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Kelley, Moss & Williams
P.O. Box 20189
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**DECLARATION
OF
CONDOMINIUM
AND
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BAHAMA BUSINESS PLAZA,
(MOHAVE COUNTY, ARIZONA)
AND
BAHAMA BUSINESS PLAZA
CONDOMINIUM ASSOCIATION, INC.
(SECOND AMENDED AND RESTATED)**

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**DECLARATION OF CONDOMINIUM AND COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
BAHAMA BUSINESS PLAZA,
(MOHAVE COUNTY, ARIZONA) AND
BAHAMA BUSINESS PLAZA ASSOCIATION, INC.
(SECOND AMENDED AND RESTATED)**

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is amended and restated this 4th day of August, 2005, by EKLUND INVESTMENT GROUP, LLC, a California limited liability company, as Successor Declarant ("Declarant").

RECITALS

A. The Declarant is the owner of real property legally described as Bahama Business Plaza, a condominium, Mohave County, Arizona, according to the plat recorded on July 27, 2004, at Fee No. 2004-068921 in the office of the Recorder for Mohave County, Arizona, being a subdivision of air space over Lots 1 and 2, Block 4 of Tract 115 in City of Lake Havasu per plat recorded at Fee No. 149835, ("Property").

B. Declarant intends to develop the subdivision as a Professional Project which will ultimately consist of sixteen (16) separately designated and described Suites with structural improvements thereupon together with those Common Elements depicted on the Plat.

C. The Declarant intends to sell, dispose of or convey from time to time all or portion of the Suites in said Plaza, and desires to subject the Plaza to certain protective reservations, covenants, conditions and restrictions between Declarant and the acquirers and/or users of the Suites establishing a general plan for the ownership, use and maintenance of all portions of Bahama Business Plaza to preserve, promote and protect the aesthetic and property values of Bahama Business Plaza.

D. The Amended and Restated Declaration recorded in Book 5378, page 13, Official Records of Mohave County, Arizona, provides at Article 9.7 that the Declarant, during the period of Declarant Control may amend the Declaration. The Declarant executes this Second Amended and Restated Declaration to correct a scrivener's error to clarify the project is for professional offices.

NOW, THEREFORE, pursuant to the Condominium Act Statutes, Declarant hereby submits the Property to Condominium and Declarant hereby declares that all of the Property shall at all times be owned, conveyed, transferred, hypothecated, mortgaged, held, rented, leased, encumbered, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions contained herein, all of which are established and declared for the purpose of establishing a general plan for the protection, maintenance, development and improvement of Bahama Business Plaza and all Suites therein and for the purpose of increasing the economic value, desirability and attractiveness of the Property for the mutual benefit of the Owners thereof. The covenants, conditions and restrictions set forth in this Declaration shall run with the Property and shall be binding upon all other persons acquiring any right, title or interest in and to said real property or any part thereof, and shall inure to the benefit of Declarant, the Association and each person who becomes an Owner of any part of the Property, and each successor in interest of any such person; and further are each thereof imposed upon each and every Suite, parcel or individual portion of said Condominium as a mutual equitable servitude in favor of each and every other Suite, parcel or individual portion of land therein as the dominant tenement.

Each Condominium Suite shall be held, mortgaged, encumbered, sold, leased, transferred, conveyed, and otherwise dealt with or affected, together with such Suite's appurtenant undivided Suite Owner's interest in the Limited Common Elements and Common Elements. A Suite Owner's interest shall be deemed included in any such transaction involving a Condominium Suite whether or not any reference is made to such interest.

1. **DEFINITIONS.**

The following terms shall have the following meaning when used in this Declaration:

1.1. **Annual Assessment or Monthly Assessment.** "Annual Assessment" or "Monthly Assessment" shall mean a charge against a particular Suite Owner and his Suite, representing a portion of the costs of maintaining, improving, repairing and managing the Association's property and all of the Common Expenses, which are to be paid by each Suite Owner to the Association.

1.2. **Architectural Review Committee.** "Architectural Review Committee" shall mean the committee established pursuant to Article 8 hereof.

1.3. **Articles.** "Articles" shall mean the Articles of Incorporation of the Association which are, or shall be, filed in the Office of the Corporation Commission of the State of Arizona, as such Articles are amended from time to time.

1.4. **Association.** "Association" shall mean and refer to BAHAMA BUSINESS PLAZA CONDOMINIUM ASSOCIATION, its successors and assigns, and it shall serve as the owners' Association for owners of suites in BAHAMA BUSINESS PLAZA CONDOMINIUMS.

1.5. **Association Property.** "Association Property" shall mean all real and personal property owned by, acquired by, or leased to the Association, including without limitation the parking areas, central directories, waste receptacles and streets (unless and until transferred to a public agency or authority pursuant to the Declaration) together with such Common Elements as may be developed and transferred, in fee or by way of easement, or leased to the Association by the Declarant.

1.6. **Board.** "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

1.7. **Building.** "Building" shall mean the principal structure or structures as depicted on the Plat.

1.8. **Building Plans.** "Building Plans" shall mean and refer to those plans and drawings of Paul R. Lehr, Architect, for design and the construction of BAHAMA BUSINESS PLAZA.

1.9. **Capital Improvement Assessment.** "Capital Improvement Assessment" shall mean a charge against each Suite Owner and his Suite, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Elements which the Association may from time to time authorize. Such charge shall be levied among all of the Suites in the Project in the same proportions as are Monthly Assessments.

1.10. **City.** "City" shall mean and refer to the City of Lake Havasu City, Arizona.

1.11. **Class "A" Voting Members.** "Class A Voting Members" shall be all owners of Suites in Bahama Business Plaza excluding Declarant until such time as Class B Member right's terminate.

1.12. **Class "B" Voting Members.** "Class B Voting Members" shall be the Declarant only until such time Class B voting rights terminate as provided in Article 3.4.

1.13. **Common Elements or Common Areas.** "Common Elements" or "Common Areas" shall mean and refer to all of the condominium other than the Suites and those areas specifically included in this Declaration and/or the plat hereof as Common Areas. Common Areas include, but are not limited to, parking areas, carports, outside walks, entranceways, driveways, waste receptacle areas, monuments, registry signs, landscaping and all other portions of the Project, except the Suites, all as more particularly described on the plat. Parking spaces shall be assigned by Declarant.

1.14. **Common Expenses.** "Common Expenses" shall mean and refer to those expenses incurred by the Association to maintain the Common Elements of the Association and the financial liabilities of the Association, together with any allocations to reserves.

1.15. **County.** "County" shall mean and refer to Mohave County, Arizona.

1.16. **Declaration.** "Declaration" shall mean and refer to this Second Amended and Restated Declaration of Covenants, Conditions and Restriction's, as the same may be amended from time to time.

1.17. **Declarant or Developer.** "Declarant" or "Developer" shall mean and refer to JOHN C. & RENEE C. FINN, LLC, an Arizona limited liability company, its successors and assigns and DAVID & LINDA BLOAUERT, LLC, an Arizona limited liability company, its successors and assigns.

1.18. **Exterior.** "Exterior" shall mean and refer to the exterior portions of a Suite, including the exterior of the buildings, utility services and entrance areas.

1.19. **Limited Common Elements.** "Limited Common Elements" shall mean and refer to those areas or elements assigned to a Suite and designated as storage area, patio area or covered parking (carport) area..

1.20. **Mortgage.** "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Suite or other portion of the Project to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used shall be synonymous with the term "Mortgage."

1.21. **Member.** "Member" shall mean any person who is a member of the Association pursuant to Article 3 below.

1.22. **Occupant.** "Occupant" shall mean and refer to a tenant of a Suite or a portion of a Suite in the project, whether an Owner or not.

1.23. **Plat.** "Plat" shall mean and refer to the plat for Bahama Business Plaza, as amended from time to time, depicting the subdivided Suites, driveways, Common Elements and easements, and such other information reasonably necessary to reflect the intent of the Developer.

1.24. **Project.** "Project" shall mean and refer to that certain real property described as Bahama Business Plaza.

1.25. **Supplementary Assessment.** "Supplementary Assessment" shall mean a charge against a particular Suite Owner and his Suite, representing a portion of the cost to the Association: (i) for the purpose of defraying, in whole or in part, to the extent the amounts in the capital replacement reserve fund are insufficient therefore, the costs of any construction or reconstruction, maintenance, repair or replacement of Common Area improvements or any part thereof, (ii) for the purpose of defraying any other expense incurred or to be incurred as provided in this Declaration, or (iii) to cover any deficiency, in the event that, for whatever reason, the amount received by the Association from Regular Assessments is less than the amount determined to be necessary and assessed by the Board.

1.26. **Suite.** "Suite" shall mean each individually platted Suite as depicted on the plat or plats of Bahama Business Plaza together with the improvements constructed thereon, which said improvements are designated and are intended for use as a professional office.

1.27. **Suite Owner.** "Suite Owner" shall mean and refer to the record Owner, whether one or more persons or entities (if more than one, any reference to Owner shall be construed as joint and several), of beneficial or equitable title or interest (or legal title if equitable title has merged) of any Suite, including the purchaser entitled to possession as shown by a recorded contract for sale of the Suite. In the case of Suites the fee simple title to which is vested of record in a Trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq. (Deeds of Trust), or in the Declarant by trust agreement or mortgage, the Suite Owners shall be deemed to be the Trustor or Mortgagor.

1.28. **Visitor.** "Visitor" shall mean and refer to the customers, guests, invitees, patrons or clients of an occupant of a Suite or a portion of a Suite in the Project.

2. **DECLARATION.**

2.1. **Plan of Common Ownership.**

The general plan and scheme of this Declaration contemplates a development which will ultimately consist of:

(a) Sixteen (16) separately designated and legally described freehold estates consisting of the spaces or areas, being the space or area contained within the perimeter walls of each of the condominium Suites in the buildings constructed on the Property, as more particularly described on the Plat.

(b) A freehold estate in the portion of the real property as described and referred to herein as the "Limited Common Elements", as more particularly described on the Plat and,

(c) A freehold estate consisting of the remaining portion of the real property as described and referenced to herein as the "Common Elements" or "Common Area" which definition includes the building structure and property upon which it is located, and specifically includes and is not limited to, parking areas, retaining walls, outside walks, driveways, landscaping and all portions of the Property except the Suites and Limited Common Elements, all as more particularly described on the Plat.

2.2. **Common Ownership.** Declarant, in order to establish a plan of condominium ownership for the Property and improvements thereon hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates:

(a) The sixteen (16) separately designated and legally described freehold estates consisting of the spaces or areas, being the area or space contained within the perimeter walls of each of the sixteen (16) condominium Suites in the buildings constructed on said Property as more particularly described on the Plat, said spaces being defined and referred to herein as "Suites".

(b) A freehold estate in the portion of the real property as described and referred to herein as the "Limited Common Elements" as more particularly described on the Plat, and

(c) A freehold estate consisting of the remaining portion of said real property as and as more particularly described on the Plat, described and referred to herein as the "Common Elements."

2.3. **Ownership of Common Elements.** For the purposes of this Declaration, and any supplemental or amended Declaration, the ownership of each Suite shall include the respective undivided interest in the Limited Common Elements and the Common Elements specified and established on the plat for Bahama Business Plaza, a condominium, and this Declaration.

2.4. **Legal Description of Suites.** The sixteen (16) individual Suites hereby established and which shall be individually conveyed are described as follows and each Suite bears a proportionate interest to the condominium Property herein established:

Suites A-100, A-102, A-104, A-106, B-100, B-102, B-104, B-106, C-100, C-102, C-104, C-106, D-100, D-102, D-104 and D-106, BAHAMA BUSINESS PLAZA, a Condominium, according to the Declaration recorded at Book 5151, Page 778, Official Records in the office of the County Recorder, Mohave County, Arizona at Fee No. 2004-085415 and the plat therefor recorded July 27, 2004 at Fee No. 2004-068921, a subdivision of Lots 1 and 2, Block 4, Tract 115 in City of Lake Havasu per plat recorded as Fee No. 149835.

2.5. **Interest in Limited Common Elements and Common Elements.** The undivided interest in the Limited Common Elements and the Common Elements hereby established and which shall be conveyed with each respective Suite shall be equal for each Suite.

2.6. **Adhesion of Common Elements.** The above respective undivided interests established and to be conveyed with the respective Suites as indicated above, cannot be changed except as indicated above, and said Declarant, its successors and assigns, and grantees covenant and agree that the undivided interests in the Limited Common Elements and the Common Elements and the fee titles to the respective Suites conveyed therewith, shall not be separated or separately conveyed or encumbered without its respective Suite even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Suite.

3. THE ASSOCIATION.

3.1. General Purpose and Powers. The Bahama Business Plaza Condominium Association has been or will be incorporated to serve as the Owners Association as required by Section 33-1241, Arizona Revised Statute and to which reference is made in this Declaration. The duties and powers of the Association are those as set forth in Section 33-1242, Arizona Revised Statutes, this Declaration, the Articles and Bylaws, together with the general and implied powers of a non-profit corporation, generally to do any and all things that a corporation organized under the laws of the State of Arizona may lawfully do, which are necessary and proper, in operating for the peace, health, comfort, safety and general welfare of its members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the documents aforementioned. Transfer of control to the Association over the Common Elements of the Development shall take place upon the first close of escrow for the sale of a condominium Suite. The Association shall further have the right to install or construct capital improvements on the Property. The Association may at any time, and from time to time, reconstruct, replace or refinish any improvement or portion thereof upon the Property in accordance with the original design, finish or standard of construction of such improvements; replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Property. The Association shall serve as a governing body for all of the Suite Owners for the maintenance, repair, replacement, administration and operation of the property and generally control and manage the condominium Property for the health, safety and general welfare of the Suite Owners.

3.2. Membership.

3.2.1. An Owner of a Suite shall automatically be a member of the Association, and shall remain a member of the Association until such time as ownership ceases, at which time the membership in said Association shall automatically cease for such Owner. Ownership of a Suite shall be the sole qualification and criteria for membership.

3.2.2. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Suite and then only to the new Owner, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer of membership is void and shall not be reflected on the books and records of the Association. A proper transfer of ownership shall be recorded upon the books of the Association and a membership issued to the new Owner. It is the responsibility of the new Owner to notify the Association in writing of such transfer and prior to such notification, the Association is entitled to rely

on its books and records as showing a Suite's true Owner and all notices given and action taken by the Association with respect to a Suite and the Owner shown on the Association's official books and records shall be valid. The Association may charge a fee to process a notice of transfer, which fee is payable as an assessment.

3.2.3. All financial and other records of the association shall be made reasonably available for examination by any Suite Owner and his authorized agents or by holders, insurers and guarantors of first mortgages that are secured by Suites of the project.

3.3. **Board of Directors.** The affairs of the Association shall be managed by the Board of Directors as provided for in the Bylaws subject to the minimum and maximum number established by law.

3.4. **Voting Members Rights.** There shall be two classes of voting membership in the Association:

3.4.1. **Class A Voting Members.** Each Member shall have one (1) vote for each 100 square feet he or she owns; provided, however, that Declarant shall not have Class A voting rights until the date specified in Section 3.4.2(b) below. Further provided that in the event that fee simple title to a Suite is held by multiple Owners, the multiple Owners shall, prior to each meeting of the Association, provide the Association with a written statement, signed by all such multiple Owners, designating one person who shall have the right to cast the single vote assigned to the Suite owned by such multiple Owners. No fractional votes by multiple Owners of a Suite will be recognized by the Association.

3.4.2. **Class B Voting Members.** The Class B member(s) shall be the Declarant (as defined in the Declaration), and shall be entitled to three (3) votes for each 100 square feet owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, taking into account all Suites (including subsequent phases to be annexed);
- (ii) on December 31, 2020; or
- (iii) when, in its discretion, the Class B Member so determines.

3.4.3. **Requirement of Good Standing.** A member must be in a good standing with the Association to be entitled to vote. A member is in good standing if he or she is current in payment of all assessments on the record date of the meeting.

3.4.4. **Transfer of Voting Rights.** The right to vote may not be severed or separated from any Suite, and any sale, transfer or conveyance of fee interest in any Suite to a new Owner or Owners shall operate to transfer the appurtenant membership and voting rights without the requirement of any express reference thereto.

3.4.5. **Proxies.** Members in good standing shall be entitled to proxy to another member in good standing for the purposes of voting at meetings. All proxies must be executed on the form and in the manner prescribed by the Association.

3.4.6. **Cumulative Voting.** Cumulative voting shall not be allowed.

3.5. **Meetings.** Meeting of the Members shall be held as follows:

3.5.1. **Regular Meetings.** Regular meetings of the Members shall be held at least once each calendar year at a time and place prescribed by the Bylaws of the Association.

3.5.2. **Special Meetings.** A special meeting of the Members shall be called by the Board upon the vote of a majority of the members of the Board, or upon receipt of written request therefore by Members representing thirty percent (30%) of a majority of the Owners as defined in the Bylaws.

3.5.3. **First Meeting.** The first meeting of the Members shall be held no later than the date which is ninety (90) days after the first date on which four (4) Suites have Owners other than Declarant. At such first meeting, all positions on the Board shall be filled by persons elected by the Members.

3.5.4. **Place of Meetings.** Meetings of the Members shall be held within the Project or as close thereto as conveniently possible. Such meetings shall not be held outside of Mohave County, Arizona, unless the Board determines that unusual conditions exist that make a meeting elsewhere desirable.

3.6. **Notices.** Each Member shall be entitled to notice of any meeting at which such Member has the right to vote. Notices of meetings shall be in writing and shall indicate each matter to be voted on at the meeting that is known to the Board at the time notice of the meeting is given; provided; however, that no business shall be

conducted at a special meeting unless it is specified in such notice. Such notices shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting, except in such cases as are determined by the Board to be emergency situations. Any notice shall be deemed given and any budget or other information or material shall be deemed furnished or delivered to a party if sent in accordance with the provisions of Section 13.14 below.

3.7. **Record Date.** The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any budget or other information or material, or in order to make a determination of Members for any purpose. Notwithstanding any provisions hereof to the contrary, the Members of record on any such record date shall be deemed the Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, for information or material with respect to the same matter for any adjournment of the same meeting. A record date shall not be more than thirty (30) days nor less than five (5) days prior to the date on which the particular action requiring determination of the Members is proposed or expected to be taken or to occur.

3.8. **Articles and Bylaws.** The purpose and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association, including any reasonable provisions with respect to corporate matters, but in the event that any such provisions may be, at any time, inconsistent with any provisions of this Declaration, the provisions of this Declaration shall govern. In the event there is a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall govern.

3.9. **Notification of Transfer.** Each Owner shall within ten (10) days of any sale, transfer or conveyance of a fee interest in the Owner's Suite, notify the Association of such sale, transfer or conveyance, including the name, address and telephone number of the transferee.

3.10. **Declarant Control of the Association.** Pursuant to section 33-1243(D), Arizona Revised Statutes, Declarant shall have control of the Association from its incorporation and until the earlier of (1) Ninety days after conveyance of seventy-five percent of the Suites which may be conveyed to Suite Owners other than Declarant, or (2) Four years after Declarant has ceased to offer Suites for sale in the ordinary course of business. During the period of Declarant's control, Declarant or persons designated by Declarant may appoint and remove the officers and members of the Board of Directors of

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

3.11. **Assignment of Right to Future Income.** Except during the period of Declarant's control, the Association through its Board of Directors may assign its right to future income, including the right to receive common expense assessments, only under the following terms and conditions:

3.11.1. In the unanimous opinion of the entire Board (i) an emergency exists; (ii) the Association does not have sufficient liquid funds to meet the emergency and/or to liquidate Association assets in the time frame for which the funds will be needed would cause the Association to incur unacceptable losses, and (iii) there is no other practical way for the Association to obtain the needed funds; and

3.11.2. The Association has sufficient assets in one or more appropriate reserve accounts which, when liquidated, will be sufficient to repay the contemplated borrowing in accordance with its terms; and

3.11.3. Notice of the Board's action along with the details of the terms and conditions of the borrowing and the Board's repayment plans be given to Suite Owners and eligible holders of first mortgagees (as defined in Section 12.4) as soon as practical under the circumstances.

4. **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.**

4.1. **Maintenance of Association Property.** The Association shall be obligated to provide for the care, operation, management, maintenance, repair and replacement of Association Property. Without limiting the generality of the foregoing, such obligation shall include (i) keeping Association Property in good, clean, attractive and sanitary condition, order and repair, (ii) repairing wind and other damage caused by the elements, (iii) unless otherwise required of a governmental agency having jurisdiction, removing any debris or materials to prevent obstruction of access to any Suite(s), (iv) keeping Association Property safe, attractive and maintained in a manner desirable for a Professional Project, and (v) making necessary or desirable alterations, additions, betterments or improvements to or on Association Property.

4.2. **Maintenance of Other Property.** Without limiting the generality of the foregoing, such obligation shall include (i) keeping the exterior portions of the Suites in good, clean, attractive and sanitary condition, order and repair, (ii) repairing wind and other damage caused by the elements, (iii) unless otherwise required by a governmental agency having jurisdiction, removing debris or materials to prevent obstruction of access to Suite(s), and (iv) maintaining the exterior of Suites in a manner desirable for a Professional Project. The Association shall have an easement across each Suite to fulfill its obligation under this paragraph. A Suite owner may not exempt itself from the provisions of this paragraph under any circumstances.

4.3. **Labor and Services.** The Association may obtain and pay for the services of any person to manage its affairs, or any part thereof, to the extent it deems advisable. The Association may also obtain and pay for the services of such other personnel, including independent contractors, as the Association shall determine to be necessary or desirable for the proper operation and maintenance of Association Property or the Association, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts.

4.4. **Insurance.**

4.4.1. **Scope of Coverage.** Commencing not later than the time of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

4.4.1.1 Property insurance on the common elements insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the common elements, as determined by the Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

4.4.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$ 2,000,000. 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 and other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

4.4.1.3 Directors and officers liability insurance or equivalent Association liability insurance;

4.4.1.4 Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

4.4.1.5 Commercial crime insurance, including employee fidelity insurance, in an amount determined by the Board's best business judgment but not less than one-sixth of the Annual Assessments on all Units plus reserves on hand. Such commercial crime insurance shall cover funds held by the Association's management company, unless such management company's insurance insures the Association against crimes committed by or against such management company. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

4.4.1.6 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

4.4.1.7 Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

4.4.1.7.1 Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the Association;

4.4.1.7.2 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

4.4.1.7.3 No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or adversely affect recovery on the policy;

4.4.1.7.4 The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

4.4.1.7.5 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Association or other Owners or Occupants;

4.4.1.7.6 Statement naming the Association as the insured;

4.4.1.7.7 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

4.4.1.8 Unit Owners shall be responsible for acquiring independent insurance coverage on the contents, including fixtures and tenant improvements, in such amount as the Unit Owner deems appropriate.

4.4.2. **Certificates of Insurance.** An insurer which has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, Mortgagee or Beneficiary under Deed of Trust. Any insurance obtained pursuant to this Article shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

4.4.3. **Payment of Insurance Proceeds.** Any loss covered by the property policy purchased under this section shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interest may appear. Subject to the provisions of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, 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 property has been completely repaired or restored, or the condominium is terminated.

4.4.4. **Repair and Replacement of Damaged or Destroyed Property.**

4.4.4.1 Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless any of the following apply:

4.4.4.1.1 The condominium is terminated.

4.4.4.1.2 Repair or replacement would be illegal under any state or local health or safety statute or ordinance.

4.4.4.1.3 Eighty percent (80%) of the Unit Owners, including every Owner or a Unit or allocated limited common elements which will not be rebuilt, vote not to rebuild.

4.4.4.1.4 The cost of repair or replacement in excess of insurance proceeds and reserves is common expense. If the entire condominium is not repaired or replaced:

4.4.4.1.5 The insurance proceeds attributable to the damaged common elements in proportion to their common elements interests or as otherwise provided in the Declaration shall be used to restore the damaged area to a condition compatible with the remainder of the condominium. The insurance proceeds attributable to Units and allocated limited common elements which are not rebuilt shall be distributed in proportion to their common elements interests or as otherwise provided in the Declaration to the Owners of those Units and the Owners of the Units to which those limited common elements were allocated, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all the Unit Owners or lienholders as their interests may appear in proportion to the common elements interests of all the Units.

4.5. **Association Functions.**

4.5.1. **Actions for Owners' Benefits.** The Association may undertake or contract for any lawful activity, function or service for the benefit of the Owners. In addition to the Assessment described in Article 6 below, all costs and expenses of activities, functions or services undertaken by the Association for the benefit of fewer than all of the Owners may, at the discretion of the Board, be assessed to the Owner or Owners specifically benefitted thereby, and such Assessments shall be enforced in accordance with the provisions of Article 6 below. The Association shall obtain from any governmental authority any licenses necessary or appropriate to carry out its functions hereunder.

4.5.2. **Permitted Activities.** The activities, functions or services undertaken or contracted for by the Association may include, without limitation, (i) providing police or similar security services, (ii) providing legal and accounting services necessary or desirable in connection with the operation of the Association or the

enforcement of this Declaration, (iii) utility services, garbage and trash collection and disposal for each Suite and area of the Project, (iv) providing sewer and water service and other common services, (v) providing vegetation maintenance (including replanting), (vi) granting or conveying easements or rights of way over, across, along or under any Association Property, (vii) enforcing all rights granted to the Association in any lease, easement or other instrument, including this Declaration, and (viii) providing service to the Owners and Occupants of Suites in the nature of a merchant's association which undertakes promotional activities for the benefit of all Owners and Occupants of Suites.

4.6. **Rules and Regulations.**

4.6.1. **Adoption.** The Association, through its Board of Directors may promulgate such reasonable rules and regulations as it deems appropriate and/or necessary for the governance and/or operation of the Association. Such rules and regulations are enforced by the Association itself including any duly employed management agent or employee. Such rules and regulations may, without limitation: (i) regulate use and enjoyment of Association Property, (ii) regulate landscaping maintenance (including replanting), (iii) regulate the parking of vehicles within the Project, (iv) regulate signage within the Project, (v) prohibit noxious or offensive activities, nuisances, unsafe or hazardous activities or construction, emissions of loud sounds or offensive odors and unsightliness, and (vi) regulate the use of Association Property.

4.6.2. **Copies to be Available to Owners.** The Association shall furnish each Owner with a written copy of such rules and regulations, but failure to furnish such copy shall not be deemed to invalidate such rules and regulations to any extent.

4.6.3. **Enforcement.** The Association shall have the right to enforce any of the rules and regulations of the Association and the obligations of any Owner or Occupant under this Declaration or any provisions of the Association's Articles of Incorporation or Bylaws (i) by assessing a reasonable fine against such Owner or Occupant; (ii) suspending the right of such Owner or Occupant to use Association Property; (iii) the recording of a non-compliance against the Property in the office of the Mohave County Recorder or, (iv) suspending the right of such Owner to vote at meetings of the Association provided that such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation. In the event a violation continues for a period of ten (10) days after notice of such violation has been given to such Owner or Occupant, such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties set forth at (i), (ii), (iii) and (iv). If any such fine imposed on an Owner or Occupant by the Association is not paid by said Owner or

Occupant within thirty (30) days after written notice of the imposition of such fine, then the amount of such fine shall be added to the amount of regular Assessment charged to the Suite of said Owner or Occupant and shall be enforceable as an Assessment in accordance with Article 6 below. No penalty may be imposed under this Section until the Owner or Occupant accused of any such violation has been afforded the opportunity to request a hearing to be heard in person by submission of a written statement or through a representative at any such hearing. The Association may also take judicial action against any Owner or Occupant to enforce complaints with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

4.6.4. **Violation by Owner or Occupant.** Should any Owner or Occupant violate any rule or regulation or any provision of this Declaration, or should any Occupant's act, omission or neglect cause damage to the Association Property, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Suite occupied by Occupant.

4.6.5. **Violation by Visitor.** Should any Visitor of an Owner or an Occupant violate any rule, regulation or provision of this Declaration, or cause such damage to Association Project, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Occupant.

4.7. **Dedication of Land.** The Association may dedicate, transfer, lease or grant easements in any part of the Association Property to any public agency, authority or utility if it deems the same to be for the benefit of all Association Members.

4.8. **Property Taxes.** The Association shall pay all real and/or personal property taxes and assessments levied on any portion of Association Property. The Association may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application of any such taxes or assessments.

4.9. **Right of Entry of Suites.** The Association shall have the right, upon not less than seventy-two (72) hours prior written notice, to enter upon any Suite for the sole purpose of enforcing this Declaration or any rules and regulations of the Association. Any expenses incurred by the Association through the exercise of the right of entry to enforce the Declaration shall be enforceable as a special assessment against the Suite for which enforcement is sought as a lien.

4.10. **Implied Rights.** The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonable to be implied from the

provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.11. **Limitation on Rights.** The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association:

4.11.1. **Contracts.** Entering into a contract with a third person wherein the third person will furnish goods or services for the Association or Association Property for a term longer than one (1) year, except (i) a contract with a public utility company if the rates charged for the materials or services are regulated by an Arizona regulatory authority or agency (provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate), or (ii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration.

4.11.2. **Capital Improvements.** Incurring aggregate expenditures for capital improvements to Association Property in any fiscal year in excess of ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

4.11.3. **Compensation to Directors and Officers.** Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

4.11.4. **Sale or Lease of Association Property.** Sale or lease of Association property shall only be with the consent of eighty percent (80%) of the owners.

5. **COMMON ELEMENTS, EASEMENTS AND IMPROVEMENTS.**

5.1. **Title to and Use of Common Elements.**

5.1.1. **Responsibility for Maintenance.** At such time as the Association has been formed and one Suite has closed escrow, Declarant shall convey to the Association fee simple title to the Common Elements free and clear of all monetary encumbrances and liens except those imposed by the County of Mohave, and subject to the provisions of this Declaration and easements, conditions, restrictions and reservations then of record. Prior to the turnover date, Declarant shall be responsible for the

maintenance of the Common Elements, including any monument signage, landscaped areas, and parking areas including carports thereon.

5.1.2. **Character of Common Elements.** Subject to the provisions of any easements granted to, or conditions imposed by the City in connection with its approval of the subdivision of the property by Declarant, Common Elements shall be used only for the purposes set forth in this Declaration and as specified on the plat for the benefit and enjoyment by the Owners, Occupants and their Visitors pursuant to the rules and regulations of the Association.

5.2. **Rights in the Association Property.**

5.2.1. **Suspension of Rights to Use Association Property.** The rights of Owners and Occupants and their Visitors to use Association Property shall be subject to this Declaration and to the rules and regulations of the Association. The Association shall have the right to enforce such rules and regulations against any Visitor by suspending the right of such Visitor to use Association Property in accordance with the provisions of Section 4.5 above as though such Visitor were an Owner or Occupant referred to therein.

5.2.2. **No Violation of Insurance Requirement.** Without the prior written consent of the Association, no Owner, Occupant or Visitor shall do anything or cause anything to be kept in or on Association Property that might result in an increase in the premiums for any insurance policies obtained by the Association or that might cause cancellation of any such insurance policies. No Owner, Occupant or Visitor shall do anything or keep anything in or on Association Property that would violate any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

5.2.3. **No Waste or Obstruction.** Without the prior written consent of the Association, no Owner, Occupant or Visitor shall obstruct, damage or commit waste to or on any Association Property. No Owner, Occupant or Visitor shall change, alter, repair or store anything in or on any Association Property unless the same is authorized in writing by the Association.

5.3. **Loss or Damage to Association Property.** If loss or damage shall be caused to any Association Property due to the act, omission or neglect of an Owner or agent of Owner, Occupant, or Visitor of an Owner or Occupant, said Owner, shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the insurer has waived its rights of subrogation against said party. If such loss or damage is not immediately repaired by the

responsible party, the Association may effect such repairs, and the costs thereof shall be assessed against the Suite of the applicable Owner(s) as an Assessment in accordance with Article 6 below and Section 4.5 above.

5.4. **Easements for Repair, Maintenance and Emergencies.** The Association shall have an easement for access through each Suite for repairing, maintaining, and replacing the sidewalks, walkways, entrance and landscaped areas and to effect emergency repairs thereon necessary to prevent damage to Association Property or to another Suite. Nothing herein shall be deemed to obligate the Association to make any such emergency repairs.

5.5. **Negligence or Willful Misconduct.** Any damage to any Suite caused by the gross negligence or willful misconduct of the Association or any of its agents during any entry onto any Suite shall be repaired by and at the expense of the Association.

5.6. **Reservation of Construction Easement.** For a period of thirty (30) months after recordation of this Declaration, Declarant reserves an easement for itself and its agents over the Property for the completion of construction of improvements thereon.

5.7. **Easement for Encroachments, Utilities and Use of Common Elements.** Declarant, the Association and Suite Owners of contiguous Suites shall have a reciprocal easement appurtenant to each of the Suites over the Suites and the Common Elements for the purpose of (1) accommodating any existing encroachment of any wall of the buildings and (2) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling of the buildings. Easements and reciprocal negative easements for installation and maintenance of utility services and uses of the Common Elements are specifically reserved for the benefit of the Suite Owners. The foregoing easements shall not unreasonably interfere with the use and enjoyment by the Owners of adjoining Suites. No portion of the Common Elements including without limitation the driveways, parking spaces and other amenities which are a part of the Property, are proposed to be leased by Declarant to the Suite Owners or to the Association.

6. **ASSESSMENTS.**

6.1. **Assessments.**

6.1.1. **Obligation of Owner to Pay Regular and Supplementary Assessments.** Each Owner (or, in the event of multiple Owners of the same Suite, such multiple Owners jointly and severally) shall be obligated to pay to the Association

amounts as hereinafter provided based on the square footage of each Suite owned by such Owner or Owners, which amounts are herein called "Assessments". Assessments shall be classified as either "Regular" or "Supplementary" Assessments.

6.1.2. **Board Authority to Assess.** Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including, without limitation, power and authority to determine where, when and how Assessments shall be paid to the Association, and each Owner shall comply with all such determinations.

6.2. **Fiscal Year and Determination of Budgets.** The fiscal year of the Association shall be determined by the Board as set forth in the Bylaws. No later than thirty (30) days prior to the commencement of each fiscal year or partial fiscal year, the Board shall determine the budget for the Association for such fiscal year or partial fiscal year, in the following manner:

6.2.1. **Operating Budget.** The Board shall prepare or cause to be prepared and approve an Operating Budget for the fiscal year or partial year showing, in reasonable detail, the estimated operating costs and expenses that will be payable in that fiscal year or partial fiscal year to fulfill the regular operating functions and obligations of the Association in that fiscal year or partial fiscal year, including amounts necessary to cover obligations made in connection with, or contemplated under, any previously approved budgets, plus an amount sufficient to provide a reasonable carry-over reserve for the next fiscal year.

6.2.2. **Capital Replacement Reserve.** The Board shall also determine the amount to be set aside in a special fund allocated for any maintenance and replacement of improvements not required to be performed annually. Upon determination of the budget for a fiscal year or partial year, the Board shall furnish a copy of the budget to each Owner, which budget shall separately identify amounts attributable to the Operating Budget and to the Capital Replacement Reserve fund.

6.3. **Regular Assessments.**

6.3.1. **Annual Calculation.** The amount to be raised by Regular Assessments during a fiscal year or partial fiscal year shall be equal to (i) the Operating Budget for such period, plus (ii) the Capital Replacement Reserve to be set aside for said period, less the amount attributable to the Operating Budget collected but not disbursed in the immediate preceding fiscal year or partial fiscal year (provided, however, that in lieu of such subtraction the Association may elect to refund said surplus to the Owners).

6.3.2. **When Approval of Owners Required.** If the aggregate amount of the Regular Assessment to be levied in any fiscal year against the Owners of each Suite is more than twenty percent (20%) greater than the Regular Assessment for the prior fiscal year, such Regular Assessment shall not be levied without the prior approval of Owners holding fifty-one percent (51%) or more of the Class A voting rights of the Association.

6.3.3. **Failure to Calculate.** If the Board fails to determine or cause to be determined the total amount to be raised by Regular Assessments in any fiscal year or partial fiscal year, and/or fails to notify the Owners of the amounts of such Regular Assessments, then the amounts thereof shall be deemed to be the amounts assessed in the previous fiscal year.

6.3.4. **Limitation on Association Expenditures.** Except as emergencies may require, the Association shall make no commitments or expenditures in excess of the funds reasonably expected to be available to the Association.

6.4. **First Assessment.** Assessments shall commence for each Suite on the first day of the first month following the close of escrow for the initial conveyance from Declarant to an Owner. Assessments shall be based on initial budget as adopted by Declarant.

6.5. **Supplementary Assessments.** In addition to Regular Assessments, the Association may levy Supplementary Assessments, payable over such period as the Association may determine: (i) for the purpose of defraying, in whole or in part, to the extent the amounts in the capital replacement reserve fund are insufficient therefore, the costs of any construction or reconstruction, maintenance, repair or replacement of improvements or any part thereof, (ii) for the purpose of defraying any other expense incurred or to be incurred as provided in this Declaration, or (iii) to cover any deficiency, in the event that, for whatever reason, the amount received by the Association from Regular Assessments is less than the amount determined to be necessary and assessed by the Board. Supplementary Assessments in excess of ten percent (10%) of the budgeted gross expenses of the Association for a fiscal year may not be levied without the prior approval of Owners holding fifty-one percent (51%) or more of the Class A voting rights. No Supplementary Assessment may be levied for the first year.

6.6. **Apportionment of Assessment.** The annual and special Assessments will be payable either in full upon receipt of the notice of Assessments, or semiannually, quarterly, or monthly as prescribed more particularly in the Bylaws, and shall be uniformly applied against such Suites without regard to the extent of use or non-use of the

Common Elements by the Owner, lessee, contract purchaser or Occupant of any such Suite.

6.7. **Time for Payments.** The amount of the Assessment, charge, fine, penalty or other amount payable with respect to any Owner or such Owner's Suites shall become due and payable as specified by the Board. In the event that the Association does not receive payment within ten (10) days after any notice of the amount due as such Assessment, charge, fine, penalty or other amount, interest shall accrue at a rate specified by the Board but in no event greater than the maximum amount allowed by law from the date due until paid. The Board shall have the discretion to impose a reasonable late charge in lieu of interest.

6.8. **Lien for Assessments and Other Amounts.** All amounts assessed, imposed or levied by the Association against a Suite shall constitute a lien against said Suite. The priority date for this lien shall be the date of recordation of this Declaration. If an Owner does not pay in full within fifteen (15) days after its due date, any Assessment, charge, fine, penalty or other amount or any installment thereof, or any interest accrued thereon, the Association may record with the Mohave County Recorder a Notice of Lien for Assessment describing the amount and nature of such Assessment and the Suite or Suites owned by the defaulting Owner. Said assessment lien shall include costs and expenses of collecting the unpaid amount (including reasonable attorney's fees). The recording or non-recording of the Notice of Assessment shall not affect the validity of the liens. The Notice of Assessment Lien shall include costs and penalties, the Owner's name and a description of the applicable Suite(s) against which the Assessment Lien is recorded, and shall be signed by an authorized representative of the Association. Upon payment or other satisfaction of the Assessment Lien, the Association shall cause to be recorded a further notice evidencing the satisfaction and release of the Assessment Lien. The Association may enforce the Assessment Lien in the manner prescribe for judicial foreclosure of Mortgages. The foregoing remedies shall be in addition to any other remedies provided by law or in equity for the enforcement of such obligations.

6.9. **Liability of Owners and Purchasers.** The amount of any Assessment, charge, fine or penalty owing to the Association of any Owner under this Declaration shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representative, successors and assigns. Each such amount, together with interest thereon (or late charge), may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

6.10. **Financial Statements.** Within ninety (90) days after the end of each fiscal year, the Association shall distribute to its Members an Association income/expense statement as of the last day of such year.

6.11. **Inspection of Books and Records.** The membership register, books and account, and minutes of the meetings of the Members and of the Board (or committees of the Board), shall be made available for inspection and copying by any Member, or by his or her duly appointed representative, at any reasonable time and for the purpose reasonably related to his or her interest as a Member, at the office of the Association or at such other place as the Board shall prescribe. The Board may establish reasonable rules with respect to the notice to be given to the custodian of the records by the Member desiring to make the inspection, the hours and days of the week when such an inspection may be made, and payment of the costs of reproducing copies of documents requested by a Member. The procedures for inspection of books and records by Members and the inspection of said books and records shall at all times comply with A.R.S. § 33-1258, as the same may be amended from time to time.

7. **RESTRICTION ON USE OF SUITES.**

7.1. **Uses and Construction Standards.**

7.1.1. **Uses.** The Premises constructed on the Suites are hereby restricted to professional offices, non-retail in nature. CO-Professional Office zone as defined by Lake Havasu City Municipal Ordinance, multi-family and residential uses are specifically prohibited.

7.1.2. **New construction.** New construction by a Suite Owner is not permitted unless the original Suite has been damaged, in whole or part. All reconstruction shall be of new materials and constructed on site. The original Building Plans, including color schemes, shall be complied with the fullest extent possible in light of any amendments to the Uniform Building Code or City Ordinances. Any alteration or deviation of any type must be approved by the Architectural Review Committee. No building, or portion thereof, constructed or erected on the premises of a Suite shall be moved from other locations onto any Suite. Any temporary structures on any Suite during construction must be approved in advance by the Committee and must be removed when construction is completed.

7.1.3. **Alterations of Suite.** A Suite Owner may make any improvements or alterations to his Suite that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. The Owner

of two adjoining Suites or an adjoining part of an adjoining Suite, may remove or alter any intervening partition or create apertures in intervening partitions, even if the partition in whole or in part is a common element, expressly provided that the actions do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries. A Suite Owner shall not change the appearance of the common elements, or the exterior appearance of a Suite or any other portion of the condominium, without written permission of the Association. Any alterations of a Suite or Suites be subject to prior Architectural Review Committee approval.

7.1.4. **Relocation of Boundaries Between Adjoining Suites.** The boundaries between or among adjoining Suites may be relocated by an amendment to the Declaration. The Owners of the Suites shall prepare an amendment to the Declaration, including the plat that identifies the Suites involved, specifies the altered boundaries of the Suites and their dimensions and includes the Suites' identifying numbers. If the Owners of the adjoining Suites have specified a reallocation between their Suites of the allocated interests, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the Owners of those Suites, shall contain words of conveyance between or among them and, before recording the amendment, shall be submitted to the board of directors. Unless the board of directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute in approval and record the amendment.

7.1.5. **Subdivision of Suites.** A Suite may be subdivided into two or more Suites. A Suite Owner shall prepare an amendment to the Declaration, including the plat which identifies the Suite involved, specifies the boundaries of each Suite created and its dimensions, assigns an identifying number to each Suite created and allocates the allocated interests formerly allocated to the subdivided Suite to the new Suites in a reasonable manner. The amendment shall be executed by the owner of the Suite to be subdivided and, before recording, submitted to the board of directors. Unless the board of directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

7.1.6. **Machinery and Equipment.** No machinery, fixtures or equipment of any type, including but not limited to, heating, cooling, air conditioning and refrigeration equipment, solar panels or equipment, hot water storage systems and tracker type systems shall be placed on any portion of a Suite other than in that area designated for machinery and equipment by the Declarant in accordance with the Building Plans.

7.1.7. **Signs**. Except as may be specifically permitted in the Association rules and regulations, no advertising signs, billboards, unsightly objects or nuisance shall be erected, placed or permitted to remain on any Suite or any portion of the Project. The Association shall have the right to place and maintain a central sign and/or a central registry signs of customary and reasonable dimensions showing the location of and identifying the Suites in the Project, and the Occupants of the Suites. The Declarant shall have the right to place signs of reasonable dimensions on Suites, in Common Elements, or on any portion of the Project, in connection with Declarant's sales program and office facilities in the Project. All permitted signage shall conform to the Architectural Standards and procedures noted in Article 8 below.

7.1.8. **Antennas**. No pole, mast or outdoor antenna, or satellite dish shall be allowed on any Suite without the express written consent of the Board.

7.1.9. **No Disrepair**. No Suite shall be used or allowed to become in a state of disrepair or other condition so as to depreciate the value of other Suites. The exterior of each Suite shall be maintained in a neat, orderly and aesthetically pleasing manner free from spider webs, unsightly cracks, chips and stains in the wood and stucco. In the event of any Owner not complying with this provision, Declarant or Association shall have the right to enter upon the land and remove the offending objects or effect the necessary repairs at the expense of the Owner, who shall repay the same upon demand as an Assessment, and such entry shall not be deemed a trespass. The right of the Association under this paragraph is in addition to the right afforded the Association at paragraph 4.8.

7.1.10. **Storage of Equipment, Refuse and Miscellaneous**. Exterior storage of any type is expressly prohibited. All equipment, refuse or other miscellaneous items must be kept within a Suite. Trash and other waste shall be disposed of in the common trash receptacles. Automobiles, trucks, buses, boats, boat trailers, recreational vehicles, campers and the like shall not be stored within the Project.

7.1.11. **Window Coverings**. All window coverings, including lettering must be approved by the Architectural Review Committee. The Architectural Control Committee shall expressly have the authority to approve the color, texture, type and material of any window covering. At no time shall aluminum foil, tin foil, paper, cardboard or other similar materials be permitted on any window, arcadia door, or similar openings as sun shades. Nothing herein contained will prevent the use of commercially available sun film materials, shade screens or similar solar screening or shading devices

on or over windows, arcadia doors or similar openings, provided that architectural approval be first obtained if appropriate.

7.2. **Plan Review.** No alteration, addition, modification, decoration, redecoration, paint, repaint, stucco or re-stucco, or reconstruction of any improvement to the exterior of a Suite shall be commenced, erected or maintained until the plans and specifications for the same showing all construction details, including the nature, shape, height, materials, floor plans, floor, wall, location and approximate cost thereof shall have been submitted to and approved in writing by the Committee, its successors or assigns. Said Committee shall have the right to deny approval of any plans or specifications which are not, in its opinion, suitable or desirable for aesthetic or any other reason, and shall have the right to take into consideration the harmony and conformity of the building with the surrounding buildings and the suitability of the same with surrounding area and the effect of such structure or building as seen from adjacent or neighboring Suites.

7.3. **Variances.** The Committee may authorize variances from compliance with any of the Architectural Provisions of this Declaration. Said variances shall be granted only in extreme cases where the failure to so do will result in substantial harm to the Suite Owner. Variances may not be granted to authorize square footage deviations or exterior modifications not in compliance with the plans. Variances must be evidenced in writing, must be signed by a majority of the members of the Committee and shall become effective only upon recordation. 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 a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Suite Owner's obligation to comply with all governmental laws and regulations affecting his use.

8. **ARCHITECTURAL REVIEW COMMITTEE.**

8.1. **Creation.** The Architectural Review Committee is hereby created with all of the rights, powers, privileges and duties herein set forth. The Committee shall consist of not less than three and no more than five members. Two members shall constitute a quorum, regardless of the actual number of members. The Board of Directors may serve as the Architectural Review Committee.

8.2. **Terms.** Each Representative shall hold office for such term as is set forth in the appointment and until his or her successor has been duly appointed as herein set forth, unless he or she has sooner resigned or been removed.

8.3. **Appointment; Initial Representatives.** Declarant shall have the sole and exclusive right to appoint the initial Representatives to serve for one (1) year terms after the date of recording this Declaration, unless such Representatives shall earlier resign or be removed by Declarant. Thereafter, Declarant shall have the sole and exclusive right to appoint and remove all of the Representatives until the date on which seventy-five percent (75%) of the Suites in the Property are owned in fee by Owners other than the Declarant. Thereafter and until the earlier of (i) the date on which one hundred percent (100%) of the Suites in the Property are owned by Owners other than Declarant, or (ii) the fifth (5th) anniversary date of the recordation of this Declaration, Declarant shall have the right to appoint and remove two (2) Representatives. Thereafter, the Board of Directors shall have the sole right to appoint and remove all Representatives, who shall be Members of the Association, except those appointed by Declarant. Declarant may, at any time from time to time, assign Declarant's right to appoint a Representative to the Board of Directors; however, such assignment shall not waive Declarant's right to appoint Representatives in the future, including any replacement of a Representative appointed by the Board pursuant to assignment of appointment power by Declarant. The initial Representatives shall be appointed by Declarant.

8.4. **Removal and Resignation.** Any Representatives appointed by Declarant may be removed by Declarant with or without cause. Any Representative appointed by the Board may be removed by the Board with or without cause. Any Representative may resign by submitting a written notice to the Board stating the effective date of his or her resignation. Acceptance of the resignation shall not be necessary to make the resignation effective.

8.5. **Committee Functions.** The functions of the Committee, in addition to any functions set forth elsewhere in this Declaration, shall be (i) to consider and approve or disapprove any plans, specifications or other material submitted to it for the alteration, modification, reconstruction, renovation, placement, or maintenance of any Suite or amenity thereon, (ii) to adopt Committee rules and regulation as provided in this Article 8, and (iii) to perform such other duties as may, from time to time be delegated to it by the Association. The Committee's actions on matters shall be by majority vote of the Representatives. Any action required to be taken by the Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a majority of the Representatives then serving. The Committee shall keep and maintain a record of all its actions.

8.6. **Rule Making Authority.** The Committee shall adopt rules and regulations not incompatible with this Declaration (i) regulating construction activities

(remodeling, renovation and the like) on all Suites including, without limitation, dust and noise abatement requirements, hours of construction activity, and (ii) interpreting, applying, supplementing and implementing the provisions of this Declaration pertaining to the alteration, modification, reconstruction or renovation of a building including but not limited to types of building materials, permissible exterior colors, landscaping and aesthetic requirements. Said rules and regulations shall be called the "Architectural Standards and Procedures of Bahama Business Plaza". A copy of the Architectural Standards and Procedures of Bahama Business Plaza as from time to time adopted, amended or repealed, certified by a Representative, shall be maintained in the Association office and shall be available for inspection during normal business hours by any Owner or prospective Owner and any architect or agent of any Owner of prospective Owner. Those Architectural Standards and Procedures, as they may, from time to time be amended or revised, are incorporated into this Declaration by this reference, as if set forth in full.

8.7. **Review of Plans.** The Committee may, by enacting appropriate rules, specify the procedures for the submission and approval of said plans, specifications and other materials. The Committee's review of any such plans, specifications and other materials shall be accomplished within 30 days of a completed submittal package, as specified in such rules. The Committee shall notify the Owner of its decision within 14 days of its review. If the Committee fails to approve or disapprove such plans and specifications within thirty (30) days after submission thereof, approval will not be required and this Article will be deemed to have been fully complied with; provided, however, that in no event shall any Suite Owner have the right to make changes or additions to his or her Suite which alters the original square footage on the exterior of the said Suite.

8.8. **Application for Approval of Improvements.** The individual Representatives shall not be entitled to compensation for services performed pursuant to this Article. The Committee may charge a submission fee not to exceed Fifty Dollars (\$50.00) per each submission.

8.9. **Requirements for Plans.** All plans and specifications for any new structural modifications shall be prepared by a licensed architect and shall include, without limitation, specifications of materials visible from the exterior and a description of color schemes. The plans and specifications for any alteration, modification or addition to the exterior of any existing building or improvement including, without limitation, alterations such as exterior painting (except for repainting with same color paint) shall contain the same information as is required for any structural alteration or other improvement, except that plans for nonstructural alterations, modifications or additions need not be prepared by an architect. After approval of any plans,

specifications and other materials, the Committee shall, upon request of the Owner, provide said Owner with a statement of approval.

8.10. **Zoning Reclassification.** Should any Owner make application for and obtain an approval for a zoning reclassification from the appropriate governing body such new classification will not in itself constitute an automatic deviation from the provisions herein, but such reclassification shall not affect this Declaration and shall be subject to approval by the Board of Directors.

8.11. **Standards of Review.** The Committee shall, in reviewing plans, specifications and other materials submitted to it, consider the suitability of the proposed improvements for the area in which it will be located; the quality of the materials to be used in construction; and the aesthetic quality and harmony with the overall project.

8.12. **Damage During Construction.** In addition to the responsibilities for repair of Association Property set forth elsewhere in this Declaration, during the course of construction activities on a Suite, the Owner thereof shall be responsible at its expense, for the prompt repair and/or replacement of Association Property (including, without limitation, sidewalks, curbs, street paving, walls, landscaping and irrigation systems) damaged or destroyed by the Owner, its Occupant, its agents, contractors or employees. Should the Owner fail to satisfactorily and promptly replace or repair any such damage to the satisfaction of the Committee within ten (10) days after the Committee's written notice thereof to the Owner, the Association may effect repair or replacement at the expense of Owner. Any such costs shall be charged to the Owner and the applicable Suite as an Assessment, the payment of which shall be enforceable in accordance with the provisions of Article 6 above.

8.13. **Liability of Representatives.** Provided that Representatives act in good faith and with due diligence, neither the Committee nor any Representatives thereof shall be liable to the Association, any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, specifications or materials, the construction or performance of any work, whether or not pursuant to approved plans, specifications and materials; the execution or recordation of a form of approval or disapproval pursuant to this Article 8, whether or not the facts stated therein are correct; the performance of any other function pursuant to the provisions of this Declaration; or any other act or omission of the Committee or Representative.

9. **DECLARANT'S RIGHTS AND RESERVATIONS.**

9.1. **Authority to Re-construct and Sell Suites.** Declarant shall have the right to repair, remodel, redecorate, re-construct and sell Suites for which provision has been made in this Declaration or any amendment hereto.

9.2. **Rights and Easements Reserved to Declarant.** The following rights in the Common Elements are hereby reserved by the Declarant so long as any Suite in the Project remains unsold, subject to a concomitant obligation to restore, if appropriate. Declarant reserves an easement over and upon the Common Elements and upon lands appurtenant to any Suite for the purpose of completing improvements for which provision is made in this Declaration or any amendment hereto. Declarant reserves the right to install and maintain such structures, displays, signs, billboards and flags in the common areas as may be reasonably necessary for the conduct of its business of completing the work and disposing of the Suites by sale, lease or otherwise. Declarant reserves the right to use any Suites in the Project owned solely or partially by Declarant as a model home complex or real estate sales or leasing office, including, but not limited to, the right to install and maintain such structures, displays, signs, billboards and flags as may be reasonably necessary for the conduct of Declarant's business of completing the work and disposing of the Suites by sale, lease or otherwise. Declarant need not seek or obtain Architectural Committee approval of any improvement constructed, repaired, remodeled, redecorated, re-constructed or placed by Declarant on any portion of the Property by Declarant.

9.3. **Right to Assign.** The rights of Declarant hereunder and elsewhere in this Declaration may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in any portion of the Property by a recorded written assignment.

9.4. **Irrevocable Power of Attorney.** Each Suite Owner hereby grants, upon acceptance of his deed to his Suite, an irrevocable, special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

9.5. **Nonexclusive Use of Common Elements and Private Drives and Walkways.** Declarant shall be entitled to the nonexclusive use of the Common Elements and any facilities thereon, without further cost for access, ingress, egress, use or enjoyment, in order to show the Property to its prospective purchasers and dispose of the Property as provided herein. Declarant, its successors and tenants, shall also be entitled to the nonexclusive use of any portions of the Property which comprise drives and walkways

for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property.

9.6. **Additional Declarant Rights and Reservations.** In addition to the rights set forth in Sections 9.1 through 9.5 inclusive, Declarant has other and additional rights and reservations set forth in various other Sections of this Declaration including, but not limited to, those concerning the following: Voting rights under Section 3.4; Control of the Association under Section 3.10; Control of Architectural Review Committee under Section 8.3; Easements under Section 7.1; Signs under Section 9.2; Consent to amendments of this Declaration under Section 14.2; and Right to bring legal proceedings under Section 15.1.

9.7. **Development Rights of Declarant.** Declarant hereby reserves and grants to itself, its successors and assigns the following development rights:

9.7.1. Add real estate to a condominium.

9.7.2. Create easements, Suites, Common Elements or Limited Common Elements within a condominium.

9.7.3. Subdivide Suites, convert Suites into Common Elements or convert Common Elements into Suites.

9.7.4. Withdraw real estate from a condominium.

9.7.5. Make the condominium part of a larger condominium or planned community.

9.7.6. Amend the Declaration during any period of Declarant control, pursuant to §33-1227, Arizona Revised Statutes, to comply with applicable law or to correct any error or inconsistency in the Declaration, if the amendment does not adversely affect the rights of any Suite owner.

9.7.7. Amend the Declaration during any period of Declarant control, pursuant to §33-1227, Arizona Revised Statutes, 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.

9.8. **Duration of Development Rights.** Those development rights reserved by or granted to Declarant herein shall be exercised within seven years from the recordation of this declaration.

9.9. **Manner of Expansion.** The development rights and or expansion of this project shall be achieved through the amendment of the declaration in accordance with §33-1220, Arizona Revised Statutes. In accordance therewith, a new plat shall be prepared and made a part of the declaration as amended. In accordance with § 33-1219, Arizona Revised Statutes, the plat shall show the name of the Condominium, the boundaries of the Condominium and a legal description of the real estate included in the Condominium, the extent of any encroachments on any portion of the Condominium, to the extent feasible, the location and dimensions of all easements serving or burdening any portion of the Condominium; the location and dimensions of the vertical boundaries of each Suite, and each Suite's identifying number; any horizontal Suite boundaries, with reference to an established datum, and each Suites identifying number; any Suites with respect to which the Declarant has reserved the right to create additional Suites or Common Elements, identified appropriately; the location and dimensions of all real estate subject to the development right of withdrawal identified as such; the distance between non-contiguous parcels of real estate, if any, compromising the Condominium; the location and dimensions Limited Common Elements, including porches, balconies, patios and entryways, other than Limited Common Elements described in §33-1212 paragraphs 2 and 4 Arizona Revised Statutes; and any other matters the Declarant deems appropriate. The amendment to the Declaration shall assign an identifying number to each new Suite created and reallocate the allocated interest among all Suites. The amendment shall further describe any Common Elements and any Limited Common Elements created and in the case of Limited Common Elements, designate the Suite to which each is allocated as required by §33-1218, Arizona Revised Statutes.

9.10. **Interest in Limited Common Elements and Common Elements.** The interest in Limited Common Elements and Common Elements shall be reallocated in the manner set forth in Section 2.5 of this Declaration. The undivided interest in the Limited Common Elements and the Common Elements shall be equal for each Suite.

9.11. **Allocation of Assessments; Voting Rights.** Article 6 in this Declaration governs assessments. The allocation of assessments shall be in such a manner as that each Suite Owner will bear his or her proportionate share of the common expense liability. In accordance with Section 3.4 herein each Suite owner shall be entitled to one (1) vote per 100 square feet (equaling the entire owners interest for that Suite) in association meetings and other matters which come to election. The effective date for the

allocation of assessments and voting rights shall be the date of recording of any amendment to this Declaration as provided for in Section 8.10.

9.12. **Substantial Completion of Improvements.** All improvements intended for further phases will be substantially completed prior to annexation by amendment to this Declaration in accordance with Section 9.10 herein.

9.13. **Undivided Interest in the Common Elements.** All Suite Owners in the new phases share equally in the undivided interest in the projects total Common Elements.

9.14. **Quality of Construction.** Any buildings and improvements to be constructed or the property due to the exercise of the development rights herein or otherwise must be consistent with the quality of those constructed pursuant to the Declaration as initially recorded.

10. **TERMINATION OF CONDOMINIUM.**

10.1. **Voting Requirements For Termination By Agreement.** Except in the case of a taking of all the Suites by eminent domain, this condominium may be terminated only by agreement of Suite Owners of Suites to which at least eighty percent (80%) of the votes in the Association are allocated. In addition to the foregoing, except in the case of condemnation or substantial destruction of the property, this condominium may be terminated only by agreement of eligible mortgage holders to which sixty seven percent (67%) of the votes appertain in addition to the requisite number of owners. Eligible mortgage holders shall be entitled to Notice as set forth in Section 12.

10.2. **Evidence of Agreement to Terminate.** The agreement to terminate shall be evidenced by the execution or ratifications of the termination agreement, in the same manner as a deed, by the requisite number of Suite Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. The termination agreement and all ratifications of the termination agreement shall be recorded in Mohave County and shall be effective only on recordation. The termination agreement may provide that all the Common Elements and Suites of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

10.3. **Sale Of Real Estate in Condominium.** The Association, on behalf of the Suite Owners, may contract for the sale of real estate in the condominium, but the

contract shall not be binding on the Suite Owners until approved pursuant to this Section 11.2. If any real estate in the condominium is to be sold following termination, title to that real estate on termination shall vest in the Association as Trustee for the holders of all interest in the Suites. Thereafter, the Association shall have all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association shall continue in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Suite Owners and lienholders as their interest may appear, in proportion to the respective interests of Suite Owners as provided in this Section 10. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Suite Owner and his successors in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his Suite. During the period of that occupancy, each Suite Owner and his successors in interest shall remain liable for all assessments and other obligations imposed on Suite Owners by this Declaration.

10.4. Vesting of Title Following Termination. If the real estate constituting the condominium is not to be sold following termination, title to all the real estate in the condominium shall vest in the Suite Owners on termination as tenants in common in proportion to their respective interests as provided in subsection 10.6 and liens on the Suites shall shift accordingly. While such tenancy in common exists, each Suite Owner and his successors in interest shall have the exclusive right to occupancy of the portion of the real estate that formerly constituted his Suite.

10.5. Association Trustee Of Proceeds Of Sale. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Suite Owners and holders of liens on the Suites as their interests may appear. Following termination, creditors of the Association holding liens on the Suites which were recorded before termination may enforce those liens in the same manner as any lienholder.

10.6. Interest Of Owner Under 10.3, 10.4 and 10.5. The respective interests of Suite Owners referred to in subsections 10.3, 10.4 and 10.5 of this Section 10 are as follows:

10.6.1. Except as provided in paragraph 2 below, the respective interests of Suite Owners are the fair market values of their Suites, Limited Common Elements and Common Element interests immediately before the termination, as determined by an independent appraiser selected by the Association. The determination of the independent appraiser shall be distributed to the Suite Owners and shall become final unless disapproved within thirty days after distribution by Suite Owners of Suites to

which fifty percent of the votes in the Association are allocated. The proportion of any Suite Owner's interest to that of all Suite Owners is determined by dividing the fair market value of that Suite Owner's Suite and Common Element interest by the total fair market values of all the Suites and Common Elements.

10.6.2. If any Suite or any limited common element is destroyed to the extent that an appraisal of the fair market value of the Suite or element before destruction cannot be made, the interests of all Suite Owners are their respective Common Element interests immediately before the termination.

10.7. **Effect Of Foreclosure On Condominium.** Except as provided in section 10.8 of this Section 10, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium shall not withdraw that portion from the condominium.

10.8. **Exclusion of Real Estate Foreclosed Upon From Condominium.** If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over this Declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, on foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

10.9. **Applicability of Section 10.** The provisions of subsections 10.2 through 10.8 of this Section 10 shall not apply if the original Declaration, an amendment to this original Declaration recorded before the conveyance of any Suite to an Owner other than the Declarant or an agreement by all of the Suite Owners contain provisions inconsistent with such subsections.

11. **AMENDMENT OF DECLARATION.**

11.1. **Notice.** Notice of the subject matter of a proposed amendment to this Declaration in a reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by a Suite Owner at a meeting of the Members of the Association.

11.2. **Vote Required.** Except in cases of amendments that may be executed by the Declarant under Section 33-1220, Arizona Revised Statutes (exercise of development rights), by the Association under Section 33-1206 (eminent domain), or Section 33-1228, subsection B, (Termination of Condominium by Agreement), and except to the extent permitted or required by other provisions of the Arizona Condominium Act, this Declaration, including the Plat, may be amended only by a vote of

the Suite Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible holders of first mortgage on Suites to which at least fifty-one percent (51%) of the votes of Suites subject to a mortgage appertain, shall be required to amend any provisions included in the Declaration, bylaws or equivalent condominium documents which are for the express benefit of first mortgage holders or insurers or guarantors of first mortgages on Suites in the Condominium Property. The consent of the Declarant is required to an amendment during any period of Declarant control of the Association pursuant to Section 33-1243, Arizona Revised Statutes, as set forth in this Declaration. Within thirty days after the adoption of any amendment pursuant to this subsection, the Association shall prepare, execute and record a written instrument setting forth the amendment. The amendment to this Declaration shall be recorded in Mohave County and shall be effective only on recordation. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article 11 shall not be brought more than one year after the amendment is recorded.

11.3. **Limitations on Amendments.** Except to the extent expressly permitted or required by the Arizona Condominium Act and this Declaration, an amendment shall not create or increase special Declarant rights, increase the number of Suites or the allocated interests of a Suite or the uses to which any Suite is restricted in the absence of unanimous consent of the Suite Owners. An amendment shall not terminate or decrease any unexpired development right, special Declarant right or period of Declarant control unless the Declarant approves.

11.4. **Execution of Amendments By Association.** Amendments to this Declaration required by the Arizona Condominium Act to be executed by the Association shall be executed on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

11.5. **Approval of Veterans Administration.** Notwithstanding any other provision in this Declaration, the prior written approval of the Administrator of Veterans Affairs shall be required before any amendment to this Declaration shall become effective, provided that one or more Suites have mortgages insured by the Veterans Administration.

12. **RIGHTS OF FIRST MORTGAGEES.**

12.1. **First Mortgagees Rights.** Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Mortgagee or Beneficiary under any First Mortgage or

First Deed of Trust upon a condominium Suite made in good faith and for value, provided that after the foreclosure of any such Mortgage or Deed of Trust such condominium Suite shall remain subject to this Declaration, as amended.

12.2. **First Mortgagees Rights to Notice.** In addition to the rights of mortgagees, insurers and guarantors of mortgages as provided for by this Declaration or by law, a mortgagee, insurer or guarantor of a mortgage on any Suite in this project has the right to timely written notice of:

(i) any condemnation or casualty loss that effects either a material portion of the project or the Suite securing its mortgage;

(ii) any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any Suite on which it holds a mortgage;

(iii) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owner's association and

(iv) any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

To be entitled to receive this information, the mortgagee, insurer or guarantor must submit a written request in accordance with 12.3.

12.3. **Requirements to Become Entitled to Notice.** For first mortgagees to be eligible mortgage holders and insurers and guarantors of mortgages to be entitled to notice as provided for herein they must submit a request for notice in writing to the Owner's Association. The request for notice shall contain the name and address of lender, insurer or guarantor and the Suite number or address which it has a mortgage or insures. **NOTE:** Approval of such change shall be implied when an eligible mortgage holder, insurer or guarantor of a mortgage fails to submit a response to any written proposal for an addition or amendment or wherever mortgagee, insurer, or guarantor approval is required within thirty (30) days after the proposal is made, provided that the proposal is delivered United States mail, postage prepaid, certified or registered mail, return receipt requested.

12.4. **Intention of Section 12.** The requirements for lender approvals in this Article 12 is not intended to and shall not operate to either:

(1) Deny or delegate control over the general administrative affairs of the Association by the Suite Owners or the Board of Directors.

(2) Prevent the Association or the Board of Directors from commencing, intervening in or settling any litigation or proceeding, or receiving and distributing any insurance proceeds pursuant to Section 33-1253, Arizona Revised Statutes.

13. **MISCELLANEOUS.**

13.1. **Duration of Declaration.** Each of the provisions contained in this Declaration shall run with the land and continue and remain in full force and effect for a period of sixty (60) years beginning as of the date of recordation of this Declaration, and shall automatically be extended thereafter for successive periods of ten (10) years each unless an instrument executed by the then Owners of not less than seventy (70%) of the Suites has been recorded agreeing to terminate this Declaration.

13.2. **Effect of Provisions of Declaration.** Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration (i) shall be deemed incorporated in each deed, agreement of sale or other instrument by which any right, title or interest in the Project or in any Suite is granted, devised or conveyed, whether or not set forth or referred to in such deed, agreement or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in the Project or in any Suite by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner and, as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns and shall be deemed a personal covenant, to and for the benefit of the Association and any other Owner; (iii) shall be deemed a real covenant by Declarant for itself, its successors and assigns and also an equitable servitude, running, in each case, as a burden with and upon the title to the Project and each Suite and, as a real covenant and servitude for the benefit of the Project and each Suite; (iv) shall be deemed a covenant, obligation and restriction secured by a Lien in favor of the Association burdening and encumbering the title to the Project and each Suite in favor of the Association.

13.3. **Enforcement and Remedies.** In the event of any violation or breach of, or any default under this Declaration or other Association document, the Association, through its Board of Directors shall have the right, after ten (10) days' notice in writing to the defaulting Owner, to go upon such Suite and take such action as may be necessary to correct such violation, breach or default, including without limitation removal of any

unauthorized improvements and restoration of the premises, removal of any unauthorized personal property and placing the same in storage at the expense of the defaulting Owner, repainting the exterior of any building which has been painted in an unapproved manner of color, replacement of any landscaping removed without approval or which Owner has failed to maintain and/or replace, and clean up any unsightly material or debris upon any Suite. Any expenses thereby incurred by the Association shall become a lien upon such Suite which may be foreclosed. In addition to other remedies herein provided, each provision of this Declaration with respect to an Owner or the Suite(s) of an Owner shall be enforceable by the Association, by Declarant (as long as it owns any Project) or by any Owner, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover from the losing party any costs and expenses in connection therewith, including reasonable attorney's fees.

13.4. **Protection of Encumbrances.** No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage, deed of trust or other lien on any Suite taken in good faith and for value and recorded prior to the time of recording of fee simple title to the Suite and giving notice of such violation, breach or failure to comply; nor shall such violation, breach or failure to comply or action to enforce, affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust or other lien or title or interest of any such mortgage, deed of trust or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien result in any liability, personal or otherwise, of any such holder or purchaser.

13.5. **Construction.** The provisions of this Declaration shall be liberally construed to promote and effectuate the fundamental concepts of the Project set forth in this Declaration, and no provision hereof shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over the Project.

13.6. **Assignment of Powers.** Any and all of the rights and powers vested in Declarant pursuant to this Declaration may be delegated, transferred, assigned, conveyed or released by Declarant to the Association or successor in interest to all of Declarant's interest in the project and if to the Association, it shall accept the same effective upon the recording by Declarant of a notice of such delegation, transfer, assignment, conveyance or release.

13.7. **Non-Avoidance.** No Owner through non-use or abandonment of his/ her Suite may avoid the burdens or obligations imposed on him or her by this Declaration.

13.8. **Limited Liability.**

13.8.1. **Good Faith.** Neither Declarant, the Association, any member of the Architectural Review Committee, any Member of the Board, any officer of the Association, any Representative, nor any agent or employee of Declarant, the Association, the Architectural Review Committee shall be liable to any Owner or any other person for any and all claims, damages, liabilities, obligations, fees or expenses (including attorney's fees) incurred as a result of any act or any failure to act with respect to any matter if the act taken or failure to act was made in good faith, regardless of whether such act or failure to act would otherwise give rise to a cause of action for negligence or breach of duty or contract, including, without limitation, any acts or failure to act with respect to the planning, design, engineering and development of the Tract and the Premises to be constructed thereon.

13.8.2. **Indemnification of Officers and Directors.** The Association shall indemnify every present and former (i) officer and Director of the Association, (ii) Representative or management agent, (iii) member of the Committee, and (iv) member of the Executive Committee against any and all claims, damages, liabilities, obligations, fees or expenses (including attorney's fees) incurred as a result of holding such office, to the full extent permitted by law.

13.8.3. **Equitable Relief.** After the date hereof, each Owner who acquires any interest in all or any part of a Suite further agrees that upon such acquisition of any interest in all or part of a Suite, said acquiring party shall look only to the immediate predecessor Owner of said Suite for any performance or relief deemed equitable or necessary for the enforcement of the covenants, conditions and restrictions contained herein.

13.8.4. **Limitation of Liability.** Anything in this Declaration to the contrary notwithstanding, each Owner shall look solely to the interest of Declarant in the Property for the satisfaction or collection of any judgment against Declarant and no other asset of Declarant shall be subject to levy, execution or any other procedure in connection with the exercise of Owner's remedies.

13.9. **Binding Effect.** This Declaration shall be binding upon and inure to the benefit of the parties, their representative heirs, legal representatives, successors and assigns.

13.10. **Validity.** If for any reason any clause or provision of this Declaration, or the application of any clause or provision in a particular context or to the particular situation, circumstance or person, should be held unenforceable, invalid or in violation of law by any court or other tribunal, then the application of such clause or provision in context or to situations, circumstances or persons other than that in or to which it is held unenforceable, invalid or in violation of law shall not be affected thereby, and, in any event, the remaining clauses and provisions hereof shall nevertheless remain in full force and effect.

13.11. **Effect of Headings.** The titles or headings of the various paragraphs hereof are intended solely for convenience of reference and are not intended and shall not be deemed to or in any way may be used to modify, explain or place any construction upon any of the provisions of this Declaration.

13.12. **Waiver.** No failure or delay by a party to insist upon the strict performance of any term, condition, covenant or agreement of this Declaration, or to exercise any right, power or remedy hereunder or under law or consequent upon a breach hereof or thereof shall constitute a waiver of the same or any other term, condition, covenant, agreement, right, power or remedy or of the same or any other prior, concurrent or subsequent breach or preclude such party from exercising the same or any such other right, power or remedy at any later time or times.

13.13. **Agreement to Perform Necessary Acts.** Each Owner agrees to immediately upon demand therefore perform any and all further acts and execute, acknowledge and deliver any and all further instructions, instruments and documents which may be reasonably necessary or useful to carry out the provisions of this Declaration or to evidence, perfect or otherwise effectuate the right and remedies relating to this Declaration.

13.14. **Notices.** Any notice required or permitted to be given under this Declaration shall be in writing and shall be sent by a recognized private courier company or by United States mail, first class, postage prepaid and addressed as follows:

If to Declarant: Eklund Investment Group, LLC
3874 Catamarca Drive
San Diego, CA 92124

If to an Owner: (TO THE MAILING ADDRESS OF THE SUITE OF
SUCH OWNER, AS REFLECTED ON THE
RECORDS OF THE ASSOCIATION)

or such other address as either party may from time to time specify in writing to the other in the manner aforesaid. Such notices shall be deemed delivered upon delivery or refusal to accept delivery as indicated by the U.S. Postal Service or advice from the courier company; provided, however, that if any such notice shall also be sent by telecopy or FAX machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on it's machines and forwards a copy thereof with its mailed or courier delivered notice. Any party to whom notices were to be sent pursuant to this Declaration may from time to time change its or his address for future communication hereunder by giving notice in the manner prescribed to all other parties hereto.

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

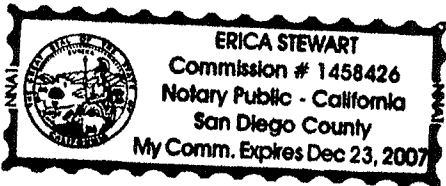
DECLARANT:

EKLUND INVESTMENT GROUP, LLC,
a California limited liability company

By: [Signature]
By: DON EKLUND
Its: Authorized Member

California
STATE OF ARIZONA)
San Diego SS
COUNTY OF MOHAVE)

On this 4 day of August, 2005, before me appeared DON EKLUND, to me personally known who, being duly sworn, did say that such person is the Authorized Member of EKLUND INVESTMENT GROUP, LLC, a California limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its Authorized Member and said Officer acknowledges said instrument to be the free act and deed of said limited liability company.



[Signature]
Notary Public
Print Name: ERICA STEWART
My Commission Expires: 23 Dec 2007