes irrevocably annexed to the Project and no assessments shall be levied or collected against any Ownership Unit or its Owner until irrevocable annexation occurs. Any assessments for Ownership Units within the Annexable Property, if any, shall commence on the first day of the first month following the date that the Annexable Property becomes irrevocably annexed to the Project, and no assessments shall be levied or collected against any Ownership Unit (or its Owner) within the Annexable Property until irrevocable annexation occurs.

(d) **Annexed Common Elements.** Upon the irrevocable annexation of a Phase, all Common Elements contained within the irrevocably annexed Phase shall be maintained by the Association at its expense as Common Elements for the benefit of all Members. Until irrevocable annexation of a Phase occurs, the Phase will be maintained at the sole expense of the Declarant. The responsibility for the maintenance of any planned or constructed Common Elements within any conditionally annexed Phase may be accepted by the Association at any time prior to irrevocable annexation so long as the Members, as a condition of the Association's acceptance of maintenance, are given a revocable license to use the planned or constructed Common Elements for the uses specified in the Declaration, subject to the terms of this Declaration and any other restrictions imposed in writing by Declarant. This revocable license will remain in effect until: (i) the Declarant withdraws the Phase from the Project; (ii) the Phase is irrevocably annexed to the Project; or (iii) the Declarant terminates the license for any reason and reassumes the responsibility for the maintenance of the Common Elements.

(e) **Declarant Reservations.** Declarant reserves the right, without the vote or consent of the Members, Institutional Guarantors, or First Mortgagees to: (i) sell any conditionally annexed Phase to any other Person; (ii) change the character and use of any conditionally annexed Phase; and (iii) to amend, modify, abandon, or change the Plat to reflect the foregoing or the withdrawal from the Declaration of any Phase that has not been irrevocably annexed to the Project.

(f) **Taxes and Assessments.** All real estate taxes and assessments relating to any Phase covering any period prior to the time at which a Phase is irrevocably annexed to the Project shall be the responsibility of, and shall be paid for, by the Declarant.

12.5 **Effect of Annexation.** Except as provided in section 12.4(b) regarding the voting rights attributable to Units within any Phase that is conditionally annexed, the Owners of the Ownership Units in a Phase shall have the same rights, duties and obligations (including the obligation to pay assessments) under this Declaration and the other Project Documents as the Owners of Ownership Units in the first Phase (i.e. the Units initially covered by this Declaration) and vice versa only upon the irrevocable annexation of the Phase to the Project.

12.6 **No Assurance.** Declarant makes no assurance that any Phase or Annexable Property will be irrevocably annexed to the Project, and Declarant makes no assurances as to the exact type, location or price of Units or Buildings and other improvements to be constructed. Upon irrevocable annexation of all Phases, the Project will not exceed fourteen (14) Units. Declarant makes no assurance as to the type, location, or price of improvements that may be constructed on any Phase or the Annexable Property; however, the improvements shall be generally consistent in construction quality with the improvements constructed on the Initial Phase.



12.7 **Amendment.** This Article 12 shall not be amended without the written consent of Declarant, which Declarant may withhold, so long as the Declarant owns any Ownership Unit(s) within the Property.

### ARTICLE 13

#### **RIGHTS AND DUTIES OF FIRST MORTGAGEE**

13.1 **First Mortgagee Protections.** Notwithstanding anything to the contrary in this Declaration or any other Project Document, the following provisions shall apply to and benefit each holder of a First Mortgage upon an Ownership Unit:

(a) The First Mortgagee shall not be personally liable for the payment of any assessment or charge or for the observance or performance of any covenants, conditions or restrictions, except as provided in this Declaration; and

(b) At the time any First Mortgagee becomes the record title Owner of an Ownership Unit, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration and other Project Documents including, without limitation, the obligation to pay all assessments and charges accruing after the First Mortgagee becomes an Owner, in the same manner as any Owner.

13.2 **Mortgagee and Insurer Notices.** Upon furnishing the Association with a written request stating the name and address of the Eligible Mortgage Holder or Institutional Guarantor and stating the address of the Ownership Unit upon which the First Mortgage is held, Institutional Guarantors and Eligible Mortgage Holders, as applicable, shall be entitled to the following notices:

(a) Written notification from the Association of any default in the performance by the individual Owner (the borrower on the applicable First Mortgage) of any obligation under the Project Documents which has remained uncured for a period of sixty (60) days;

(b) Written notification from the Association of any casualty loss or condemnation loss which affects a material portion of the Project or any Ownership Unit upon which there is a First Mortgage held by an Eligible Mortgage Holder or upon which there is a First Mortgage of an Institutional Guarantor;

(c) Written notification from the Association of any lapse, cancellation, or material modification, of any insurance policy or fidelity bond maintained by the Association; and

(d) Written notification from the Association of any proposed action which will require the consent of a specified number of Eligible Mortgage Holders or Institutional Guarantors, as set forth in this Declaration.

13.3 **Approval Required to Terminate Project.** Notwithstanding any other provisions of this Declaration, any termination of the legal status of the Project for reasons other than the substantial destruction or condemnation of the Project shall not be effective unless approved by two-thirds (2/3) or more of the Eligible Mortgage Holders.

13.4 **Approval Required for Amendment of Declaration, Articles or Bylaws.** The approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to add to or amend any material provisions of the Declaration, Articles, or Bylaws that establish, provide for, govern, or regulate any



of the following: (i) voting rights; (ii) assessments, assessment liens, priority and subordination of assessment liens, or assessment rate increases of more than twenty-five percent (25%); (iii) reserves for maintenance, repair, restoration or replacement of Common Elements; (iv) insurance of the Association or fidelity bonds; (v) responsibility for the maintenance and repairs of the Common Elements; (vi) expansion or contraction of the Project, or the addition, annexation, or withdrawal of real property to or from the Project (except that the addition, annexation, or withdrawal of the Annexable Property shall not require the vote of any of the Eligible Mortgage Holders); (vii) boundaries of any Ownership Unit sold to an Owner (other than those Units owned by Declarant); (viii) reallocation of interests in the Common Elements (other than as already provided for in this Declaration) or the rights to the use of the Common Elements; (ix) convertibility of Ownership Units into Common Elements or Common Elements into Ownership Units; (x) leasing of Units; (xi) imposition of any restriction on an Owner's right to sell or to transfer the Owner's Ownership Unit(s); (xii) a decision by the Association to establish self management when professional management had been required previously by the Eligible Mortgage Holders; (xiii) restoration or repair of the Project (after a hazard or casualty or partial condemnation) in a manner other than that specified in the Project Documents; (xiv) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; and (xv) any provision that expressly benefits First Mortgagees, Eligible Mortgage Holders, or Institutional Guarantors. Any addition or amendment to the Declaration, Articles, or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. Any First Mortgagee who has been delivered a written request to approve additions or amendments to any material provision(s) of the Declaration, Articles, or Bylaws and who does not deliver or mail to the requesting party a negative response within thirty (30) days from the date the notice is deemed received shall be deemed to have approved the request and consented to the action. A non-response by any First Mortgagee to a written request of the Association shall be deemed an approval only when the notice to the First Mortgagee was delivered by certified or regular mail, return receipt requested.

**13.5 First Mortgagee's Right of Inspection.** Any First Mortgagee will, upon written request to the Association, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive, within ninety (90) days following the end of any fiscal year of the Association, an unaudited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the First Mortgagee; and (iii) receive written notice of all meetings of the Members of the Association and designate a representative to attend all such meetings. An Institutional Guarantor may make a request in writing to the Association that the financial statements for the preceding fiscal year be audited at the cost of the requesting Institutional Guarantor.

**13.6 Limitation on Partition and Subdivision.** No Ownership Unit shall be partitioned or subdivided.

**13.7 Conflicting Provisions.** Except as set forth in this Subsection 13.7, in the event of any conflict or inconsistency between the provisions of this Article 13 and any other provisions of the Project Documents, the provisions of this Article 13 shall govern. In the event of any conflict or inconsistency between the different subsections of this Article 13 or between the provisions of this Article 13 and any other provisions of the Project Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders, or Institutional Guarantors that must consent to an amendment of the Declaration, Articles, or Bylaws, or a termination of the Project, or certain actions of the Association as specified in this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders, or Institutional Guarantors shall prevail.

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## ARTICLE 14

### TERMINATION

14.1 **Termination of Condominium.** Except in the case of the taking of all the Units by eminent domain, this Condominium may be terminated only by the adoption of a termination agreement approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of eighty percent (80%) or more of the total number of eligible votes in the Association. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Unit Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. The termination agreement and the ratification shall be recorded in the official records of the County Recorder in Coconino County, Arizona, and shall be effective only upon recordation.

14.2 **Sale.** A termination agreement may provide that all of the Common Elements and Ownership Units shall be sold following termination. If provision is made for the sale of any real estate in the Condominium, the termination agreement shall set forth the minimum terms and conditions of the sale. The Association, on behalf of the Unit Owners, may contract for the sale of any real estate in the Condominium, but the contract shall not be binding until approved in the same manner as the termination agreement. If any real estate in the Condominium is to be sold following termination, title to the real estate to be sold shall vest, at termination of the Condominium, in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association shall have all powers necessary and appropriate to effectuate the sale. Until the sale has been concluded and the sale proceeds distributed, the Association shall continue in existence with all powers it had before termination. Sale proceeds shall be distributed to Unit Owners and lienholders, as their respective interests may appear, in proportion to the respective interests of Unit Owners as specified in this Article 14. Unless otherwise specified in the termination agreement, each Ownership Unit Owner and his or her successors in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his Ownership Unit. During the period of that occupancy, each Ownership Unit Owner and his or her successors in interest shall remain liable for all assessments and other obligations imposed on Ownership Unit Owners by the Act or this Declaration.

14.3 **Tenancy in Common.** If the real estate constituting the Condominium is not to be sold following termination, title to all the real estate in the Condominium shall vest in the Unit Owners at termination as tenants in common in proportion to their respective interests as provided in this Article 14, with any liens on the Units to shift accordingly. While the tenancy in common exists, each Unit Owner and his or her successors in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her Unit.

14.4 **Sale Proceeds.** Following termination of the Condominium, the proceeds of any sale of real estate, together with all assets of the Association, shall be held by the Association as trustee for the Unit Owners and lienholders on the Units, as their respective interests may appear. Following termination, creditors of the Association holding liens on the Units that were recorded before termination may enforce those liens in the same manner as any lienholder.

14.5 **Interests.** Except as provided in this Section 14.5, the respective interests of Unit Owners are the fair market values of their Units, plus the value of their respective Fractional Interests in the Common Elements, immediately before termination, as determined by an independent appraiser selected by the Association ("the Appraiser"). The determination of the Appraiser shall be distributed to Unit Owners and shall become final unless disapproved within thirty (30) days after distribution by Owners of Units holding greater than fifty percent (50%) of the total number of eligible votes in the Association. The proportion of any



Unit Owner's interest to that of all Unit Owners shall be determined by dividing the fair market value of that Owner's Unit and Fractional Interest in the Common Elements by the total market value of all the Units and Common Elements. If any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value of the Unit or Limited Common Element cannot be made, the percentage interest of all Unit Owners shall be determined to be equal their respective percentage interests in the Common Elements immediately before termination.

14.6 **Foreclosure.** Except as provided in this subsection, foreclosure enforcement of a lien or encumbrance against the entire Condominium does not of itself terminate the Condominium; and foreclosure enforcement of a lien or encumbrance against a portion of the Condominium does not withdraw that portion from the Condominium.

DATED this 1<sup>st</sup> day of Oct., 2002.

DECLARANT:

Winrick, L.L.C.:

By: Rick Natenberg  
Its: Managing Member


STATE OF ARIZONA        )  
                                      :§§  
County of Coconino)

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public this 1<sup>st</sup> day of October, 2002, by Rick Natenberg, the Managing Member of Winrick, L.L.C., who executed the foregoing on behalf of Winrick, L.L.C., being authorized to do so for the purposes therein set forth.

My Commission Expires:

May 12, 2003

Mary Jo Sterling  
Notary Public

 Notary Public State of Arizona  
Coconino County  
Mary Jo Sterling  
Expires May 12, 2003



**EXHIBIT A**  
**TO**  
**DECLARATION OF CONDOMINIUM AND**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**ARROWHEAD WEST CONDOMINIUMS**

(Meets and Bounds Legal Description of the Property)

**Legal Description**

See following page.



## PARCEL NO. 1:

LOT 1, TRACT 10, SUNNYSIDE FARMS, as shown on the corrected plat thereof, recorded in Book 2 of maps, page 20, records of Coconino County, Arizona.

## PARCEL NO. 2:

Located in the Northwest quarter of the Southwest quarter of Section 14, Township 21 North, Range 7 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona;

AND BEING the alley between Tract 5 and Tract 10 as depicted in "Corrected map of Sunnyside Farms Subdivision, Tract 1 to Tract 11 Inclusive" recorded September, 1947 as Book 2, page 20, Coconino County Records (R1);

AND BEING more particularly described as follows:

COMMENCING FOR REFERENCE at the most Easterly corner of Tract 10 on the right-of-way of Arrowhead Avenue as marked by a found 3/4" open pipe which point is the TRUE POINT OF BEGINNING of this description;

thence South 35° 32' 05" West, along the Southerly line of Lot 1, Tract 10, a distance of 200.08 feet to the most Southerly point of Lot 1, Tract 10, as marked by a set 5/8" rebar with plastic cap stamped "AZTECH RLS 15853";

thence South 54° 14' 00" East, along the Westerly line of the alley between Tract 5 and Tract 10, a distance of 20.00 feet to the most Westerly corner of Lot 6, Tract 5, as marked by a set 5/8" rebar with plastic cap stamped "AZTECH RLS 15853";

thence North 35° 32' 05" east, along the Northerly line of Lot 6, Tract 5, a distance of 200.08 feet to the most Northerly corner of Lot 6, Tract 5, on the Westerly right-of-way line of Arrowhead Avenue as marked by a set 5/8" rebar with plastic cap stamped "AZTECH RLS 15853";

thence North 54° 14' 00" West, along the right-of-way line of Arrowhead Avenue (Basis of Bearings assumed from r1) a distance of 20.00 feet to the TRUE POINT OF BEGINNING of this description.



**EXHIBIT B**  
**TO**  
**DECLARATION OF CONDOMINIUM AND**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**ARROWHEAD WEST CONDOMINIUMS**

(Description of Phases)

Subject to the terms of the Declaration, the Project is composed of two (2) Phases, as depicted on the Plat. Each Phase will consist of the Ownership Units described below and the Common Elements depicted on the Plat within the physical boundaries of each Phase. If the physical boundaries of each Phase are not depicted on the Plat, the Common Elements contained in each Phase will consist of those Common Elements that are substantially complete at the time of the irrevocable annexation of the Phase.

PHASE 1 shall consist of Units 1, 2, 3, 4, 10, and 11

PHASE 2 shall consist of Units 5, 6, 7, 8, and 9



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