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Declaration of Condominium for "Firerock Parcel C Condominiums"

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**DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
FIREROCK PARCEL "C", A CONDOMINIUM**

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**Table of Contents**

<b>ARTICLE 1 - DEFINITIONS.....</b>	<b>1</b>
1.1 Act .....	1
1.2 Adjoining Unit.....	1
1.3 Alleged Defect.....	1
1.4 Articles.....	1
1.5 Assessment, assessment, annual assessment, and special assessment.....	2
1.6 Association.....	2
1.7 Association Rules .....	2
1.8 Board and Board of Directors.....	2
1.9 Building .....	2
1.10 Bylaws .....	2
1.11 Claimant.....	2
1.12 Common Elements .....	2
1.13 Condominium.....	2
1.14 Condominium Documents.....	2
1.15 Declarant.....	2
1.16 Declaration.....	2
1.17 Development Rights .....	2
1.18 Easement Rights.....	3
1.19 Fractional Interest.....	3
1.20 Inventory Unit .....	3
1.21 Institutional Guarantor.....	3
1.22 Limited Common Elements.....	3
1.23 Member.....	3
1.24 Mortgage.....	3
1.25 Mortgagee.....	3
1.26 Mortgagor .....	3
1.27 Owner .....	3
1.28 Person .....	3
1.29 Plat.....	4
1.30 Single Family .....	4
1.31 Single Family Residential Use .....	4
1.32 Special Declarant Rights.....	4
1.33 Unit.....	4
<b>ARTICLE 2 - UNIT BOUNDARIES, PROPERTY RIGHTS IN COMMON ELEMENTS .....</b>	<b>4</b>
2.1 Condominium Description.....	4
2.2 Unit Boundaries.....	4
2.3 Allocation of Fractional Interest in Common Elements.....	5
2.4 Allocation of Limited Common Elements.....	5
2.5 Exclusive Use.....	6
2.6 Exclusive and Restricted Use of Crawl Space.....	6
2.7 Reallocation of Boundaries Between Adjoining Units.....	6
<b>ARTICLE 3 - EASEMENTS AND DEVELOPMENT RIGHTS.....</b>	<b>7</b>
3.1 Owners' Easements of Enjoyment.....	7
3.2 Delegation of Use .....	7
3.3 Public Utility Easements.....	7
3.4 Easement for Encroachments .....	8

3.5	Easements for Support .....	8
3.6	Easements for Ingress and Egress .....	8
3.7	Declarant's Rights and Easements .....	8
3.8	Common Elements Easement in Favor of Unit Owners .....	9
3.9	Common Elements Easements in Favor of the Association .....	9
3.10	Units and Limited Common Elements Easements in Favor of the Association .....	10
<b>ARTICLE 4 USE RESTRICTIONS .....</b>		
4.1	Restricted Use .....	10
4.2	Signs .....	11
4.3	Improvements & Alterations .....	11
4.4	Noxious or Offensive Activities .....	12
4.5	Animals .....	12
4.6	Trash .....	12
4.7	Woodpiles and Storage Areas .....	12
4.8	Antennas .....	12
4.9	Windows and Window Covering .....	12
4.10	Ownership and Leasing .....	13
4.11	Machinery .....	13
4.12	Increased Risk .....	13
4.13	Outdoor Burning and Lighting .....	13
4.14	Hazardous Wastes .....	13
4.15	Commercial and Recreational Vehicles .....	13
4.16	Garages and Parking of Family Vehicles .....	13
4.17	No Vehicle Repairs .....	14
4.18	Declarant's Exemption .....	14
4.19	Security .....	14
<b>ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS .....</b>		
5.1	Membership .....	14
5.2	Class .....	15
5.3	Transfer of Control .....	15
<b>ARTICLE 6 COVENANT FOR MAINTENANCE ASSESSMENTS .....</b>		
6.1	Lien and Personal Obligation for Assessments .....	15
6.2	Purpose of Annual Assessments .....	16
6.3	Annual Assessments; Commencement of Assessments .....	16
6.4	Annual Assessment Increases .....	17
6.5	Special Assessments .....	18
6.6	Notice and Quorum .....	18
6.7	Allocation of Assessments .....	18
6.8	Transfer .....	18
6.9	Effect of Nonpayment of Assessments - Remedies of the Association .....	19
6.10	Subordination of the Lien to Mortgages .....	19
6.11	Notice of Lien .....	20
6.12	Initial Working Capital Contribution by Owners .....	20
<b>ARTICLE 7 COMMON ELEMENTS AND UNIT MAINTENANCE .....</b>		
7.1	Common Elements .....	20
7.2	Repairs Necessitated by Owner; Walls .....	21
7.3	Maintenance of Unit .....	21
7.4	Owner's Failure to Maintain .....	22
7.5	Exterior Repairs .....	22
7.6	General Standards .....	22
7.7	Utilities .....	22



<b>ARTICLE 8</b>	<b>DUTIES AND POWERS OF THE OWNERS' ASSOCIATION.....</b>	<b>22</b>
8.1	Duties and Powers .....	22
8.2	Insurance.....	23
8.3	Other Duties and Powers.....	25
8.4	Association Rules .....	25
<b>ARTICLE 9</b>	<b>CONDEMNATION .....</b>	<b>25</b>
9.1	Taking.....	25
9.2	Award .....	25
9.3	Total.....	25
9.4	Partial.....	26
9.5	Effect .....	26
9.6	Reconstruction.....	26
9.7	Separate Compensation.....	26
<b>ARTICLE 10</b>	<b>CASUALTY DAMAGE.....</b>	<b>26</b>
10.1	Attorney-in-Fact .....	26
10.2	Restoration .....	27
10.3	Declaration.....	27
10.4	Costs .....	27
10.5	Partial Damage .....	27
10.6	Total Destruction.....	27
10.7	Insurance Trustee; Proceeds.....	28
10.8	Manner of Disbursement.....	28
10.9	Information.....	29
10.10	Termination.....	29
10.11	Non-Repair.....	29
<b>ARTICLE 11</b>	<b>GENERAL PROVISIONS.....</b>	<b>29</b>
11.1	Enforcement .....	29
11.2	Approval of Litigation .....	30
11.3	Severability .....	31
11.4	Term .....	31
11.5	Amendment.....	31
11.6	Government Financing.....	31
11.7	Construction.....	31
11.8	Notices .....	32
11.9	Management Agreements.....	32
11.10	No Partition.....	32
11.11	Declarant's Right to Use Similar Name.....	32
11.12	Joint and Several Liability.....	32
11.13	Construction .....	32
11.14	Survival of Liability.....	32
11.15	Waiver .....	33
11.16	Attorney Fees .....	33
11.17	Notice of Proximity to Phoenix Sky Harbor International Airport and City of Scottsdale Airport.....	33
<b>ARTICLE 12</b>	<b>CLAIMS AND DISPUTE RESOLUTION/LEGAL ACTIONS .....</b>	<b>33</b>
12.1	Dispute Resolution Agreement.....	33
12.2	Exempt Claims .....	34
12.3	Mandatory Resolution Procedures.....	35
12.4	Allocation of Costs of Resolving Claims.....	37
12.5	Enforcement of Resolution.....	38
12.6	Alleged Defects .....	38
12.7	Annual Inspection.....	39
12.8	Amendments to Article XII.....	39
12.9	Conflicts.....	39

<b>ARTICLE 13</b>	<b>RIGHTS AND DUTIES OF FIRST MORTGAGEE</b>	<b>39</b>
13.1	First Mortgagee Protections	39
13.2	Mortgagee and Insurer Notices	40
13.3	Approval Required to Terminate Condominium	40
13.4	Approval Required for Amendment to Declaration, Articles or Bylaws	40
13.5	First Mortgagee's Right of Inspection	41
13.6	Limitation on Partition and Subdivision	41
13.7	Conflicting Provisions	41
<b>ARTICLE 14</b>	<b>TERMINATION</b>	<b>41</b>
14.1	Termination of Condominium	41
14.2	Sale	42
14.3	Tenancy in Common	42
14.4	Sale Proceeds	42
14.5	Interests	42
14.6	Foreclosure	42
<b>ARTICLE 15</b>	<b>FIREROCK COUNTRY CLUB</b>	<b>42</b>
15.1	FireRock Community Association, Inc.	42

**DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
FIREROCK PARCEL "C", A CONDOMINIUM**

This Declaration of Condominium and Covenants, Conditions, and Restrictions for FireRock Parcel "C," a Condominium, is made as of the date set forth at the end of this Declaration by Sydney FireRock Developments, L.L.C., an Arizona limited liability company.

**BACKGROUND**

A. Declarant is the owner of certain real property that is depicted on the Plat and that is additionally described as follows:

See Exhibit "A" attached to and incorporated in this Declaration by this reference.

The real property is located in the Town of Fountain Hills, County of Maricopa, State of Arizona.

B. Declarant desires to provide for the construction of a residential condominium project consisting of condominium units, limited common elements, common elements, and other facilities.

C. Declarant intends that this Declaration and the other Condominium Documents will facilitate a general plan for development for the Condominium.

**DECLARATION AND GRANT**

Accordingly, Declarant declares that the Units, Common Elements, and Limited Common Elements described in this Declaration as the Condominium shall be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges, and liens (collectively referred to as "covenants and restrictions"). The covenants and restrictions are for the purpose of protecting the value, attractiveness, and desirability of the Condominium, and the covenants and restrictions shall benefit, burden, and run with the title to the Condominium and shall be binding upon all parties having any right, title, or interest in or to any part of the Condominium and their heirs, successors, and assigns. The covenants and restrictions shall inure to the benefit of each Owner. The Declarant further declares as follows:

**ARTICLE 1  
DEFINITIONS**

1.1 "Act" means the Arizona Condominium Act found at A.R.S. § 33-1201 through 33-1270, as and if amended from time to time.

1.2 "Adjoining Unit" means a Unit which shares an interior common wall with another Unit.

1.3 "Alleged Defect" means as provided in Article XII.

1.4 "Articles" means the Articles of Incorporation of the Association that have been or will be filed in the office of the Corporation Commission of the State of Arizona, as may be amended from time to time in the manner set forth in the Articles.

1.5 "Assessment," "assessment," "annual assessment," and "special assessment" (and the plural of each) means the assessments authorized in this Declaration, including those authorized in Article 5.

1.6 "Association" means Balera at FireRock Homeowners Association, Inc., that has been or will be incorporated by Declarant as a non-profit Arizona corporation, and shall mean additionally the Association's successors and assigns.

1.7 "Association Rules" means any rules and regulations or design guidelines that may be adopted or amended by the Association.

1.8 "Board" and "Board of Directors" means the Board of Directors of the Association.

1.9 "Building" means any of the buildings actually constructed from time to time on the Condominium. A Building will 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 shall be the exterior of the outside perimeter walls of each Building, as actually constructed.

1.10 "Bylaws" means the bylaws of the Association, as may be amended from time to time in the manner set forth in the Bylaws.

1.11 "Claimant" means the Association, the Board, or any Owner.

1.12 "Common Elements" means all those areas of the Condominium that are not included within the description of the Units. Unless otherwise specified in this Declaration, the Limited Common Elements are considered part of the Common Elements. The Common Elements shall include (i) all sprinkler heads, piping and other components of the fire sprinkler system, including all ancillary piping and components located in the Condominium and any Units, and (ii) all areas described as "Crawlspace" on the Plat.

1.13 "Condominium" means the real property described on Exhibit "A," together with all improvements located thereon, including the Unit(s) and Common Elements.

1.14 "Condominium Documents" refers to this Declaration, the Articles, the Bylaws, the Association Rules, and the Plat, collectively, as any or all of the foregoing may be amended from time to time.

1.15 "Declarant" means Sydney FireRock Developments, L.L.C., an Arizona limited liability company. The term "Declarant" will include all successors and assigns of Sydney FireRock Developments, L.L.C., an Arizona limited liability company, if the successors or assigns: (i) acquire more than one (1) Unit from the Declarant for the purpose of resale or development; and (ii) record a supplemental declaration executed by the then-Declarant declaring the successor or assignee as a succeeding Declarant under this Declaration. "Declarant" does not include any Mortgagee.

1.16 "Declaration" means this Declaration of Condominium and Covenants, Conditions, and Restrictions and the covenants and restrictions set forth in this entire document (in entirety or by reference), as may be amended from time to time in the manner set forth below.

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

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

(b) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;

(c) Amend the Condominium Documents during the period of Declarant Control as provided in Section 11.5(d).

1.18 "Easement Rights" means 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 over the Common Elements, whether created or reserved solely for the use and benefit of one (1) Owner or multiple Owners.

1.19 "Fractional Interest" means the appurtenant and undivided percentage interest in the Common Elements allocated to each Unit, as determined pursuant to Section 2.3.

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

1.21 "Institutional Guarantor" means, if applicable to the Condominium, a governmental insurer, guarantor or secondary market mortgage purchaser such as the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA) 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 of its desire to vote and its address for delivery of all Association notices.

1.22 "Limited Common Elements" means a portion of the Common Elements specifically designated in Section 2.4 as a Limited Common Element and allocated by this Declaration or by operation of the Act for the exclusive use of one or more, but fewer than all of the Units. All Limited Common Elements are reserved for the exclusive use and benefit of the designated Unit Owners, subject to the rights of the Association described in this Declaration or the other Condominium Documents.

1.23 "Member" shall mean each Owner of a Unit that is located within the Condominium.

1.24 "Mortgage" (whether capitalized or not) shall mean the conveyance or assignment of any Unit, or the creation of a lien on any Unit, to secure the performance of an obligation, and shall include the instrument evidencing the obligation, and may include a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation or duty. "First Mortgage" shall mean a Mortgage that is the first and most senior of all Mortgages on the applicable Unit.

1.25 "Mortgagee" (whether capitalized or not) shall mean a person or entity to whom a Mortgage is made and shall include a holder of a promissory note, a beneficiary under a deed of trust, or a seller under an agreement for sale. "First Mortgagee" shall mean a Mortgagee that is the first and most senior of all Mortgagees upon the applicable Unit. "Eligible Mortgage Holder" shall mean 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 on any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

1.26 "Mortgagor" shall mean a person or entity who is a maker under a promissory note, a mortgagor under a mortgage, a trustor under a deed of trust, or a buyer under an agreement for sale, as applicable.

1.27 "Owner" shall mean 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 an interest in a Unit merely as security for the performance of an obligation or duty (i.e., a mortgagee). In the case of Units in which the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, §§ 33-801, et seq., the "Owner" of the Unit shall be deemed to be the trustor. In the case of a Unit covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, et seq., the buyer of the Unit shall be deemed to be the "Owner." An "Owner's Permittees" shall mean all family members, guests, tenants, licensees, invitees, and agents that use or occupy the Owner's Unit or other portions of the Condominium (including Common Area) with the implied or express consent of an Owner.

1.28 "Person" (whether capitalized or not) shall mean a natural person, a corporation, a partnership, a trust, or other legal entity.



1.29 "Plat" will refer to the condominium plat for FireRock Parcel "C", A Condominium, recorded in Book 633 of Maps, Page 25, Official Records of Maricopa County, Arizona, as it may be amended from time to time pursuant to this Declaration.

1.30 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than four (4) adult persons not all so related who maintain a common household in a Unit.

1.31 "Single Family Residential Use" shall mean the occupancy or use of a Unit by a Single Family in conformity with the Condominium Documents and the requirements imposed by applicable zoning laws or other federal, state, county, or municipal rules, ordinances, codes, and regulations.

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

- (a) Construct improvements provided for in this Declaration or shown on the Plat;
- (b) Exercise any Development Right;
- (c) Maintain sales offices, management offices, models and signs advertising the Condominium;
- (d) Use easements through the Common Elements for the purpose of making improvements within the Condominium;
- (e) Appoint or remove any officer of the Association or any member of the Board of Directors during the period of Declarant Control.
- (f) Exercise the rights described in Section 3.7.

1.33 "Unit" means a condominium unit designated for separate ownership or occupancy by a Single Family.

## ARTICLE 2

### UNIT BOUNDARIES; PROPERTY RIGHTS IN COMMON ELEMENTS

2.1 Condominium Description. The Condominium will initially consist of One Hundred Fifteen (115) Units. The identifying numbers of the Units initially submitted to the Condominium are those Units numbered 1 through 115, inclusive, as shown on the Plat.

2.2 Unit Boundaries.

- (a) The Boundaries of each Unit are as follows:
  - (i) The vertical boundaries of the interior finished but undecorated surfaces of the perimeter of walls of the Unit.
  - (ii) The lower horizontal boundary is the finished but undecorated surface floor of the Unit.
  - (iii) The upper horizontal boundary is the underside of the finished but undecorated ceiling.

(iv) Each Unit shall include any door or window within a perimeter wall of the Unit, the openings and outlets of all utility installations in the Unit and the firebox of any fireplace located in the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished surfaces of the walls or floor are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements (including, but not limited to, shoots, flues, wires, conduits, heating and air conditioning units, hot water heaters and gas, cable television, water and electric pipes, lines or meters) within the boundaries of a Unit which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the boundaries of a Unit but which serve more than one Unit are part of the Common Elements.

(b) In interpreting the Plat, this Declaration and the Condominium Documents, if the interior finished surfaces of perimeter walls, floors, ceilings, doors and windows of a Unit are not exactly where indicated on the Plat due to settling or minor variances resulting from the construction of the Units, the existing physical interior unfinished surfaces of the perimeter walls, floors, ceilings, doors and windows of the Unit shall be deemed to be its actual boundaries rather than the boundaries as shown on the Plat.

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

(d) Declarant reserves the right to relocate the boundaries between Adjoining Units owned by the Declarant and to reallocate each such Unit's Fractional Interest in the Common Elements, votes in the Association and allocation of assessments subject to and in accordance with A.R.S. § 33-1222.

2.3 Allocation of Fractional Interest in Common Elements An appurtenant and undivided percentage interest in the Common Elements shall be allocated to each Unit as determined by dividing the numerator of one (1) by the denominator equaling the total number of Units in the Condominium. The Fractional Interest allocated to each Unit shall be One-One Hundred fifteenth (1/115th) of a whole.

2.4 Allocation of Limited Common Elements.

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

(i) Any parking space designated for use solely by an Owner of a Unit or the Owner's Permittees;

(ii) any stairways, entry walks or courtyards designated for use by one or more, but not all, Units and any balconies and patios designed to serve a single Unit (but located outside the physical boundaries of a Unit);

(iii) any shutters, awnings, window boxes, door steps, exterior doors to the Unit, and windows and other similar features designated to serve a single Unit (but located outside the physical boundaries of a Unit);

(iv) the air conditioning unit (including compressors and condensers), heater, and hot water heater servicing a single Unit;

(v) all sewer and drainage pipes, water lines, and other utility lines servicing a single Unit, between the point of entry into the Unit and the point of connection with joint or common utility lines; and

(vi) any chimney, chute, flue, duct, or other similar improvement that lies partially within and partially outside of the physical boundaries of a Unit and that serves only a single Unit

(with any item of the type described in subparagraph (vi) that services more than a single Unit being deemed a part of the Common Elements and not a Limited Common Element).

(b) A Limited Common Element may be reallocated by an amendment to this Declaration. The amendment shall be executed by the Unit Owners between or among whose Units the allocation is made, shall state the manner in which the Limited Common Elements are to be reallocated and, before recording the amendment, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment; provided, however, that a determination by the Board of Directors as to a reallocation of Limited Common Elements for a particular Building under this Section 2.4 shall not obligate the Board of Directors to determine that a similar reallocation of limited common elements for a different building shall be reasonable.

(c) The Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. After the Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding at least seventy-five percent (75%) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Act.

2.5 Exclusive Use. Subject to the terms of the Condominium Documents, each Owner of a Unit shall have the exclusive right to the use of: (i) the Unit, if any; (ii) the parking space(s) assigned to the Unit; (iii) the balcony or patio designed to serve the Unit; and (iv) those Limited Common Elements described in subparagraph (iii), (iv), (v), and (vi) of Section 2.4. The exclusive right to the use and possession of the foregoing shall be appurtenant to and inseparable from the ownership of the Unit. Other Limited Common Elements not reserved for the exclusive use of a single Owner are reserved for the exclusive and joint use of the applicable Owners.

2.6 Exclusive and Restricted Use of Crawl Space. The exclusive use and enjoyment of those portions of the Common Elements described as "Crawlspace" on the Plat shall be limited to those Persons who are expressly authorized by the Board of Directors to enter into the Crawlspace to perform, or cause to be performed, maintenance, repair or replacement of the Common Elements and other portions of the Condominium. No Person, including, but not limited to, Owners or Owners' Permittees may enter, use or occupy for any reason (including, but not limited to, storage of property or goods) in the Crawlspace without the prior written approval of the Board of Directors.

2.7 Reallocation of Boundaries Between Adjoining Units. The boundaries between or among Adjoining Units may be reallocated by an amendment to this Declaration. The Owners of the Units affected by the reallocation of boundaries shall prepare an amendment to this Declaration and the Plat that identifies the Units involved, specifies the outer boundaries of the Units and their dimensions and includes the Units' identifying numbers. If the Owners of the Adjoining Units have specified a reallocation between their Units of the allocated Fractional Interest in the Common Elements, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the Owners of those Units, shall contain words of conveyance between or among them and, before recording the amendment, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment; provided, however, that an approval by the Board of Directors that a reallocation of boundaries between or among Adjoining Units in a particular Building under this Section 2.7 shall not obligate the Board of Directors to approve a similar request for another Building within the Condominium.



## ARTICLE 3

### EASEMENTS AND DEVELOPMENT RIGHTS

3.1 Owners' Easements of Enjoyment. Except as provided in this Declaration with respect to Limited Common Elements, every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Elements, in common with all other persons entitled to use the 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 every Unit and shall be subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of the Common Elements and to regulate the use of the Common Elements; the right of the Association to limit the number of the Owner's Permittees who use the Common Elements; the right of the Association to limit the number and type of pets that use the Common Elements; the right of the Association to hold the Owners accountable for the conduct of the Owner's Permittees and pets;

(b) The right of the Association to suspend the voting rights of any Owner and to suspend the right to the use of the Common Elements by an Owner or the Owner's Permittees for any period during which any assessment against that Owner or Owner's Unit remains unpaid, or, in the case of any non-monetary infraction of the Condominium Documents, for any period during which the infraction remains uncured;

(c) The right of the Association to dedicate or grant an easement covering all or any part of the Common Elements to any provider utility company or municipality for the purposes, and subject to the conditions, that may be established by the Declarant during the period of Declarant Control (as defined in Section 5.2) 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 Condominium, no dedication or grant of easement over all or any part of the Common Elements to any municipality or provider utility company 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 instrument evidencing the dedication or grant is executed by an authorized officer of the Association and recorded in the proper records in Maricopa County; and

(d) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least seventy-five percent (75%) of the votes entitled to be cast, any such action by the Association shall be done in the manner contemplated and subject to the limitations set forth in the Act.

(e) All rights and easements set forth in this Declaration, including, but not limited to, the rights and easements granted to the Declarant by Section 3.7.

3.2 Delegation of Use. Subject to and in accordance with the Condominium Documents, any Owner may delegate its right of enjoyment to the Common Elements to the Owner's Permittees.

3.3 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 or PUE for the installation and maintenance of utilities servicing the Condominium, 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 provider utility company and municipality without the necessity of any additional recorded easement instrument. While it holds a Class B membership, the Declarant may permit, through a recorded instrument, any person to use the public utility easement for the installation and maintenance of utilities servicing any neighboring property. The public utility easement described in this Section 3.3 shall not affect the validity of any other recorded easements affecting the Condominium, and the term of this public utility easement 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 or telephone structures incident to the construction of buildings or structures as needed by the Declarant. Public or private sidewalks may be located in the public utility easements.

3.4 Easement for Encroachments. Each Unit and the Common Elements are subject to a reciprocal and appurtenant easement benefiting and burdening, respectively, the Unit or the Common Elements for minor encroachments created by construction, settling, 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 termination of the Declaration or other Condominium 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 the encroaching Unit and its Owner or the Association, as applicable.

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

3.6 Easements for Ingress and Egress. A perpetual and non-exclusive easement for pedestrian ingress and egress is created and reserved by Declarant for the benefit of the Declarant and all Owners over, through, and across sidewalks, paths, driveways, roadways, walks, and lanes that from time to time may be constructed within the Condominium. The right of access described in this Section 3.6 is and will remain at all times an unrestricted right of ingress and egress.

3.7 Declarant's Rights and Easements.

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

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

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

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

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

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

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

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

(i) The Declarant and its employees, agents and contractors shall have a right and easement on, over and through the Condominium as may be reasonably necessary for the purpose of inspecting or performing maintenance, repair or the other Declarant obligations set forth under Section 12.7 or for the purpose of gaining access to or repair from the Crawl Space.

In the event of any conflict or inconsistency between this Section 3.7 and any other provision of the Condominium Documents, this Section 3.7 shall control and prevail over such other provisions. The rights of the Declarant set forth in this Section 3.7 shall be enforceable by injunction, by any other remedy available at law or in equity and/or by any means provided in this Declaration.

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

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

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

(c) For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Limited Common Elements that the Unit Owner is obligated to maintain under Section 7.3.

**3.9 Common Elements Easement in Favor of the Association.** The Common Elements shall be subject to an easement in favor of the Association, its Board and the agents, employees and independent contractors of the Association, for the purpose of the inspection, upkeep, maintenance, repair, and replacement of the Common Elements and Limited Common Elements.



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

(a) For inspection at reasonable times and upon reasonable notice to the Unit Owner of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements;

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

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

#### ARTICLE 4

##### USE RESTRICTIONS

In addition to all other covenants and restrictions contained in this Declaration and the other Condominium Documents, the use of the Common Elements, Limited Common Elements, and the Units is subject to the following:

##### 4.1 Restricted Use.

(a) All Units and Limited Common Elements allocated thereto shall be used, improved and devoted exclusively to residential use by a Single Family. No gainful occupation, profession, trade or other nonresidential use shall be conducted on or in any Unit or Limited Common Element, but an Owner or Owner's Permittees of a Unit may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (iii) the business activity does not involve retail sales, business meetings, appointments, gatherings, or day care; (iv) the business activity does not result in shipping or receiving from or to the Unit; (v) the business activity does not involve persons coming to the Unit or the door-to-door solicitation of Owners or Owner's Permittees in the Condominium; (vi) the trade or business does not use flammable liquids or hazardous materials in quantities not customary for residential use; (vii) the business activity is consistent with the overall residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of Condominium Owners, as may be determined from time to time in the sole discretion of the Board of Directors; and (viii) the business activity does not entail employees, clients or customers coming on to the Condominium, or persons entering into a Unit for the purpose of receiving or delivering products or services arising out of such usage, except as may be approved from time to time in the sole discretion of the Board of Directors. Notwithstanding the foregoing provisions of this Section 4.1(a), to the extent the Board of Directors approves of a use under this Section 4.1(a), the Board of Directors may place such conditions upon the use as the Board of Directors determines to be reasonable.

(b) The terms "business" and "trade" as used in this Section 4.1 shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is

intended or does generate a profit; or (iii) a license is required for such activity. The mere leasing of a Unit by the Owner thereof in accordance with the provisions of Section 4.10 below shall not be considered a trade or business within the meaning of this section.

(c) Notwithstanding the foregoing, Declarant and its agents, successors, or assigns may use the Condominium or Units for any of the uses as may be required, convenient, or incidental to the construction and sale of Units, including, without limitation, a business office, management office, storage area, construction yard, signage, model sites, and display and sales office during the construction and sales period.

#### 4.2 Signs.

(a) No emblem, logo, sign, or billboard of any kind shall be displayed on any of the Units or the Common Elements so as to be visible from neighboring property, except for: (i) signs used by Declarant to advertise the 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 and (iii) any signs as may be required by legal proceedings. The foregoing will not be deemed to prevent the right of an 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 to adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners (including disturbance from pedestrian and vehicle traffic coming on the Condominium to view the signs, symbols, and decorations).

(b) Subject to the rights of Declarant under Section 4.2(a) hereof, no sign of any kind or nature advertising a Unit for sale shall be displayed on any of the Units or the Common Elements.

#### 4.3 Improvements & Alterations.

(a) No Person shall make any structural additions, alterations or improvements (collectively, "Modifications") within a Unit, unless prior to the commencement of each Modification, (i) the Owner retains an architect or engineer licensed in Arizona who certifies to the Board that such Modification will not impair the structural integrity of the Building or the mechanical systems serving the same within which such Modification is to be made; (ii) the Owner provides the Association with a written indemnity against liability in accordance with Article 8 below in form provided by the Board; (iii) the Owner executes a written acknowledgment that any such Modification may negate or amend any contractual, statutory or common law warranty expressly or implicitly provided by Declarant; and (iv) the Owner receives a formal written approval of the Modification from the Board. The Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such Modification. The term "Modifications" shall not include any structural additions, alterations or improvements made by the Declarant, its agents, employees or contractors, during the initial construction of the Unit.

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

(c) Notwithstanding the foregoing, no Modifications within a Unit, whether structural or not, which would be visible from the exterior of the Building shall be made without the prior written consent of the Board, which approval shall only be granted if the Board affirmatively finds that the proposed Modification is aesthetically pleasing and in harmony with the surrounding improvements. Further, in the event any Owner petitions to install awnings outside of any exterior windows or patio doors, whether temporary or permanent and whether manually or electronically controlled, such petition for approval shall also require the consent of the Declarant, while Declarant owns any Units.

(d) Any Owner, acquiring an Adjoining Unit, and, upon receiving the approval of the Board set forth in this Section 4.3, may remove or alter any non-structural common wall or partition between Adjoining Units or create apertures therein even if certain elements therein are part of the Common Elements or Limited Common Elements, if such acts do not impair the structural integrity of the Building or its mechanical systems or lessen the support of any part of the Condominium.

(e) The approvals required of the Board and/or Declarant pursuant to this Section 4.3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

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

4.4 Noxious or Offensive Activities. No noxious or offensive activity shall be engaged in (or permitted to be engaged in) any Unit. No act or use may be performed on any 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 of the Owner's Unit. No Owner shall permit any thing or condition to exist upon any property that induces, breeds, or harbors infectious plant diseases or infectious or noxious insects.

4.5 Animals. No animals, livestock, horses, birds, or poultry of any kind shall be raised, bred, or kept on or within any Unit or structure on a Unit; however, an Owner may keep up to two (2) dogs or two (2) cats or two (2) other common household pets or two (2) of any combination of dogs, cats, or other common household pets in the Unit if permitted under local zoning ordinances. Additional pets are prohibited unless approved in writing 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 permitted 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 an annoyance or nuisance to other Owners. No permitted pets shall be permitted to move about unrestrained in the Condominium, Common Elements, or any public or private street within the Condominium. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Condominium, Common Elements, Limited Common Elements or public or private streets. 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 or nuisance.

4.6 Trash. All rubbish, trash, and garbage shall be regularly removed from the Units and Limited Common Elements and shall not be allowed to accumulate on any Unit or the Limited Common Elements. In the case of an Owner who allows trash to accumulate on the Owner's 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 costs shall become a special assessment to that Owner. No incinerators shall be kept or maintained on any Unit.

4.7 Woodpiles and Storage Areas. Woodpiles and open storage areas may not be maintained upon any Unit or Limited Common Elements. At no time shall an Owner maintain any storage on the Condominium of Commercial or Recreational Vehicles or Family Vehicles (as described in Sections 4.15 and 4.16) of the type described in this Declaration in any stage of construction, reconstruction, modification, or rebuilding. No vehicle frames, bodies, engines, or other parts or accessories shall be stored on the Condominium.

4.8 Antennas. Except as originally installed by the Declarant, no external radio, direct television, television antenna, or satellite dish shall be installed or constructed on any Unit, Common Elements, Limited Common Elements or roof of any Unit, except as permitted in writing by the Association.

4.9 Windows and Window Covering. 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. Window drapes must be lined in a white, non-patterned material. No air conditioners, swamp coolers, or similar units may be placed in any window of a Unit.

4.10 Ownership and Leasing. Nothing in the Declaration shall be deemed to prevent the leasing of a Unit to a Single Family from time to time by the Owner of the Unit, subject to all of the provisions of the Condominium Documents. Any Owner who leases his Unit shall promptly notify the Association and shall advise the Association of the lease period and the name of each lessee and the address and telephone number at which the Unit Owner can be contacted by the Association during the lease term. Any lease shall be approved by the Association and shall be for a term of no less than thirty (30) consecutive days. No Owner shall be permitted to lease the Owner's Unit for transient or hotel purposes. The provisions of this Section 4.10 shall not apply to any Unit(s) owned by Declarant or Declarant's successor. Notwithstanding the foregoing, no more than an aggregate of thirty-five (35) Units may be leased at any one time.

4.11 Machinery. No machinery of any kind shall be placed, operated, or maintained upon or adjacent to any Unit or Limited Common Elements other than machinery that is usual and customary in connection with the use, maintenance, or construction of a Unit, including, but not limited to, equipment necessary for the emergency maintenance or operation of the Condominium and other than machinery that Declarant or the Association may require for the operation and maintenance of the Condominium. All emergency equipment shall be removed from the Condominium as soon as reasonably possible.

4.12 Increased Risk. Nothing shall be done or kept in or on any Unit or the Common Elements that will increase the rate of insurance on the Common Elements without the prior written consent of the Board, as determined in the sole and absolute discretion of the Board. No Owner shall permit anything to be done or kept on or in the Owner's Unit or the Common Elements that will result in the cancellation of insurance on any Unit or any part of the Common Elements or that would be in violation of any law.

4.13 Outdoor Burning and Lighting. There shall be no outdoor burning of trash, debris, wood, or other materials. The foregoing, however, shall not be deemed to prohibit the use of barbecues owned and maintained by the Association within the Limited Common Elements or Common Elements, subject to the Association Rules. Without limiting the provisions of Section 4.4 above and except as originally installed by the Declarant or as otherwise approved by the Board, no spotlights, flood lights, or other high intensity lighting shall be placed or utilized upon any Unit so that the light is directed or reflected on any Common Element or any other Unit.

4.14 Hazardous Wastes. Except as may be necessary for normal household, landscaping, or automotive uses, no Owner shall permit any hazardous wastes (as defined under all applicable federal and state laws), asbestos, asbestos containing material, or any petroleum products or by-products to be kept, dumped, maintained, stored, or used in, on, under, or over any Unit or the Common Elements. No gasoline, kerosene, similar cleaning solvents, or other flammable liquids may be stored in the Units or the Common Elements.

4.15 Commercial and Recreational Vehicles. No commercial truck, recreational vehicle, pick-up trucks with campers or camper shells, semitrailer, wagon, freight trailer, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, personal watercraft, jet skis, dune buggy, all-terrain vehicle, bus, or similar commercial or recreational equipment or vehicle (whether or not equipped with any sleeping quarters) (collectively referred to in this Declaration as "Commercial or Recreational Vehicles") shall be stored or parked within the Condominium unless such Commercial or Recreational Vehicles are in good working condition and repair and stored or parked completely within the garage space(s) of the respective Owner and are covered from view. The provisions of this Section 4.15 are subject to the rules and regulations of the Association, as may be amended

4.16 General Restrictions Regarding Parking.

(a) Additional Family Vehicles that cannot be parked in the garage that is part of the Owner's Unit may be parked in any undesignated parking areas on the Condominium so long as the Family Vehicles are in good working condition, operable and are, in fact, operated from time to time. Except as may be otherwise expressly approved in advance by the Board, no Owner may use his garage for storage of

anything other than parking of a Family vehicle, permitted under this Declaration. Parking spaces may be allocated in the future as a Limited Common Element of the Unit, as further provided in Section 2.4.

(b) A "Family Vehicle" means any domestic or foreign cars, station wagons, sport wagons, pick-up trucks, vans, mini-vans, jeeps, sport utility vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are used by the Owner of the applicable Unit or the Owner's Permittees for family and domestic purposes only. A "Family Vehicle" also includes: (i) pick-up trucks with no more than three-quarter (3/4) ton capacity with attached camper shells that are no more than eight (8) feet in height, measured from ground level; (ii) small motor homes of not more than eight (8) feet in height or more than eighteen (18) feet in length; and (iii) non-commercial pick-up trucks of greater than one (1) ton capacity that the Board determines, in advance of use, to be similar in size and appearance to smaller vehicles. A "Family Vehicle" does not include any of the commercial or recreational vehicles described in Section 4.15. The provisions of this Section 4.16 are subject to the rules and regulations of the Association, as may be amended.

4.17 No Vehicle Repairs. Routine maintenance (other than the washing of a Family Vehicle) and repairs of Commercial and Recreational Vehicle Family Vehicles shall not be performed in the Unit or anywhere else on the Condominium. No vehicles of any type shall be constructed, reconstructed, or assembled anywhere within the Condominium.

4.18 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 trailers, or signs necessary or convenient to the construction, development, identification, sale, or lease of Units or other property within the Condominium.

4.19 Security. Each Owner understands and agrees that neither the Association (nor its officers, directors, employees, and agents) nor the Declarant (nor its officers, directors, employees, and agents) is 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 features or common security measures that may be used at the Condominium 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 a Unit (or otherwise becomes an "Owner") may be abandoned, terminated, or modified by a majority vote of the Board. The installation or operation of security devices or controls (including, but not limited to, entry or limited access gates) shall not be, constitute, or be deemed to constitute (a) an assumption of any duty on the part of the Association, Board of Directors or the Declarant with respect to the Condominium and its Owners, and (b) a representation or warranty by the Association, Declarant or Board of Directors to the Owners, Owners' Permittees or any other person that such advices or controls will serve as a deterrent to or prevent crime within the Condominium.

## ARTICLE 5

### MEMBERSHIP AND VOTING RIGHTS

5.1 Membership. Every Owner of a Unit, by accepting a deed for that Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner", shall be a Member of the Association and shall be bound by the provisions of the Condominium Documents, shall be deemed to have personally covenanted and agreed to be bound by all covenants and restrictions contained in the Condominium Documents, and shall be deemed to have entered into a contract with the Association and each other Owner for the performance of the respective covenants and restrictions. The personal covenant of each Owner described in the preceding sentence shall be deemed to be in addition to the real covenants and equitable servitudes created by the 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 title to all 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 Unit that is subject to assessment. Upon the permitted transfer of an ownership interest in a 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 Owners of Units.

5.2 Class. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall be all Owners, with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Unit owned. When more than one person holds an interest in any Unit, all joint owners shall be Members; however, for all voting purposes and quorum purposes, they shall together be considered to be one (1) Member. The vote for any 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 any Unit. Any attempt to cast multiple votes for a given Unit shall result in the invalidity of all votes cast for that Unit.

(b) Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earlier:

(i) Four (4) months after the date when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership;

(ii) The date that is six (6) years after the date of the close of escrow on the first Unit sold by Declarant; or

(iii) When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

Upon the conversion of Declarant's Class B membership to Class A membership, the Declarant will be entitled to only one (1) vote for each Unit owned by the Declarant. The period of time during which Class B membership is in existence shall be referred to in this Declaration as the period of "Declarant Control." For the purposes of 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 Section 5.2(b)(i), the number of votes in the Association shall be based upon the total number of Units.

5.3 Transfer of Control. When the period of Declarant Control ends, 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 Condominium as provided in the Condominium 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 Condominium (other than the payment of assessments on Units that the Declarant still owns). Any claims of the Association or any Owners against the Declarant for present or past acts or omissions of the Declarant or its members with respect to the operation of the Association or the administration of the Condominium (including the availability or sufficiency or any reserves) shall be waived, unenforceable, and released if not commenced within one (1) year from the expiration of Declarant Control.

## ARTICLE 6

### COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 Lien and Personal Obligation for Assessments. Each Owner of any Unit, by accepting a deed for that 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 and restrictions and all duties, obligations, and provisions of the Condominium Documents and to pay to the Association:

(a) Annual assessments or charges which shall be payable in monthly installments;

(b) Special assessments for capital improvements under Section 6.5 for unexpected or extraordinary expenses for repairs of the Common Elements, or other Association matters;

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

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

(e) All other assessments as may be fixed, established, and collected from time to time as provided in this Declaration or the other Condominium Documents, including, without limitation, any accrued interest, taxable court costs, late fees, attorney fees, fines, penalties, or other charges.

The assessments and amounts described above, together with all accrued interest, court costs, attorney fees, late fees, and all other expenses incurred in connection with the assessments and amounts described above, whether or not a lawsuit or other legal action is initiated, shall be referred to in the Condominium Documents as an "assessment" or the "assessments". The assessments shall be a charge and a consensual and continuing lien upon the Unit against which the assessment is made or with reference to which each assessment is incurred. Each assessment also shall be the personal obligation of the person who was the Owner of the Unit at the time when the assessment became due or charge was incurred, or, in the case of more than one Owner, the personal obligation of each person, jointly and severally. The personal obligation for delinquent assessments shall not pass to the particular Owner's successors in title unless expressly assumed by them; however, the personal obligation of the prior Owner for the delinquent assessments or charges shall not be deemed released or discharged by reason of any assignment, conveyance, or transfer of title of a Unit. Notwithstanding the previous sentence, in the event of an assignment, conveyance, or transfer of title to any Unit, the assessment additionally shall continue as a charge against the Unit in the hands of the subsequent Owner, except in those circumstances described in Section 6.10. The recording of this Declaration shall constitute record notice and perfection of any assessment or assessment lien, and, notwithstanding Section 6.11, further recording of any claim of lien (or Notice and Claim of Lien) for assessment shall not be required for perfection, priority, or enforcement.

**6.2 Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used for the purpose of:

(a) promoting the recreation, health, safety, welfare, and desirability of the Condominium for its Owners;

(b) operating the Common Elements (including payment of all taxes, utilities, maintenance, and rubbish collection fees, if any, and if not individually billed to the Owners);

(c) insuring (including a reserve fund for insurance deductibles), maintaining, repairing, painting, and replacing improvements in the Common Elements (including any reserve fund for the foregoing); and

(d) enhancing and protecting the value, desirability, and attractiveness of the Units and Common Elements generally.

The annual assessment may include a reserve fund for taxes, insurance, insurance deductibles, maintenance, repairs, and replacements of the Common Elements and other improvements that the Association is responsible for maintaining.

**6.3 Annual Assessments; Commencement of Assessments.** The Board shall annually determine and fix the amount of the annual assessment against each Unit, effective as of January 1 of each year, and shall notify the

Unit Owner in writing as to the amount of such annual assessment at least thirty (30) days in advance of each annual assessment period; however, the annual assessment shall be binding notwithstanding any delay. The annual assessment (which shall be payable either in arrears or in advance, as determined by the Board of Directors, shall be payable by monthly installments representing one-twelfth ( $1/12^{\text{th}}$ ) of the amount of the annual assessment due, and such monthly installments shall be due and payable on the first day of each month. Written notice of the annual assessment and of any special assessments shall be sent to every Owner subject to the assessment. The Board is expressly authorized to adopt and amend budgets from time to time without the approval of the Members and shall provide a summary of such budget or amended budget to the Members not later than thirty (30) days after adoption of the same by Board. The due dates of the annual assessments shall be established by the Board of Directors. The annual assessments established in this Declaration regarding the Units subject to this Declaration shall commence on the first day of the month following the conveyance of the first Unit to an Owner other than the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

#### 6.4 Annual Assessment Increases.

(a) Subject to the provisions of Section 6.4(b) and (c) hereof, the annual assessment in any given year over the annual assessment in the previous year may not be increased by more than the Permitted Percentage Increase (as defined below), unless any further additional increase is 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 total number of eligible votes cast at that meeting in each class of Members. Subject to the provisions of Section 6.4(b) from and after January 1 of the year immediately following the conveyance of the first Unit to an Owner other than the Declarant ("base year"), the Board, without a vote of the Members, may increase the maximum annual assessments during each fiscal year of the Association by an amount ("Permitted Percentage Increase") equal to the greater of: (i) five percent (5%); (ii) a percentage calculated by dividing the Consumer Price Index in the most recent October (identified by an "A" in the formula below) by the Consumer Price Index for the October one (1) year prior (identified by a "B" in the formula below), minus one (1) (i.e.,  $\text{CPI percentage} = (A/B) - 1$ ). By way of example only, the percentage increase in the assessment for 2003 cannot be increased by more than the greater of: (I) five percent (5%); or (II) the increase in the Consumer Price Index for October, 2002, divided by the Consumer Price Index in October, 2001, minus one (1). The term "Consumer Price Index" shall refer to the "United States Bureau of Labor Statistics, Consumer Price Index, United States and selected areas, all items" issued by the U.S. Bureau of Labor Statistics, or its equivalent or revised or successor index.

(b) To the extent the Board of Directors does not increase the annual assessment in any given year by the amounts described in either Section 6.4(a)(i) or (ii), a five percent (5%) increase in the Annual Assessment shall be automatically deferred ("Deferred Percentage") until such time as the Board increases the Annual Assessment under the provision of either Section 6.4(a) or 6.4(c).

(c) Notwithstanding the provisions of Section 6.4(a), to the extent a Deferred Percentage exists, the Board, without a vote of the Members, may increase the maximum annual assessments during a fiscal year by an amount not to exceed the lesser of (i) the Deferred Percentage plus the amount of increase permitted under Section 6.4(a)(i) for the year in which the increase is to occur, or (ii) fifteen percent (15%); provided, however, the Deferred Percentage for a particular year is no longer available for use by the Board in increasing the annual assessment if the Board elects to increase the Annual Assessment under Section 6.4(a) in a subsequent year.

Example No. 1: By way of example and not limitation, in the event that the annual assessment is not increased by the Board under Section 6.4(a)(i) or (ii) for the fiscal years 2003, 2004 and 2005, assuming the Board elects to increase the Annual Assessment in 2006, the Board may increase the Annual Assessment by the lesser of (i) the Deferred Percentage Increase of five percent (5%) from fiscal years 2003, 2004, 2005 and the permitted increase of 5% under Section 6.4(a)(i) for fiscal year 2006 (a total of 20%), or (ii) 15%. Accordingly, under Example No. 1 the maximum increase permitted under Section 6.4 (c) is the lesser of 20% or 15%, which is fifteen percent (15%).

Example No. 2: By way of example and not limitation, in the event that the annual



assessment is not increased by the Board of Directors under 6.4(a) (i) or (ii) in fiscal year 2003 and the Annual Assessment is increased by four percent (4%) by the Board of Directors in fiscal year 2004, if the Board elects to increase the Annual Assessment in fiscal year 2005, the Board may increase the annual assessment by the amount of the Permitted Percentage Increase under the provisions of Section 6.4(a) and any increase is not permitted under the provisions of Section 6.4(c). Under Example No. 2, when the Board increased the Annual Assessment in the year 2004 under Section 6.4(a), the Deferred Percentage from the year 2003 was no longer available for use by the Board for an increase in fiscal year 2005.

6.5 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 a special assessment against all of the Members for the purpose of defraying, in whole or in part: (i) the cost of any construction, reconstruction, repair, or replacement (whether or not due to destruction, governmental taking, or otherwise) of a capital improvement upon or under the Common Elements (including fixtures and personal property related to the Common Elements); or (ii) the cost of any other unexpected or extraordinary expenses for repairs of the Common Elements or other association matters; however, any 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 total number of eligible votes cast at that meeting in each class of Members. Notwithstanding the foregoing, no approval of the Members shall be needed to levy assessments on an Owner that arise out of the Owner's failure to comply with the Condominium Documents including, without limitation, any assessment levied pursuant to Sections 6.1(c), 6.1(d), 6.7, 7.2 or 7.4 of the Declaration.

6.6 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.4 or 6.5 shall be sent to all Members not less than ten (10) days nor more than fifty (50) 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 sixty percent (60%) of the total number of eligible votes of the Association, regardless of class of membership, shall constitute a quorum. 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 subsequent 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 subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.7 Allocation of Assessments.

(a) Each Unit shall be allocated one-one hundred fifteenth (1/115<sup>th</sup>) of the annual assessments outlined in Section 4.3 and the special assessments outlined in Section 4.4.

(b) The rate of assessment for Inventory Units owned by Declarant shall be twenty-five percent (25%) of the rate for completed and occupied Units owned by an Owner other than the Declarant. Declarant shall commence payment of the reduced assessment for the Inventory Units upon closing the first sale of a Unit to an Owner. Notwithstanding the reduced assessment on Inventory Units, Declarant shall be obligated to pay to the Association for any shortages or deficiencies in the Association's operating budget caused by reason of Declarant's reduced assessments; however, Declarant's maximum obligation for these shortages or deficiencies shall be equal to the uniform rate of assessment on all Units multiplied by the number of Inventory Units upon which Declarant paid a reduced assessment, less all amounts previously paid by Declarant as reduced assessments on the Inventory Units.

(c) The provisions of this Section 6.7 shall not preclude the Association from making a separate or additional charge to, or special assessment on, 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 Unit. If any expense incurred by the Association is caused by the misconduct of any Owner or the Owner's Permittees, the Association may specially assess the expense exclusively against the offending Owner and/or Unit.

6.8 Transfer. The Association, acting through the Board of Directors and property management company, upon written demand and for a reasonable charge (currently \$150.00 per request, subject to change by the Board), 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 a specified 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 a Unit and any other required matters shall be binding on 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 shall be permitted for any reason whatsoever including, without limitation, abandonment of the Owner's Unit, a claim that the Association is not properly exercising its duties in maintenance or enforcement, a claim against the Declarant or its affiliates, or the non-use or claim of non-use by Owner of all or any portion of the Common Elements. Upon any transfer of a Unit, the Owner acquiring the Unit shall pay to the Association as a working capital contribution an amount equal to one sixth (1/6) of the annual assessment then in effect (the "Working Capital Contribution"). The payment of the Working Capital Contribution shall not constitute a credit against the amounts owed by an Owner for annual assessments or special assessments.

6.9 Effect of Nonpayment of Assessments - Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be subject to a one-time late charge of Twenty-Five and No/100 Dollars (\$25.00) and additionally shall bear interest from the due date at the minimum rate of ten percent (10%) per annum or any other legal interest rate approved by the Board of Directors and permitted under the requirements of any Applicable Guarantor. Notwithstanding the foregoing, the Board of Directors may approve changes to the assessment collection procedure. Each Owner of a Unit, by accepting a deed for that 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 Condominium Documents as a debt and to enforce the lien securing the assessment by all methods available for the enforcement of liens, including foreclosure by an action brought in the name of the Association in the same manner as a mortgage of real property, a deed of trust, and/or a mechanic's lien. If an Owner fails to make payments on any prior liens (including any Mortgage) or fails to pay taxes on the Owner's Unit, the Association may make payments on any prior liens (including any Mortgage) or taxes on the Unit, and all payments shall be due and payable immediately as a special assessment and shall be added to the lien in favor of the Association. The lien shall be in favor of and shall benefit the Association. The Association shall have the power to bid in any foreclosure, sheriff'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 Unit purchased. The Association may institute suit to recover a money judgment for unpaid assessments of the Owner without being required to foreclose its lien on the Unit involved and without waiving the lien that secures the unpaid assessments. Any foreclosure may be instituted without regard to the value of the 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 of all other rights and remedies that the Association may have under the Condominium Documents or under Arizona law.

6.10 Subordination of the Lien to Mortgages. Regardless of whether or not 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 on any 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 First Mortgagee, except for the amount of assessments that accrues from and after the date upon which the First Mortgagee acquires title to or comes in possession of any Unit and except for amounts due to the Association as a result of the exercise of its self-help and lien rights described in Section 7.4 ; and (ii) any taxes, bonds, or assessments that by law are prior and superior to the assessment lien. The sale or transfer of any 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 Unit; however, the sale or transfer of any Unit pursuant to a judicial foreclosure or trustee's sale by a First Mortgagee shall extinguish that portion of the lien on the Unit (but not the personal obligation) that became due prior to the transfer or sale. In the case of a sale or transfer by judicial foreclosure or trustee's sale by a First Mortgagee, the First Mortgagee or other successor Owner shall not be liable for any assessments that become due prior to the sale or transfer by the First Mortgagee. No sale or transfer pursuant to a judicial foreclosure or trustee's sale of any First Mortgagee shall relieve any Unit from the liability or 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 Unit, and the Association may enforce the personal obligation to pay the assessments arising during the Owner's ownership of the Unit in any manner permitted under Arizona law or the Condominium Documents.

6.11 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:

- (a) The last known name of the delinquent Owner;
  - (b) The legal description or street address of the Unit against which the claim of lien is made;
  - (c) The amount claimed to be due and owing from the Owner and assessed against the Unit;
- and
- (d) A statement that the claim is made by the Association pursuant to the terms of the Declaration and the other Condominium 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. The Association may record a Notice and Claim of Lien against the delinquent Owner's 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.

6.12 Initial Working Capital Contribution by Owners. Upon acceptance of a deed for a Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "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 this Article 6. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed from the purchase and sale escrow directly to the Association. Declarant, in its sole discretion, may advance certain amounts to the Association as working capital; however, Declarant shall not be obligated to advance any amounts for working capital. If Declarant elects to advance any amounts for working capital, Declarant shall be entitled to a reimbursement from the Association, upon Declarant's demand, for all working capital funds previously advanced by Declarant. Except for those amounts paid by Declarant, all amounts paid 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.

## ARTICLE 7

### COMMON ELEMENTS AND UNIT MAINTENANCE

7.1 Common Elements. Except as provided in Sections 7.2 or 7.3 below, the Association shall be responsible for the maintenance, repair, and replacement of the Common Elements (including the exterior and the structural elements of all garages, the garage doors, all structural elements of the Building such as walls, patios, and balconies, and the roof of the Building). 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 Condominium (whether established through easement, license, or otherwise); (iii) cause the annual inspection and preparation of the inspection report as required by Section 12.7 and (iv) do any other acts deemed necessary to preserve, beautify, and protect the Common Elements in accordance with the general purposes specified in the Condominium 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 7.1, the Association will have no obligation to perform any maintenance or repair work that is performed by any municipality or provider utility company responsible for the maintenance of any utilities or improvements located within any Common Elements. 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 the Common



Elements. To the extent reasonably practical, the Association shall provide notice to the owners affected by maintenance, repair and replacement described in this Section 7.1 at least two (2) days prior to the commencement of such work, unless such maintenance, repair and replacement is deemed to be an emergency by the Board of Directors, in which event the Association shall be under no obligation to provide notice to the Owners affected by such work.

7.2 Repairs Necessitated by Owner; Walls. In the event that the need for maintenance or repair to the Common Elements is caused 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 or repairs, including the deductible portion of any applicable insurance policy, shall be added to and become a part of the assessment against the Unit owned by that Owner, without regard to the availability of any insurance proceeds payable to the Association for the cost of the maintenance or repairs. In addition to the foregoing, if the Owner of a given Unit is held liable to the Association by a court of competent jurisdiction for maintenance or repair work performed by the Association to any other Unit (i.e., a Unit not owned by that Owner), the amount of that judgment shall be added to and become a part of the assessment against the Unit owned by that Owner. To protect the integrity of soundproofing material contained inside the walls of the Condominium, Building or Unit, no Owner may puncture or damage any wall in the Condominium, Building or any Unit.

7.3 Maintenance of Unit. It is the responsibility of each Owner to maintain, repair, and replace, at the Owners' expense and without disturbance to the rights of other Owners:

- (a) All portions of the Owner's Unit;
- (b) The interior portions of the Unit, including, without limitation: (i) service equipment such as a dishwasher, laundry, refrigerator, microwave, oven, and stove, 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 and subfloor; and (iii) all interior surfaces including but not limited to windows, doors, inside paint, and other inside wall finishes;
- (c) All windows and glass doors (including the cleaning of the interior and exterior of any windows and glass doors);
- (d) The air conditioning unit (including compressors and condensers), heater, and hot water heater servicing the Unit;
- (e) The decorating within the Unit including, without limitation, painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps, and other furniture and interior decorating. Subject to the provisions 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 Unit, and each Owner shall maintain these surfaces in good condition at the Owner's sole expense. Maintenance by the Owners may be subject to the rules and regulations of the Association as may be necessary for the common good of the Condominium;
- (f) The interior space of the garage designated for parking by a single Owner;
- (g) To the extent not included within the categories identified above in this Section 7.3, the Limited Common Elements of the type described in subparagraphs (iii), (iv), and (vi) of Section 2.4 of this Declaration;
- (h) All cosmetic defects or blemishes within the Unit including, without limitation, damage or defect caused by settlement, expansion and/or cracking; and
- (i) To provide insurance for the Owner's personal property;

7.4 Owner's Failure to Maintain. If an Owner fails to perform any items of maintenance and repair required under the terms of this Article 7, 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 and the holder of any applicable First Mortgage, the Association shall have the right (but not the obligation) to enter upon or into that 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 these maintenance items and 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 that Owner's Unit. The rights of the Association described above are in addition to any other remedies available to the Association under the Condominium Documents or Arizona law.

7.5 Exterior Repairs. Notwithstanding the fact that the Owner may be required to maintain certain of the Limited Common Elements that are outside of the physical boundaries of the Unit, the Owner will not be permitted to change any exterior color, style, or condition of the Limited Common Elements without the prior approval of the Board, which approval or disapproval may be granted or withheld in the sole and absolute discretion of the Board of Directors.

7.6 General Standards. Except as may be otherwise provided in this Declaration or the other Condominium Documents, each respective Owner of a Unit shall maintain the areas they are respectively responsible for 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 Condominium.

7.7 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 individual Units will be metered separately to each Unit and will be the responsibility of the respective Owners for payment.

## ARTICLE 8

### DUTIES AND POWERS OF THE OWNERS' ASSOCIATION

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

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

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

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

(d) Employment of Managers. 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) Purchase Insurance. Purchase insurance for the Common Elements for risks, with companies, and in amounts as the Board determines to be necessary, desirable, or beneficial, subject to the provisions of Section 8.2 below;



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

(g) Enforcement. Enforce the provisions of this Declaration and the other Condominium Documents by all legal means, including, without limitation, 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 Condominium Documents.

## 8.2 Insurance.

(a) Liability Insurance. Prior to the first conveyance of a Unit to an Owner other than Declarant, comprehensive general liability insurance covering 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 for the master or blanket hazard and multi-peril insurance policy shall be paid out of 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 \$2,000,000 for bodily injury and property damage on a combined single limit basis, or such other amount as determined to be appropriate by the Board of Directors. The policy shall name as insureds the Owners, the Association (its directors, officers, employees, and agents acting in the scope of their employment), and the Declarant (its directors, officers, partners, employees, and agents acting in the scope of their employment) for so long as Declarant owns any Unit. This policy shall include, but need not be limited to, insurance against injury or damage occurring in or on the Common Elements.

(b) Hazard and Multi-Peril Insurance - Master Policy for Common Elements. A master or blanket hazard and multi-peril insurance policy shall be purchased or obtained by the Board or acquired by assignment from Declarant promptly following the construction of any Building or any permanent structure on the Common Elements. Once purchased, obtained, or acquired, this hazard insurance policy shall be maintained in force at all times by the Association and such policy will provide coverage of the Common Elements only to the edge of the vertical stud wall to the lowest edge of any ceiling joist or rafter and the upper edge of the sub-flooring. Everything within the bounds of the planes described above is the responsibility of the Owner of the Unit, including drywall or plaster surfaces and anything attached therefore and all floor coverings. The hazard insurance policy will cover all exterior windows. The hazard insurance policy contemplated by the first sentence of this Section 8.2(b) will not insure any personal property in a Unit. Personal property within a Unit must be insured by the Unit Owner. The premiums for the hazard insurance policy contemplated by the first sentence of this Section 8.2(b) shall be paid out of the Association's funds at the common expense of the Owners. The hazard 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 covered by the standard extended coverage endorsement and "all risk" endorsement to the hazard insurance policy for the full replacement cost of all of the 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 and other personal property inside a Unit (whether or not part of the Common Elements). The hazard insurance policy shall be in an amount determined from time to time by the Board in its sole discretion. The hazard insurance policy shall name the Declarant (for so long as Declarant owns a Unit), Association, and any First Mortgagee of the insured permanent improvements on the Common Elements as insureds, as their respective interests may appear.

(c) Other Insurance. The Board may purchase (but is not obligated to purchase) additional insurance as the Board may determine to be advisable or necessary including, but not limited to, workmen's compensation insurance, boiler 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 these types of insurance and bonds shall be paid out of the Association's funds. The Association may assess the Owners in advance for the estimated cost of these types of insurance. By virtue of owning a 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 the Units. Without limiting any other provision of the 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.

(d) General Provisions on Insurance. The Board of Directors of the Association is granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Association pursuant to Section 8.2. 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 be binding on 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.

(e) Nonliability of Association. Notwithstanding the requirement of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant, nor its officers, directors, partners, or employees nor the Association, nor 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.

(f) Provisions Required. The comprehensive general liability insurance referred to in Section 8.2(a) and, if applicable, the hazard insurance policy referred to in Section 8.2(b) shall contain the following provisions (to the extent determined by the Board of Directors to be available at a reasonable cost):

(i) Any "other insurance" clause shall exclude insurance purchased by any Owners or First Mortgagees;

(ii) The coverage afforded by the policies shall be primary and shall not be brought into contribution or proration with any insurance that may be purchased by any Owners or First Mortgagees;

(iii) The act or omission of any one or more of the Owners or the Owner's Permittees shall not constitute grounds for avoiding liability on the policies and shall not be a condition to recovery under the policies;

(iv) A "severability of interest" endorsement shall be obtained that shall preclude the insurer from denying the claim based upon negligent acts or omissions of the Association or Owners;

(v) Any policy of property insurance that gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that this election is not exercisable without the prior written consent of the Association;

(vi) Each insurer shall waive its rights to subrogate under each policy against the Association (and its directors, officers, agents, and employees) and the Owner (and the Owner's Permittees);

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

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

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

(g) Other Governmental Requirements. Notwithstanding anything to the contrary contained in this Section 8.2, 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.

8.3 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 Units, the cost shall be specially assessed to the Owners of these Units.

8.4 Association Rules. 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 Condominium. The Association Rules may restrict and govern the use of any area by any Owner or the Owner's Permittees or the Owner's pets and additionally may establish a system of fines and charges for violations of the Condominium Documents; however, the Association Rules may not discriminate among 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 full and were a part of this Declaration. Provided, however, in the event of a conflict between the Association Rules and this Declaration, the terms and conditions of this Declaration shall control.

## ARTICLE 9

### CONDEMNATION

9.1 Taking. If, at any time during the term of this Declaration, all or any part of the Condominium is taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in advance of any taking (collectively referred to as "taking", "taken", or "condemned"), the provisions of this Article 9 shall apply.

9.2 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 fees, appraisal fees, and court costs incurred by the Association in connection with the taking, are referred to as the "Award."

9.3 Total. In the event that the entire Condominium 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 of the Award to which each Owner is entitled. All shares shall be paid into a separate account and be disbursed as soon as practicable by check payable jointly to the Owners and their respective First Mortgagees.



9.4 Partial.

(a) In the event that less than the entire Condominium is taken or condemned, the Condominium shall not terminate. 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 Unit and/or improvements an Owner made within his own Unit to the particular Unit involved; (ii) as soon as practical, the Board shall reasonably and in good faith allocate that portion of the Award attributable to 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 respective Owners and their respective First Mortgagees.

(b) Notwithstanding anything to the contrary, if any Unit is acquired by condemnation or a taking, or if part of a 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 the Declaration, the Award must compensate the Owner for the Owner's Unit and its Fractional Interest in the Common Elements, regardless of whether any Common Elements are taken or condemned. Unless the judicial decree or 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 the Declaration), the Unit's Fractional Interest is automatically reallocated to the remaining Units in accordance with the formula set forth in Section 2.3. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Element.

(c) If 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.

9.5 Effect. Without limiting Section 9.4, in the event a partial taking results in the taking of all of a Building or a 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 of the Owner's undivided Unit was taken) automatically shall cease to be members of the Association as of the time of the taking, which, for the purposes of this Article 9, 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 2.3 so that the total percentage of all remaining Units shall be one hundred percent (100%).

9.6 Reconstruction. Any reconstruction and repair necessitated by a partial taking shall be governed by the procedures specified in Article 10.

9.7 Separate Compensation. Nothing contained in this Article 9 shall restrict the rights of lessees, mortgagees, the Declarant, or any other person holding an interest in a Unit or its Common Elements from receiving separate compensation or a portion of the compensation payable, or both, pursuant to this Article 9 and A.R.S. § 33-1206 (as and if amended).

## ARTICLE 10

### CASUALTY DAMAGE

10.1 Attorney-in-Fact. The Owners irrevocably appoint the Board as their true and lawful agent and attorney-in-fact (in their name, place, and stead) for the purpose of dealing with the Condominium 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 a Unit shall automatically constitute appointment of the Board as its agent and attorney-in-fact for the purposes outlined in this Declaration.

10.2 Restoration. The Board shall have 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 10 means restoring the Condominium to substantially the same condition that existed prior to the damage and with each 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 called "Events of Non-Repair"). If the damaged property is to be repaired and restored, no Unit Owner or lienholder is 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.

10.3 Declaration. For the purposes of this Article 10, the following terms shall have the following meanings:

(a) "Casualty Event" means any event causing damage or destruction of all or part of the Condominium.

(b) "Total Destruction" means damage or destruction to the Condominium 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.

10.4 Costs. As soon as practicable after a Casualty Event, the Board shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of the Condominium or that portion of the Condominium that was damaged or destroyed.

10.5 Partial Damage. Unless there occurs an Event of Non-Repair, any Partial Damage to the Condominium 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, if any, shall be assessed as a Common Expense. If the Unit Owners vote not to rebuild any Unit pursuant to Section 10.2(iii), the unrepaired Unit's Fractional Interest shall be automatically reallocated to the remaining Units.

10.6 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 promptly 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 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 Condominium 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 to any weighted voting of the Declarant) agree in writing, including all owners of Units that will not be rebuilt, the Condominium 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 the other Condominium 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 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.

#### 10.7 Insurance Trustee; Proceeds.

(a) Except for loss or damage representing less than one percent (1%) of the value of the Condominium, as estimated by the Board, all insurance proceeds payable on account of damage or loss to the Condominium shall be adjusted with the Association and shall be paid to any bank in Arizona that is selected as a trustee by the Board as the "Insurance Trustee". The Insurance Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of policies, or for the failure to collect any insurance proceeds. Insurance proceeds payable on account of loss or damage that equals or is less than one percent (1%) of the value of the Condominium shall be payable to and used by the Association to repair the loss or damage in accordance with the provisions of this Article 10.

(b) 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; (ii) proceeds, if any, on account of damage to Units shall be held for the Owner of damaged 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 a Unit, the share of the Owner shall be held in trust for the First Mortgagee and the Owner as their interests may appear.

10.8 Manner of Disbursement. The proceeds from assessments and insurance received by the Insurance Trustee shall be disbursed in the following manner.

(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 a Unit affects in any way the Common Elements or any other Owner's Unit, 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 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 such architect acting for and on behalf of the Association stating all information.



10.9 Information. 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.

10.10 Termination. If it is determined in the event of Total Destruction that none of the Buildings shall be repaired or reconstructed because of damage or destruction, this Condominium shall be terminated, and all of the Owners and all of the mortgagees and lienholders of record of all of the Units appoint the Board, and each of the members of the Board, as their attorney-in-fact for the purpose of executing, acknowledging, and recording a declaration withdrawing the Condominium from the Condominium.

10.11 Non-Repair. If portions of the Condominium are not repaired 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 compatible with the remainder of the Condominium;

(b) The insurance proceeds attributable to Units and undivided percentage interests that are not rebuilt shall be distributed in proration to their undivided percentage interests to the Owners of those 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 proration to the Common Elements interest of all the Units.

## ARTICLE 11

### GENERAL PROVISIONS

11.1 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 and restrictions now or hereafter imposed by the provisions of this Declaration, or the other Condominium Documents. Subject to the limitations established in Article XII below with respect to the negotiation, mediation, or arbitration of any disputes, the right to enforce all covenants and restrictions includes the right to bring an action at law, in equity, or both. Failure of the Association or any Owner to enforce any covenant and reservation in this Declaration or in the other Condominium 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 Condominium, or any part of the Condominium, may incorporate the covenants and restrictions by reference to this Declaration; however, each and every covenant and restriction 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 and restrictions may be restrained by any court of competent jurisdiction and damages awarded against the violators. 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, fines, rent, costs, attorney fees, or an other amount due, to obtain specific performance, or to obtain injunctive relief may be maintained without the foreclosing, waiving, releasing, or satisfying the liens created under this Declaration. Each Owner of a Unit, by accepting a deed for that Unit (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner," specifically acknowledges that any award of monetary damages made in favor of the Owner against the Association for the Association's failure to comply with, or accurately comply with, the provisions of A.R.S. § 33-1806 will be satisfied from and limited solely to: (i) the proceeds available under any policy of insurance maintained by the Association for errors or omissions of this type; or (ii) the amount available in any liability reserve account that may be established by the Association and funded through specific liability reserves collected as part of the annual assessments.

## 11.2 Approval of Litigation.

(a) Limits on Initiation of Litigation. Except for any legal proceedings initiated or joined by the Association either to: (i) enforce the use restrictions contained in this Declaration through injunctive relief or otherwise; (ii) enforce the Association Rules or the Architectural Committee Rules through injunctive relief or otherwise; (iii) collect any unpaid Assessments, enforce or foreclose any lien in favor of the Association, or determine the priority of any lien for Assessments; (iv) make a claim against a vendor of the Association or supplier of goods and services to the Association; (v) defend claims filed against the Association (and to assert counterclaims or cross-claims in connection with a defense); or (vi) make a claim for a breach of fiduciary duty by any one or more of the Board of Directors or officers of the Association, the Association will not incur any expenses (including, without limitation, attorney fees and costs) to initiate legal proceedings or to join as a plaintiff in legal proceedings without the prior approval of the Members.

(b) Member Approval of Association Litigation. The Members' approval to initiate legal proceedings or join as a plaintiff in legal proceedings must be given at any duly called regular or special meeting of the Members by an affirmative vote (in person or by proxy) of more than 50% of the total number of eligible votes of the Members, excluding the vote of any Owner who would be a defendant in the proceedings.

(c) Prior Approval Disclosures. Prior to any vote of the Members, the Association will provide full disclosure of the nature of the claim, the name and professional background of the attorney proposed to be retained by the Association to pursue the matter, a description of the relationship (if any) between the attorney and the Board of Directors (or any member of the Board of Directors) or the property management company, a description of the fee arrangement with the attorney, an estimate of the fees and costs necessary to pursue the claim, and the estimated time necessary to complete the proceedings.

(d) Litigation Fund. The costs of any legal proceedings initiated or joined by the Association that are not included in the above exceptions (i.e., Section 11.2(a)(i) through (vi) above) must be financed by the Association with monies that are specifically collected for that purpose, and the Association will not borrow money, use reserve funds, use general funds, or use monies collected for other Association obligations (such as working capital requirements) to initiate or join any legal proceeding.

(e) Written Notification to Prospective Purchasers and Acknowledgment. In connection with the sale of the Owner's Unit, each Owner must provide all prospective purchasers of the Owner's Unit with (i) a written description of all legal proceedings initiated or joined by the Association for which a special litigation fund has been established, and (ii) a copy of any written notice received by the Owner from the Association regarding the litigation. Prior to the closing of a sale of an Owner's Unit, the Owner selling the Unit shall provide to the Association an Acknowledgment, executed by the purchaser, acknowledging receipt of the information required under this Section. 11.2(e).

(f) Exceptions for Certain Board Actions. These limitations on the commencement of litigation do not preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to, among other things: (i) enforce the Condominium Documents including the imposition of fines; (ii) comply with the Condominium Documents or any statutes or regulations related to the operation of the Association, Common Area, or the Areas of Association Responsibility; (iii) amend the Condominium Documents in a manner and for the purposes described in this Declaration; (iv) grant easements or convey Common Area in a manner and for purposes described in this Declaration; or (v) perform the obligations of the Association as provided in this Declaration.

(g) Legal Proceedings. As used in this Section 11.2, the term "legal proceedings" includes administration, arbitration, and judicial actions including any matters covered by the alternative dispute resolution procedures described in Article XII below.



11.3 Severability. Invalidation of any one or any portion of these covenants and restrictions by judgment or court order shall not affect the validity of any other provisions of the Condominium Documents, which shall remain in full force and effect.

11.4 Term. The covenants 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 ten (10) years for so long as the Units continue to be used for Single Family Residential Uses or unless terminated under Article 13.

11.5 Amendment.

(a) Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under § 33-1220 of the Act, by the Association under § 33-1206 or § 33-1216(D) of the Act, or by certain Unit Owners under § 33-1218(B), § 33-1222, § 33-1223, or § 33-1228(B) of the Condominium during the first twenty (20) year term of this Declaration 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 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 (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 the purpose or, in the absence of designation, by the President of the Association. In addition to and notwithstanding the foregoing, any amendment to the uniform rate of assessments established under Section 6.3 above shall require the prior written approval of sixty-seven percent (67%) or more of the holders of First Mortgages on the Units.

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

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

(d) During the period of Declarant Control, the Declarant shall have the right to amend the Declaration, including the Plat, to: (i) to exercise any Development Right or Special Declarant Right; or (ii) comply with the Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; or (iii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; or (iv) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

11.6 Government Financing. If the financing of any Institutional Guarantor is applicable to the Condominium, any amendment to the Declaration made by the Declarant pursuant to Section 11.5 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 Condominium

Units and Common Elements with maintenance as provided in this Declaration and the other Condominium Documents. 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 symbol "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" inserted, and once with the word "or" inserted, in the place of 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 required under the rules applicable to any Institutional Guarantors, any notice permitted or required to be delivered 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 copy of the notice has been deposited in the United States mail, postage prepaid, addressed to each person at the address given by such person to the Association for the purpose of service of such notice. 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. This address may be changed from time to time by notice in writing received by the Association. If an Owner fails to provide the Association with an address for purposes of receiving notices, the address of any Unit owned by the Owner may be used in giving the notice.

11.9 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 Condominium or the Association will be deemed to have accepted these limitations, and no contrary provision of any management agreement will be enforceable.

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

11.11 Declarant's Right to Use Similar Name. The Association irrevocably consents to the use by any other profit or nonprofit corporation that 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 entity) in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Association.

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

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

11.14 Survival of Liability. The termination of membership in the Association shall not relieve or release any former Member from any liability or obligation incurred under 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 the covenants and obligations incident to the membership.

11.15 Waiver. The waiver of or failure to enforce any breach or violation of the Condominium Documents shall not be deemed a waiver or abandonment of any provision of the Condominium Documents or a waiver of the right to enforce any subsequent breach or violation of the Condominium Documents. The foregoing shall apply regardless of whether any person affected by the Condominium Documents (or having the right to enforce the Condominium Documents) has or had knowledge of the breach or violation.

11.16 Attorney Fees. Without limiting the power and authority of the Association to incur and assess attorney fees as part of the creation or enforcement of any assessment, in the event an action is instituted to enforce any of the provisions contained in the Condominium Documents, the party prevailing in any action shall be entitled to recover from the other party all reasonable attorneys' fees and court costs. In the event the Association is the prevailing party in the action, the amount of attorney fees and court costs may be deemed all or part of a special assessment against the Unit and Owner involved in the action.

11.17 Notice of Proximity to Phoenix Sky Harbor International Airport and City of Scottsdale Airport.

(a) Each Owner, by accepting a deed to a Unit, or by otherwise acquiring title to a Unit, acknowledges (for such Owner and the Owner's successors and assigns) that: (i) the Condominium is in close proximity to the City of Scottsdale Airport flight path and is located approximately twelve (12) miles from the City of Scottsdale Airport (the "Airport"), which is currently located generally between Frank Lloyd Wright Boulevard on the north, Pima Road on the east, Thunderbird Road on the south, and Scottsdale Road on the west and, as of the date hereof, the Airport is operated as a general aviation reliever/commercial service airport for Scottsdale and North Phoenix, used generally for single engine and twin engine airplanes, corporate jets, helicopters and scheduled service turbo prop and jet aircraft; (ii) the Condominium may lie within existing or future flight patterns of Phoenix Sky Harbor International Airport ("Sky Harbor"), which is a large hub commercial service airport serving Maricopa County and is the largest airport in the State of Arizona and, as of the date hereof, the aircraft fleet mix includes single-engine, twin-engine, corporate jets, helicopters and scheduled service utilizing turbo prop, jet planes and all other commercial aircraft, including the Boeing 747, along with various military fixed and rotary aircraft utilize the field, including the Arizona Air National Guard, who is located on the field and utilizes KC 135 aircraft; (iii) aircraft taking off from and landing at the Airport and Sky Harbor may fly over the Condominium and adjacent properties at altitudes which will vary with meteorological conditions, aircraft type, aircraft performance, pilot proficiency and governmental restrictions and requirements; (iv) Sky Harbor and the Airport are open twenty-four (24) hours each day, so takeoffs and landings may occur at any hour of the day or night; (v) flights over the Condominium or adjacent properties by aircraft taking off from or landing at the Airport and Sky Harbor may generate noise, the volume, pitch, amount and frequency of occurrence of which will vary depending on a number of factors, including, without limitation, the altitudes at which the aircraft fly, wind direction and other meteorological conditions and aircraft number and type, and may be affected by future changes in Airport and Sky Harbor use and activity; and (vi) such Owner (for such Owner, the Owner's successors and assigns) hereby accepts and assumes any and all risks, burdens and inconvenience caused by or associated with the Airport and Sky Harbor and their operations (including, without limitation, noise caused by or associated with aircraft flying over the Condominium and adjacent properties), and agrees not to assert or make and claim against the Declarant, the Association, the Board of Directors and any director, officer, employee, agent, representative or contractor of any of them.

## ARTICLE 12

### CLAIMS AND DISPUTE RESOLUTION/LEGAL ACTIONS

12.1 Dispute Resolution Agreement. All Bound ADR Parties, as identified and defined below, agree to encourage the amicable resolution of claims, grievances, controversies, disagreements, or disputes involving the



Condominium or the Condominium Documents in order to avoid or limit wherever possible the emotional and financial costs of litigation. Accordingly, each Bound ADR Party covenants and agrees that all Covered Claims, as defined below, between one or more Bound ADR Party must be resolved using the alternative dispute resolution procedures set forth below in this Declaration and the Bylaws in lieu of filing a lawsuit or initiating administrative proceedings. As used in the Condominium Documents, the term "Bound ADR Parties" means the Association, Board, Declarant, any affiliate of Declarant, any property manager or association manager for the Condominium, all Owners, any tenant of an Owner, any family member residing in the Owner's Unit, and any person not subject to this Declaration who voluntarily agrees to be subject to the dispute resolution procedures described below. Unless they otherwise agree, Mortgagees and Institutional Guarantors are not Bound ADR Parties. As used in the Condominium Documents, the term "Covered Claims" means all claims, grievances, controversies, disagreements, or disputes that arise in whole or part out of: (i) the interpretation, application, or enforcement of the Declaration or the other Condominium Documents; (ii) any alleged violation of the Condominium Documents by any of the Bound ADR Parties; (iii) the authority of the Association or the Board to take or not take any action under the Condominium Documents; (iv) the failure of the Declarant or the Association or the Board to properly conduct elections, give adequate notice of meetings, properly conduct meetings, allow inspection of books and records, or establish adequate warranty and reserve funds; (v) the performance or non-performance by any of the Bound ADR Parties of any of their respective obligations or responsibilities under the Condominium Documents to or on behalf of any other Bound ADR Party; (vi) any and all matters related in any manner to the design or construction of any of the Units within the Condominium (other than matters of aesthetic judgment by the Architectural Committee or the Board, all of which are not subject to further review under the alternative dispute resolution procedures or separate legal action); or (vii) any alleged violation or defect with respect to the maintenance or construction of the Common Area or any improvements or landscaping on the Common Area. The term "Covered Claims", however, specifically does not include any Exempt Claims of the type described below. The term "Alleged Defects" means only those Covered Claims described in subsections (vi) and (vii) above.

12.2 Exempt Claims. The following claims, grievances, controversies, disagreements, and disputes (each an "Exempt Claim" and, collectively, the "Exempt Claims") are exempt from the alternative dispute resolution provisions described in this Declaration:

(a) Collection of Assessments. Any action taken by the Association against any Bound ADR Party to enforce the collection of any Assessments, to enforce or foreclose any lien in favor of the Association, or to determine the priority of any lien for Assessments;

(b) Specific Actions. Any claim, grievance, controversy, disagreement, or dispute that primarily involves:

(i) Title to any Unit or Common Area;

(ii) A challenge to a property taxation or condemnation proceeding;

(iii) The eviction of a tenant from a Unit;

(iv) The breach of fiduciary duty by any one or more of the Board of Directors or officers of the Association;

(v) The rights of any Mortgagee or Institutional Guarantor;

(vi) An employment matter between the Association and any employee of the Association; or

(vii) The invalidation of any provision of the Declaration or any of the covenants and restrictions contained in the Condominium Documents.



(c) Injunctive Relief. Any suit by the Association to obtain a temporary or permanent restraining order or equivalent emergency equitable relief (together with any other ancillary relief as the court may deem necessary) in order to maintain the then-current status of the Condominium and preserve the Association's ability to enforce the architectural control provisions of the Condominium Documents and the use restrictions contained in this Declaration;

(d) Owner Actions. Any suit solely between Owners (that does not include as a party the Association, or Declarant) seeking redress on any Covered Claim that would constitute a cause of action under federal law or the laws of the State of Arizona regardless of the existence of the Condominium Documents;

(e) Separate Written Contracts. Any action arising out of any separate written contract between Owners, between the Declarant and any Owner, or between Declarant and that would constitute a cause of action under the laws of the State of Arizona regardless of the existence of the Condominium Documents; and

(f) Not Bound Parties. Any suit in which less than all parties are Bound ADR Parties (unless the parties that are not Bound ADR Parties voluntarily agree to be subject to the alternative dispute resolution procedures established in this Declaration and the Bylaws).

Any Bound ADR Party having an Exempt Claim may submit it to the alternative dispute resolution procedures established in this Declaration and the Bylaws, but there is no obligation to do so and no obligation of any other Bound ADR Party to agree to have the Exempt Claim submitted to the alternative dispute resolution procedures. The submission of an Exempt Claim involving the Association or Declarant to the alternative dispute resolution procedures below requires the approval of the Association or Declarant, as applicable.

12.3 Mandatory Resolution Procedures. All Covered Claims must be resolved solely by using the following procedures:

(a) Notice. Any Bound ADR Party having a Covered Claim (each a "Claimant") against any one or more Bound ADR Party (each a "Respondent") must notify each Respondent in writing of the Covered Claim (the "Covered Claim Notice"), stating plainly and concisely:

(i) The nature of the claim, including date, time, location, persons involved, and Respondent's role in the Covered Claim;

(ii) The basis of the Covered Claim (i.e., the provisions of the Condominium Documents or other authority out of which the Covered Claim arises);

(iii) The resolution or relief sought by Claimant against Respondent; and

(iv) The agreement of Claimant to meet personally with Respondent at a mutually agreeable time and place to discuss ways to resolve the Covered Claim.

If the Respondent to the Covered Claim includes the Declarant or its officers, directors, incorporators, members, contractors, subcontractors, or employees, Declarant will be given a period of fifteen (15) days after receipt of the Covered Claim Notice to enter the Condominium and inspect, test, and, perhaps, repair the alleged violation or defect in the sole discretion of Declarant. This right to inspect and test is irrevocable and may not be waived or otherwise terminated except by a written instrument signed by Declarant.

(b) Conciliation and Negotiation.

(i) Each Claimant and Respondent (collectively, the "Claim Parties" and, singularly, a "Claim Party") must make reasonable efforts to meet personally and agree to confer for the purpose of resolving the Covered Claim by good faith and confidential negotiations.

(ii) Upon receipt of a written request from any of the Claim Parties, accompanied by a copy of the Covered Claim Notice, the Board may appoint a representative to assist the Claim Parties in resolving the dispute by negotiation if, in its discretion, the Board believes its efforts will be beneficial to the Claim Parties or to the welfare of the Condominium.

(c) Mediation.

(i) If the Claim Parties do not resolve the Covered Claim through negotiation within ten (10) days of the date of the Covered Claim Notice (or within any other period as may be agreed upon by the Claim Parties) ("Termination of Negotiations"), Claimant will have thirty (30) additional days within which to submit the Covered Claim to mediation by an independent mediation service designated by the Association or, in absence of a mediation service designated by the Association or in the case of a reasonable objection by Claimant, any dispute resolution center or other independent agency providing similar services in the Maricopa County, Arizona area upon which the Claim Parties may mutually agree.

(ii) If Claimant does not submit on a timely basis the Covered Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant will be deemed to have waived the Covered Claim, and Respondent will be released and discharged from any and all liability to Claimant arising out of the Covered Claim; however, Claimant's failure to submit the Covered Claim for mediation will not release or discharge Respondent from any liability to any person that is not a Claim Party to the foregoing proceedings.

(iii) Within ten (10) days of the selection of the mediator, each of the Claim Parties will submit to the mediator and each other a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator will have the right to schedule a pre-mediation conference, and all Claim Parties must attend unless otherwise agreed. The mediation will commence within ten (10) days following submittal of the memoranda to the mediator and will conclude within fifteen (15) days from the commencement of the mediation unless the Claim Parties mutually agree to extend the mediation period. The mediation will be held in Maricopa County or any other place that is mutually acceptable to the Claim Parties.

(iv) The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Covered Claim. The mediator is authorized to conduct joint and separate meetings with the Claim Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator also may obtain expert advice concerning technical aspects of the dispute, so long as the Claim Parties agree to obtain and assume the expenses of obtaining the expert advice. The mediator does not have the authority to impose a settlement.

(v) The expenses of witnesses will be paid by the Claim Party producing the witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, will be borne equally by the Claim Parties unless agreed to otherwise. Each Claim Party will bear their own attorney fees and costs in connection with the mediation.

(vi) If the Claim Parties do not settle the Covered Claim within thirty (30) days after submission of the matter to the mediation process, or within any period of time as determined

reasonable or appropriate by the mediator and the Claim Parties, the mediator will issue a notice or termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice must set forth when and where the Claim Parties met, the nature of the Claim Parties' impasse, and the date that the mediation was terminated. At the option of the Claim Parties, the Termination of Mediation notice may establish, as to matters or items that have been agreed to by the Claim Parties, any undisputed factual findings or agreed resolutions.

(vii) Within five (5) days of the mediator's issuance of the Termination of Mediation, each of the Claim Parties must make a written offer of settlement in an effort to resolve the Covered Claim, the Claimant will make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent will make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Covered Claim Notice will constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent will be deemed to have made a "zero", "take nothing", or "do nothing" Settlement Offer.

(viii) All mediation discussions are privileged and confidential in the same manner as described in A.R.S. § 12-2238. Witnesses, Natural Persons who are not Claim Parties (or one (1) authorized representative of a Claim Party that is not a natural person), the Claim Parties Attorneys or one (1) authorized representative of the Claim Parties are the only persons allowed to attend the mediation conference without the consent of all Claim Parties.

(d) Final and Binding Arbitration. If the Claim Parties do not agree in writing to accept either the Settlement Demand or the Settlement Offer or otherwise fail to resolve the Covered Claim within fifteen (15) days of the Termination of Mediation, the Claimant will have thirty (30) additional days to submit the Covered Claim to arbitration in accordance with the Arbitration Rules described in the Bylaws. If the Claimant fails to submit on a timely basis the Covered Claim to arbitration, the Covered Claim will be deemed waived, and Respondent will be released and discharged from any and all liability to Claimant arising out of the Covered Claim; however, Claimant's failure to submit the Covered Claim for arbitration will not release or discharge Respondent from any liability to any person that is not a Claim Party to the foregoing proceedings. Except as provided below, an arbitration award issued by the arbitrator (the "Arbitration Award") will be final, binding, and unappealable, and a judgment may be entered upon the Arbitration Award in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Arizona.

(e) Limited Right of Appeal. An Arbitration Award may be: (i) vacated by a court (or a court may decline to confirm an award and enter judgment on the award) only in those cases described in A.R.S. § 12-1512.A.1 through A.4; or (ii) modified or corrected by a court only in those cases described in A.R.S. § 12-1513.A.

(f) Limitation on Arbitration Award. An arbitrator of a Covered Claim will have no power to grant any relief that cannot be granted by a court, and any monetary award made by the arbitrator will be for actual and compensatory damages only and not exemplary, punitive, or consequential damages.

#### 12.4 Allocation of Costs of Resolving Claims.

(a) Costs for Negotiation and Mediation. Each Claim Party will bear its own costs incurred prior to and during the negotiation and mediation proceedings described in subsections 7.11(a), (b), and (c) above, including the fees of its attorney or other representative. Each Claim Party will share equally all costs of the mediator and, if and to the extent required, will pay this respective share of the costs in advance of the mediation as a condition to their continuation of the prosecution or defense of the Covered Claim.

(b) Costs for Arbitration. Each Claim Party will bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation and will share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise

provided below. If, and to the extent required, each Claim Party will pay their respective share of the costs in advance of the arbitration as a condition to their continuation of the prosecution or defense of the Covered Claim.

(c) Association Advance. If any Owner that is a Claim Party refuses to pay in advance the cost of mediation or arbitration in any Covered Claim involving the Association, the Association may advance the cost and the amount so advanced will be deemed to be an assessment against the applicable Owner and the Owner's Unit.

(d) Award of Costs. If the arbitration panel enters any Arbitration Award that is equal to or more favorable to Claimant than Claimant's Settlement Demand, Claimant's Post Mediation Costs will be added to the Arbitration Award, and all Post Mediation Costs will be borne equally by all Respondents. If the arbitration panel enters any Arbitration Award that is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant, Respondent's Post Mediation Costs will be subtracted from the Arbitration Award, and all Post Mediation Costs will be borne by all the Claimants. The arbitration panel will be the sole judge as to whether or not the Arbitration Award is more or less favorable than the Settlement Demand or Settlement Offer, as applicable.

12.5 Enforcement of Resolution. This agreement of the Bound ADR Parties to negotiate, mediate, and arbitrate all Covered Claims is specifically enforceable under the applicable arbitration laws of the State of Arizona. After resolution of any Covered Claim through negotiation, mediation, or arbitration in accordance with the provisions outlined above, if any Bound ADR Party fails to abide by the terms of any agreement or Arbitration Award, any other Bound ADR Party may file suit or initiate administrative proceedings to enforce the agreement or arbitration award without the need to again comply with the procedures set forth above. In this case, the Bound ADR Party taking action to enforce the agreement or Arbitration Award is entitled to recover from the non-complying Bound ADR Party (or if more than one non-complying Bound ADR Party, from all non-complying Bound ADR Parties pro rata) all costs incurred in enforcing the agreement or Arbitration Award, including, with limitation, attorney fees, and court costs.

12.6 Alleged Defects. If any Owner or the Association desires or intends to bring a claim of any sort against the Declarant or its affiliates or contractors for an Alleged Defect, the following provisions will apply to provide full and fair notice of the existence of the Alleged Defect and an opportunity to repair or correct the Alleged Defect without costly and time-consuming litigation.

(a) Notice of Alleged Defect. If any Owner or the Association discovers an Alleged Defect, the discovering party (referred to as a "Defect Claimant") will give written notice to the Declarant of the Alleged Defect and, if known, the repair or remedy sought by the Defect Claimant.

(b) Right to Enter. Within a reasonable time after the receipt by Declarant of written notice of the Alleged Defect (or Declarant's independent discovery of a possible Alleged Defect), Declarant will have the right to enter the Condominium and any affected Units or Common Area to inspect, test, and, if deemed necessary or advisable by the Declarant in its sole discretion, cause the repair or correction of the Alleged Defect. All tests, inspections, and applicable repairs may be made by Declarant or its agents or independent contractors (including contractors and subcontractors) but can be commenced only after reasonable written notice by the Declarant to the Defect Claimant and must be made only during normal business hours.

(c) Declarant Discretion. In performing the tests, inspections, or repairs, as applicable, Declarant will be entitled to utilize methods or take actions that it deems appropriate or necessary, and Declarant's sole obligation with respect to the Defect Claimant will be to restore the affected area as close as reasonably possible to its condition prior to the testings, investigations, or repairs.

(d) No Extension of Warranties. The existence of this right to notice and an opportunity to inspect and/or cure will not be deemed to impose any obligation on the Declarant to test, inspect, or repair any Alleged Defect or to establish or extend any applicable warranty of any builder, developer, or seller



(including Declarant) that may be applicable to the Unit or Common Area. Notwithstanding Section 12.8 below, the provisions of this Section 12.6 may not be modified, amended, waived, or terminated in any manner until the expiration of each of the following periods of time: (i) any period of time that Declarant or its affiliates or contractors may remain liable or responsible for the Alleged Defect or any resulting injury or damage from the Alleged Defect, without the prior and express written consent of Declarant given in a recorded instrument; (ii) twenty (20) years from the sale of the first Unit to an Owner other than Declarant.

12.7 Annual Inspection. Declarant shall retain West Coast Properties, LLC, or such other independent third-party inspection company acceptable to Declarant ("Inspector") to perform an annual inspection of each Building of the Condominium on an annual basis during the first two (2) years after the Town of Fountain Hills has issued a certificate of occupancy with respect to each Building. After Declarant, at Declarant's sole cost and expense, obtains the first two (2) annual reports, the Association shall retain the Inspector to prepare an annual report for each Building for no less than the next eight (8) years. Each annual inspection of each Building will result in the annual report containing a written summary specifying the condition of each Building and any defects or deficiencies discovered in any Building excluding ordinary wear and tear and including deferred maintenance items. Declarant shall provide a written copy of the first two (2) annual reports to the Association. Thereafter, the Association shall provide written copies of each annual report to the Declarant for a period no less than eight (8) additional years. If any annual report shows a defect or deficiency in a Building, Declarant, at Declarant's sole option, may enter that Building to cause the repair or correction of the defect or deficiency, provided, however, that the Declarant shall not be required or obligated to repair or correct ordinary wear and tear and deferred maintenance items.

12.8 Amendments to Article XII. The alternative dispute resolution procedures established in Article XII of this Declaration may not be modified, amended, terminated, or waived in any manner without Declarant's prior and express written consent, as evidenced by a recorded instrument, for so long as Declarant owns at least one Unit within the Condominium. After Declarant ceases to own at least one Unit within the Condominium, the alternative dispute resolution procedures of Article XII may be modified, amended, or terminated in accordance with the procedures established in the Condominium Documents; however, to the extent any Covered Claim still involves the Declarant, the Declarant can elect for the Covered Claim to be governed by the alternative dispute resolution procedures previously contained in the Condominium Documents (as though not modified, amended, or terminated). Nothing contained in this Section 12.8 is intended to shorten, modify, or amend the provisions of Section 12.6 with respect to the notice and opportunity to inspect and/or cure an Alleged Defect.

12.9 Conflicts. Notwithstanding anything to the contrary in this Declaration, if there is a conflict between this Article and any other provisions of the Condominium Documents, this Article shall control.

## ARTICLE 13

### RIGHTS AND DUTIES OF FIRST MORTGAGEE

13.1 First Mortgagee Protections. Notwithstanding any other provisions of this Declaration or any other Condominium Documents, the following provisions shall apply to and benefit each holder of a First Mortgage upon a 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 and restrictions, except as provided in this Declaration; and

(b) At the time any First Mortgagee becomes the record Owner of a Unit, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration and the Condominium Documents, including, but not limited to, the obligation to pay for 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 Unit upon which the First Mortgage is held, Institutional Guarantors and Eligible Mortgage Holder, 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 (and borrower on the applicable First Mortgage) of any obligation under the Condominium 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 Condominium or any 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 Condominium. Notwithstanding any other provisions of this Declaration, any termination of the legal status of the Condominium for reasons other than the substantial destruction or condemnation of the Condominium shall not be effective unless approved by two-thirds (2/3) or more of the Eligible Mortgage Holders.

13.4 Approval Required for Amendment to 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:

- (a) Voting rights;
- (b) Assessments, assessment liens, or subordination of assessment liens;
- (c) Reserves for maintenance, repair, and replacement of Common Elements;
- (d) Insurance of the Association or fidelity bonds;
- (e) Responsibility for the maintenance and repairs of the Common Elements;
- (f) Expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of real property to or from the Condominium ;
- (g) Boundaries of any Unit sold to an Owner (other than those Units owned by Declarant);
- (h) Reallocation of interests in the Common Elements or the rights to the use of the Common Elements;
- (i) Convertibility of Units into Common Elements or Common Elements into Units;
- (j) Leasing of Units;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer the Owner's Unit;

(l) A decision by the Association to establish self management when professional management had been required previously by the Eligible Mortgage Holders;

(m) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;

(n) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; and

(o) Any provisions that expressly benefit 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 provisions 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 be permitted to designate a representative to attend all such meetings. If and when the Condominium consists of fifty (50) or more Units, any Institutional Guarantor may make a request in writing to the Association that the financial statements for the preceding fiscal year be audited at no cost to the requesting Institutional Guarantor. If the Condominium consists of less than fifty (50) Units, the Institutional Guarantor may 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 Unit shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Unit.

13.7 Conflicting Provisions. Except as set forth in the following sentence, in the event of any conflict or inconsistency between the provisions of this Article 13 and any other provision of the Condominium Documents, the provisions of this Article 13 shall prevail. 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 provision of the Condominium 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 Condominium, 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.

## ARTICLE 14

### TERMINATION

14.1 Termination of Condominium. Except in the case of 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 ratifications 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 all ratifications shall be recorded in the official records of the County Recorder in Maricopa County, Arizona and shall be effective only upon recordation.

14.2 Sale. A termination agreement may provide that all the Common Elements and Condominium Units shall be sold following termination. If provision is made for 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 interest in the Units. Thereafter, the Association shall have all powers necessary and appropriate to effect 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 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 Unit Owner and his successors in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his Unit. During the period of that occupancy, each Unit Owner and his successors in interest remain liable for all assessments and other obligations imposed on Unit Owners by the Act or the 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 vests in the Unit Owners at termination as tenants in common in proration 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 successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his 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 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 and Fractional Interests in the Common Elements immediately before the termination, as determined by an independent appraiser selected by the Association (the "Appraiser"). The determination of the Appraiser shall be distributed to the 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 Elements is destroyed to the extent that an appraisal of the fair market value of the Unit or Limited Common Elements cannot be made, the interests of all Unit Owners shall be their respective Common Elements interest immediately before the termination.

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

## ARTICLE 15

### FIREROCK COUNTRY CLUB

15.1 FireRock Community Association, Inc. The Condominium is a part of a planned residential community known as "FireRock." The Condominium is subject to the terms and conditions of the Covenants, Conditions, Restrictions and Easements for FireRock Country Club dated June 18, 1999, and recorded at Document



No. 99-0587829 on June 21, 1999 in the Office of the Recorder of Maricopa County, Arizona, as amended by that certain First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for FireRock Country Club dated as of August 13, 1999, and recorded at Document No. 99-0777121 on August 17, 1999 in the Office of the Recorder of Maricopa County, Arizona (the "FireRock Declaration"). The Articles of Incorporation, Bylaws and Rules of the Association are subject to and subordinate to the Bylaws, Articles of Incorporation and Rules of the FireRock Association. Restrictions, regulations, approvals and consents and all other provisions of the FireRock Declaration shall be in addition to any consents required under the terms of this Declaration.

Dated as of April 22, 2003.

"Declarant"

Sydney FireRock Developments, L.L.C., an Arizona limited liability company

By:

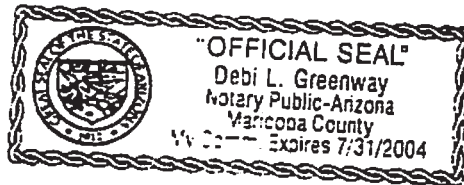
J. Craig Waddell  
J. Craig Waddell  
Its Managing Member

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 22 day of April, 2003, by J. CRAIG Waddell, the MAN. MEMBER of Sydney FireRock Developments, L.L.C., an Arizona limited liability company, being authorized so to do for the purposes therein contained.

Debi L. Greenway  
Notary Public

My Commission Expires:  
7/31/04



**EXHIBIT "A"**

**TO**

**DECLARATION OF CONDOMINIUM AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
FIREROCK PARCEL "C", A CONDOMINIUM**

**(Meets and Bound Legal Description of Entire Property)**