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**CONDOMINIUM DECLARATION
FOR
ANDARE CONDOMINIUM**

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**CONDOMINIUM DECLARATION
FOR
ANDARE CONDOMINIUM**

This Condominium Declaration for Andare Condominium is made this 14th day of August, 2006, by MERITAGE HOMES OF ARIZONA, INC., an Arizona corporation, doing business as Monterey Homes.

**ARTICLE 1
DEFINITIONS**

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

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

1.2.1 **"Additional Property"** means the real property located in Maricopa County, Arizona, which is described on Exhibit "B" attached to this Declaration together with all buildings and other Improvements located thereon and all easements, rights and appurtenances belonging thereto.

1.2.2 **"Architectural Committee"** means the Architectural Committee established pursuant to Section 6.7 of this Declaration.

1.2.3 **"Articles"** means the Articles of Incorporation of the Association as amended from time to time.

1.2.4 **"Assessments"** means the Common Expense Assessments and Special Assessments levied and assessed against each Unit pursuant to Article 7 of this Declaration.

1.2.5 **"Assessment Lien"** means the lien granted to the Association by the Condominium Act to secure the payment of Assessments.

1.2.6 **"Association"** means Andare Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

1.2.7 **"Board of Directors" or "Board"** means the Board of Directors of the Association.

1.2.8 **"Buildings"** means the structures which are hereafter constructed on the Initial Property and the Additional Property to the extent such buildings are designated or shown as buildings on the Condominium Plat.

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

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

1.2.11 "**Common Expenses**" means expenditures made by or financial liabilities of the Association, together with any allocations for reserves.

1.2.12 "**Common Expense Assessment**" means the assessment levied against the Units pursuant to Section 7.2 of this Declaration.

1.2.13 "**Common Expense Liability**" means the liability for Common Expenses allocated to each Unit by this Declaration.

1.2.14 "**Condominium**" means the Initial Property and any part of the Additional Property which is annexed by the Declarant pursuant to Section 2.9 of this Declaration together with all Buildings and other Improvements located thereon.

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

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

1.2.17 "**Condominium Plat**" means collectively, the Final Plat for Andare Condominium which has been recorded in Book 857 of Maps, Page 31, records of Maricopa County, Arizona, and any replats, amendments, supplements and corrections thereto.

1.2.18 "**Declarant**" means Meritage Homes of Arizona, Inc., an Arizona corporation doing business as Monterey Homes, and its successors and any person or entity to whom such party may transfer any Special Declarant Rights. For purpose of Article 12 only, any contractor(s) which are affiliated with Declarant and which construct a Unit or any Common Elements shall also be deemed to be a Declarant.

1.2.19 "**Declaration**" means this Declaration, as amended from time to time.

1.2.20 "**Development Rights**" means any right or combination of rights reserved by or granted to the Declarant in this Declaration to do any of the following: (i) add real estate to the Condominium; (ii) create easements, licenses, Units, Common Elements or Limited Common Elements within the Condominium; (iii) subdivide and re-subdivide Units; (iv) convert Units into Common Elements or convert Common Elements into Units; (v) withdraw real estate from the Condominium and this Declaration; (vi) 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 provided such amendment does not adversely affect the rights of any Unit Owner; (vii) 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, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration; and (viii) make the Condominium part of a larger condominium.

1.2.21 **"Eligible Insurer or Guarantor"** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 11.1 of this Declaration.

1.2.22 **"Eligible Mortgage Holder"** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 11.1 of this Declaration.

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

1.2.24 **"First Mortgagee"** means the holder of any First Mortgage.

1.2.25 **"Improvement"** means any physical structure, fixture, facility or improvement existing or constructed, placed, erected or installed on the land included in the Condominium, including, but not limited to, Buildings, roadways, driveways, paving, fences, walls, recreational amenities, hedges, plants, trees, shrubs and landscaping of every type and kind.

1.2.26 **"Initial Property"** means the real property described on Exhibit "A" attached to this Declaration together with all Improvements situated thereon and all easements and rights appurtenant thereto.

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

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

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

1.2.30 **"Period of Declarant Control"** means the time period commencing on the date this Declaration is recorded with the County Recorder of Maricopa County, Arizona, and ending on the earlier of: (i) Ninety (90) days after the conveyance to Unit Owners other than a Declarant of seventy-five percent (75%) of the Units which may be created, including any Units which can be created upon the annexation of the Additional Property; or (ii) six (6) years after the date of the Recording of this Declaration.

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

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

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

1.2.34 "**Resident**" means any person, other than a Declarant and any Unit Owners, who resides in a Unit for a period of thirty (30) days or more in a twelve (12) month period, or who occupies or is in possession of a Unit, whether as a Lessee, guest or otherwise.

1.2.35 "**Residential Dwelling**" means the dwelling structure (including, without limitation, a garage) and all related Improvements located on or consisting of a Unit and which is intended for use and occupancy as a residence.

1.2.36 "**Rules**" means the rules and regulations adopted by the Association, as amended from time to time.

1.2.37 "**Single Family**" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Unit.

1.2.38 "**Special Declarant Rights**" means any right or combination of rights reserved by or granted to the Declarant in this Declaration or by the Condominium Act to do any of the following: (i) construct Improvements provided for in this Declaration or shown on the Condominium Plat; (ii) exercise any Development Right; (iii) maintain sales offices, management offices, models and signs advertising the Condominium; (iv) use easements through the Common Elements for the purpose of making Improvements within the Condominium; and (v) appoint and remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control.

1.2.39 "**Unit**" means the portions of the Condominium as described in this Declaration and as designated on the Condominium Plat as Units and which are designated for separate ownership and occupancy, the boundaries of which are more thoroughly described in Section 2.5 of this Declaration; provided, however, although the Condominium Plat depicts units on the Additional Property, no such units on the Additional Property shall be deemed to be Units within the Condominium unless and until the Additional Property on which such unit(s) is situated is annexed into the Condominium and made subject to this Declaration.

1.2.40 "**Unit 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 or an agreement for sale 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 any similar executory contract which is 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.

ARTICLE 2
SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION
OF PERCENTAGE INTERESTS, VOTES AND
COMMON EXPENSE LIABILITIES

2.1 **Creation of Condominium.** Declarant hereby submits the Initial Property and all easements, rights and appurtenances thereto, 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 Initial Property shall be held and conveyed subject to the terms, covenants, conditions and restrictions set forth in this Declaration. By acceptance of a deed or by acquiring any ownership interest in any portion of the Condominium, each Person, for himself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by the Condominium Documents and any amendments thereof. In addition, each such Person, by accepting a deed or by acquiring any ownership interest in any portion of the Condominium, thereby acknowledges that the Condominium Documents set forth a general scheme for the improvement and development of the Condominium and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in the Condominium Documents shall run with the land and be binding on all subsequent and future Unit Owners, grantees, purchasers, assignees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that the Condominium Documents shall be mutually beneficial, prohibitive and enforceable by the Association and the various subsequent and future Unit Owners. Declarant and its successors, assigns and grantees, covenant and agree that the Units and the membership in the Association and the other rights created by the Condominium Documents which are appurtenant to a Unit shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

2.2 **Name of Condominium.** The name of the Condominium created by this Declaration is Andare Condominium.

2.3 **Name of Association.** The name of the Association is Andare Condominium Association.

2.4 Identifying Numbers of Units. The identifying numbers of the Units within the Initial Property as of the date of this Declaration are Units 131 through 141, inclusive, as shown on the Condominium Plat. The identifying numbers of the units which are not currently Units but which are contemplated to be included within the Additional Property if and when annexed are Units 101 through 130, inclusive, as shown on the Condominium Plat. Provided all of the Additional Property is annexed into the Condominium, there shall be 41 Units, the identifying numbers of which shall be 101 through 141, inclusive.

2.5 Unit Boundaries and Description.

2.5.1 The lower horizontal boundary of each story or level of living space and the garage of each Unit is the top of the unfinished floors thereof.

2.5.2 The upper horizontal boundary of each story or level of living space and the garage of each Unit is the top of the drywall comprising the ceilings thereof.

2.5.3 The lateral boundaries of each Unit (including the stairway area and the garage serving a Unit) are the planes defined by the interior faces of the studs in the perimeter walls (that is, the side of the drywall facing away from the interior of the Unit), and the windows and doors of the Unit (and vertical planes coincident with the foregoing extended upwards and downwards to intersect the upper and lower horizontal boundaries).

2.5.4 Each Unit includes the garage that serves such Unit.

2.5.5 Each Unit includes the surfaces so described and the airspace contained within said boundaries. All furring, drywall, plaster, paneling, tiles, wallpaper, paint, carpet, finished flooring and any other materials constituting any part of the finished surfaces of the walls, floor and ceiling are part of the Unit (and therefore owned by and the responsibility of the Unit Owner of the Unit and not the Association, unless otherwise specifically provided in this Declaration). Each Unit shall also include the range, garbage disposal units, dishwasher, microwave, water heaters, elevator, if any, and other facilities, systems and other appliances lying within the boundaries of the Unit (and therefore all such items shall be owned by and the responsibility of the Unit Owner and not the Association, unless otherwise specifically provided by this Declaration).

2.5.6 Unless otherwise indicated, all airspace boundary lines intersect at approximately right angles.

2.5.7 The following are not part of a Unit but rather are Common Elements: structural parts of the Building of which the Unit is a part, bearing walls, columns, vertical supports, roofs, floors (and the spaces within such floors, including without limitation, ductwork therein), foundations, slabs, all waste, water and gas pipes, fire sprinkler system, tubing for delivery of insecticide, ducts, flues, chimneys, conduits, wires and other utility and installation lines wherever located, except the lines, outlets and traps thereof when located within the Unit. Air conditioning and heating units located on a Common Element or a Limited Common Element and not within a Unit are owned by and shall be maintained, repaired and replaced by the Unit Owner served by same. The existing physical boundaries of a Unit constructed or reconstructed in substantial accordance with the original plans thereof shall be conclusively

presumed to be its boundaries rather than the description expressed in any deed, plat, plan or declaration, regardless of settling or lateral movement of the Building, and regardless of minor variances between the boundaries as shown on same and those of the Unit.

2.5.8 Declarant reserves the right to relocate the boundaries of Units owned by 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 Section 33-1222 of the Condominium Act as it may be amended.

2.6 Description and Allocation of Common Element Interest. The Common Elements shall include all portions of the Condominium other than the Units, including, without limitation, the land upon which the Buildings are located, the structural part of Buildings, all bearing walls, columns, vertical supports, roofs, space above the upper horizontal boundaries of Units (except as provided below), floors, foundations, slabs, all waste, water and gas pipes, ducts, flues, chimneys, (except those within the boundaries of a Unit) conduits and wires, fire sprinkler system, swimming pool and pool equipment, recreation buildings, cabanas, landscaping (including, without limitation, lattice work attached to the outside of Buildings and any vines or plantings thereon), exterior lighting (including lights attached to the Buildings although the electricity for such lighting will be the responsibility of the applicable Unit Owner), fences, walkways, streets, private drives and driveways, guest parking spaces, utility meters, outdoor cooking facilities, patios and all other devices and premises not situated within a Unit; provided, however, air conditioning and heating units not located within a Unit but serving only the Unit are owned by the Unit Owner. The space between the top surface of the drywall comprising the ceiling of living space on a lower floor and the top of the unfinished floor of the next higher story of living space is not part of a Unit but rather is a part of the Common Elements. The undivided interests in the Common Elements shall be allocated equally among the Units. Accordingly, each Unit's fraction of undivided interests in the Common Elements shall initially be a 1/13 interest. If any part of the Additional Property is annexed by the Declarant pursuant to Section 2.9 of this Declaration, the undivided interests in the Common Elements shall be reallocated so that each Unit's fraction of undivided interests shall be a fraction, the numerator of which is 1 and the denominator of which is the total number of Units then existing and subject to this Declaration.

2.7 Allocation of Votes in the Association. The total votes in the Association shall be equal to the number of Units. The votes in the Association shall be allocated equally among all the Units with each Unit having one (1) vote. Notwithstanding the foregoing, during the Period of Declarant Control, Declarant shall be entitled to three (3) votes for each Unit owned by Declarant.

2.8 Allocation of Limited Common Elements.

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

- (i) Any entryways, doorsteps, patios, decks, stoops and porches and any other fixtures and facilities designed to exclusively serve or benefit a single Unit, if

and to the extent located outside the boundary of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(ii) Any chute, flue, pipe, duct, wire, conduit or other fixtures (including, but not limited to, gas, cable television, water and electric pipes, lines or meters) which lie outside the designated boundaries of a Unit and which serve only the Unit is a Limited Common Element allocated solely to the Unit.

(iii) The front door of a Unit and the garage door of a Unit are each a Limited Common Element allocated solely to that Unit.

(iv) The mailbox designated with the corresponding Unit number.

(v) Space within the Common Elements of a size and location adequate to install, operate and maintain air conditioning and heating units and appurtenant facilities, said areas to be as originally designed, designated and installed by or on behalf of Declarant or as subsequently approved by the Board of Directors. The air conditioning and heating units and appurtenant facilities shall be owned and maintained by the Unit Owner.

(vi) Any utility meter or submeter serving only the Unit, as originally designed, designated and installed by or on behalf of Declarant and as may thereafter be modified with the approval of the Architectural Committee (with any utility meter serving more than one Unit being a part of the Common Elements).

(vii) Any light(s) attached to a Building shall be for the exclusive use of the Units in that Building.

2.8.2 A Limited Common Element may be reallocated by an amendment to this Declaration made in accordance with the provisions of Section 33-1218(B) of the Condominium Act.

2.8.3 The Board of Directors shall have the right, without a vote of the Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Condominium Plat if required by the Condominium Act.

2.9 Expansion and Contraction of the Condominium.

2.9.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the Condominium created by this Declaration, without the consent of the Association or any Unit Owner, by annexing and submitting to this Declaration all or any portion of the Additional Property. The Declarant shall exercise its right to expand the Condominium by executing and Recording an amendment to this Declaration and/or a Declaration of Annexation containing the following: (i) a legal description or identification of the portion of the Additional Property being annexed; (ii) the number of Units being added by the annexation and the Identifying Number assigned to each new Unit; (iii) a description of the Common Elements and

the Limited Common Elements created and, in the case of Limited Common Elements, a designation of the Unit to which each Limited Common Element is allocated; (iv) a reallocation to each Unit of a fraction of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association; (v) a description of any Special Declarant Rights or Development Rights other than those described in this Declaration reserved by the Declarant with respect to the Additional Property being annexed. This option to expand the Condominium shall expire six (6) years from the date of the Recording of this Declaration.

2.9.2 Unless otherwise provided in the amendment or declaration adding Additional Property, the effective date of the annexation and the date for reallocating to each Unit a fraction of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association shall be the date on which the amendment or declaration annexing additional Units is Recorded. An amendment or declaration annexing all or any portion of the Additional Property may divide the Additional Property being annexed into separate phases and may provide for different effective dates for each phase.

2.9.3 The Additional Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or the boundaries thereof. The Additional Property submitted to the Condominium need not be contiguous, and the exercise of the option of Declarant to annex any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property. There are no limitations on the locations or dimensions of Improvements to be located on the Additional Property. No assurances are made as to what, if any, further Improvements will be made by Declarant on any portion of the Additional Property. Improvements to any Additional Property must be consistent with the Improvements to the Initial Property in terms of quality of construction.

2.9.4 The Additional Property, when and if added to the Condominium, shall be subject to the use restrictions contained in this Declaration and shall be subject in all respects to the Condominium Documents.

2.9.5 Declarant makes no assurances as to the exact number of Units which shall be added to the Condominium by annexation of all or any portion of the Additional Property, but the number of Units added by any such annexations shall not exceed 31.

2.9.6 All taxes and other governmental assessments relating to all or any portion of the Additional Property annexed into the Condominium covering any period prior to the time when such portion of the Additional Property is annexed in accordance with this Section shall be the responsibility of and shall be paid for by the Declarant.

2.9.7 Declarant may de-annex any portion of the Additional Property previously annexed into the Condominium, provided that Declarant is the sole owner of that portion of the Additional Property which Declarant seeks to de-annex, and provided, further, that (a) an amending instrument or notice of deletion or de-annexation is Recorded in the same manner as the applicable amendment to this Declaration which previously annexed the Additional Property which Declarant seeks to de-annex; (b) Declarant has not exercised any Association vote with respect to any portion of the Additional Property which Declarant seeks to de-annex; (c)

assessments have not yet commenced with respect to any portion of the Additional Property which Declarant seeks to de-annex; (d) close of escrow has not occurred for the sale of any Unit in the Additional Property which Declarant seeks to de-annex; and (e) the Association has not made any expenditures or incurred any obligations which pertain solely to any portion of such Additional Property which Declarant seeks to de-annex.

2.10 As-Built Conditions. Various engineering and architectural plans pertaining to the Condominium, including, but not limited to, the Condominium Plat, subdivision maps, grading plans, plot plans, improvement plans and building plans (collectively the "Plans"), contain dimensions regarding certain aspects of the Common Elements, the Units and other parts of the Condominium. By accepting a deed to a Unit, each Unit Owner shall be deemed to have acknowledged and agreed that (a) if there is a discrepancy between the Plans and the actual as-built conditions of any Unit, Residential Dwelling, Common Element or any other Improvement within the Condominium, the as-built conditions will control and be deemed to be accepted as-is by the Unit Owner; (b) the usable or buildable area, location and configuration of the Units, Common Elements and any other Improvements located within the Condominium may deviate from the Plans or from any other display or configuration related thereto; (c) the location, size, height and composition of all walls and fences to be constructed on or as part of a Unit or adjacent thereto shall be determined by Declarant in its sole and absolute discretion. Despite the Plans or any other materials that may exist, Declarant shall be deemed to have made no representations, warranties or assurances with respect to any such matters or with respect to the size, height, location or composition of any wall or fence to be constructed on or adjacent to any Units; and (d) each Unit Owner waives the right to make any demands of or claims against Declarant as a result of any discrepancies between the Plans and any actual as-built conditions of any Unit.

2.11 Allocation of Common Expense Liabilities. The Common Expenses shall be allocated equally among all Units. As Additional Property is annexed by Declarant pursuant to Section 2.9 of this Declaration, the responsibility for Common Expenses shall be reallocated so that Common Expenses are allocated equally among all Units, including those Units added by such annexation.

ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS

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

3.2 Easements for Ingress and Egress. There is hereby created easements for ingress and egress for pedestrian traffic over, through and across streets, driveways, sidewalks,

paths, walks and lanes that from time to time may exist upon the Common Elements. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes provided that such easements shall be subject to all other restrictions and provisions contained in this Declaration, and provided further 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 Residents and their guests, families, tenants and invitees and in favor of Declarant and the owners and occupants of the Additional Property and their guests, families, tenants and invitees, whether or not the Additional Property has been subjected to this Declaration.

3.3 Unit Owners' Easements of Enjoyment.

3.3.1 Every Unit Owner 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:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Elements to the extent consistent with applicable laws including, without limitation, the right to suspend or deny access to certain recreational Common Elements by any Unit Owner (including any Lessee or Resident of such Unit Owner's Unit) who fails to timely pay any Assessments or who otherwise is in breach of any covenants, restrictions or obligations under this Declaration;

(ii) 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, but in no event, without the vote or written assent of those Unit Owners representing at least eighty percent (80%) of the votes in the Association and of Declarant during the Period of Declarant Control and, in all events, subject to a Unit Owner's easement for ingress and egress if access to such Unit Owner's Residential Dwelling is through the Common Elements to be so conveyed or mortgaged.

(iii) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Sections 3.4 and 3.5 of this Declaration;

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

3.3.2 If a Unit is leased or rented, the Lessee and the members of his family residing with the Lessee shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease (except that the Unit Owner will have the right to use the Common Elements to the extent reasonably necessary to inspect such Unit Owner's Unit, to cause

maintenance and repairs to be performed to such Unit, and/or to determine whether the Lessee is in compliance with the applicable lease). If and to the extent permitted by the applicable lease or other agreement between the Unit Owner and the Lessee, the Unit Owner may park a Vehicle in the Unit's garage and/or store other personal property in such garage or elsewhere in such Unit (subject to the rules, regulations, restrictions and other provisions in this Declaration, the Rules or the other Condominium Documents), and such Unit Owner shall have the right to use the Common Elements to the extent reasonably necessary to have access to and to store or remove any such items.

3.3.3 The guests and invitees of a Unit Owner, Lessee or Resident entitled to use the Common Elements pursuant to Subsection 3.3.1 of this Declaration may use the Common Elements provided they are accompanied by a Member, Lessee or Resident entitled to use the Common Elements pursuant to Subsection 3.3.1 or 3.3.2 of this Declaration.

3.3.4 A Unit Owner's right and 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, transfer or encumbrance of any Unit, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

3.3.5 Any lease by a Unit Owner of a Unit shall be in writing and shall expressly state that the lease is subject to the requirements of this Declaration, the Association's Articles and Bylaws, the Condominium Plat and all Rules promulgated by the Board of Directors, and that all such tenants will comply with all requirements of the foregoing. Within ten (10) days after the execution of such lease, but in no event later than the date the Lessee under such lease takes occupancy of the Unit, the Unit Owner shall provide the Board and/or the Association's manager with written notice setting forth the following information: the number of the Unit subject to the lease, the name of the Unit Owner, the Unit Owner's mailing address outside of the Property for notices and invoices, the Unit Owner's telephone number for emergency and other contacts, the name of the Lessee, and the Lessee's telephone number for emergency and other contacts.

3.4 Declarant's Rights and Easements for Sales Purposes.

3.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Condominium and to maintain advertising signs on the Common Elements while Declarant is marketing Units in the Condominium. Declarant reserves the right to place models and sales offices in any Units owned by Declarant and on any portion of the Common Elements in such number, of such size and in such locations as Declarant deems appropriate.

3.4.2 Declarant may from time to time relocate models, sales offices and management offices to different locations within the Condominium. Upon the relocation of a model, management office or sales office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom.

3.4.3 So long as Declarant is marketing Units in the Condominium, Declarant shall have the right to restrict the use of the parking spaces within the Condominium. Such right shall include reserving such spaces for use by prospective Unit purchasers, employees of the Declarant and others engaged in sales, maintenance, construction or management activities.

3.4.4 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. 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.

3.5 Declarant's Development Rights and Easements.

3.5.1 Declarant shall have the right and an easement on and over the Condominium to construct the Common Elements and the Units shown on the Condominium Plat and all other Improvements the Declarant may deem necessary, 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.

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

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

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

3.5.5 Declarant reserves the right to exercise any Development Rights and Special Declarant Rights and to exercise the rights of the Declarant as provided for in this Declaration and to subdivide Units pursuant to A.R.S. Section 33-1223, relocate boundaries between adjoining Units pursuant to A.R.S. Section 33-1222, and to convert Units into Common Elements and Common Elements into Units subject to any further restrictions set forth in this Declaration, the Condominium Act and by applicable City of Phoenix zoning ordinances.

3.5.6 Declarant shall have the right to create additional Units, Common Elements and Limited Common Elements within the Condominium.

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

3.5.8 In the event of any conflict or inconsistency between this Section 3.5 and any other provision of the Condominium Documents, this Section 3.5 shall control and prevail over such other provisions.

3.6 Declarant's Use of Recreational Facilities. So long as Declarant is marketing Units for sale, Declarant shall have the right to the exclusive use, without charge, of any portion of the recreational facilities, if any, within the Common Elements on a short-term basis for employee meetings, administrative purposes, special events or any other purpose, subject to the following: (i) the availability of the facilities at the time a request is submitted by Declarant to the Association; (ii) Declarant shall indemnify the Association against any loss or damage resulting from such Declarant's use thereof; and (iii) Declarant shall return the facilities to the Association in the same condition as existed prior to such Declarant's use thereof. The rights of the Declarant set forth in this Section 3.6 shall be enforceable by injunction, by any other remedy in law or in equity and/or by any other means provided in this Declaration. In the event of any conflict or inconsistency between this Section 3.6 and any other provision of the Condominium Documents, the provisions of this Section 3.6 shall control and prevail over other such provisions.

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

3.8 Common Elements Easement in Favor of the Association.

3.8.1 The Common Elements and the Units shall be subject to an easement in favor of the Association and the agents, employees and independent contractors of the Association for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements and for those components of the Units which the Association is obligated to maintain pursuant to this Declaration and for the purpose of exercising all rights of the Association and discharging all obligations of the Association.

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

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

3.9.1 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.

3.9.2 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 are situated within or encroach onto any Common Element; 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 any Building or Unit or impair or structurally weaken any Building or Unit.

3.9.3 For the performance of the Unit Owners' obligation to maintain, repair, replace and restore those portions of the Units and the Limited Common Elements that the Unit Owners are obligated to maintain under Section 5.2 of this Declaration.

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

3.10.1 For 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.

3.10.2 For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in, on, under or above or which is accessible from such Units or Limited Common Elements;

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

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

3.10.5 For inspection, at reasonable times and upon reasonable notice to the Unit Owner, 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 and Residents, and their guests, tenants, invitees and the other occupants of the Unit.

3.11 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, shifting or settling or alteration or restoration authorized by this Declaration or any reason other than the intentional encroachment on the Common Elements or any Unit by a Unit Owner, a valid easement for the encroachment, and for the maintenance thereof, exists.

3.12 Private Streets and Sewer Lines. Access to the Units shall be over the private streets shown on the Condominium Plat (the "Private Streets") and which are part of the Common Elements. The Private Streets are subject to the right and easement of the City of Phoenix to have access thereto for purposes of enforcement of applicable City codes and laws.

The sewer lines located within the Private Streets (and all connecting lines up to the point where they enter a Unit) are private and a part of the Common Elements.

ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS

The following covenants, conditions and restrictions shall apply to the Initial Property and any Additional Property which is annexed by Declarant pursuant to Section 2.9 of this Declaration, and to the Unit Owners, Residents and Lessees thereof.

4.1 Residential Use. All Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Unit or in or from any Unit, except that a Unit Owner or other Resident may conduct a business activity within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Dwelling; (ii) the business activity conforms to all applicable zoning ordinances and requirements for the Condominium; (iii) the business activity does not involve more than one (1) employee working on or from such Unit who is not a Resident thereof; (iv) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or parking violations; (v) the business activity does not involve persons coming onto the Unit or the door-to-door-solicitation of Unit Owners or other Residents in the Condominium; and (vi) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Condominium, as may be determined from time to time in the sole discretion of the Board of Directors. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or (iii) a license is required for such activity. The leasing of a Unit by the Unit Owner thereof shall not be considered a trade or business within the meaning of this Section.

4.2 Communications Services; Antennae. Incorporated into the Buildings as part of their initial construction is a provider-neutral system for the provision of cable television, satellite television, internet, telephone and other communications services ("Technology Services") to all of the Units. Each Unit Owner (or the Unit's Residents) shall be responsible for arranging directly with the provider(s) for provision to the Unit of selected services using such system, and for payment to the applicable provider(s) of all monthly service charges, and any and all other fees and charges, for or related thereto, all without cost or expense to the Association, the Declarant or any other Owner. As the Units do not include any exterior components of any Buildings, Unit Owners are prohibited from installing or locating or causing to be installed or located on any Building, Common Element or Limited Common Element (including, without limitation, on any balcony or porch), any cable, antenna, dish, or other device, equipment or improvement for the providing of Technology Services.

4.3 Utility Service. Except for lines, wires and devices existing on the Condominium as of the date of this Declaration or hereafter constructed by Declarant and except for maintenance and replacement of the same, no lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon the Condominium unless they are installed and maintained underground or concealed in, under or on Improvements or other structures permitted under this Declaration. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements by Declarant or structures approved by the Architectural Committee.

4.4 Maintenance, Improvements and Alterations.

4.4.1 Any Unit Owner may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Architectural Committee, but such Unit Owner shall, to the extent permitted under Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements. No Unit Owner shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Unit Owner receives the prior written approval of the Architectural Committee and unless an architect or engineer, licensed in Arizona and approved in advance and in writing by the Architectural Committee, certifies that such addition, alteration or improvement will not impair the structural integrity of the Building and Unit within which such addition, alteration or improvement is to be made. The Unit Owner shall, to the extent permitted by Arizona law, be responsible for any damage to other Units and to the Common Elements which results from any such additions, alterations or improvements. Notwithstanding the foregoing, no addition, alteration or improvement to any Unit, whether structural or not, which would be visible from the exterior of the Unit, shall be made without the prior written approval of the Architectural Committee, which approval may be granted only if the Architectural Committee affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. Each Unit Owner shall maintain his or her Unit in good condition and repair. Except for a Unit Owner's obligation to maintain his or her Unit and any Limited Common Element for his Unit, no Unit Owner shall make any addition, alteration or improvement to the Common Elements without the prior written approval of the Architectural Committee. No exterior components of any of the Buildings are part of any Units but rather are part of the Common Elements. Accordingly, no Unit Owner shall have any right or obligation to repair, improve, paint, refinish or modify in any way any exterior components of the Buildings. All roof materials and other exterior surfaces and finishes of any Buildings may only be replaced by the Association and any such replacement shall be with materials of the same design, appearance, color and quality unless the Architectural Committee approves different materials and finishes.

4.4.2 The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board of Directors, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. No construction, alteration, location, relocation, repainting, demolishing, addition, installation, modification, decoration, redecoration or reconstruction of an

Improvement, which is subject to the Architectural Committee's review as provided in this Section, shall be commenced or maintained until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same have been submitted to the Architectural Committee and approved by the Architectural Committee. It shall be the responsibility of the Unit Owner to submit the written plans and specifications to an authorized agent of the Architectural Committee. Unless changed by the Board of Directors, the address for the submission of such plans and specifications shall be the principal office of the Association. The Architectural Committee may condition its approval of proposals or plans and specifications for any Improvement (i) upon the Unit Owner's furnishing the Association with security acceptable to the Association against any mechanics' liens or other encumbrance which may be Recorded against the Condominium as a result of such work; (ii) on such changes therein as it deems appropriate; (iii) upon the Unit Owner's agreement to complete the proposed work within a stated period of time; or (iv) any or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted.

4.4.3 The Architectural Committee may issue Architectural Committee Rules setting forth procedures for the submission of plans for approval. The Architectural Committee may impose a reasonable fee for the review of any submitted plans and shall require that such fee accompany each application for approval. The Architectural Committee shall also be entitled to impose additional requirements and state additional factors which it will take into consideration in reviewing submissions.

4.4.4 Notwithstanding the foregoing provisions of this Section, Improvements within a Unit which are damaged or destroyed may be fully repaired, restored, replaced and/or reconstructed in conformance with previously approved plans, specifications and materials without the necessity of submitting additional plans and specifications to the Architectural Committee or obtaining the Committee's approval.

4.4.5 Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Committee and the reasons therefore shall be transmitted by the Architectural Committee to the Unit Owner at the address set forth in the application for approval within forty-five (45) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any application submitted pursuant to this Section shall be deemed disapproved unless written approval thereof has been transmitted by the Architectural Committee to the Unit Owner within forty-five (45) days after date of receipt by the Architectural Committee of all required materials. If any Unit Owner resubmits an application which was deemed disapproved pursuant to the preceding sentence, and in the event the Architectural Committee fails to approve or disapprove in writing such resubmitted application within thirty (30) days after the receipt by the President of the Association and any management company retained by the Association of a complete resubmitted application, duly prepared in accordance with the rules promulgated by the Declarant or the Board of Directors, as the case may be, the application shall be deemed approved by the Architectural Committee, provided such improvement, addition or alteration described in the resubmitted application is carried out in precise conformity with such application.

4.4.6 The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

4.4.7 The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and must be signed by a majority of the members of the Architectural Committee. After the Period of Declarant Control expires, the Board of Directors must approve any variance recommended by the Architectural Committee before any such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Improvement and provision hereof covered by the variance, nor shall it affect in any way the Unit Owner's obligation to comply with all governmental laws and regulations affecting the use of his Unit.

4.4.8 Decisions of the Architectural Committee may be appealed to the Board of Directors. After the Period of Declarant Control expires or is terminated, the Board of Directors may adopt Rules for the appeal of Architectural Committee decisions for reconsideration by the Board of Directors.

4.4.9 Following the approval by the Architectural Committee and/or the Board of Directors of any plans for Improvements, and as a condition of commencement of construction pursuant to such approved plans, the Unit Owner shall pay to the Association a construction deposit (the "Construction Deposit") in an amount established by the Architectural Committee or the Board. Each Unit Owner shall be fully responsible for any damage to the Condominium and any loss, fees, costs, and expenses that may be incurred as a result of any work performed by, on behalf of, or at the request of such Unit Owner, and in the event that such amounts are not timely paid to the Association, the Association may, in addition to any other remedies the Association may have, deduct such amounts from the Construction Deposit. Upon the completion of construction, any unused portion of the Construction Deposit shall be returned to the Unit Owner.

4.4.10 No Unit Owner, other than Declarant, may subdivide his Unit without the written approval of the Architectural Committee.

4.4.11 Declarant is exempt from the provisions of this Section and need not seek nor obtain the Architectural Committee's approval of any Improvements constructed on the Condominium by Declarant.

4.5 **Trash Containers and Collection.** No garbage or trash shall be placed or kept outside of any Unit except in centralized trash containers of a type, size and style to be approved by the Board of Directors and to be situated within the Condominium at locations to be designated by the Board of Directors, provided, however, following the expiration of the Period of Declarant Control, if any change is proposed with respect to the number, location or type of trash, recycling, or compaction containers or processes, such change shall require the written approval of the City. The Board of Directors shall have the right to sign leases and/or other agreements to subscribe to trash compaction, pickup and related services for the use and benefit of the Association and all Unit Owners and Residents, and to adopt and promulgate rules and regulations regarding garbage, trash, compaction and recycling, containers, processes and collection. No incinerators shall be kept or maintained in any Unit and all Unit Owners and Residents shall comply with all trash disposal and compaction requirements and all recycling requirements contained in such rules and regulations.

4.6 **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 a Declarant or the Association may require for the construction, operation and maintenance of the Common Elements.

4.7 **Animals.** No animals, birds, fowl, poultry or livestock shall be maintained or kept in any Units or on any other portion of the Condominium except that no more than two Permitted Pets may be kept or maintained in a Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. For purposes of this Section, a "Permitted Pet" shall only mean a dog weighing no more than 75 pounds, a cat or a household bird. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor or become a nuisance. All Permitted Pets shall be kept on a leash not to exceed six (6) feet in length when outside a Unit, and all Permitted Pets shall be directly under the Unit Owner's or Resident's control at all times. If the pet of a Unit Owner or any Lessee or Resident or any pet of any guest of a Unit Owner, Lessee or Resident relieves itself on any portion of the Condominium, the Unit Owner, Lessee, Resident or guest of the Unit Owner shall immediately pick up and properly dispose of such pet waste. No structure for the care, housing, confinement or training of any animal or pet shall be maintained in or on any Unit so as to be visible from any Common Element or any other Unit. Upon the written request of any Unit Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet is a nuisance or is making an unreasonable amount of noise or causing an odor.

4.8 **Temporary Occupancy.** No trailer, tent, shack, garage or other structure on the Condominium and no temporary Improvement of any kind shall be used at any time for a residence, either temporarily or permanently.

4.9 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on the Condominium.

4.10 Mineral Exploration. No portion of the Condominium shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

4.11 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 as may be necessary to prevent insects, rodents and other pests from being present in his Unit.

4.12 Trucks, Trailers, Campers and Boats, etc. No truck (other than a Family Vehicle, as defined in Section 4.13.2 below), mobile home, travel trailer, tent trailer, camper shell, detached camper, recreational vehicle, bus, boat, or other recreational trailer or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium except if fully enclosed in the garages which are part of the Units.

4.13 Vehicle and Parking Restrictions.

4.13.1 General Vehicle and Parking Restrictions. The following vehicle and parking restrictions shall apply to the Condominium.

(i) A Unit Owner, Lessee or Resident of a Unit may only park any Vehicle (as defined in Section 4.13.2 below) owned, leased or controlled by them in the garage of the Unit owned or occupied by them and in no event shall any Vehicle owned, leased or controlled by any Unit Owner, Lessee or Resident be parked in any other location within the Condominium except in the garage of such Unit Owner's, Lessee's and/or Resident's Unit. Thus, if the Unit Owners, Lessees or Residents of a Unit collectively own, lease, possess or control more vehicles than are parked in the garage of the Unit, such additional vehicle(s) must be kept off of the Condominium.

(ii) The parking spaces within the Condominium may only be used by guests and invitees of Unit Owners, Lessees and Residents.

(iii) Vehicles of guests and invitees of a Residential Dwelling may only park in designated parking spaces within the Condominium or in the garage of the Unit they are visiting.

(iv) Except as may be specifically set forth herein, no Vehicle of any kind or type may be parked on the street within the Condominium.

(v) Each Unit Owner is responsible for notifying Lessees, Residents and guests of its Unit of this provision, and any such violation will be enforced against the Unit Owner whose Lessees, Residents, invitees or guests violate this provision.

(vi) Except for emergency repairs of any Vehicle and subject to the further restrictions of this Section 4.13, no Vehicle shall be constructed, reconstructed or repaired on a Unit or any other portion of the Condominium except within the enclosed garage of a Residential Dwelling.

(vii) The Board of Directors shall have the right to have any Vehicle or other item of equipment parked, maintained, kept, reconstructed or repaired in violation of this Section 4.13 towed away or immobilized at the sole expense of the owner of the Vehicle or equipment. Any expense incurred by the Association, including, without limitation, attorneys' and court fees and costs, in connection with the towing or immobilization of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. Each Unit Owner shall indemnify, defend and hold the Association harmless from any claim, demand and expense by or from any Resident, lessee, guest or invitee of his Unit relating to the immobilizing or towing of any vehicle parked in violation of this Declaration.

(viii) The provisions of this Section shall not apply to parking of public service and public safety vehicles if and to the extent the Association is prohibited from restricting the parking of such vehicles pursuant to A.R.S. Section 33-1809 or any similar statute in effect from time to time.

Additional restrictions may be included in the Rules.

4.13.2 Commercial or Recreational Vehicles. No truck (other than a Family Vehicle (as defined below)), mobile home or motor home, boat, jet ski, wave runner, recreational vehicle, all-terrain vehicle, off-road vehicle, trailer, camper, camper shell, tent trailer, snowmobile, bus, or any other vehicle classed by manufacturer rating as exceeding one (1) ton or any vehicles designed for commercial purposes or other similar equipment or vehicle (hereinafter "**Commercial Vehicles**") may be parked, maintained, constructed, reconstructed or repaired on or in any Unit or the Common Elements, except for: (i) the temporary parking of any Commercial Vehicle on the street within the Condominium for loading and unloading for a period of not more than eight (8) hours; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement by Declarant or any Improvement approved by the Architectural Committee; and (iii) Commercial Vehicles parked completely within enclosed Residential Dwelling garages. A "**Family Vehicle**" means any domestic or foreign car, station wagon, sport wagon, pickup truck of less than one (1) ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level, mini-van, jeep, sport utility vehicle, motorcycle and similar non-commercial and non-recreational vehicles that are used by a Resident for family and domestic purposes and which are used on a regular and recurring basis for basic transportation. The Board of Directors may, acting in good faith, designate a Commercial Vehicle as a Family Vehicle if, prior to use, the Resident petitions the Architectural Committee to classify the same as a Family Vehicle and the parking of such Vehicle will not adversely affect the Condominium or the Residents of the Condominium. Family Vehicles and Commercial Vehicles are, collectively, referred to in this Article 4 as "**Vehicles**."

4.13.3 Parking Spaces. The parking spaces in the Common Elements are unreserved parking spaces to be used for parking by guests and invitees of Unit Owners, Lessees, and Residents, and in no event shall such parking spaces be used by Unit Owners, Lessees, or Residents, as such persons may only park vehicles owned, leased, used, operated or controlled by them in the garages of the respective Units subject, however, to the other covenants and restrictions contained in this Declaration.

4.13.4 Parking Services Agreement and Enforcement. To assist with the enforcement of the parking restrictions set forth in this Declaration, the Board of Directors may enter into a parking service agreement with either a parking service company or the professional property manager for the Condominium. Any persons who violate any parking restrictions set forth herein or in the Rules will be subject to having their Vehicle immobilized or towed at their expense. In addition, any Person who violates the parking restrictions set forth in this Declaration or in the Rules shall be subject to a fine as established by the Board. Any parking services agreement entered into by the Board of Directors must provide that it may be terminated with or without cause and without payment of any penalty or termination fee on no more than thirty (30) days written notice.

4.14 Garage Doors. Garage doors shall be kept closed at all times except while vehicles or people are entering or leaving the garage. Each garage door is a Limited Common Element allocated to the Unit to which it is attached. The Unit Owner shall be responsible for the maintenance, repair and replacement (including, without limitation, the painting of the exterior thereof in accordance with the requirements of, and using paint colors approved by, the Board or the Architectural Committee) of the garage door allocated to such Unit Owner's Unit. If, in the reasonable opinion of the Board, a Unit Owner has failed to properly maintain, repair or replace the garage door allocated to such Unit Owner's Unit (including, without limitation, painting the same as required above), the Association shall have the right to maintain, repair and/or replace such garage doors, in which event the applicable Unit Owner shall be responsible for all costs incurred by the Association in doing so and shall, promptly following demand therefor by the Association, reimburse the Association for all such costs and shall also pay the Association interest (at such rate as may be reasonably required by the Board) on the amount of such costs from the date the same were paid by the Association until all such costs and interest have been fully paid by the applicable Unit Owner to the Association. Without limiting the generality of any other provisions of this Declaration, all such amounts (including, without limitation, interest) shall be secured by the Assessment Lien against the applicable Unit. Each Unit Owner shall be responsible for the maintenance, repair and replacement of all garage door opening devices and remotes for the garage door allocated to that Unit Owner's Unit.

4.15 Signs and Flags. No signs, stickers, billboards or flags of any kind shall be displayed to the public view on any portion of the Condominium except for: (i) signs as may be required by legal proceedings; (ii) not more than two (2) signs for each Unit for identification of the address of such Unit with a combined total face area of eighty-four (84) square inches or less; (iii) such signs as may be erected by a Declarant in connection with the development of any Unit or the Condominium or the sale by Declarant of any Unit; (iv) signage for the Condominium at such locations designated or installed by a Declarant; and (v) American flags attached to a Unit and displayed in a manner consistent with the federal flag code, 4 U.S.C. § 4-10; provided, however, the Architectural Committee may adopt reasonable rules and regulations regarding the

placement and manner of display of the American flag and may regulate the location and size of flagpoles to be attached to any Unit; (vi) not more than two (2) security signs and stickers with maximum dimensions of six (6) inches by six (6) inches for professional security companies which may be retained by Unit Owners to provide security monitoring services; and (vii) such other signs, the nature, number and location of which shall have been approved in advance by the Association. No "For Sale" or "For Rent" signs or similar signs shall be permitted. All signs permitted under this Section shall require the approval of the Architectural Committee as to the size, color, design, message content, location, type and hours of display.

4.16 Lawful Use. No unlawful use shall be made of any part of the Condominium. All 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.

4.17 Nuisances and Offensive Activity. No nuisance shall be permitted to exist or operate upon the Condominium, and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Unit Owner or other occupant of the Condominium or is an annoyance to any Unit Owner or other Resident. No exterior speakers, horns, whistles, bells or other sound devices, including those for security purposes, shall be located, used or placed on the Condominium except inside of Units.

4.18 Window Coverings. Within ninety (90) days of occupancy of a Unit, the Unit Owner shall install draperies or suitable window treatments on all windows facing the streets and Common Elements adjacent to its Unit. However, no external window covering may be placed, or permitted to remain, on any window of any Unit or other improvement without the prior written approval by the Architectural Committee. No reflective coating, materials or covering may be placed on any window of any Unit or other improvement. Further, all curtains, blinds, interior shutters, screens and window coverings or window treatments which are visible from neighboring property must be neutral in color. No bed sheets, blankets, bedspreads or other items not designed for use as curtains or other window coverings may be used for such purposes except during a period not to exceed ninety (90) days following the conveyance of a Unit from a Declarant or a builder to a Purchaser.

4.19 Rental of Units; No Timeshares. Only entire Units may be rented, and if so rented, the occupancy thereof shall be limited to the Lessee under the lease and his family and guests. No Unit Owner shall be permitted to lease a Unit for transient or hotel purposes, and no Unit shall be used for timeshare, interval ownership or other such use, and the Board shall have the right, power and authority to determine, in its reasonable discretion, whether such a use is being made of a Unit. No Unit Owner may lease less than his entire Unit. All lease agreements shall be in writing, shall be for terms of at least one (1) year and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Condominium Documents and any failure by Lessee to comply with the terms of such documents shall be a default under the lease. For purposes of this Declaration, "lease" shall mean any agreement for the leasing or rental of a Unit. Upon leasing his Unit, a Unit Owner shall promptly notify the Association in writing of the commencement date and termination date of the lease, together with the names of each Lessee or other person who will be occupying the Unit during the term of the lease.

4.20 **Porches, Balconies, Patios.** Nothing may be kept on any porch, balcony or patio, except for patio furniture that complies with any rules or guidelines adopted by the Board and/or the Architectural Committee and a reasonable number of potted plants that comply with any rules or guidelines adopted by the Board and/or the Architectural Committee; all such furniture and plants placed or maintained on any porch, balcony, or patio must at all times be in good condition and repair and kept in an orderly and uncluttered fashion. Barbeques are not considered patio furniture and will not be allowed on porches, balconies or patios. Likewise, no firebowl or other open flame device of any kind shall be placed or operated on any porch, balcony or patio.

4.21 **Declarant Approval Required.** After the expiration of the Period of Declarant Control and for so long as a 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.

4.22 **Basketball Goals.** No basketball goals of any type (whether portable or permanent) may be installed, placed, situated or kept on any Unit or within the Condominium.

ARTICLE 5 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 **Duties of the Association.** Except as otherwise specifically set forth in this Declaration the Association shall maintain, repair and make necessary improvements to all Common Elements, including, without limitation, the exteriors of all Buildings within the Condominium, all Limited Common Elements, the Private Streets, all parking spaces, sidewalks, landscaping, street lights, lighting and light fixtures in the Common Elements. The Common Elements must be maintained in substantial conformance with the original plans for such Common Elements and all applicable warranty manuals. The cost of all such repairs and maintenance shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall determine, in its sole discretion, the level and frequency of maintenance of the Common Elements. 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 Unit Owner, Lessee, Resident or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the written approval of the Board of Directors. No Unit Owner, Lessee, Resident 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. The Association shall be responsible for all costs to water any landscaping on the Common Elements.

5.2 **Duties of Unit Owners.** Each Unit Owner shall (i) maintain his Unit in good condition and repair, (ii) maintain all sewer taps, lines and facilities located within its Unit and all sewer taps, lines and facilities situated outside of its Unit but which serve only its Unit, including, without limitation, the sewer tap, lines and facilities serving its Unit which are located in the Common Elements. In addition to the foregoing, each Unit Owner is responsible for maintaining and repairing and is liable for any expense related to the utility connections within

his Unit or which serve his Unit exclusively, the sewer clean-out, the water box and the power meter appurtenant to said Unit, except to the extent the regulated utility maintains the same.

5.3 Repair or Restoration Necessitated by Unit Owner. Each Unit Owner shall be liable to the Association, to the extent permitted by Arizona law, for any damage or excessive wear and tear to the Common Elements or the Improvements thereon, the Unit Owner's allocable Limited Common Elements, or any other part of the Condominium (including without limitation, windows, exterior doors and garage doors) the Association is responsible to maintain, repair, paint and replace to the extent such damage or excessive wear and tear results from the negligence, neglect, abuse or willful conduct of the Unit Owner or of any Lessee or Resident of a Unit, and any guest or invitee of a Unit Owner. An amount equal to one hundred twenty percent (120%) of the cost to the Association of any repair, painting, maintenance or replacements required by the act of a Unit Owner, or a Lessee, family member, guest or invitee of a Unit Owner or of any other occupant of a Unit Owner's Unit shall be paid by the Unit Owner, upon demand, to the Association. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

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 or any other portion of the Condominium 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. An amount equal to one hundred twenty percent (120%) of the cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Subsection 7.2.4 of this Declaration.

5.5 Maintenance Manual. Each Unit Owner shall obtain from the Board the maintenance manual applicable to the Units (the "Maintenance Manual") and utilize the Maintenance Manual for the maintenance, operation, upkeep, repair, inspection and replacement of the Unit and all Limited Common Elements that the Owner is obligated to maintain, repair and replace pursuant to this Declaration and/or the other Condominium Documents. Each Unit Owner (other than the Declarant) shall maintain detailed and complete records of all maintenance, repairs and replacements to the Unit Owner's Unit or the Limited Common Elements made by the Unit Owner. Upon request of the Declarant or the Association, each Unit Owner (other than the Declarant) shall submit to the Association and the Declarant a maintenance report detailing all maintenance, repairs and replacements to the Unit Owner's Unit or the Limited Common Elements made by the Unit Owner during the immediately preceding calendar year, and upon request of the Board, shall provide to the Association the records with respect to such maintenance, repairs and replacements.

ARTICLE 6 THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP

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 the Condominium Act, other applicable laws and regulations and as are set forth in the Condominium Documents together with the 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 written consent or affirmative vote of Unit Owners representing 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, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board of Directors. The Association has the specific duty to make available to Declarant, Eligible Mortgage Holders, Unit Owners and insurers or guarantors of any First Mortgage during normal business hours, current copies of the Condominium Documents and other books, records and financial statements of the Association as may be requested from time to time by such parties. Such requests shall be in writing, and the Association shall have the right to charge for copying expense.

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.

6.2.2 Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors, which must consist of at least three (3) members but no more than nine (9) members, at least a majority of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association. The terms of the Directors shall be staggered as set forth in the Bylaws.

6.2.3 The Declarant may voluntarily surrender its right to appoint and remove the members of the Board of Directors and the officers of the Association before the 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 any area by any Unit Owner, Resident, by the family of such Unit Owner or Resident, or by any invitee, licensee or Lessee of such Unit Owner; provided, however, that the Rules may not unreasonably discriminate among Unit Owners and shall not be inconsistent with the Condominium Act, the applicable federal and state Fair Housing Acts, this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner and may be Recorded.

6.4 Composition of Members. Each Unit Owner shall be a Member of the Association. The membership of the Association shall, at all times, consist exclusively of the Unit Owners. Membership in the Association is mandatory, and the allocated interests thereof are appurtenant thereto, and may not be separated from, ownership of the Unit; provided, however, the allocated interests of Units from time to time may be modified or changed as expressly permitted in this Declaration and authorized under the Condominium Act. No Unit Owner, during his ownership of a Unit, shall have the right to relinquish or terminate his membership in the Association.

6.5 Personal Liability. Neither Declarant nor any member of the Board of Directors, the Architectural Committee or of any other committee of the Association, any officer of the Association nor any manager, managing agent or employee of the Association shall be personally liable to any Member or to any other Persons, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of Declarant, the Association, the Board of Directors, any manager, any managing agent, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 6.5 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

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

6.7 Architectural Committee. The Board of Directors shall establish an Architectural Committee consisting of not less than three (3) members appointed by the Board of Directors to regulate the external design, appearance, use and maintenance of the Condominium and to perform such other functions and duties as are imposed upon it by the Condominium Documents or the Board of Directors. Plans submitted to the Committee may be approved with the consent of a majority of Committee members. Subject to the right and power of the Board of Directors to remove and replace, at any time, any member of the Architectural Committee, Committee members shall serve one (1) year terms. If the Board of Directors does not appoint an Architectural Committee at any time, then the Board of Directors members shall serve as the Architectural Committee. Notwithstanding any provision contained in this Declaration, Declarant shall, as long as it owns any Unit or any Additional Property, have the exclusive right to appoint the members of the Architectural Committee and such persons need not be Unit Owners.

6.8 Management Contracts. The Association may enter into a management agreement with a professional management company to manage the operation and affairs of the Association. Any agreement for professional management of the Association or any other Association contract or lease executed by a Declarant or any member, agent or representative of Declarant during the Period of Declarant Control must allow for termination by either party without cause and without payment of a termination fee upon thirty (30) days or less written notice.

**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: (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements, Limited Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (ii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (iii) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (iv) such amounts as may be necessary to provide general operating reserves and reserves for contingencies, major repairs and replacements, including for the Common Elements and Limited Common Elements. The amount budgeted for reserves shall be established in accordance with Section 7.14 of this Declaration. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units pursuant to Subsection 7.2.4 or 7.2.5 of this Declaration and must include an adequate allocation to reserves as part of the Common Expense Assessment.

7.1.2 Upon the adoption of a budget, the Board of Directors shall make available to each Unit Owner a summary of the budget and a statement of the amount of the Common Expense Assessment assessed against the Unit of the Unit Owner in accordance with Section 7.2 of this Declaration. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2 of this Declaration, and each Unit Owner shall continue to pay the Common Expense Assessment against his Unit as established for the previous fiscal year until a notice of the Common Expense Assessment for the new fiscal year has been established by the Board of Directors.

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

7.2 Common Expense Assessment.

7.2.1 For each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the total amount of the estimated Common Expenses set forth in the budget adopted by the Board of Directors (except for the Common Expenses which are to be assessed against less than all of the Units pursuant to Subsections 7.2.4 and 7.2.5 of this Declaration) shall be assessed equally against each Unit, except as provided in Subsection 7.2.2. 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; provided, however, the Common Expense Assessment for each Unit shall be during each year following the year of the conveyance of the first Unit to a Purchaser be increased in accordance with Section 7.2.2 of this Declaration. If the Board of Directors determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Common Expense Assessment for that fiscal year and the revised Common Expense Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Common Expense Assessments shall commence as to all Units on the first day of the month following the first conveyance of any Unit to a Purchaser; provided, however, the Common Expense Assessment for any Unit which has not been conveyed to an initial Purchaser shall be an amount equal to twenty-five percent (25%) of the Common Expense Assessments for Units. The first Common Expense Assessment shall be adjusted according to the number of months remaining in the partial fiscal year of the Association in which the first conveyance of a Unit to a Purchaser occurs. The Board of Directors may require that the Common Expense Assessments or Special Assessments be paid in monthly, quarterly, semi-annual or annual installments. Upon commencement of the first full fiscal year of the Association immediately following the conveyance of the first Unit to a Purchaser, the Common Expense Assessment payable by each Unit Owner during the partial fiscal year within the first conveyance of a Unit to a Purchaser occurs, and during the immediately following first full fiscal year of the Association shall, for each such period, be in such amounts as determined by the Board of Directors. Upon the commencement of each and every fiscal year thereafter, the Board of Directors may increase the Common Expense Assessments payable by each Unit Owner by any amount determined by the Board of Directors to be appropriate in order to maintain the Condominium and operate the Association; provided, however, that beginning with the second full fiscal year following the first conveyance of a Unit to a Purchaser, the Common Expense Assessments shall not be increased by more than the greater of (a) 20%; or (b) the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) West Urban All Items (1982-84=100), issued by the United States Department of Labor, Bureau of Labor Statistics or its successor governmental agency or, if such index is no longer published by said Bureau or successor agency, the index most similar in composition to such index as determined by the Board, which amount shall be computed in the last month of fiscal year for the subsequent fiscal year in accordance with the following formula:

X = Consumer Price Index for July of the calendar year immediately preceding the calendar year which immediately precedes the calendar year for which the Common Expense Assessment is to be determined.

Y = Consumer Price Index for July of the calendar year immediately preceding the calendar year for which the Common Expense Assessment is to be determined.

$\frac{Y-X}{X}$ multiplied by the Common Expense Assessment for the then current calendar year equals the amount by which the Common Expense

Assessment may be increased.

Notwithstanding the foregoing, if increases in insurance premiums and/or utility charges would reasonably require the Board of Directors to set Common Expense Assessments at amounts greater than permitted by the foregoing, the Board shall nevertheless have the right, power and authority to increase the Common Expense Assessments at such higher levels as may be necessary to cover such increases in insurance premiums and/or utility charges. If and to the extent the Board of Directors does not, in any year or years, increase the Common Expense Assessments by the maximum amount(s) permitted under the prior provisions of this Subsection 7.2.2, the Board of Directors may, in any subsequent year or years increase the Common Expense Assessment by an amount greater than would otherwise be permitted by this Subsection 7.2.2, so long as such greater increase would not exceed the aggregate total of all "unused" prior permitted increases. So long as any Unit owned by the Declarant qualifies for the reduced Common Expense Assessment provided for in this Subsection 7.2.2, 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. Declarant shall receive a credit toward any obligation of Declarant to pay Assessments or any subsidy for the amount of any Common Expenses advanced or paid by Declarant, but Declarant shall have no obligation whatsoever to make any such advances or payments. Declarant shall also receive a credit toward any assessment or subsidy for any "in-kind" contributions by Declarant of goods or services, which shall be valued at the fair market value of the goods and services contributed.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Subsection 7.2.1 of this Declaration.

7.2.4 If any Common Expense is caused by the negligence, omission or 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 All Assessments, monetary penalties and other fees and charges levied against a Unit shall be the personal obligation of the Unit Owner at the time the Assessments, monetary penalties or other fees and charges become 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.

7.2.7 Any funds in the Association's operating account at the end of such fiscal year which are not needed to pay Common Expenses payable within thirty (30) days shall be deposited into the Association's Working Capital Account to be established pursuant to Section 7.9 below.

7.3 Special Assessments. In addition to Common Expense Assessments, the Association may levy in any fiscal year of the Association a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including landscaping, 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 Article 9 of this Declaration 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 purposes. Special Assessments shall be allocated among the Units in accordance with the Units' respective shares of Common Expense Assessments. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Unit Owners.

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

7.4.1 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 highest rate which the Association is entitled to charge or at such lower rate of interest as may be established from time to time by the Board of Directors. In addition to or in lieu of interest, the Board of Directors may establish a reasonable late fee for delinquent assessments to be charged to a Unit Owner and assessed against his Unit as part of the Assessment Lien for each installment of an Assessment not paid within fifteen (15) days of its due date.

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

7.4.3 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: (i) 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; (ii) bringing an action to foreclose its Assessment Lien against the Unit in the manner provided by law for the foreclosure of a realty mortgage; and (iii) suspending voting and recreational amenities use rights as provided in the Bylaws. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Units purchased at such sale.

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

7.6 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 or its managing agent, upon written request, shall furnish or cause the Association's management company to 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 ten (10) days after receipt of the request and is binding on the Association, the Board of Directors and every Unit Owner. The Association or the Association's management company, as the case may be, may charge a reasonable fee in an amount established or approved 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 Contributions. To insure that the Association shall have adequate funds to meet its expenses, to purchase necessary materials and services, to meet unforeseen expenditures, to repair, replace and purchase capital items and to make capital improvements each Unit Owner who purchases a Unit from Declarant (an "Initial Purchaser") shall pay to the Association, immediately upon becoming the Unit Owner, (a) a sum equal to one-fourth (1/4) of the then current annual Common Expense Assessment for the Unit (a "Working Capital Assessment"); and (b) a sum equal to one-fourth (1/4) of the then current annual Common Expense Assessment for the Unit (a "Reserve Contribution"). With respect to conveyances of a Unit following the conveyance of the Unit to the Initial Purchaser, each such subsequent Purchaser of a Unit shall pay to the Association at the closing of its purchase of the Unit (x) a Working Capital Assessment in such amount as is established from time to time by the Board of Directors, but which Working Capital Assessment shall not exceed one-fourth (1/4) of the then current annual Common Expense Assessment for the Unit; and (y) a Reserve Contribution in such amount as is established from time to time by the Board of Directors, but which Reserve Contribution shall not exceed one-fourth (1/4) of the then current annual Common Expense

Assessment for the Unit. Neither the Working Capital Assessment nor the Reserve Contribution described in the immediately preceding sentence of this Section shall be payable with respect to (a) the transfer or conveyance of a Unit by device 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 of Directors determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of any Assessments, a Working Capital Assessment, or a Reserve Contribution; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq. Working Capital Assessments and Reserve Contributions shall be non-refundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

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

7.11 Transfer Fee. Each Unit Owner other than Declarant shall pay to the Association or its managing agent immediately upon becoming the Unit Owner a transfer fee in an amount determined by the Board of Directors to cover administrative costs incurred by the Association in connection with such transfer. The transfer fee provided for above shall be in addition to, and shall not be offset against or considered as an advance payment of any Assessment levied by the Association pursuant to this Declaration

7.12 Utility Charges.

7.12.1 With the sole exception of water services (governed by Section 7.12.2 below), each Unit Owner shall be responsible for separately paying all utility bills for his or her Unit, and the Association shall have no involvement with the providing of and billing for utility services.

7.12.2 Notwithstanding any other provision in this Declaration, (a) the applicable public or private water provider will bill the Association for the cost of all domestic water provided to the Units and any and all other water used within the Condominium, (b) the Association will pay the cost of all such water, (c) the Association (itself, through its manager or managing agent or through a separate contractor) will separately bill each Unit Owner periodically for the cost of all such water, and (d) no portion of the cost of such water will be included in the annual budget of the Association (except as reimbursable "pass-through" expenses) or in the Assessments charged to the Unit Owners. The cost of such water will be calculated and billed as follows:

(i) It is possible (but not guaranteed) that at some future time the Board may elect to install separate water meters for each Building and separate submeters for each Unit. In such case, the Association or its agent will bill each Unit Owner for (x)

his/her share of the water provided to his/her Unit as determined by means of such submeters, plus (y) his/her share of any and all other water used within the Condominium that is not provided to the Units on the basis of such Unit's allocated fraction of undivided interests in the Common Elements at the time of each billing; alternatively,

(ii) Unless and until such meters and submeters are subsequently installed and operational, the Association or its agent will bill each Unit Owner for his/her share of all water provided to the Units and any and all other water used within the Condominium on the basis of each Unit's allocated fraction of undivided interests in the Common Elements at the time of each billing.

Nonpayment or late payment of any such water bill may subject the applicable Unit Owner to fines, delinquency charges or other monetary charges or penalties as may be determined by the Board, and in the event of any such nonpayment or late payment the Board shall have the right to enforce one or more of its available rights and remedies, including without limitation instituting an action to collect such unpaid amounts and/or to cause water service to the applicable Unit to be shut off.

7.13 Reserves. The Assessments may include reasonable amounts as determined by the Board of Directors to be collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Elements, or any other purpose as determined by the Board of Directors. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board of Directors in a separate bank account to be held in trust for the purposes for which they are collected and which are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than those purposes for which they were collected and except as authorized in a resolution of the Board of Directors. The Board of Directors shall obtain a reserve study at least once every three (3) years following the expiration of the Period of Declarant Control, which study shall be prepared by an independent company experienced and qualified to prepare such studies and which study shall, at a minimum, include (a) reserves of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study. The Board of Directors shall modify the budget in accordance with the findings of the reserve 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:

(i) A blanket causes of loss – special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the entire Condominium, except for (i) options, extras, additions, alterations and improvements supplied or installed by or at the request of the Unit Owners; and (ii) furniture, furnishings or other personal property of the Unit Owners. 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 Condominium (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.

(ii) Commercial general liability insurance, for a limit to be determined by the Board of Directors, but not less than \$1,000,000 for any single occurrence and \$2,000,000 general aggregate and an umbrella policy in the amount of not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include (i) a cross liability clause to cover liabilities of the Unit Owners as a group to a Unit Owner, (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles, (iii) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party; and (iv) a waiver of the contractual liability exclusion for personal injury.

(iii) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and a policy of employer's liability insurance with coverage limits determined by the Board of Directors.

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

(v) 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 of the Board of Directors and the Unit Owners, including, without limitation, umbrella general liability insurance which would provide general liability coverage in excess of the coverage provided by the policy to be obtained pursuant to Section 8.1.1(i) above.

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

(a) 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.

(b) There shall be no subrogation with respect to the Association, its agents, servants and employees against Unit Owners and members of their household.

(c) 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.

(d) 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.

(e) 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.

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

(g) 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.

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

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

(viii) If required by any governmental or quasi-governmental agency (including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation) flood insurance in accordance with the applicable regulations of such agency.

(ix) Such other insurance as may be required to be carried by the Association in order for the Association to be in compliance with all applicable requirements established by the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or any other governmental agency, except to the extent such coverage is not reasonably available or has been waived in writing by such agencies, as applicable.

(x) "Agreed Amount" and "Inflation Guard" endorsements, except where not applicable or available.

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 Unit Owner which is the subject of any claim shall be responsible for paying or reimbursing the Association for any deductible payable in connection with such claim. In the event any single claim is made with respect to more than one (1) Unit and only a single deductible is charged by the insurance carrier, the deductible amount shall be assessed in equal shares to each of the affected Units. The deductible payable with respect to damage to Common Elements shall be a Common Expense, but the Association may assess to a Unit Owner any such deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

8.1.4 Notwithstanding any of the other provisions of this Article 8 to the contrary, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. Each Unit Owner appoints the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (a) the collection and appropriate disposition of the proceeds thereof; (b) the negotiation of losses and execution of releases of liability; (c) the execution of all documents; and (d) the performance of all other acts necessary to accomplish such purpose.

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

Members fail to approve any increase in the Common Expense Assessment needed to pay the insurance premiums.

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

8.2 Fidelity Bonds.

8.2.1 The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of the fidelity bonds maintained by the Association shall be based upon the best business judgment of the Board of Directors, and shall not be less than the greater of the estimated maximum funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, or the sum equal to three (3) months aggregate Common Expense Assessments on all Units plus reserve funds. Fidelity bonds obtained by the Association must comply with all requirements imposed by governmental agencies which insure home mortgages and must also meet the following requirements:

- (i) The fidelity bonds shall name the Association as an obligee;
- (ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and
- (iii) The bonds shall provide that they may not be canceled or substantially modified (including cancellation from nonpayment of premium) without at least thirty (30) days prior written notice to the Association and each First Mortgagee.

8.2.2 The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Subsection 8.2.1. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

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 be responsible for: (a) property insurance on his personal property located in his Unit and elsewhere on the Condominium; (b) property insurance on any options, extras, additions, alterations and

improvements to his Unit (whether installed by Declarant, by such Unit Owner or any prior Unit Owner); and (c) comprehensive general liability insurance to the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all of the Unit Owners. All policies of property insurance carried by a Unit Owner shall be without contribution with respect to the policies of property insurance obtained by the Board of Directors for the benefit of all of the Unit Owners. No Unit Owner shall separately insure his Unit against loss by fire or other casualty covered by any insurance carried by the Association. If any Unit Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of other insurance will be chargeable to the Unit Owner who acquired other insurance.

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 lienholders as their interests may appear, and the proceeds shall be disbursed and applied as provided for in Section 33-1253 of the Condominium Act.

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 a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

8.7 Annual Insurance Review. After the termination of the Period of Declarant Control, 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 Unit 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 (i) the Condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance or (iii) eighty percent (80%) of the Unit Owners' 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 of this Declaration.

9.2 Determination Not to Reconstruct without Termination. If eighty percent (80%) of the Unit Owners vote not to rebuild and the Condominium is not terminated in accordance with the Condominium Act, the insurance proceeds shall be distributed to the Unit Owners of the Units and/or Limited Common Elements destroyed in proportion to their respective share of Common Expense Liability relative to the total share of Common Expense Liability allocated to such Units, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders in proportion to their respective obligation for Common Expense Liability bears to the Common Expense Liability for all the Units.

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 Condominium 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 portion of the Common Elements and to make settlements with the insurer for less than full insurance coverage on the damage to such Common Elements. Any settlement made by the Association in good faith shall be binding upon all Unit 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 of this Declaration, 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, a Unit shall be made by and at the individual expense of the Unit 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 a Unit 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 Unit Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Unit 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 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 Condominium Act. Any remnant of a Unit remaining after part of a Unit is taken shall become 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 Unit Owner for the reduction in the value of his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken.

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 Unit 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 shall be terminated and the provisions of Section 33-1228 of the Condominium Act shall apply.

10.5 Priority and Power of Attorney. Nothing contained in this Article shall entitle a Unit 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 Unit 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 of a Unit Owner.

ARTICLE 11 RIGHTS OF FIRST MORTGAGEES

11.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and number or address of the Unit to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

11.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor;

11.1.2 Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by the Unit

Owner of any obligation under the Condominium Documents, which delinquency or default remains uncured for a period of sixty (60) days;

11.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

11.1.4 Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in this Declaration.

11.2 Approval Required for Amendment to Declaration, Articles or Bylaws

11.2.1 The approval of Eligible Mortgage Holders holding First Mortgages on Units, the Unit Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Units Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders, shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (i) Voting rights;
- (ii) Assessments, Assessment Liens or subordination of Assessment Liens;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Condominium, the addition or annexation of property to the Condominium, or the withdrawal of property from the Condominium (other than as otherwise contemplated and permitted by Section 2.9 of this Declaration);
- (vii) Boundaries of any Unit;
- (viii) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (ix) Convertibility of Units into Common Elements or of Common Elements into Units;
- (x) Leasing of Units;
- (xi) Imposition of any restrictions on a Unit Owner's right to sell, lease or transfer his Unit;

(xii) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;

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

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

(xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

11.2.2 Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Eligible Mortgage Holders holding First Mortgages on Units, the Unit Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

11.2.3 Any First Mortgagees who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws, which additions or amendments are not material, who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request. Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

11.2.4 The provisions of this Section 11.2 shall not affect or apply to the amendments that may be executed by Declarant in the exercise of its Development Rights.

11.3 Prohibition Against Right of First Refusal. The right of a Unit Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

11.4 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer or Guarantor will, upon written request, be entitled to: (i) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours, provided that the Association shall have up to ten (10) days after any such request to make such items available for inspection; (ii) receive within one hundred eighty (180) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

11.5 Prior Written Approval of First Mortgagees. Except as provided herein or by statute in case of condemnation or substantial loss to the Units or the Common Elements and unless at least two-thirds (2/3) of all First Mortgagees (based upon one (1) vote for each First Mortgage owned) and at least two-thirds (2/3) of all Unit Owners (other than Declarant or other

sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

11.5.1 By act or omission, seek to abandon or terminate this Declaration or the Condominium;

11.5.2 Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

11.5.3 Partition or subdivide any Unit;

11.5.4 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this Subsection;

11.5.5 Use hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

Nothing contained in this Section or any other provisions of this Declaration shall be deemed to grant the Association the right to partition any Unit without the consent of the Unit Owners thereof. Any partition of a Unit shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as provided under Arizona law.

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

11.7 Condemnation or Insurance Proceeds. No Unit Owner or any other party shall have priority over any rights of any First Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

11.8 Limitation on Partition and Subdivision. No Unit shall be partitioned or subdivided without the prior written approval of the Holder of any First Mortgage on such Unit.

11.9 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Condominium or (iii) certain actions of the Association as specified in Subsections 11.2 and 11.5 of this Declaration, the provision requiring the consent of the greatest

number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that Declarant, without the consent of any Unit Owner being required, shall have the right to amend this Declaration, the Articles or the Bylaws during the Period of Declarant Control in order to (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (ii) correct any error or inconsistency in the Declaration, the Articles or the Bylaws if the amendment does not adversely affect the rights of any Unit Owner, (iii) comply with the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration and the Veterans Administration or (iv) the rules or requirements of any federal, state or local governmental agency whose approval of the Condominium or the Condominium Documents is required by law or requested by Declarant.

ARTICLE 12 DISPUTE RESOLUTION FOR DEVELOPMENT AND CONSTRUCTION RELATED MATTERS

It is Declarant's intent that all Improvements constructed by any builder who may construct a Unit within the Condominium including Declarant (each a "Builder" and collectively the "Builders") shall be built in compliance with all applicable building codes and ordinances and will be of a quality that is consistent with good construction and development practices. Nevertheless, disputes may arise as to whether a defect exists with respect to the construction by a Builder of any of the Improvements constructed within the Condominium and a Builder's responsibility therefor. It is the intent of the Builders that all disputes and claims regarding Alleged Defects (as defined below) be resolved amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, the Board of Directors, the Builders and all Unit Owners shall be bound by the claim resolution procedures, provisions and limitations set forth or described in this Article 12.

12.1 Limitation on Unit Owners' Remedies. In the event that the Association, the Board of Directors or any Unit Owner (collectively "Claimant") claims, contends or alleges that any portion of a Unit, the Common Elements or any other part of any Condominium is defective or that one or more of the Builders, their agents, consultants, contractors or subcontractors (collectively "Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively an "Alleged Defect"), the only right or remedy that any Claimant shall have with regard to any such Alleged Defect is the right to have the Alleged Defect repaired and/or replaced by the Builder which was responsible for the construction of the Improvement which is the subject of the Alleged Defect, but such right or remedy shall only be available if and to the extent such Builder is, at that time, still obligated to repair such Alleged Defect pursuant to applicable statutes or common law or pursuant to any applicable rules, regulations and guidelines imposed by the Arizona Registrar of Contractors (the "Applicable Laws"). By accepting a deed to a Unit, each Unit Owner shall, with respect to any Alleged Defect(s), be deemed to have waived the right to seek damages or other legal or equitable remedies from any Builder or from any affiliates, subcontractors, agents, vendors, suppliers, design professionals and materialmen of any Builder under any common law, statutes

and other theories of liability, including, but not limited to, negligence, tort and strict liability. Under no circumstances will any Builder or Declarant be liable for any consequential, indirect, special, punitive or other damages, including, but not limited to, any damages based on a claim of diminution in the value of the Claimant's Unit and each Unit Owner, by accepting a deed to a Unit, shall be deemed to have waived its right to pursue any such damages. It shall be a condition to a Claimant's rights and a Builder's obligations under this Article that the Claimant fully and timely abide by the requirements and conditions set forth in this Article. To accommodate the Builders' right to repair and/or replace an Alleged Defect, the Builders hereby reserve the right for themselves to be notified of all such Alleged Defects and to enter onto the Condominium, Common Elements and Units to inspect, repair and/or replace such Alleged Defect(s) as set forth herein.

12.2 Notice of Alleged Defect. In the event that a Claimant discovers any Alleged Defect, Claimant shall within fifteen (15) days of discovery of the Alleged Defect provide the Builder which constructed the Improvement which is the subject of the Alleged Defect with written notice of the Alleged Defect, and of the specific nature of such Alleged Defect (a "Notice of Alleged Defect").

12.3 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by a Builder of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Builder, such Builder shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Unit, Common Element or other part of the Condominium as may be necessary or appropriate for the purposes of inspecting and/or conducting testing and, if deemed necessary by the Builder, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacements, Builder shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances to repair or correct any such Alleged Defect.

12.4 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Section shall be construed to impose any obligation on Builders to inspect, test, repair or replace any item or Alleged Defect for which Builders are not otherwise obligated to do so under Applicable Laws or by contract. Specifically, a Builder's obligation to repair and/or replace an Alleged Defect shall expire upon the expiration of any applicable warranty provided by Builder for such item, if any, or on any later applicable date which the Applicable Laws specify or recognize as the date(s) through which a contractor is responsible for such Alleged Defect. The right of Builders to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Builders.

12.5 Tolling of Statutes of Limitations. In no event shall any statutes of limitations be tolled during the period in which a Builder conducts any inspection or testing of any Alleged Defects.

12.6 Binding Arbitration. In the event of a dispute between or among a Builder, its contractors, subcontractors or brokers or their agents or employees, on the one hand, and any Unit Owner or the Association, on the other hand, regarding any controversy or claim between the parties, including any claim based on contract, tort, statute or any other theory of liability

arising out of or relating to the rights or duties of the parties under this Declaration, the design or construction of the Condominium, any Unit, any Common Element or any part of the Condominium or an Alleged Defect, the matter shall be resolved by binding arbitration conducted in accordance with the requirements, terms and provisions set forth in this Section 12.6.

12.6.1 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 American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

12.6.2 Condition to Initiation of Arbitration. In the event a dispute arises regarding an Alleged Defect and the Claimant is the Association, the Association must provide written notice to all Members prior to initiation of any proceeding or arbitration against a Builder which notice shall (at a minimum) include (i) a description of the Alleged Defect; (ii) a description of the Builder's position related to such Alleged Defect and any attempts of the affected Builder to correct such Alleged Defect and the opportunities provided to the affected Builder to correct such Alleged Defect; (iii) a certification from an engineer licensed in the State of Arizona, confirming its opinion of the existence of such Alleged Defect and a resume of such engineer; (iv) the estimated cost to repair such Alleged Defect; (v) the name and professional background of the attorney retained by the Association to pursue the claim against the Builder and a description of the relationship between such attorney and member(s) of the Board of Directors, if any; (vi) a thorough description of the fee arrangement or proposed fee arrangement between such attorney and the Association; (vii) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Builder(s) and the source of the funds which will be used to pay such fees and expenses; (viii) the estimated time necessary to conclude the action against Builder; and (ix) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. In the event the Association recovers any funds from Declarant(s) (or any other Person) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

12.6.3 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, the provisions of this Section shall govern.

12.6.4 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 is referred to in this Section as the "Arbitrator".

12.6.5 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.

12.6.6 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 12.6.4 above.

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

12.6.8 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 Guidelines, 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.

12.6.9 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.

12.6.10 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 and the parties attorneys and expert witnesses (where applicable to their testimony), except that, upon the 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.

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

12.6.12 Final Award. The Arbitrator shall promptly, within sixty (60) days of the conclusion of the proceedings or such longer period as the parties mutually agree, determine the claims of the parties and render a final award in writing. The Arbitrator 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

have absolutely no ability or authority to award any damages of any kind except for the actual cost to repair any defect for which a Builder is found to be responsible and which such Builder fails to correct. Accordingly, except for the actual damages referred to in the preceding sentence, the Arbitrator shall not award indirect, consequential, special, punitive or other damages. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

12.6.13 Statute of Limitations. All statutes of limitation applicable to claims which are subject to binding arbitration pursuant to this Section shall apply to the commencement of arbitration proceedings under this Section. If arbitration proceedings are not initiated within the applicable period, the claim shall forever be barred.

12.7 Approval of Legal Proceedings. The Association shall not incur attorneys' fees or other legal expenses in connection with any legal proceedings without the written approval of Unit Owners holding more than two-thirds (2/3) of the total votes in the Association, excluding the vote of any Unit Owner who would be a defendant in such proceedings. The Association must finance any such legal proceeding with monies that are specifically collected for same and may not borrow money or use working capital or reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal proceedings, all Unit Owners must notify prospective purchasers of the existence of such legal proceedings and must provide such prospective purchasers with a copy of any applicable notice provided by the Association in accordance with Section 12.6.2 of this Declaration. This Section shall not apply to legal proceedings initiated by the Association to collect any unpaid Assessments levied pursuant to this Declaration or to enforce against any Unit Owners (other than a Declarant or a Builder) any covenants, conditions, restrictions or easements contained in this Declaration.

12.8 Repurchase Option for Alleged Defect Claims. Notwithstanding anything in this Declaration to the contrary, in the event any Unit Owner, either directly or through the Association, shall commence an action against a Builder in connection with any Alleged Defects in such Unit Owner's Unit, the Builder (or any assignee of such Builder) that constructed and/or sold such Unit shall have the option (but not the obligation) to purchase such Unit on the following terms and conditions:

12.8.1 The purchase price shall be an amount equal to the sum of the following less any sums paid to such Unit Owners under any homeowner's warranty in connection with the Alleged Defect:

(i) The purchase price paid to the Builder by the original Unit Owner which purchased the Unit from a Builder;

(ii) The value of any documented Improvements made to the Unit by third-party contractors or decorators that added an ascertainable value to the Unit;

(iii) The Unit Owner's reasonable moving costs; and

(iv) Any reasonable and customary closing costs, including loan fees and/or "points" incurred by the Unit Owner in connection with the purchase of another primary residence within ninety (90) days after the closing of the repurchase provided for herein.

12.8.2 Close of escrow shall not occur later than forty-five (45) days after written notice from Builder to the Unit Owner of Builder's intent to exercise the option herein.

12.8.3 Title to the Unit shall be conveyed to the applicable Builder free and clear of all monetary liens and encumbrances other than non-delinquent real estate taxes.

12.8.4 All closing costs in connection with the repurchase shall be paid by the applicable Builder.

12.8.5 Exercise of the repurchase option as provided hereinabove shall constitute full and final satisfaction of all claims relating to the subject Unit, including claims relating to the Alleged Defect. The Unit Owner (or Association, as applicable) shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

12.9 **As-Built Conditions.** Various engineering and architectural plans pertaining to the Condominium, including, but not limited to, the Plat, subdivision maps, grading plans, plot plans, improvement plans and building plans (collectively the "Plans"), contain dimensions regarding certain aspects of the Units, Common Elements and other parts and aspects of the Condominium. By accepting a deed to a Unit, each Unit Owner shall be deemed to have acknowledged and agreed that (a) if there is a discrepancy between the Plans and the actual as-built conditions of any Unit, Common Element or any other Improvement within the Condominium, the as-built conditions will control and be deemed to be accepted as-is by the Unit Owner; (b) the usable or buildable area, location and configuration of the Unit, Common Elements and any other Improvements located within the Condominium may deviate from the Plans or from any other display or configuration related thereto; (c) the location, size, height and composition of all walls and fences to be constructed on or as part of a Unit or adjacent thereto shall be determined by Builders in their sole and absolute discretion. Despite the Plans or any other materials that may exist, Builders shall be deemed to have made no representations, warranties or assurances with respect to any such matters or with respect to the size, height, location or composition of any wall or fence to be constructed on or adjacent to any Units; and (d) each Unit Owner waives the right to make any demands of or claims against Builders as a result of any discrepancies between the Plans and any actual as-built conditions of any Unit.

12.10 **Limitation on Declarant's and Builders' Liability.** Notwithstanding anything to the contrary herein, it is expressly agreed, and each Unit Owner, by accepting title to a Unit and becoming a Unit Owner, and each other person, by acquiring any interest in the Condominium, acknowledges and agrees, that neither Declarant nor Builders (including, but not limited to, any assignee of the interest of Declarant or a Builder) nor any partner, shareholder, officer, director, employee or affiliate of Declarant or a Builder shall have any personal liability to the Association, or to any Unit Owner, Member or other person, arising under or in connection with this Declaration or resulting from any action or failure to act with respect to this Declaration, the Association or the Committee except, in the case of Declarant and Builders (or

their assignees), to the extent of their respective interests in the Condominium; and, in the event of a judgment against any such parties no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor. Neither Declarant nor the Association shall be liable for any theft, vandalism, disturbance, accident, unauthorized entrance or other similar occurrence or breach of the peace or security which may occur or take place within the Condominium.

ARTICLE 13 GENERAL

13.1 Enforcement. The Association, or any Unit Owner, shall have the right to enforce by any proceeding, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Condominium Documents. Failure by the Association or by any Unit Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter.

13.2 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.

13.3 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 13.4.

13.4 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 Unit Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated. An agreement to terminate the Condominium must be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed by the requisite number of Unit Owners.

13.5 Amendment.

13.5.1 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 Section 33-1216(D) of the Condominium Act, or by certain Unit Owners under Sections 33-1218(B), 33-1222, 33-1223 or 33-1228(B) of the Condominium Act, the Declaration 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.

13.5.2 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 written consent of all Unit Owners and of Declarant.

13.5.3 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. In addition, any amendment to this Declaration adopted during the Period of Declarant Control must be approved in writing by Declarant, and no amendment to Article 12 shall be effective unless Declarant approves the amendment in writing even if Declarant no longer owns any Unit at the time of such Amendment.

13.5.4 During the Period of Declarant Control, Declarant shall have the right to unilaterally, without the consent of any other Unit Owner, amend the Condominium Plat, the Declaration and any of the other Condominium Documents to (i) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (ii) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner or (iii) 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.

13.5.5 Any amendment adopted by the Unit Owners pursuant to Subsection 13.5.1 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by Declarant pursuant to Subsection 13.5.4 of this Declaration or the Condominium Act shall be executed by Declarant and shall be Recorded.

13.5.6 Until Declarant no longer owns any portion of the Initial Property or the Additional Property, prior written approval by the Declarant is required for any amendment to this Declaration which would impair or diminish the Declarant's rights to complete the development of the Condominium as Declarant deems appropriate or to sell or lease Units therein in accordance with this Declaration. In addition, notwithstanding any other provisions in this Declaration, until such time as (i) Declarant is no longer entitled to add Additional Property to the Condominium or (ii) Declarant no longer owns any Units, whichever occurs last, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant: (a) any amendment or action requiring the approval of First Mortgagees pursuant to this Declaration; (b) the annexation to the Condominium of real property other than the Additional Property; (c) the levy of any assessment for the construction of new facilities not constructed on the Common Elements by Declarant; and (d) any significant reduction of the Association's maintenance of the Common Elements or other services of the Association.

13.6 **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

13.7 **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 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 (3) 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.

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

13.9 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.

13.10 Topic Headings. The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or of this Declaration.

13.11 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Unit Owner or Member from any liability or obligation incurred under, or in any way connection 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 Unit Owner or Member arising out of, or in any way connected with, such ownership or membership and the covenants and obligations incident thereto.

13.12 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.

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

13.14 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 Owner's failure to insure compliance by such Person 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.

13.15 Attorneys' Fees. In the event 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.

13.16 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.

13.17 Notice of Violation. The Association shall have the right to record a written notice of a violation by any Unit Owner of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the name of the Unit Owner; (ii) the legal description of the Unit against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the Notice of Violation was Recorded and the recording data of the Notice of Violation and shall state that the violation referred to in the Notice of Violation has been cured, or if such be the case, that it did not exist.

13.18 References to VA and FHA. In various places throughout the Condominium Documents, references are made to the Department of Veterans Affairs or Veterans Administration ("VA") and the Federal Housing Administration ("FHA") and, in particular, to various consents or approvals required of either or both of such agencies. Such references are included so as to cause the Condominium Documents to meet certain requirements of such agencies should Declarant request approval of the Condominium by either or both of those agencies. However, Declarant shall have no obligation to request approval of the Condominium by either or both of such agencies. Unless and until the VA or the FHA has approved the

Condominium as acceptable for insured or guaranteed loans and at any time during which such approval, once given, has been revoked, withdrawn, cancelled or suspended and there are no outstanding mortgages or deeds of trust Recorded against a Unit to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no further force and effect.

13.19 **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 Declarant, the Association shall sign such letters, documents or other writings as may be required the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

13.20 **Development and Special Declarant Rights.** Notwithstanding anything to the contrary within the Condominium Documents, Declarant hereby expressly reserves the right, but not the obligation, to exercise the Development Rights and the Special Declarant Rights.

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

MERITAGE HOMES OF ARIZONA, INC., an Arizona corporation, doing business as Monterey Homes

By: *David Walls*
Its: Division President

STATE OF ARIZONA)
)
County of Maricopa) ss.

The foregoing instrument was acknowledged before me this 15th day of August, 2006, by DAVID WALLS, the DIVISION PRESIDENT of Meritage Homes of Arizona, Inc., an Arizona corporation, doing business as Monterey Homes, on behalf of such entity.

Sandra H. Mishima
Notary Public

My Commission Expires: 1/30/2010



EXHIBIT "A"

Legal Description of the Initial Property

Units 131 through 141, inclusive, as shown on the Condominium Plat (as defined in Article 1 of the foregoing Declaration), together with the undivided interests in Common Elements appurtenant thereto and any Limited Common Elements allocated thereto, all as more particularly provided in the foregoing Declaration or on said Condominium Plat.

EXHIBIT "B"

Legal Description of the Additional Property

Units 101 through 130, inclusive, as shown on the Condominium Plat (as defined in Article 1 of the foregoing Declaration), together with any undivided interests in Common Elements appurtenant thereto and any Limited Common Elements thereto, all as may be more particularly provided in the foregoing Declaration or any amendment thereto, or on said Condominium Plat.