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CONDOMINIUM DECLARATION

FOR

FOOTHILLS PARKWAY OFFICE
CONDOMINIUM

**CONDOMINIUM DECLARATION
FOR
FOOTHILLS PARKWAY OFFICE CONDOMINIUM**

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CONDOMINIUM DECLARATION FOR FOOTHILLS PARKWAY OFFICE CONDOMINIUM

This Condominium Declaration for Foothills Parkway Office Condominium, is made this 9th day of January, 2008, by 29A Office Condos, LLC, an Arizona limited liability company.

ARTICLE 1

DEFINITIONS

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

1.1 "Allocated Interests" means the undivided interests in the Common Elements, the Common Expenses Liability and the votes in the Association allocated to each Unit by this Declaration.

1.2 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

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

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

1.5 "Association" means Foothills Parkway Office Condominium Association, an Arizona nonprofit corporation, its successors and assigns, formed or to be formed by the Declarant to administer, exercise, and enforce the Condominium Documents and to exercise the rights, powers and duties set forth in the Condominium Documents and the Condominium Act.

1.6 "Board of Directors" means the Board of Directors of the Association.

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

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

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

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

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

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

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

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

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

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

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

(g) any separate real property taxes levied against the Common Elements or against the Condominium as a whole instead of against the Units;

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

(i) amounts payable by the Unit Owners or the Association for the maintenance, repair or replacement of streets and drives pursuant to Recorded easements burdening or benefiting the Condominium;

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

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

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

1.14 "Condominium" means the Parcel, together with the Building and all other Improvements located thereon.

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

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

1.17 "Declarant" means 29A Office Condos, LLC, an Arizona limited liability company, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

1.18 "Declaration" means this Condominium Declaration for Foothills Parkway Office Condominium, as amended from time to time.

1.19 "Development Rights" means any right or combination of rights to do any of the following:

- (a) Add real estate to the Condominium;
- (b) Create easements, Units, Common Elements or Limited Common Elements within the Condominium;
- (c) Subdivide Units, convert Units into Common Elements or convert Common Elements into Units;
- (d) Withdraw real estate from the Condominium;

(e) Make the Condominium part of a larger condominium or planned community;

(f) Amend the Declaration during the Period of Declarant Control to comply with the Condominium Act or any other applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner;

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

1.20 "Enforcement Assessment" means an assessment levied pursuant to Section 7.4.

1.21 "First Mortgage" means any mortgage or deed of trust on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

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

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

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

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

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

1.27 "Master Association" means The Foothills Community Association, an Arizona nonprofit corporation, formed to administer and enforce the Master Association Documents and to exercise the rights, powers and duties under the Master Association Documents and all other governing documents promulgated by the Master Association.

1.28 "Master Association Documents" means the Master Declaration, the Articles of Incorporation, Bylaws, Design Guidelines and any policies, rules and regulations and all other

governing documents promulgated by the Master Association, as each may be amended from time to time.

1.29 "Master Declaration" means the Declaration of Covenants, Conditions and Restrictions for The Foothills recorded on April 10, 1987 at Document No. 87-218943; First Amendment to Declaration of Covenants, Conditions and Restrictions for The Foothills recorded on June 4, 1987 at Document No. 87-352729; Second Amendment to Declaration of Covenants, Conditions and Restriction for The Foothills recorded July 31, 1987 at Document No. 87-767440; Ratification of Tract Declaration and Second Amendment to Declaration of Covenants, Conditions and Restrictions for The Foothills recorded January 15, 1988 at Document No. 88-012019; Third Amendment to Declaration of Covenants, Conditions and Restrictions for The Foothills recorded October 11, 1988 at Document No. 88-501865; Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for The Foothills recorded March 17, 1989 at Document No. 89-121258; Supplementary Declaration of Covenants, Conditions and Restrictions for The Foothills recorded March 17, 1989 at Document No. 89-121259, in the records of the County Recorder of Maricopa County, Arizona, all of which as may be amended from time to time.

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

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

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

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

1.34 "Party Wall" means a wall separating a Unit from another Unit or from a Utility Room.

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

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

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

1.38 "Plat" means the Amended Condominium Plat for Foothills Parkway Office Condominium, recorded in Book 966, Page 16, in the official records of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

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

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

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

1.42 "Shared Conduits" means the conduits installed in each Unit pursuant to Subsection 5.2.1 and to which each Owner of a Unit in a Building shall have access for "pulling cable" from the Utility Room in the Building to the Owner's Unit through the space of other Units in the same Building or the Common Elements.

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

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

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

1.45 "Unit Owner" or "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Unit. Unit Owner shall not include Persons having an interest in

a Unit merely as security for the performance of an obligation, or a lessee or tenant of a Unit. Unit Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, et seq. Unit Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Units the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the Trustor shall be deemed to be the Unit Owner. In the case of Units the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit shall be deemed to be the Unit Owner.

1.46 “Utility Room” means a portion of the Common Elements designated on the Plat as a Utility Room.

ARTICLE 2

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

2.1 Submission of Property. The Declarant is the owner of fee title to the Parcel. Declarant hereby submits the Parcel to the provisions of the Condominium Act for the purpose of creating a condominium in accordance with the provisions of the Condominium Act and hereby declares that the Parcel shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. Pursuant to the Act, the Declarant hereby divides the Parcel into the Units described in Section 2.5 and shown on the Plat and Common Elements. Declarant hereby designates each Unit for separate ownership or occupancy. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Parcel and shall be binding upon and inure to the benefit of the Declarant and all Unit Owners, Lessees and Occupants and all other Persons having or acquiring any right, title or interest in the Condominium or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Condominium, or any part thereof, agrees to abide by all of the provisions of the Condominium Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Condominium Documents, or as to the compliance of any of the provisions of the Condominium Documents with public laws, ordinances and regulations applicable thereto.

2.2 Name of Condominium. The name of the Condominium created by this Declaration is Foothills Parkway Office Condominium.

2.3 Name of Association. The name of the Association is Foothills Parkway Office Condominium Association.

2.4 Identifying Numbers of Units. The Identifying Numbers of the Units are shown on the Plat.

2.5 Unit Boundaries.

2.5.1 The boundaries of each Unit are as follows:

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

(b) The lower horizontal boundary is the top of the concrete floor slab of the Building; and

(c) The upper horizontal boundary is the bottom of the roof trusses;

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

2.5.3 The location and dimensions of the Perimeter Building Walls and Party Walls as shown on the Plat are based on architectural drawings and are approximate. The actual location and dimensions of the Perimeter Building Walls and Party Walls may vary from the location and dimensions of the Perimeter Building Walls and Party Walls as shown on the Plat. The actual physical location and dimensions of the Perimeter Building Walls and Party Walls, as initially constructed, or as reconstructed following the damage or destruction of such walls, shall be considered the location and dimensions of the Perimeter Building Walls and Party Walls for purposes of this Declaration (except for the calculation of the percentage of undivided interests of each Unit in the Common Expenses and in the Common Elements pursuant to Section 2.6 and the allocation of votes in the Association pursuant to Section 2.7) regardless of any variances from the location and dimensions of the Perimeter Building Walls and Party Walls as shown on the Plat.

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

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

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

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

2.8 Allocation of Limited Common Elements.

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

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

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

(c) Each Utility Room is allocated to the Unit or Units within the Building containing the Utility Room;

(d) Each Unit is allocated the Parking Space listed opposite the Identifying Number of the Unit on Exhibit C attached to this Declaration;

2.8.2 The right to the exclusive use and possession of the Limited Common Elements is subject to the rights granted to the Declarant or the Association by the Condominium Documents. All Limited Common Elements must be used in accordance with the Declaration and the Rules.

2.8.3 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 reallocation is made and shall state the manner in which the Limited Common Element is to be reallocated. Before Recording the amendment, the amendment shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and Record the amendment.

2.8.4 The Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements (including, but not limited to, Parking Spaces) 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. The Association and all Owners acknowledge and agree the Declarant shall have the right to charge a fee for making an allocation of a Parking Space as a Limited Common Element and that all such fees shall be the sole property of the Declarant and neither the Association nor any Owner shall have any right or claim to such fees. The rights granted to the Declarant by this Section shall expire on the date that is one (1) year after the date on which the Declarant conveys the last Unit to a Purchaser.

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

2.10 Subdivision of Units. A Unit may be subdivided into two or more Units. A Unit Owner desiring to subdivide his Unit shall prepare an amendment to the Declaration and the Plat which identifies the Unit involved, specifies the boundaries of each Unit created and the dimensions, assigns an Identifying Number to each Unit created and allocates the allocated interest in the Common Elements, in the Common Expenses and in the votes in the Association formerly allocated

to the subdivided Unit to the new Units in a reasonable manner. The amendment shall be executed by the Owner of the Unit to be subdivided and, before Recording, 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 shall specifically state the reasons for disapproval, the Association shall execute its approval and Record the amendment.

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

2.12 Master Declaration. In addition to the Declaration, all Units are subject to the Master Declaration, including, without limitation, all restrictions and approvals provided for and assessments payable thereunder. Each Owner shall be a "Member" (as defined in the Master Declaration) of the Master Association pursuant to and in accordance with the terms of the Master Declaration and shall remain a Member of the Master Association for so long as such Person continues to be an Owner. Each Owner of a Unit shall be obligated to pay assessments and other charges payable to the Master Association in accordance with the Master Association Documents. All Assessments and other charges due to the Association under this Declaration shall be in addition to the assessments and other charges payable to the Master Association pursuant to the Master Association Documents. All consents or approvals of the Board, Declarant, Association or otherwise required by this Declaration shall be in addition to any requirements, consents or approvals required under the terms of the Master Association Documents. In the event of any conflict or inconsistency between any term or provision of this Declaration and the Master Declaration, the term or provision in the Master Declaration shall control.

2.13 Master Association. The Association and the rights and duties of its Owners, Members, Lessees and Occupants shall be subject to, subordinate to and consistent with the provisions of the Master Association Documents.

ARTICLE 3

EASEMENTS AND DEVELOPMENT RIGHTS

3.1 Utility Easements.

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

3.1.2 The Owners of adjoining Units shall both have the right and a non-exclusive easement to use the portion of the Party Wall within the boundaries of the adjoining Unit for the installation, maintenance, repair and replacement of chutes, conduit, wires, pipes, cables, lines and other fixtures which provide utility services to such Owner's Unit; provided however, that an Owner shall not penetrate the wallboard or drywall on the interior surface of the Party Wall of the adjoining Unit. In addition, the Owners of all Units within the same Building shall each have the right and a non-exclusive easement to use the inside of the Perimeter Building Walls of the Building in which the Unit is located for the installation, maintenance, repair and replacement of chutes, conduit, wires, pipes, cables, lines and other fixtures which provide utility services to such Owner's Unit; provided however, that an Owner shall not penetrate the wallboard or drywall on the interior surface of the Perimeter Building Wall located within the boundaries of any other Unit. Each Owner shall be required to install, at the Owner's expense, as part of the original build-out of the Owner's Unit, two (2) three-inch (3") diameter conduits, located in or adjacent to the roof trusses and beams, running the length of the Unit, aligned with the Utility Room for the Building in which the Unit is located and connecting with the similar conduit in any adjacent Unit or the Utility Room. The Owners of all Units within the same Building shall each have the right and a non-exclusive easement to use these Shared Conduits for running data and communication cable lines from the Utility Room to the Owner's Unit.

3.1.3 Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, telephone, data, or fiber optic lines and cables, or other utility or service lines may be installed or located on the Common Elements except (a) as originally installed by the Declarant, (b) as approved by the Board or allowed by the Rules or (c) in the conduits installed by the Declarant. The easements in this Section shall in no way affect any other Recorded easements on the Common Elements.

3.1.4 There is hereby created in favor of each Owner an easement upon, over and across, the roof of the Building within which an Owner's Unit is located for the installation, replacement, repair and/or maintenance of roof-mounted equipment, air conditioning or heating fixtures, all of which may only be installed on or through the roof immediately over the Owner's Unit. If any Owner installs roof-mounted equipment or fixtures, the Owner shall be responsible for all costs of installation, repair, maintenance and replacement of such roof-mounted equipment or fixtures. There is further hereby created in favor of each Owner an easement upon, under, and through the concrete floor slab under the Owner's Unit for the Owner's installation, replacement, repair and/or maintenance of water, sewer, or other utility lines serving only the Owner's Unit.

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

3.3 Unit Owners' Easements of Enjoyment.

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

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

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

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

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

(e) The right of the Association to suspend the right of a Unit Owner, Lessee or Occupant to use the Common Elements for any period during which the Unit Owner, Lessee or Occupant is in violation of any provision of the Condominium Documents.

(f) The right of the Association to grant easements or licenses to Unit Owners, Lessees or Occupants to install, maintain, repair and replace signs located on the Common Elements as provided in Section 4.11.2.

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

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

3.4 Declarant's Rights and Easements.

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

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

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

3.4.4 Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Elements and the Units to erect and construct the Common Elements and the Units shown on the Plat and all other Improvements the

Declarant may deem appropriate and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.

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

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

3.4.7 To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights. Unless otherwise expressly provided in this Declaration, there are no limitations on the exercise of Development Rights or Special Declarant Rights, and there is no limit on the time when any Development Rights or Special Declarant Rights must be exercised.

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

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

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

3.6 Easements and Rights of the Association. The Common Elements and the Units shall be subject to an easement in favor of the Association and its agents, employees and contractors for the purpose of: (a) making emergency repairs to the Common Elements and those components of the Units the Association is obligated to maintain pursuant to this Declaration; (b) inspection, upkeep, maintenance, repair and replacement of the Common Elements and those components of the

Units which the Association is obligated to maintain pursuant to this Declaration; (c) exercising all rights and powers of the Association and discharging all duties and obligations of the Association; (d) inspection of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible; (e) correction of conditions (including, without limitation, broken or leaking water pipes, broken hot water heaters or obstructed sewer lines) in one or more Units or Limited Common Elements which have damaged or which, if left uncorrected, could damage, the Common Elements, the Limited Common Elements or other Units; and (f) inspection of the Units and the Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees and Occupants of the Unit. Except in case of emergency, the Association shall only enter a Unit at reasonable times and upon reasonable notice to the Unit Owner or, if the Unit is leased, to the Lessee. In the event of an emergency, the Association may enter a Unit without prior notice to the Unit Owner or the Lessee, but promptly following the Association's entry into the Unit, the Association shall notify the Unit Owner or the Lessee of the nature of the emergency condition which required entry without notice.

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

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

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

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

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

ARTICLE 4

USE AND OCCUPANCY RESTRICTIONS

4.1 Use of Units All Units shall be used and occupied exclusively for commercial offices and other commercial or retail uses which are permitted under the zoning classification applicable to the Condominium without the issuance of a special use permit or variance.

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

4.3 Improvements and Alterations.

4.3.1 Except as otherwise expressly provided in this Declaration, no Owner, Lessee or Occupant or any other Person other than the Association shall make any alterations or modifications to the Common Elements or the Perimeter Building Walls or construct or install any Improvement on or within the Common Elements or the Perimeter Building Walls without the prior written approval of the Board of Directors.

4.3.2 As stated in Section 5.2.1, the Declarant only intends to construct the shell of the Building. Each Owner is responsible for the construction of all interior partitions and walls, interior doors, interior plastering, drywall or other wall coverings, ceilings, lighting, floor coverings, electrical, telephone, cable television, data, communications, mechanical water and sewer connections and other utility connections, hardware and other interior improvements (the "Interior Improvements") desired by the Owner of the Unit. All Interior Improvements shall be constructed and installed in accordance with the Tenant Improvement Standards which will be a part of the Rules. After the termination of the Period of Declarant Control and so long as the Declarant owns any Unit, any amendment of the Tenant Improvement Standards must be approved in writing by the Declarant. After the initial installation of the Interior Improvements, any Owner, Lessee or Occupant may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Board of Directors, except that no Owner shall make any additions, alterations or improvements to the Perimeter Building Walls or any Party Wall without the prior written consent of the Board of Directors. A Owner shall be responsible for any damage to other Units or to the Common Elements which results from any such construction or installation of improvements within the Owner's Unit or any alterations or additions to such improvements. No Owner, Lessee or Occupant shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the following conditions are satisfied: (a) the Owner, Lessee or Occupant receives the prior written approval of the Board of Directors; (b) an architect or engineer, licensed in Arizona, certifies to the Association that such addition, alteration or improvement will not impair the structural integrity or the mechanical

systems of the Building or lessen the support of any portion of the Condominium; and (c) the Owner provides the Association with a copy of the building permit issued by the City of Phoenix for the addition, alteration or improvement, unless a building permit is not required under the applicable ordinances and codes of the City of Phoenix. All additions, alterations or improvements to a Unit must be performed by contractors licensed by the Arizona Registrar of Contractors. All construction, whether or not such construction must be approved by the Board of Directors, shall be subject to reasonable rules, regulations or guidelines established from time to time by the Board of Directors.

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

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

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

4.3.6 Proposed additions, alterations and improvements to a Unit or the Common Elements shall be made in compliance with all laws, rules, ordinances and regulations of all

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

4.3.7 The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 4.3 or any rules of the Association governing additions, alterations or improvements to the Units or the Common Elements. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Association nor any of their officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the Association and their respective directors, officers, agents and employees harmless for, from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Lessee or Occupant of the Owner's Unit.

4.3.8 If the Declarant or the Association designates a central location for the storage of laboratory collection boxes, then all laboratory collection boxes must be stored in the location designated by the Declarant or the Association. If the Declarant or the Association does not designate a central location for the storage of laboratory collection boxes, then storage areas for laboratory collection boxes may be installed on the exterior surface of the Perimeter Building Walls provided such storage areas are located behind pony walls constructed by the Owner in accordance with the standards and specifications approved by the Board of Directors.

4.4 Animals. No animals, birds, reptiles, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium, except for fish kept in aquariums and service animals for handicapped or disabled persons.

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

4.6 Motor Vehicles and Bicycles. Except for emergency repairs, no automobile, motorcycle, van, sport utility vehicle, truck, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No automobile, motorcycle, motorbike, van, sport utility vehicle, truck or other motor vehicle shall be parked upon any part of the Condominium, except in the Parking Spaces. Provided one of the Parking Spaces allocated to a Unit as a Limited Common Element or assigned to the Unit as a Reserved Parking Space pursuant to Section 6.7, is available the Unit Owners, Lessees and Occupants of a Unit must park their automobiles, motorcycles, motorbikes, vans, sport utility vehicles, trucks or other motor vehicles in the Parking Space allocated or assigned to their Unit. The Owners, Lessees and Occupants of a Unit and their guests and invitees may not at any one time use more Parking Spaces (including Parking Spaces allocated to the Unit as a Limited Common Element or assigned to the Unit as Reserved Parking Spaces pursuant to Section 6.7) than the Maximum Allowable Parking Spaces for such Unit. The Maximum Allowable Parking Spaces for each Unit shall be the product of the total number of Parking Spaces in the Condominium multiplied by the Unit's percentage of undivided interest in the Common Elements as set forth in Exhibit B attached to this Declaration, rounded to the nearest whole number.

4.7 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size and style, which are approved by the Board of Directors. The Board of Directors shall have the right to subscribe to a trash service for the use and benefit of the Association and all Unit Owners, and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Board of Directors shall have the right to require all Owners to place trash and garbage in containers located in areas designated by the Board of Directors. No incinerators shall be kept or maintained in any Unit. Hazardous waste and sharp objects shall not be placed in the trash containers, but must be disposed of separately by the Unit Owner or Lessee in accordance with all applicable laws and regulations.

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

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

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

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

4.11 Signs.

4.11.1 No signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the exterior of any Building or in the interior of a Unit if the signs would be visible from the exterior of the Building in which the Unit is located, or on any other portion of the Condominium without the prior written approval of the Board of Directors. The Board of Directors may permit signs identifying the Unit Owner, Lessee or Occupant of a Unit to be installed on the outside of the Building in which a Unit is located provided that the location size, color, style and appearance of the sign is acceptable to the Board of Directors, and the Board of Directors may permit such sign to be placed at any location on the outside of the Building that is acceptable to the Board of Directors. The Board of Directors may adopt criteria regarding the location, size, color, style and appearance of signs, and the methods of affixation to the Units, that may be placed or installed in the Condominium. Any change to the sign criteria initially adopted by the Board of Directors must be approved by Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated. In addition to the approval of the Board of Directors required by this Section, any sign must also comply with the ordinances of the City of Phoenix.

4.11.2 The Declarant, so long as the Declarant owns any Unit, and thereafter, the Board of Directors, shall have the power and authority to grant licenses or easements to Unit Owners, Lessees or Occupants for the installation, maintenance, repair or replacement of panels on the monument sign or signs located on the Common Elements for such consideration and upon such terms and conditions as the Board of Directors may determine to be reasonable and prudent.

4.11.3 An easement is hereby created and granted to the Association, the Declarant and the Unit Owners upon and over the Perimeter Building Walls for the installation, maintenance, repair and replacement of such signs as may be approved by the Board of Directors pursuant to this Section and such signs as the Declarant may install pursuant to the rights and easements granted to the Declarant by Section 3.4.

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

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

4.14 Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon

the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed without the prior written consent of the Board of Directors. The Board of Directors may establish a "Condominium Standard" window treatment plan to ensure uniformity that will be complied with by all Owners.

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

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

ARTICLE 5

MAINTENANCE OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall maintain, repair and replace all Common Elements, except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2. In addition, notwithstanding the fact that the ownership of the Units runs to the exterior of the Perimeter Building Walls as provided in Section 2.5.1., the Association shall maintain, repair and replace the Perimeter Building Walls, except for the doors and windows of the Perimeter Building Walls. The cost of all such maintenance, repairs and replacements made by the Association shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements.

5.2 Duties of Unit Owners.

5.2.1 The Declarant only intends to construct the shell of each Building. Each Owner shall construct all interior partitions and walls, interior doors, interior plastering, drywall or other wall coverings, ceilings, lighting, floor coverings, electrical, telephone, cable television, data, communications, mechanical, water and sewer connections, and other utility connections, hardware, and any other interior improvements desired by the Owner, and shall be responsible for all of the decorating within the Unit from time to time, including painting, wall coverings, floor coverings, window coverings and shades, and other interior decorating. Each Owner shall be responsible for the installation of insulation in the Party Wall or Party Walls separating the Owner's Unit from one or more other Units. In order to limit noise transference between Units, all Party Walls must be constructed to the bottom of the roof trusses and beams. All window coverings visible from the exterior of the Buildings shall be of neutral color or otherwise compatible with the exterior decor of the Buildings and shall be limited to window blinds complying with the standard established by the Board of Directors.

5.2.2 Each Unit Owner shall maintain, repair and replace, at his own expense, in a good, clean and sanitary condition the following portions of the Condominium: (a) the Owner's Unit, except for any portion of the Unit that is to be maintained, repaired or replaced by the Association pursuant to Section 5.1; (b) the Limited Common Elements allocated to the Owner's Unit pursuant to Subsections 2.8.1(a) and 2.8.1(b); (c) any signs installed on the outside of a Building by the Unit Owner with the permission of the Board of Directors as provided in Section 4.11; and (d) any panel installed by the Unit Owner on a monument sign which is part of the Common Elements pursuant to a license or easement granted to the Unit Owner by the Association pursuant to Section 4.11.

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

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

5.5 Sprinkler System. In accordance with the requirements of the City of Phoenix, each Building is equipped with a sprinkler system. The heads of the sprinkler system will intrude into the Units. All pipes, heads and other parts of the sprinkler system (whether located within or outside of a Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. Each Owner shall be responsible for the alteration of the sprinkler system that may be

required or necessary in connection with the construction of partition walls and other improvements within the Owner's Unit. All such alterations must be performed in accordance with all applicable building codes and other municipal ordinances and regulations. If an Owner, Lessee or Occupant or their Invitees causes the sprinkler system to be activated (except in the case of a fire) or damages or destroys any part of the sprinkler system, the Owner of the Unit shall be responsible for the cost of any repairs to the sprinkler system made by the Association and for all other losses or damages resulting from such actions. The Association will contract with a fire monitoring company to monitor such sprinkler system.

ARTICLE 6

THE ASSOCIATION

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

6.2 Directors and Officers.

6.2.1 During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners. The initial directors and officers of the Association shall be designated in the Articles, and such designation shall constitute the appointment of such persons by the Declarant. The initial directors and officers shall serve until their death, resignation or removal from office. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors, which must consist of at least five (5) members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association.

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

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

6.4 Identity of Members. Each Unit Owner shall be a member of the Association. The membership of the Association at all times shall consist exclusively of all the Unit Owners. Membership in the Association shall be mandatory. A Unit Owner shall automatically, upon becoming a Unit Owner, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Unit and may not be separately assigned, transferred or conveyed.

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

6.6 Utility Service and Trash Collection. The Association shall acquire and pay for the following: (a) water, sewer, natural gas, electrical and other utility service for the Common Elements; (b) water and sewer service for the Units; and (c) refuse and rubbish collection for the Common Elements and the Units.

6.7 Assignment of Reserve Parking Spaces. The Declarant and the Board of Directors shall have the power to assign one or more uncovered Parking Spaces to a Unit as Reserved Spaces for the exclusive use of the Owners, Lessees and Occupants of the Unit and their invitees. However, not more than 20% of the total uncovered Parking Spaces in the Condominium shall be assigned as reserved parking. In addition, the total number of uncovered Parking Spaces that may be assigned to a Unit as reserved parking shall not exceed the product of the total number of uncovered Parking Spaces in the Condominium multiplied by the Unit's percentage of undivided interest in the Common Elements as set forth in Exhibit B attached to this Declaration, rounded to the nearest whole number. The location of the uncovered Parking Spaces assigned as reserved parking to a particular Unit shall be determined by the Declarant or the Board of Directors, and the Declarant or the Board of Directors may relocate the uncovered Parking Spaces previously assigned as reserved parking to a particular Unit by giving written notice of the relocation to the Unit Owner and any Lessees of the Unit. In assigning uncovered Parking Spaces or in relocating uncovered Parking Spaces as reserved parking, the Declarant or the Board of Directors shall endeavor to assign to a Unit uncovered Parking Spaces which are in reasonable proximity to the Unit. So long as the Declarant owns any Unit, any action taken by the Board of Directors pursuant to this Section must be approved in writing by the Declarant.

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budget.

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

7.1.2 Within thirty days (30) after adoption of the proposed budget for a particular fiscal year of the Association, the Board of Directors shall provide a summary of the budget to all Unit Owners, and the Board of Directors shall set a date for a meeting of the Unit Owners to consider ratification of the budget not fewer than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting Owners of Units to which at least a majority of the votes in the Association are allocated reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. Within thirty (30) days after ratification of the budget by the Unit Owners, the Board of Directors shall send each Unit Owner a statement of the amount of the Common Expenses Assessment assessed against the Owner's Unit pursuant to Section 7.2.

7.2 Common Expense Assessment.

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

the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

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

7.2.3 Except as otherwise expressly provided in Section 6.6, Subsection 7.2.7 or elsewhere in this Declaration, all Common Expenses including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 7.2.1. The Common Expenses associated with the maintenance, repair and replacement of a Utility Room shall be assessed against the Units within the Building in which the Utility Room is located with each Unit's share of such Common Expenses being the percentage calculated by dividing the square footage of the Unit by the square footage of all Units within the Building.

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

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

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

7.2.7 All charges billed to the Association for electric service and for water and sewer service to the Units shall be assessed to the Units based as provided in Section 6.6.

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

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

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

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

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

7.5.2 The Association shall have a lien on each Unit for any Assessment levied against that Unit from the time the Assessment becomes due and for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments. The Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may be foreclosed in the same manner as a mortgage on real estate. Fees, charges, late charges, monetary penalties and interest charged pursuant to Section 33-1242, Paragraphs 10, 11 and 12 of the Arizona Revised Statutes, other than charges for late payment of Assessments, are not enforceable as Assessments under this Section 7.5. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment of the Assessment becomes due. The Association has a lien for fees, charges, late charges (other than charges for late payment of Assessments), monetary penalties or interest charged pursuant to Section 33-1242, Paragraphs 10, 11 and 12 of the Arizona Revised Statutes after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest

from a court of competent jurisdiction and the recording of that judgment in the records of the County Recorder of Maricopa County, Arizona, as otherwise provided by law. The Association's lien for monies other than for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may not be foreclosed and is effective only on conveyance of any interest in the Unit. The recording of this Declaration constitutes record notice and perfection of the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Association's lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments which are secured by the Association's lien.

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

7.5.4 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments, monetary penalties and all other fees and charges owed to the Association in any manner allowed by law including, but not limited to: (a) bringing an action at law against the Unit Owner personally obligated to pay the delinquent amounts and such action may be brought without waiving the Assessment Lien securing any such delinquent amounts; or (b) bringing an action to foreclose the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

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

7.7 Certificate of Payment. The Association upon written request shall furnish to a lienholder, Unit Owner or person designated by a Unit Owner a recordable statement setting forth

the amount of unpaid Assessments against his Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

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

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

7.10 Reserve Contribution.

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

7.10.2 No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which even a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.; or (f) the transfer or conveyance of a Unit by an Owner immediately following such Owner's acquisition of the Unit.

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

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

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

7.13 Reserves. The budget adopted by the Board of Directors shall include reasonable amounts as determined by the Board of Directors collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Elements, or any other purpose as determined by the Board of Directors. The reserves may be funded from the Reserve Contributions paid pursuant to Section 7.10, the Initial Working Fund payments made pursuant to Section 7.9, from the Common Expense Assessments or from any other revenues of the Association.

All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than the maintenance, repair or replacement of the Common Elements. After the termination of the Period of Declarant Control, the Board of Directors shall obtain a reserve study at least once every three years, which study shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage.

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

- (a) A policy of property insurance, insuring the Common Elements and the Perimeter Building Walls under a "special cause of loss" or "all risk" policy form with sprinkler leakage, debris removal

and water damage endorsements. Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of an Insurance Trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the insured property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. The replacement cost shall be reviewed annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

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

(c) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and, if the Association has any employees, a policy of employer's liability insurance with coverage limits determined by the Board of Directors, but not less than the limits required for excess coverage under the Umbrella Liability Policy.

(d) Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering all the directors and officers of the Association in such limits as the Board of Directors may determine from time to time.

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

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

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

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

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

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

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

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

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

8.1.2 If, at the time of a loss insured under an insurance policy purchased by the Association, the loss is also insured under an insurance policy purchased by a Unit Owner, the Association's policy shall provide primary coverage.

8.1.3 The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 8.1 in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any

deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

8.2 General Requirements All insurance provided for in this Article 8 shall be written under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Arizona with a financial strength rating of A:VII or better from M.A. Best Company and/or A+ or better from Standard & Poor's. All such policies shall provide for a minimum of thirty (30) days advance written notice to the Association prior to the cancellation or material change of any insurance coverage under the policy.

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

8.4 Insurance Obtained by Unit Owners. Each Unit Owner shall obtain (i) physical damage insurance on any additions, alterations, and improvements to the Unit Owner's Unit whether installed by such Unit Owner or any prior Unit Owner or whether originally in such Unit Owner's Unit; (ii) liability insurance covering such Unit Owner's liability arising out of the ownership, maintenance, use or operation of the Unit Owner's Unit, including liability arising out of the act of the Unit Owner's guest, invitee or tenant at a limit of not less than \$1,000,000 applicable to each occurrence. Each Unit Owner shall provide the Board of Directors with a certificate of insurance evidencing such insurance coverage at least ten (10) days prior to the conveyance of the Unit to the Unit Owner, and thereafter at least thirty (30) days prior to the expiration of any policy. Each Unit Owner shall promptly notify the Board of Directors of any change in the insurance coverage to be maintained by the Unit Owner pursuant to this Section.

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

8.6 Certificate of Insurance. An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under at deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until ten (10) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a Deed of Trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

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

coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association.

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

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

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

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

9.4 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and First Mortgagees. Insurance proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any First Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections

9.1 and 9.2, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged or destroyed Common Elements have been completely repaired or restored or the Condominium is terminated.

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

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

ARTICLE 10

EMINENT DOMAIN

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

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

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

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

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

ARTICLE 11

DISPUTE RESOLUTION

11.1 Defined Terms. As used in this Article 11, the following terms shall have the meaning set forth below:

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

(b) **"Declarant Party"** means: (i) the Declarant and its members, managers, officers and employees; (ii) the Person which signed the Plat if different from, but affiliated with, Declarant; (iii) any general contractors, subcontractors, material suppliers, labor suppliers, architects, engineers, surveyors, consultants or other Persons who furnished labor or services or supplied materials in connection with the initial design, development and/or construction of the Buildings and other Improvements in the Condominium or in connection with any addition, renovation, repair or reconstruction of the Buildings or other Improvements in the Condominium; or (iii) any employee or other representative of the Declarant who serves as a director or officer of the Association.

(c) **"Claim"** means: (i) any claim or cause of action by a Claimant against a Declarant Party arising out of or related in any way to an Alleged Defect (including, without limitation, any claim or cause of action for breach of express or implied warranties, strict

liability, negligence or consumer fraud) or that a Declarant Party was negligent in the planning, design, engineering, grading, construction or development of the Condominium; or (ii) any claim or cause of action against a Declarant Party arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

11.2 Agreement to Resolve Certain Disputes Without Litigation. The Association, all Unit Owners and all Declarant Parties agree that it is in the best interests of the Association, the Unit Owners and the Declarant Parties to encourage the amicable resolution of Claims and to resolve Claims without the emotional and financial costs of litigation. Therefore, the Association, all Unit Owners and all Declarant Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 11.

11.3 Notice of Claim. The Association or any Unit Owner who contends or alleges to have a Claim (a "Claimant") against any Declarant Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. If the Claim involves an Alleged Defect, the Claim Notice shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Unit Owner giving the Notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Section 12-2602B of the Arizona Revised Statutes. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the Claim. If the Claim is not resolved to the satisfaction of the Claimant within one hundred twenty (120) days after the Claim Notice is given to the Respondent, then the Claimant may proceed with submitting the Claim to mediation pursuant to Section 11.5.

11.4 Right to Enter, Inspect, Repair and/or Replace. Whether or not a Claim Notice has been given pursuant to Section 11.3, a Declarant Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Association or a Unit Owner and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing with respect to any Alleged Defect, and, if deemed necessary by the Declarant Party, to correct, repair and/or replace any Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. A Declarant Party who conducts any inspection or test shall promptly repair any damages to the Unit or Common Elements caused by such inspection or test. Nothing set forth in

this Section 11.4 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Declarant Party. In no event shall any statutes of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

11.5 Mediation. If the Parties do not resolve the Claim through negotiation within one hundred twenty (120) days after the Claim Notice is given to the Respondent, Claimant shall have sixty (60) additional days within which to submit the Claim to mediation by the American Arbitration Association (“AAA”) or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within the time period specified in this Section, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within sixty (60) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation Notice”). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

11.6 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 11.6. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may submit a Claim to binding arbitration without submitting the Claim to mediation or without completing the mediation process described in Section 11.5 if necessary to prevent the Claim from being barred by the statute of limitations. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. The Association, the Unit Owners and all Declarant Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 11.6. The Association, the Unit Owners and all Declarant Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Declarant Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association shall not submit the Claim to arbitration until the Association has given written notice of the Claim to all Members, which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Declarant Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Declarant Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of

such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Claimant submits the Claim to binding arbitration in accordance with this Section 11.6, the arbitration shall be conducted in accordance with the following rules:

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

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 11.6, the provisions of this Section 11.6 shall govern.

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 11.6 as the "Arbitrator".

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

(e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 11.6.(c).

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

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

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

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

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

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

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

11.8 Approval of Arbitration or Litigation. The Association shall not deliver a Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast more than sixty-seven percent (67%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association may not borrow money or use reserve funds to pay for any legal action or mediation or arbitration proceeding. In the event that the Association commences any legal action or arbitration proceeding involving a Claim relating to an Alleged Defect, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 11.6.

11.9 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 11.6. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

11.10 Federal Arbitration Act. Because many of the materials and products incorporated into the Condominium are manufactured in other states, the development and conveyance of the Units evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et. seq.) now in effect or as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

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

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND

CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF A UNIT OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 11 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE MARICOPA COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE 11 ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER IN THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THE RESPECTIVE SUCCESSORS AND ASSIGNS.

ARTICLE 12

GENERAL PROVISIONS

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

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

- (b) suspending a Unit Owner's right to vote;
- (c) suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit or its Limited Common Elements;
- (d) suspending any services provided by the Association to a Unit Owner or the Unit Owner's Unit if the Unit Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owed to the Association;
- (e) exercising self-help of taking action to abate any violation of the Condominium Documents in an emergency situation;
- (f) requiring a Unit Owner, at the Unit Owner's expense, to remove any structure or Improvement on such Owner's Unit in violation of this Declaration and to restore the Unit to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (g) without liability to any person, prohibiting any contractor, subcontractor, agent, employee or other invitee of a Unit Owner who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities of the Condominium;
- (h) towing vehicles which are parked in violation of this Declaration or the Rules; and
- (i) filing a suit at law or in equity to enjoin a violation of the Condominium Documents, to compel compliance with the Condominium Documents, to recover monetary penalties or money damages or to obtain such other relief as to which the Association may be entitled;
- (j) Recording a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being Recorded;

(iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents.

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

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

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

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

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

12.4 Termination of Condominium. Except in the case of a taking of all the Units by eminent domain, the Condominium may be terminated only by the agreement of Owners of Units holding at least eighty-five percent (85%) of the votes in the Association. An agreement to terminate the Condominium must be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed by the requisite number of Owners.

12.5 Amendment.

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

12.5.2 Except to the extent expressly permitted or required by the Condominium Act, an amendment to the Declaration shall not create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit, the allocated Interest of a Unit, or the use as to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners. Any amendment adopted during the Period of Declarant Control must be approved in writing by the Declarant. After the expiration of the Period of Declarant Control, no amendment to any provision of Article 11 or this Subsection 12.5.2 shall be effective in the absence of the unanimous consent of the Unit Owners. In addition, no amendment to any provision of Article 11 or this Subsection 12.5.2 shall be effective unless the amendment is approved in writing by the Declarant even if the Declarant no longer owns any Unit at the time of the amendment.

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

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

12.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 12.5.1 shall be signed by the President or Vice President of the Association and shall be Recorded. Any amendment made by the Declarant pursuant to Subsection 12.5.4 or the Condominium Act shall be executed by the Declarant and shall be Recorded.

12.6 Notices. All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Unit Owner. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the

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

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

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

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

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

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

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

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

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

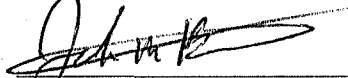
12.15 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words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

29A OFFICE CONDOS, LLC, an Arizona limited liability company

By: HB CAPITAL & INVESTMENTS, LLC, an Arizona limited liability company

Its: Member

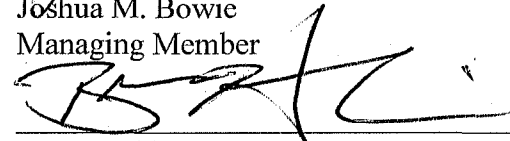
By:



Joshua M. Bowie

Its: Managing Member

By:



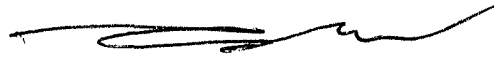
Ben Hawkins

Its: Managing Member

By: ENCORE PROPERTY DEVELOPMENT, LLC, an Arizona limited liability company

Its: Member

By:



Joshua Warden

Its: Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 9th day of January, 2008, by Joshua M. Bowie, a Managing Member of HB Capital & Investments, LLC, an Arizona limited liability company, a Member of 29A Office Condos, LLC, an Arizona limited liability company, on behalf of the company.

Justin Kolesar
Notary Public

My Commission Expires:
July 9, 2009



STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 9th day of January, 2008, by Ben Hawkins, a Managing Member of HB Capital & Investments, LLC, an Arizona limited liability company, a Member of 29A Office Condos, LLC, an Arizona limited liability company, on behalf of the company.

Justin Kolesar
Notary Public

My Commission Expires:
July 9, 2009



STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 9th day of January, 2008, by Joshua Warden, the Manager of 29A Office Condos, LLC, an Arizona limited liability company, on behalf of the company.

Justin Kolesar
Notary Public

My Commission Expires:
July 9, 2009



EXHIBIT A

**LEGAL DESCRIPTION OF
PROPERTY SUBMITTED TO CONDOMINIUM**

Lot 2, Foothills Parkway Office Complex, according to the plat recorded in Book 914, Page 25, in the records of the County Recorder of Maricopa County, Arizona.

EXHIBIT B

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

BUILDING	UNIT	SQUARE FOOTAGE	PERCENTAGE UNDIVIDED INTEREST	VOTES
B	102	1,103	4.33%	4
B	104	1,205	4.73%	5
B	106	946	3.72%	4
B	108	946	3.72%	4
B	110	946	3.72%	4
B	112	946	3.72%	4
B	114	1,205	4.73%	5
B	116	1,189	4.67%	5
C	118	1,103	4.33%	4
C	120	1,205	4.73%	5
C	122	946	3.72%	4
C	124	946	3.72%	4
C	126	946	3.72%	4
C	128	946	3.72%	4
C	130	1,205	4.73%	5
C	132	1,189	4.67%	5
D	134	1,103	4.33%	4
D	136	1,205	4.73%	5
D	138	946	3.72%	4
D	140	946	3.72%	4
D	142	946	3.72%	4
D	144	946	3.72%	4
D	146	1,205	4.73%	5
D	148	1,189	4.67%	5
	TOTAL	25,458	100.00%	105

EXHIBIT C
ALLOCATION OF COVERED PARKING SPACES

Unit	Parking Space(s) (As Shown on Plat)
B102	129
B014	128
B106	127
B108	126
B110	125
B112	124
B114	123
B116	122
C118	169
C120	170
C122	171
C124	172
C126	173
C128	174
C130	175
C132	176
D134	132
D136	133
D138	134
D140	135
D142	136
D144	137
D146	138
D148	139