

**WHEN RECORDED, RETURN TO:**

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**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION**

**FOR**

**THE VILLAGE AT UNIVERSITY HEIGHTS  
CONDOMINIUM**

1/71

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**TABLE OF CONTENTS**

<b>ARTICLE 1 DEFINITIONS.....</b>	<b>2</b>
<b>ARTICLE 2 SUBMISSION OF PROPERTY; UNIT BOUNDARIES; ALLOCATION.....</b>	<b>8</b>
2.1 SUBMISSION OF PROPERTY.....	8
2.2 NAME OF CONDOMINIUM .....	8
2.3 NAME OF ASSOCIATION .....	8
2.4 IDENTIFYING NUMBERS OF UNITS.....	8
2.5 UNIT BOUNDARIES .....	8
2.6 ALLOCATION OF COMMON ELEMENT INTEREST AND COMMON EXPENSE LIABILITIES .....	9
2.7 ALLOCATION OF VOTES IN THE ASSOCIATION .....	9
2.8 ALLOCATION OF LIMITED COMMON ELEMENTS .....	10
2.9 CONVERSION DISCLOSURE .....	11
2.10 DISCLAIMER OF REPRESENTATIONS .....	12
<b>ARTICLE 3 EASEMENTS AND DEVELOPMENT RIGHTS .....</b>	<b>13</b>
3.1 UTILITY EASEMENT .....	13
3.2 EASEMENTS FOR INGRESS AND EGRESS.....	13
3.3 UNIT OWNERS' EASEMENTS OF ENJOYMENT .....	13
3.4 DECLARANT'S RIGHTS AND EASEMENTS .....	14
3.5 EASEMENT FOR SUPPORT .....	16
3.6 EASEMENTS AND RIGHTS OF THE ASSOCIATION FOR PEST CONTROL .....	16
3.7 COMMON ELEMENTS EASEMENT IN FAVOR OF UNIT OWNERS.....	16
3.8 UNITS AND LIMITED COMMON ELEMENTS EASEMENT IN FAVOR OF ASSOCIATION	17
3.9 EASEMENT FOR UNINTENDED ENCROACHMENTS.....	18
3.10 EASEMENTS FOR UTILITIES AND MAINTENANCE .....	18
3.11 EASEMENTS FOR INSPECTION AND REPAIR BY DECLARANT .....	18
<b>ARTICLE 4 USE AND OCCUPANCY RESTRICTIONS.....</b>	<b>19</b>
4.1 RESIDENTIAL Use .....	19
4.2 ANTENNAS .....	19
4.3 IMPROVEMENTS AND ALTERATIONS .....	20
4.4 TRASH CONTAINERS AND COLLECTION.....	22
4.5 ANIMALS.....	22
4.6 DISEASES AND INSECTS.....	23
4.7 MOTOR VEHICLES .....	23
4.8 TOWING OF VEHICLES.....	24
4.9 SIGNS .....	24
4.10 LAWFUL USE .....	24

4.11	NUISANCES AND OFFENSIVE ACTIVITY.....	24
4.12	WINDOW COVERINGS.....	24
4.13	DECKS.....	24
4.14	BARBEQUE GRILLS AND HEATERS.....	25
4.15	RENTAL OF UNITS.....	25
4.16	TIME SHARING.....	25
4.17	HAZARDOUS MATERIALS.....	25
4.18	NOISE REDUCTION.....	25
4.19	DECLARANT APPROVAL REQUIRED.....	26
<b>ARTICLE 5 MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS</b>		
.....		26
5.1	DUTIES OF THE ASSOCIATION.....	26
5.2	DUTIES OF UNIT OWNERS.....	26
5.3	REPAIR OR RESTORATION NECESSITATED BY OWNER.....	27
5.4	OWNER'S FAILURE TO MAINTAIN.....	27
5.5	PRIVATE SEWER FACILITIES.....	27
<b>ARTICLE 6 THE ASSOCIATION.....</b>		<b>28</b>
6.1	RIGHTS, POWERS AND DUTIES OF THE ASSOCIATION.....	28
6.2	DIRECTORS AND OFFICERS.....	28
6.3	RULES.....	28
6.4	MEMBERSHIP IN THE ASSOCIATION.....	29
6.5	TRANSFER OF MEMBERSHIP.....	29
6.6	ISSUES OF CRITICAL IMPORTANCE.....	29
6.7	PERSONAL LIABILITY.....	30
6.8	UTILITY SERVICE.....	30
6.9	BOOKS AND RECORDS.....	31
6.10	ANNUAL AUDIT.....	31
6.11	CONFLICT OF INTEREST.....	32
6.12	PRESENCE AT MEETINGS.....	32
6.13	RESERVATION OF RIGHT TO TERMINATE CONTRACTS.....	32
<b>ARTICLE 7 ASSESSMENTS.....</b>		<b>33</b>
7.1	PREPARATION OF BUDGET.....	33
7.2	REGULAR ASSESSMENT.....	33
7.3	SPECIAL ASSESSMENTS.....	34
7.4	INDIVIDUAL EXPENSE ASSESSMENT.....	34
7.5	USER FEE ASSESSMENTS.....	35
7.6	ENFORCEMENT ASSESSMENT.....	35
7.7	PURPOSES FOR WHICH ASSOCIATION'S FUNDS MAY BE USED.....	35
7.8	EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.....	35
7.9	CERTIFICATE OF PAYMENT.....	37
7.10	NO EXEMPTION OR OFFSETS.....	37
7.11	INITIAL WORKING CAPITAL FUND.....	37
7.12	RESERVE CONTRIBUTION.....	37
7.13	RESERVES.....	38

<b>ARTICLE 8 INSURANCE.....</b>	<b>39</b>
8.1 SCOPE OF COVERAGE.....	39
8.2 FIDELITY BONDS OR INSURANCE.....	42
8.3 PAYMENT OF PREMIUMS.....	42
8.4 INSURANCE OBTAINED BY UNIT OWNERS.....	43
8.5 PAYMENT OF INSURANCE PROCEEDS.....	43
8.6 CERTIFICATE OF INSURANCE .....	43
8.7 CONFLICT WITH HUD REGULATIONS.....	43
<b>ARTICLE 9 DESTRUCTION OF IMPROVEMENTS.....</b>	<b>43</b>
9.1 AUTOMATIC RECONSTRUCTION.....	43
9.2 DETERMINATION NOT TO RECONSTRUCT WITHOUT TERMINATION .....	43
9.3 DISTRIBUTION OF INSURANCE PROCEEDS IN THE EVENT OF TERMINATION OF THE CONDOMINIUM.....	44
9.4 NEGOTIATIONS WITH INSURER.....	44
9.5 REPAIR OF UNITS .....	44
9.6 PRIORITY.....	44
<b>ARTICLE 10 EMINENT DOMAIN .....</b>	<b>44</b>
10.1 TOTAL TAKING OF A UNIT.....	44
10.2 PARTIAL TAKING OF A UNIT.....	45
10.3 TAKING OF COMMON ELEMENTS.....	45
10.4 TAKING OF ENTIRE CONDOMINIUM.....	45
10.5 PRIORITY AND POWER OF ATTORNEY .....	45
<b>ARTICLE 11 DISPUTE RESOLUTION .....</b>	<b>45</b>
11.1 DEFINED TERMS.....	45
11.2 AGREEMENT TO RESOLVE CERTAIN DISPUTES WITHOUT LITIGATION.....	46
11.3 NOTICE OF CLAIM.....	46
11.4 RIGHT TO ENTER, INSPECT, REPAIR AND/OR REPLACE.....	47
11.5 MEDIATION .....	47
11.6 BINDING ARBITRATION.....	47
11.7 USE OF FUNDS .....	49
11.8 APPROVAL OF ACTION.....	50
11.9 NOTICE TO PROSPECTIVE PURCHASERS .....	50
11.10 STATUTE OF LIMITATIONS.....	50
11.11 CONFLICTS .....	50
<b>ARTICLE 12 MORTGAGEES .....</b>	<b>51</b>
12.1 RIGHTS OF MORTGAGEES .....	51
12.2 RIGHT TO NOTICE.....	52
12.3 PRIORITY OF ASSESSMENTS .....	52
12.4 WRITTEN CONSENT .....	52
12.5 SUBSTITUTE PERFORMANCE .....	53
12.6 CONFLICTING PROVISIONS.....	53

<b>ARTICLE 13 GENERAL PROVISIONS.....</b>	<b>54</b>
13.1 ENFORCEMENT.....	54
13.2 SEVERABILITY.....	55
13.3 DURATION .....	55
13.4 TERMINATION OF CONDOMINIUM.....	56
13.5 AMENDMENT .....	56
13.6 NOTICES .....	57
13.7 GENDER.....	57
13.8 TOPIC HEADINGS .....	57
13.9 SURVIVAL OF LIABILITY.....	57
13.10 CONSTRUCTION.....	57
13.11 JOINT AND SEVERAL LIABILITY .....	57
13.12 GUESTS AND TENANTS.....	57
13.13 ATTORNEYS' FEES .....	58
13.14 NUMBER OF DAYS .....	58
13.15 DECLARANT'S RIGHT TO USE SIMILAR NAME .....	58
13.16 SECURITY DISCLAIMER .....	58
13.17 NONLIABILITY FOR SQUARE FOOTAGE CALCULATION.....	59
13.18 NONLIABILITY FOR MOLD DEVELOPMENT.....	59
13.19 DISCLAIMER OF WARRANTIES .....	59

**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
THE VILLAGE AT UNIVERSITY HEIGHTS CONDOMINIUM**

THIS AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR THE VILLAGE AT UNIVERSITY HEIGHTS CONDOMINIUM is made as of the date hereinafter set forth by Alta Sierra Investments, LLC, an Arizona limited liability company ("Declarant"), with reference to the following recitals that are expressly made part of this Declaration.

**RECITALS:**

A. Declarant is the owner of that certain real property situated in the City of Flagstaff, Arizona, which is more particularly described in Exhibit A (the "Parcel").

B. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners and Occupants of the Condominium created by this Declaration, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens, as set forth herein, which shall run with and be a burden upon the Parcel.

C. Declarant intends that all Owners, Occupants, Eligible Mortgagees and other Persons acquiring an interest in the Condominium shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is Recorded in furtherance of establishing a general plan of condominium ownership for the Condominium, and for establishing rules for the use, occupancy, management, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Condominium and the quality of life therein.

D. Declarant desires to submit and subject the Parcel, together with all Improvements now or subsequently constructed or located thereon, and all easements and rights appurtenant thereto, to a condominium plan of description and ownership pursuant to the Condominium Act.

E. Thus, on June 19, 2006, Declarant caused to be recorded in the Official Records of the Coconino County Recorder as Instrument No. 3389222 that certain Condominium Declaration for The Village at University Heights Condominium (the "Original Declaration") pertaining to the Parcel.

F. On March 5, 2007, Declarant caused to be recorded in the Official Records of the Coconino County Recorder a First Amendment to Condominium Declaration as Instrument No. 3428416 (the "First Amendment").

G. On June 13, 2008, Declarant caused to be recorded in the Official Records of the Coconino County Recorder a Second Amendment to Condominium Declaration as Instrument No. 3489703 (the "Second Amendment").

H. On August 6, 2008, Declarant caused to be recorded in the Official Records of the Coconino County Recorder a Third Amendment to Condominium Declaration as Instrument No. 3495594 (the "Third Amendment").

I. Sections 13.5.4 and 1.19 of the Declaration reserve to the Declarant the right to amend the Declaration during the Period of Declarant Control (defined in the Declaration) to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner.

J. The Period of Declarant Control has not expired under the terms of the Original Declaration, as modified by the First, Second and Third Amendments.

K. With this Amended and Restated Condominium Declaration for the Village at University Heights Condominium (the "Declaration"), Declarant intends to amend, restate and supersede in its entirety the Original Declaration, as modified by the First, Second and Third Amendments, for the purpose of consolidating in a single declaration all of the terms and conditions thereof, and of correcting clerical errors therein.

NOW THEREFORE, Declarant, for the purposes hereinafter set forth, hereby incorporates the foregoing Recitals into this Declaration and declares as follows:

## ARTICLE 1

### DEFINITIONS

As used in this Declaration, the terms defined in this Article 1 shall have meanings specified in this Article 1. Capitalized terms used in this Declaration but not otherwise defined in this Declaration shall have the meanings specified for such terms in the Arizona Condominium Act, A.R.S. § 33-1201, et seq., as amended from time to time.

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

**1.2 "Assessments"** means the Regular Assessments, Special Assessments, Individual Expense Assessments, User Fee Assessments and Enforcement Assessments all levied pursuant to Article 7.

**1.3 "Assessment Lien"** means the lien granted to the Association by this Declaration and the Condominium Act to secure the payment of Regular and Special Assessments and any interest, late fees, Collection Costs and other fees and charges owed to the Association with respect to such Regular and Special Assessments.

**1.4 "Association"** means The Village at University Heights Owners Association, an Arizona nonprofit corporation, its successors and assigns.

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

**1.6 "Building" or "Buildings"** means each of the buildings located on the Parcel and containing Units as shown on the Plat.

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

**1.8 "City"** means the City of Flagstaff, Arizona, a municipal corporation.

**1.9 "Collection Costs"** means all costs, fees, charges and expenditures (including, without limitation, collection fees, attorneys' fees, court costs, filing fees and recording fees) incurred by the Association in collecting and/or enforcing payment of Assessments.

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

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

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

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

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

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

(e) Reasonable reserves as deemed appropriate by the Board or required by the Condominium Documents;

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

(g) Taxes paid by the Association;



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

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

**1.12 “Common Expense Liability”** means the percentage of undivided interests in the Common Expenses allocated to each Unit by Section 2.6.

**1.13 “Condominium”** means the Parcel, together with the Buildings and all other Improvements located thereon.

**1.14 “Condominium Act”** means the Arizona Condominium Act, A.R.S. § 33-1201, et seq., as amended from time to time, or any successor statute which governs the creation and management of condominiums.

**1.15 “Condominium Documents”** means this Declaration, the Plat, the Articles, the Bylaws, and the Rules, as the same are amended from time to time.

**1.16 “Deck”** means a portion of the Common Elements designated as a deck on the Plat. As provided in Subsection 2.8.1(c) and (d), a Deck shall be a Limited Common Element.

**1.17 “Declarant”** means Alta Sierra Investments, LLC, an Arizona limited liability company, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.

**1.18 “Declaration”** means this Condominium Declaration for The Village at University Heights Condominium, as amended from time to time.

**1.19 “Development Rights”** means any right or combination of rights to do any of the following:

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

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

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

(d) Amend the Declaration during the Period of Declarant Control to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-

governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments.

**1.20 “Eligible Mortgagee”** means the holder, insurer or guarantor of a First Mortgage that has informed the Association, by separate written notice, of the First Mortgagee’s address and that has requested notification from the Association of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

**1.21 “Enforcement Assessment”** means an assessment levied pursuant to Section 7.6.

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

**1.23 “Individual Expense Assessment”** means an assessment levied by the Association pursuant to Section 7.4.

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

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

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

**1.27 “Member”** means a Person who is or becomes a member of the Association.

**1.28 “Mortgage”** shall mean any Recorded mortgage or deed of trust relating to one or more Units to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term “Mortgage” shall not include any judgment lien, mechanic’s lien, tax lien or other similar involuntarily lien or encumbrance on a Unit. “**First Mortgage**” shall mean any Mortgage in first lien position against the title to a Unit.

**1.29 “Mortgagee”** shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a deed of trust.

**1.30 “Occupant”** means a person, other than an Owner, in possession of a Unit at the request of or with the consent of the Owner.

**1.31 “Owner” or “Unit Owner”** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial

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

**1.32 “Parcel”** means the land described on Exhibit A attached hereto, together with all improvements situated thereon and all easements and rights appurtenant thereto.

**1.33 “Parking Space”** means a portion of the Common Elements intended for the parking of a single motor vehicle and identified on the Plat as a parking space or parking stall. As provided in Subsection 2.8.1(e), certain Parking Spaces may be allocated to the Units as Limited Common Elements.

**1.34 “Period of Declarant Control”** means the time period commencing on the date this Declaration is Recorded and ending on the earlier of: (a) ninety (90) days after the conveyance of seventy-five percent (75%) of the Units to Owners other than the Declarant; (b) four (4) years after Declarant ceases to offer Units for sale in the ordinary course of business; or (c) the date that is five(5) years after the date of the close of escrow of the first Unit sold by the Declarant.

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

**1.36 “Plat”** means the condominium plat for The Village at University Heights Condominium recorded on or about June 19, 2006, at Docket No. 3389221 in the official records of the County Recorder of Coconino County, Arizona, and any amendments, supplements or corrections thereto.

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

**1.38 “Recording”** means placing an instrument of public record in the office of the County Recorder of Coconino County, Arizona and **“Recorded”** means having been so placed of public record.

**1.39 “Regular Assessment”** means the assessment levied against the Units pursuant to Section 7.2.

**1.40 “Reserve Study”** means the Reserve Study for The Village at University Heights prepared by Reserve Data Analysis, Inc., dated May 10, 2006,.

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

**1.42 “Special Assessment”** means the assessment levied against the Units pursuant to Section 7.3.

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

- (a) Construct Improvements provided for in this Declaration or shown on the Plat;
- (b) Exercise any Development Right;
- (c) Maintain sales offices, management offices, models, and signs advertising the Condominium;
- (d) Use easements through the Common Elements for the purpose of making Improvements within the Condominium, but only if access thereto is otherwise not reasonably available;
- (e) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control; and
- (f) Exercise the rights described in Section 3.4.

**1.44 “Unit”** means a portion of a Building subject to this Declaration and designated as a Unit on the Plat. The boundaries of each Unit are described in Section 2.5 and are shown on the Plat.

**1.45 “User Fee Assessments”** means (a) any payments, fees or charges imposed by the Association pursuant to Section 7.5 for the use, rental or operation of the Common Elements, other than Limited Common Elements intended to serve a single Unit, and for services provided to Unit Owners; and (b) reasonable charges imposed by the Association pursuant to Section 7.5 for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments.

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## ARTICLE 2

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

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

**2.2 Name of Condominium.** The name of the Condominium created by this Declaration is The Village at University Heights Condominium.

**2.3 Name of Association.** The name of the Association is The Village at University Heights Owners Association.

**2.4 Identifying Numbers of Units.** The Identifying Numbers of the Units are set forth in Exhibit B hereto.

**2.5 Unit Boundaries.**

2.5.1 The boundaries of each Unit are as follows: (a) the vertical boundaries are the interior unfinished surfaces of the perimeter walls, doors and windows of the Unit; (b) the lower horizontal boundary is the unfinished floor of the lowest level of the Unit; and (c) the upper horizontal boundary is the unfinished ceiling of the Unit. The dimensions of the boundaries of each Unit and each Unit's identifying number are set forth on the Plat. Each Unit shall include all openings and outlets of all utility installations in the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the walls or floor are part of the Unit, and all other portions of the walls and floor are part of the Common Elements. All spaces, interior partitions and other fixtures and improvements (including, but not limited to, chutes, flues, wires, conduits, heating and air conditioning unit, hot water heaters and gas, cable

television, water and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the boundaries of a Unit but which serve more than one Unit are part of the Common Elements. In the event of any inconsistency or conflict between the provisions of this Section 2.5.1 and the Plat in regard to the description of the boundaries of the Unit, this Section shall control.

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

**2.6 Allocation of Common Element Interest and Common Expense Liabilities.**

Each Unit is allocated a percentage of undivided interests in the Common Elements and in the Common Expenses. For purposes of calculating the percentage of undivided interests in the Common Elements and in the Common Expenses, the Units shall be divided into three (3) classes, such classes being designated as Class A, Class B and Class C. The undivided interest of each Unit is calculated by dividing the square footage of all of the Units in the Class which includes the Unit by the square footage of all Units in the Condominium and then dividing the resulting number by the number of Units within the Class which includes the Unit. The square footage of each Unit is shown on the Plat. The designation of the class in which each Unit is included, the square footages of the Units and the percentage of undivided interests in the Common Elements and in the Common Expenses allocated to each Unit are set forth on Exhibit B attached hereto. The percentage of interest of each Unit in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of interest. The ownership of each Unit shall not be conveyed separate from the percentage of interest in the Common Elements allocated to the Unit. The undivided percentage of interest in the Common Elements allocated to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering the Unit may refer only to the fee title to the Unit. Except as permitted by the Condominium Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

**2.7 Allocation of Votes in the Association.** The total votes in the Association shall be equal to the number of Units. The votes in the Association shall be allocated equally among all the Units with each Unit having one (1) vote. When more than one (1) Person holds such interest or interests in any Unit ("Co-owners"), all such Co-owners shall be members of the Association and may attend any meeting of the Association, but only one (1) such Co-owner shall be entitled to exercise the single vote allocated to that Unit. If only one (1) of several Co-owners of a Unit is present at a meeting of the Association, that Co-owner is entitled to cast the one (1) vote allocated to that Unit. Co-owners owning a majority interests in a Unit may from time to time designate in writing to the Association which Co-owner may vote. Fractional voting shall not be allowed. Where no voting Co-owner is designated or if the designation has been revoked, the vote for the Unit shall be exercised by the Co-owners owning a majority of the

interests in the Unit. Unless the Board of Directors receives a written objection in advance from an absent Co-owner, it shall be conclusively presumed that the corresponding voting Co-owner is acting with the consent of all Co-owners. No vote shall be cast for any Unit if the Co-owners present in person, by proxy, or by ballot owning a majority of the interests in such Unit cannot agree to said vote or other action. The nonvoting Co-owner or Co-owners shall be jointly and severally liable for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners (including all Co-owners), their successors and assigns; including, without limitation, a Purchaser of a Unit.

## **2.8 Allocation of Limited Common Elements.**

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

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

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

(c) Each Unit located on the second floor of a Building is allocated the Deck adjoining the Unit as shown on the Plat. The boundaries of each Deck shall be as follows: (i) the lower boundary shall be the unfinished floor of the Deck; (ii) the upper boundary shall be the horizontal plane corresponding to the extended eaves of the Deck; and (iii) the vertical boundaries shall be vertical planes corresponding to the exterior wall of the Building and the inside surface of the railing of the Deck extended to the upper and lower boundaries.

(d) Each Unit on the first floor of a Building is allocated the Deck adjoining the Unit as shown on the Plat. The boundaries of each Deck shall be as follows: (i) the lower boundary shall be the unfinished concrete floor of the Deck; (ii) the upper boundary shall be a horizontal plane having an elevation equal to the elevation of the finished ceiling of the Unit to which the Deck is allocated; and (iii) the vertical boundaries shall be the vertical planes corresponding to the exterior wall of the Building in which the Unit is located and outside edge of the concrete floor of the Deck extended to the upper and lower boundaries.

(e) The Parking Spaces designated by number on Exhibit B attached hereto are Limited Common Elements assigned by the Declarant to a Unit Owner for the

exclusive use and benefit of that Unit Owner. The location of assigned Parking Spaces shall be as designated on the Plat. Declarant or the Association, as applicable, shall from time to time record amendments to Exhibit B reflecting any changes to the assignment of Parking Spaces among the Unit Owners. Any Parking Spaces not specifically designated on Exhibit B shall be a Common Element.

(f) The exterior windows and window casings, and exterior doors and jams are Limited Common Elements allocated to the Unit served by those elements.

(g) The storage space adjacent to each Unit is a Limited Common Element allocated solely to the Unit served.

2.8.2 Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to his Unit, subject to the rights granted to the Declarant or the Association by the Condominium Documents. All Limited Common Elements must be used in accordance with the Declaration and the Rules.

2.8.3 A Limited Common Element may be reallocated by an amendment to this Declaration. The amendment shall be executed by the Owners between or among whose Units the allocation is made, shall state the manner in which the Limited Common Elements are to be reallocated and, before recording the amendment, shall be submitted to the Board of Directors. Unless the Board of Directors determines within thirty (30) days that the proposed amendment is unreasonable, which determination shall be in writing and specifically state the reasons for disapproval, the Association shall execute its approval and record the amendment.

2.8.4 So long as the Declarant owns any Unit, the Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements (including, but not limited to, Parking Spaces) which has not previously been allocated as a Limited Common Element. Any such allocation shall be made by an amendment to this Declaration executed by the Declarant. After the Declarant no longer owns any Unit, the Board of Directors shall have the right, with the approval of Members holding at least sixty-seven percent (67%) of the total number of votes entitled to be cast by Members, to allocate as a Limited Common Element any portion of the Common Elements not previously allocated as a Limited Common Element. Any such allocation by the Board of Directors shall be made by an amendment to this Declaration and an amendment to the Plat if required by the Condominium Act.

**2.9 Conversion Disclosure.** The Parcel is being converted by the recording of the Plat and this Declaration from multifamily rental (apartments) to condominiums, with the as-constructed building types, and in the as-constructed architectural style, currently existing on the Parcel. The original construction of the improvements situated on the Parcel was completed in 1989. The name and address of the original owner, builder, developer and general contractor as shown on the building permit issued by the City is as follows:

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Owner: The Village @ University Heights,  
An Arizona Joint Venture, aka  
The Village @ University Heights Joint  
Venture, and Arizona General Partnership  
3200 S. Litzler Drive  
Flagstaff, AZ 86001

General Contractor and Builder: Gene Schroder Construction Co., Inc.  
5845 E. Townsend-Winona Rd.  
Flagstaff, AZ 86004

The name and address of each subsequent owner of the Parcel as determined by a search of the records of the County Recorder of Coconino County is as follows:

Alta Sierra Investments, LLC,  
An Arizona Limited Liability Company  
510 N. Humphreys  
Flagstaff, AZ 86001

The Declarant agrees to provide the following information on request (a) the name and address of any builder, developer, general contractor, subcontractors, architects and engineers who designed or made improvements to the Parcel immediately before the first Unit was sold; and (b) a specific description of all improvements made. Declarant hereby advises all Unit Owners that the fire barriers between Units are rated at one (1) hour.

**2.10 Disclaimer of Representations.** No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents, consultants, or employees in connection with the Condominium, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration, or in a Public Report for the Condominium issued to Declarant by the Arizona Department of Real Estate, or in any written contract with a Purchaser executed by Declarant. Declarant further makes no warranties, express or implied, about the existing or future soil or environmental conditions on or adjacent to the Condominium, including possible present or future pollution of the air, water or soil from any sources, including but not limited to, power lines, radon gas, or underground migration or seepage of hazardous substances or other pollutants. Declarant expressly disclaims any liability for any type of damage, whether direct, indirect or consequential, which the Condominium or the Owners and Occupants, their family members and Invitees, may suffer because of any existing or future environmental or other conditions in or adjacent to the Condominium.

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## ARTICLE 3

### EASEMENTS AND DEVELOPMENT RIGHTS

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

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

### **3.3 Unit Owners' Easements of Enjoyment.**

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

(a) The right of the Association to adopt reasonable Rules governing the use of the Common Elements;

(b) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least eighty percent (80%) of the votes in the Association. Any such action by the Association shall be done in the manner and subject to the limitations set forth in the Condominium Act;

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

(d) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Section 3.4 and granted to the Association by Section 3.8; and

(e) The right of the Association to suspend the right of an Owner, Lessee or Occupant to use the Common Elements for any period during which the Owner, Lessee or Occupant is in violation of any provision of the Condominium Documents; provided, however, that nothing herein shall authorize the Board of Directors to limit the use of any Limited Common Element or ingress and egress to and from a Unit.

3.3.2 Notwithstanding the provisions of Section 3.3.1 to the contrary, if a Unit is leased or rented, the Lessee and the other Occupants of the Unit shall have the right to use any recreational amenities which are part of the Common Elements during the term of the lease, and the Unit Owner shall have no right to use such recreational amenities until the termination or expiration of the lease.

3.3.3 The guests of any Owner, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3 may use the Common Elements provided they are accompanied by a Member, Lessee or Occupant entitled to use the Common Elements pursuant to this Section 3.3 and the applicable Association Rules. The Board of Directors shall have the right to limit the number of guests who may use the Common Elements at any one time and may restrict the use of the Common Elements by guests to certain specified times.

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

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

### **3.4 Declarant's Rights and Easements.**

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

its marketing of Units. Some employees, agents or contractors of the Declarant or of the Association may temporarily reside in Units owned by the Declarant, but such Units shall not be deemed converted to Common Elements and such Units will not be conveyed to the Association. Declarant shall obtain any required permits or licenses for any signage installed by Declarant on or about the Parcel. All signage installed by Declarant shall comply in all material respects with the City Land Development Code.

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

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

3.4.4 If alternative access is not reasonably available, Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Elements, and the Units to erect and construct the Common Elements, the Units and other Improvements shown on the Plat and all other Improvements the Declarant may deem appropriate, and to use the Common Elements for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium. Declarant and its employees, agents, contractors and subcontractors shall further have the right to use any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.

3.4.5 The Declarant and its members, managers, employees, agents, contractors and subcontractors shall have an easement through the Common Elements and the Units for the purpose of completing any renovations, warranty work or modifications to the Common Elements or the Units the Declarant deems necessary or desirable.

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

3.4.7 To the extent not expressly reserved by or granted to Declarant by other provisions of this Declaration, Declarant reserves all Development Rights and Special Declarant Rights as defined herein and in the Condominium Act.

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

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

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

**3.6 Easements and Rights of the Association for Pest Control.** Each Unit shall be subject to an easement in favor of the Association and the agents, employees and contractors of the Association for the purpose of performing such pest control activities as the Association may deem necessary to control or prevent the infestation of the Condominium by insects, rodents or other pests or to eradicate insects, rodents or other pests from the Condominium. The Association may cause the temporary removal of any Owner, Lessee or Occupant for such periods and at such times as necessary for prompt, effective treatment of wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than fifteen (15) days nor more than thirty (30) days notice of the need to temporarily vacate shall be given to occupants and to the Owner of the Unit affected. The notice shall state: (a) the reason for the temporary relocation; (b) the date and time of the beginning of the treatment; (c) the anticipated dated and time of termination of treatment; and (d) that the Owner, Lessee or Occupant will be responsible for their own accommodations during the temporary relocation.

**3.7 Common Elements Easement in Favor of Unit Owners.**

3.7.1 The Common Elements shall be subject to the following easements in favor of the Units benefited:

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

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

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

3.7.2 Notwithstanding any other provision of this Declaration to the contrary, no Owner, Lessee or Occupant or any other Person (except for the Association) shall penetrate, alter or damage any part of the Common Elements, including but not limited to, the perimeter walls or roof of any Unit. Penetrating the perimeter walls or roof of a Unit could damage the waterproofing and soundproofing of the Unit.

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

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

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

(c) For correction of conditions (including, without limitation, broken or leaking water pipes, broken hot water heaters or obstructed sewer lines) in one or more Units or Limited Common Elements which have damaged or if left uncorrected could damage, the Common Elements, the Limited Common Elements or other Units;

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

(e) For inspection of the Units and the Limited Common Elements in order to verify that the provisions of the Condominium Documents are being complied with by the Unit Owners, Lessees and Residents of the Unit.

Except in case of emergency, the Association shall only enter a Unit at reasonable times and upon reasonable notice to the Unit Owner or, if the Unit is leased, to the Lessee. In the event of an emergency, the Association may enter a Unit without prior notice to the Unit Owner or the Lessee, but promptly following the Association's entry into the Unit, the Association shall notify the Unit Owner or the Lessee of the nature of the emergency condition which required entry without notice.

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

**3.10 Easements for Utilities and Maintenance.** On behalf of all Owners, the Declarant during the Period of Declarant Control, and thereafter the Association may create and dedicate easements over the Common Elements: (a) for the benefit of all service providers for the installation, repair, replacement and maintenance of sanitary sewers, water, electric, gas and telephone lines and facilities, heating and air-conditioning facilities, cable telephone or master television antenna or satellite lines or cables, and drainage facilities, and for ingress to and egress from the Condominium in connection therewith, and (b) for ingress to and egress from the Condominium for the benefit of all municipal, state and federal vehicles, including, without limitation, all emergency and service type vehicles as may be required from time to time to service the Condominium and the Owners, Lessees and Occupants including, without limitation, for U.S. Mail distribution and collection and private or municipal refuse collection, without the joinder or consent of any Eligible Mortgagee or other Person.

**3.11 Easements for Inspection and Repair by Declarant.** The Common Elements are hereby made subject to the following easement in favor of the Declarant, its members, agents, employees and independent contractors: (a) for inspection of the Common Elements in order to verify the performance of the Association of all items of maintenance and repair for which it is responsible pursuant to the Condominium Documents, the Maintenance Program (as defined in Section 5.1) provided by Declarant (if any), any termite reports, and the Reserve Study; (b) for inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements; and (c) for correction of conditions (including without limitations, broken or leaky water pipes, broken sewer lines, replacement of roofs, repair of exterior surfaces, maintenance of parking lot and swimming pools, landscape equipment, etc., which have been damaged or if left uncorrected could damage the Common Elements including those that may affect the same due to the failure on the part of a Unit Owner to perform his obligations under Section 5.2 hereof. If and to the extent the Declarant elects to perform any maintenance or make any repairs or replacements, the appropriate party, either the Association as to the Common Elements, or the Unit Owner as to the Limited Common Elements which the Unit Owner is obligated to maintain under Section 5.2, shall reimburse the Declarant within seven (7) days after receipt of written notice of the same is delivered by the Declarant to the party owing the amount. If not repaid within the specified time period, then that amount together with interest thereon at the greater of twelve percent (12%) per annum or the maximum legal rate and any and all costs,

including attorneys' fees, incidental to the collection of the same shall be paid by the party failing to repay the referenced amount. The provisions of this Section 3.11 shall not be construed as creating an obligation on the part of the Declarant to make repairs to the Common Elements or Limited Common Elements, except as otherwise expressly provided herein.

## ARTICLE 4

### USE AND OCCUPANCY RESTRICTIONS

**4.1 Residential Use.** All Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Unit or in or from any Unit, except that an Owner, Lessee or Occupant of a Unit may conduct a business activity within a Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, vibration or smell from outside the Unit; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Condominium; (c) the business activity is conducted solely in the Unit; (d) the business activity does not involve persons coming to the Unit or the door-to-door-solicitation of Owners, Lessees or Occupants; (e) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other Owners, Lessees or Occupants, as may be determined from time to time in the sole discretion of the Board of Directors; and (f) the Owner, Lessee or Occupant shall obtain a Home Occupation Permit and a Privilege License from the City (to the extent required) and otherwise comply with all applicable laws, codes and ordinances. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section. Declarant shall be exempt from the provisions of this Section.

**4.2 Antennas.** Except for antennas, satellite dishes and other over-the-air receiving devices covered by the Federal Communication Commission rules governing over-the-air reception devices, television broadcast service and multi-channel multipoint distribution service (the "FCC Rule"), no antenna for the transmission or reception of television or radio signals or for access to the internet shall be erected in a Unit or in any Limited Common Element allocated to the Unit unless approved by the Board of Directors. Any antenna, satellite dish or other receiving device covered by the FCC Rule may be installed in a Unit or in a Limited Common Element allocated to the Unit without the prior approval of the Board of Directors provided the antenna, satellite dish or receiving device is placed inside the Unit or in the portion of a Limited Common Element which is the least visible from the outside of the Building and does not interfere with the viewer's ability to install, maintain or use the antenna, satellite dish or receiving device. The Board of Directors shall have the right to adopt rules and regulations with respect to the installation and placement of antennas, satellite dishes and other receiving devices; provided, however, that the



Board of Directors shall not impose or enforce any rule or regulation which is inconsistent or prohibited by the FCC Rule.

#### **4.3 Improvements and Alterations.**

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

4.3.2 Except for paint and wallpaper applied to the interior surface of the walls of the Unit and the installation of carpeting on the floors of the Unit, no Owner, Lessee or Occupant shall make any additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Owner, Lessee or Occupant receives the prior written approval of the Board of Directors. The Board of Directors may require that an architect or engineer, licensed in Arizona, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of the Building or lessen the support of any portion of the Condominium. Notwithstanding any provision of this Section 4.3, no approval of the Board of Directors shall be required for any addition, alteration or improvement made by or at the direction of the Declarant or for any addition, alteration or improvement approved in writing by the Declarant. Except for additions, alterations or improvements to the Units made by or on behalf of the Declarant, all additions, alterations or improvements to a Unit must be performed by contractors licensed by the Arizona Registrar of Contractors. All construction, whether or not such construction must be approved by the Board of Directors, shall be subject to reasonable rules, regulations or guidelines established from time to time by the Board of Directors. Any Owner making any additions, alterations or improvements within his Unit shall be responsible for any damage to other Units and to the Common Elements which results from any such alterations, additions or improvements.

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

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

aquariums holding in excess of thirty (30) gallons of water, or other furnishings which may cause floor overloads shall be placed, kept or used in any Unit.

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

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

4.3.7 The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 4.3 or any Rules of the Association governing additions, alterations or improvements to the Units or the Common Elements. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Association nor any of their members, managers, officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety,

soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the Association and their respective members, managers, directors, officers, agents and employees harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Lessee or Occupant of the Owner's Unit.

**4.4 Trash Containers and Collection.** No rubbish, trash or garbage shall be placed or kept on the Common Elements except in covered containers of a type, size and style which are approved by the Board of Directors. All rubbish, trash and garbage shall be regularly removed from the Units by the Owners, Lessees or Occupants thereof. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash chutes or receptacles. The Rules may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium. The Association shall utilize the services of the City of Flagstaff Department of Environmental Services (or its successor) for trash removal.

**4.5 Animals.**

4.5.1 Except as expressly permitted by this Section, no animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Condominium. A reasonable number of Permitted Pets may be kept or maintained in a Unit if they are kept, bred or raised solely as domestic pets and not for commercial purposes. For purposes of this Section, a "Permitted Pet" shall mean a dog, cat, fish or bird of a variety commonly kept as a household pet. The Board of Directors shall have the absolute authority to determine what constitutes a reasonable number of Permitted Pets. No Permitted Pet shall be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Unit, or be an annoyance to a person of ordinary sensibilities. All Permitted Pets shall be kept on a leash or travel crate when outside a Unit, and all dogs shall be directly under the control of the Owner, Lessee or Occupant at all times. Any person bringing a Permitted Pet onto the Common Elements shall immediately remove any feces deposited on the Common Elements by the Permitted Pet, and such person shall be liable to the Association for the cost of any cleaning of the Common Elements or the repair of any damage to the Common Elements caused or required by the Permitted Pet. Any Unit where a Permitted Pet is kept or maintained shall at all times be kept in a neat and clean condition. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Elements or in any Unit so as to be visible from the exterior of the Building or any other Unit. The Board of Directors shall have the right to adopt, amend and repeal Rules governing the keeping of Permitted Pets in the Condominium, and such Rules may include limitations on the height and/or weight of Permitted Pets.

4.5.2 Upon the written request of any Owner, the Board of Directors shall determine whether, for the purposes of this Section, a Permitted Pet makes an unreasonable amount of noise, causes an odor which is detectable outside the Unit or is an annoyance to a person of ordinary sensibilities. Notwithstanding any other provision of this Section, no

Permitted Pet which the Board of Directors determines, in its sole discretion, is of a breed which has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals shall be kept in a Unit or on any other portion of the Condominium. Any Permitted Pet which has bitten or attacked a person or other animal or any Permitted Pet which the Board of Directors, in its sole discretion, determines has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners, Lessees or Occupants or their guests shall be removed from the Condominium by the owner of the Permitted Pet within five (5) days after written demand for removal of the Permitted Pet is given to the owner by the Board of Directors. Each Owner and Occupant acknowledges and agrees that the Association must report any instance of a Permitted Pet attacking or biting any person or other animal to the appropriate governmental agencies.

**4.6 Diseases and Insects.** No Owner, Lessee or Occupant shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Association, each Owner shall perform such pest control activities in his Unit as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

**4.7 Motor Vehicles.**

4.7.1 As used in this Section, the term "Authorized Vehicles" means operative motorized land vehicles designed and used primarily for non-retail passenger transport, such as automobiles, sport utility vehicles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles and pickup trucks having a manufacturers rating or payload capacity of one ton or less, all of which shall not exceed seven (7) feet in height. An Authorized Vehicle may be parked only in a Parking Space. If a Parking Space is assigned to a Unit as a Limited Common Element, then only the Owner, Lessee or Occupant to whom that Parking Space is assigned may park an Authorized Vehicle owned or leased by such Unit Owner, Lessee or Occupant in that assigned Parking Space.

4.7.2 No Authorized Vehicle shall be parked in a Parking Space if such vehicle does not completely and clearly fit within the painted parking lines designated for the Parking Space or otherwise physically fit wholly in the Parking Space. Parking Spaces shall be used solely for the parking of Authorized Vehicles and shall not be used for storage. Except for emergency repairs, no maintenance, repair, restoration or construction of any Authorized Vehicle shall be conducted in a Parking Space or any other part of the Common Elements.

4.7.3 The Owner of a Unit may lease to another Owner, Lessee or Occupant, the Parking Space allocated to the Owner's Unit as a Limited Common Element, subject to such rules and regulations as may be adopted by the Board of Directors. The Owner of a Unit may not lease a Parking Space to any Person who is not also an Owner, Lessee or Occupant. The conveyance of the Unit to which the Parking Space is allocated as a Limited Common Element shall terminate any lease of such Parking Space.

**4.8 Towing of Vehicles.** The Board of Directors shall have the right to have any automobile, sport utility vehicle, van, truck, recreational vehicle, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Condominium Documents towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Association in connection with the towing of any vehicle shall be paid to the Association upon demand by the owner of the vehicle.

**4.9 Signs.** No signs (including, but not limited to, "For Sale" or "For Rent" signs) shall be permitted on the exterior of a Building or in the interior of a Unit if the signs would be visible from the exterior of the Building, or on any other portion of the Condominium without the prior written approval of the Board of Directors.

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

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

**4.12 Window Coverings.** No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items, shall be installed or placed upon the outside or inside of any windows of a Unit without the prior written approval of the Board of Directors. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed unless in compliance with the color palette established by Declarant or the Association. Except for tinting which is part of the original construction of the Building, window tinting is prohibited.

**4.13 Decks.** Furniture, furnishings, umbrellas, pots and plants kept and maintained on any Deck shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior walls of the Building in which the Unit is located and must be approved in writing by the Board of Directors unless expressly permitted by the Rules. No furniture, furnishings, umbrellas, pots, plants or other items which extend above the wall or railing of a Deck shall be kept and maintained on any Deck unless expressly permitted by the Rules or approved in writing by the Board of Directors. No astro turf, carpet or other floor covering shall be installed in any Deck without the prior written approval of the Board of Directors. No Deck shall be used as a storage area for items or materials that are not customarily intended for use on a Deck, such as the use of a Deck to store bicycles or exercise equipment. No items may be hung from any Deck or the ceiling, wall or railing enclosing any Deck. The Rules may govern and regulate the nature and extent of plants, shrubs, flowers and other landscaping that may be installed in Decks. No Owner, Lessee or Occupant shall remove or alter any existing flooring in a Deck without the

prior written approval of the Board of Directors. No spas or hot tubs shall be installed or kept on any Deck.

**4.14 Barbeque Grills and Heaters.** No barbeque grills or other devices used for outdoor cooking or heating shall be kept or used on any Deck, breezeway or hallway.

**4.15 Rental of Units.** No Owner may lease less than his entire Unit. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the Lessee or the other Occupants shall be a default under the lease. There shall be no subleasing of a Unit or assignment of a lease, other than in relation to the sale of a Unit that is subject to a lease. No Unit may be leased for a term of less than thirty (30) days. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with a copy of the signed lease and the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and each other person who will reside in the Unit during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address and telephone number of a person whom the Association can contact in the event of an emergency involving the Unit. Any Owner who leases his Unit must provide the Lessee with copies of this Declaration and the Rules. The Owner shall be liable for any violation of this Declaration or the Rules by the Lessees or other persons residing in the Unit and their guests or invitees and, in the event of any such violation, the Unit Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

**4.16 Time Sharing.** No Unit shall be divided or conveyed on a time increment basis or measurable chronological periods or pursuant to any agreement, plan, program or arrangement under which the right to use, occupy or possess a Unit, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time one hundred eighty (180) consecutive calendar days or less.

**4.17 Hazardous Materials.** No Owner, Lessee or Occupant shall use or keep in a Unit or any Limited Common Element allocated to the Unit any kerosene, gasoline, or inflammable or combustible fluid or material or other hazardous materials, other than those required, in limited quantities, for normal cleaning or landscaping work.

**4.18 Noise Reduction.** No Owner, Lessee or Occupant of a Unit situated on the second floor of a Building shall install or allow to be installed any hard floor coverings (including, but not limited to, tile, marble or wood) in any part of the Unit, except the kitchen, bathroom(s), laundry and front door entry. Any hard floor coverings to be installed in the kitchen, bathroom(s), laundry or front door entry of a Unit must use a sound control underlayment system which must include perimeter insulative material which will insure that impact noises will not be transmitted into the Unit below the floor either directly through the floor or by going around the floor and through the surrounding walls. In order to maintain the highest level of acoustical privacy possible, the Board of Directors may, from time to time, adopt rules and regulations to reduce levels of noise emission from Units. Additionally, no

loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernable between Units. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules. All Owners, Lessees and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the rules and regulations of the Association and any noise reduction ordinance of the City.

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

## ARTICLE 5

### MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

**5.1 Duties of the Association.** The Association shall inspect, maintain, repair and replace all Common Elements (including but not necessarily limited to all sewer lines to the main trunk line and all water lines to the water meter), except for the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2. The cost of all such inspection, maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements or any components of the Units which the Association is obligated to maintain, repair or replace. The Declarant, at its option, may provide to the Association a maintenance program for the maintenance, care, up-keep, repair, inspection and replacement of the Common Elements and Units (the "Maintenance Program"). If the Declarant provides a Maintenance Program to the Association, the Board of Directors shall utilize the Maintenance Program in the determination of the appropriate maintenance of the Common Elements. The failure to maintain, repair and replace the Common Elements in accordance with any Maintenance Program provided by the Declarant shall void all express or implied warranties by the Declarant or by any contractor, subcontractor, supplier or manufacturer. Owners, Lessees and Occupants shall immediately notify the Association of (a) any broken or leaking water pipes, toilets, clothes washers or hot water heaters and (b) any water intrusion into the Buildings from the roofs or windows.

**5.2 Duties of Unit Owners.** Each Owner shall maintain, repair and replace, at his own expense, all portions of his Unit in a good, clean and sanitary condition. In addition, each Owner shall be responsible for the maintenance, repair and replacement of the Limited Common Elements allocated to his Unit pursuant to Subsections 2.8.1(a), (b) and (f). Each Owner shall be

responsible for maintaining the interior of the Deck allocated to the Unit as a Limited Common Element in a good, clean and sanitary condition. Any Owner, Lessee or Occupant that leaves their Unit unoccupied for more than seven (7) consecutive days shall turn off the water to all toilets and the clothes washer in the Unit. If the Declarant provides a Maintenance Program to the Association, each Unit Owner shall obtain from the Board of Directors the Maintenance Program applicable to the Units and utilize the Maintenance Program for the maintenance, upkeep, repair, inspection and replacement of the Unit and all Limited Common Elements that the Owner is obligated to maintain, repair and replace pursuant to this Section. The failure to maintain, repair and replace the Unit and the Limited Common Elements in accordance with the Maintenance Program shall void all express and implied warranties by the Declarant or by any contractor, subcontractor, supplier or manufacturer. Each Owner shall cause the HVAC system serving the Owner's Unit to be inspected periodically (but in all events, not less than annually) by a qualified technician to properly assess the condition of the system and to identify any necessary repair, maintenance or replacement of the system. The Owner shall promptly make all recommended repairs, maintenance and replacements of the HVAC system, and all repairs, maintenance and replacements must be performed by a licensed contractor. No person other than a licensed contractor performing repairs, maintenance or replacement of an HVAC system or Association employees, agents or contractors shall be permitted on the roof of a Building without the prior written approval of the Board of Directors.

**5.3 Repair or Restoration Necessitated by Owner.** Each Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Owner or of the Owner's Lessees, Occupants or Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of an Owner or of the Owner's Lessees, Occupants or Invitees shall be assessed against the Owner as provided in Sections 7.2.4 and 7.6.

**5.4 Owner's Failure to Maintain.** If an Owner fails to maintain in good condition and repair his Unit or any Limited Common Element which he is obligated to maintain under this Declaration and the required maintenance, repair or replacement is not performed within fifteen (15) days after written notice has been given to the Owner by the Association, the Association shall have the right, but not the obligation, to perform the required maintenance, repair or replacement. The cost of any such maintenance, repair or replacement shall be assessed against the nonperforming Unit Owner pursuant to Sections 7.2.4 and 7.6.

**5.5 Private Sewer Facilities.** As used in this Section, the term "sewer facilities" means all sewer lines and appurtenant facilities within the boundaries of the Condominium, except for: (a) any sewer lines and appurtenant facilities which serve only one Unit and which are located within the boundaries of the Unit or are part of the Common Elements but are allocated to the Unit by this Declaration as a Limited Common Element; and (b) any sewer lines and appurtenant facilities which have been accepted by and are the responsibility of a governmental or private sewer company. The Association shall be responsible for the operation, maintenance, repair and replacement of the sewer facilities in compliance with all applicable federal, state and local laws, ordinances and regulations. The Association shall file all reports regarding the operation and maintenance of the sewer facilities as may be required by federal, state or local laws, ordinances or regulations. The Association will advise any utility company or



other entity to which the Association gives permission to make additional improvements to the Condominium that the services which are available under Arizona law to locate and mark underground utility lines and facilities within dedicated public rights-of-way are not available to locate the sewer facilities, and, therefore, a private person or entity will need to be employed for such purpose. Sewer lines and appurtenant facilities which serve only one Unit and which are located within the boundary of a Unit or which are part of the Common Elements but are allocated to the Unit by this Declaration as a Limited Common Element shall be maintained, repaired and replaced by the Owner of the Unit served.

## ARTICLE 6

### THE ASSOCIATION

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

**6.2 Directors and Officers.** During the Period of Declarant Control, the Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association who do not have to be Unit Owners. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three (3) members, all of whom must be Unit Owners; provided that if the Unit Owner is a corporation, limited liability company, partnership, trust, bank or other form of association, an authorized officer, member, manager, trustee, agent or employee of such association may serve as a director or officer of the Association. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association. The Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

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

**6.4 Membership in the Association.** Every Owner, upon becoming the Owner of a Unit, shall automatically become a member of the Association and shall remain a member in the Association until such Owner is no longer an Owner of a Unit, at which time such membership shall automatically cease. Ownership of a Unit shall be the sole qualification for membership in the Association. Membership shall not be assignable except to the Person to which title to the Unit has been transferred, and every membership shall be appurtenant to and may not be separated from the fee ownership of such Unit. The rights, duties, privileges and obligations of all Owners with respect to the Association shall be as provided in the Condominium Documents.

**6.5 Transfer of Membership.** Membership in the Association shall not be transferred, pledged or alienated in any way except in conjunction with the sale, transfer or conveyance of fee title to a Unit, and then only to the Person acquiring title to such Unit. A prohibited transfer is VOID and will not be reflected upon the books and records of the Association. An Owner who has entered into an executory contract to sell a Unit shall be entitled to delegate to the prospective Purchaser the membership rights in the Association appurtenant to such Unit. The delegation shall be in writing and shall be delivered to the Board of Directors before the prospective Purchaser may vote. However, the Owner shall remain liable for all charges and Assessments attributable to the Unit until title to the Unit is transferred to the Purchaser. If the Owner fails or refuses to transfer membership to the Purchaser of the Unit upon transfer of title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer has been presented to the Board of Directors, the Purchaser shall not be entitled to vote at meetings of the Association. The Association may levy a reasonable fee against an Owner and his Unit (which fee shall be payable at the close of escrow relating to the sale of the Unit to the Purchaser) to reimburse the Association for the costs incurred in the preparation of a statement furnished by the Association pursuant to A.R.S. § 33-1260.

**6.6 Issues of Critical Importance.** In order for every Owner to fully and completely understand and to foster a full and complete discussion of the impact of issues of critical importance to the Association and the severity of the affect of such issues on the value of each Unit, the resaleability of each Unit, the ability to obtain financing or re-financing with respect to a Unit, the ability to obtain financing and to refinance the Common Elements, and effectuate proper management of the Association, Members of the Association must be encouraged to attend meetings of the membership in person. As contemplated in this Section, the term "issues of critical importance" means the following:

(a) Initiating litigation, mediation, arbitration or any similar proceeding, including, without limitation, any such proceeding pursuant to Article 11 of this Declaration or otherwise;

(b) Initiating any pledge, assignment, encumbrance, hypothecation, grant of security interest in or sale of all or any portion of the Common Elements;

(c) Any attempt to abandon or terminate the Condominium;

(d) Any attempt to partition or subdivide any non-Declarant owned Unit;

- (e) Any attempt to abandon, pledge, partition, subdivide any portion of the Common Elements;
- (f) Any attempt to construct additional Improvements costing in excess of \$50,000; or
- (g) Any attempt to make any amendment to this Section 6.6, Section 6.12 and Articles 11 and 12.

For the reasons set forth in this Section, any notice of annual or special meeting served by the Association upon the Members in accordance with the terms of the Bylaws pursuant to which an issue of critical importance will be brought before the membership for a vote shall contain the following legend:

NOTICE: YOUR PERSONAL ATTENDANCE AT THE MEETING OF THE MEMBERS IS STRONGLY ENCOURAGED. ONE OR MORE RESOLUTIONS WILL BE PRESENTED FOR VOTE THAT COULD HAVE A GRAVE IMPACT UPON YOUR PROPERTY. PERSONAL ATTENDANCE AT THE MEETING WILL ENABLE YOU TO BECOME FULLY INFORMED ON THESE ISSUES PRIOR TO CASTING YOUR VOTE.

Any notice of annual or special meeting that includes an issue of critical importance, but which does not contain a legend in substantial compliance with the foregoing, shall not constitute effective notice under the Bylaws as to the issue of critical importance (but shall otherwise constitute effective notice for any other business to be transacted at the meeting).

In addition, no absentee ballot on an issue of critical importance shall be filed with the secretary of the Association more than thirty (30) days prior to the meeting of the Members. Any absentee ballot filed with the secretary more than thirty (30) days prior to the meeting shall not be counted.

The Declarant is intended to be a third-party beneficiary of this Section 6.6, and as such, any attempt to amend, modify or repeal this Section 6.6 without the prior written consent of the Declarant, which consent Declarant may withhold in Declarant's sole and absolute discretion, shall be VOID and of no force or effect.

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

**6.8 Utility Service.** The Association shall acquire and pay for the following: (a) water, sewer, electric, natural gas and other utility service for the Common Elements; (b) refuse

and rubbish collection for the Common Elements and the Units; and (c) water and sewer service for the Units. Each Unit will be separately metered for electric service, and all charges for electric service to a Unit shall be paid by the Owner of the Unit. In addition, all charges for telephone, cable, or internet services, and security alarm monitoring to a Unit shall be paid by the Unit Owner.

## **6.9 Books and Records.**

6.9.1 Except as provided in Sections 6.9.2 and 6.9.3, all financial and other records of the Association, including without limitation, current copies of the Declaration, any amendments thereto, bylaws of the Association and other documents governing the condominium, and other books, records and financial statements of the Association, shall be made reasonably available for examination by any Owner, any person designated by the Owner in writing as the Owner's representative, any Eligible Mortgagees, and any lenders, holders and insurers of any First Mortgage. Except as provided in Sections 6.9.2 and 6.9.3, the Association shall also make available to prospective purchasers current copies of the Declaration and any amendments thereto, bylaws of the Association, and other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared. Except as provided in Sections 6.9.2 and 6.9.3, upon written request from any of the federal agencies or corporations which has an interest or prospective interest in the condominium, the Association shall prepare and furnish within a reasonable time an audited financial statement of the owners association for the immediately preceding fiscal year.

6.9.2 Books and records kept by or on behalf of the Association and the Board of Directors may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

- (a) Privileged communication between an attorney for the Association and the Association;
- (b) Pending or contemplated litigation;
- (c) Meeting minutes or other records of a session of a Board of Directors meeting that is not required to be open to all Owners pursuant to applicable law;
- (d) Personal, health and financial records of an individual Owner, an individual employee of the Association or an individual employee of a contractor for the Association; or
- (e) Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the Association or an individual employee of a contractor of the Association who works under the direction of the Association.

6.9.3 The Association shall not be required to disclose financial and other records of the Association if disclosure would violate any state or federal law.

**6.10 Annual Audit.** The Board of Directors shall provide for an annual financial audit, review or compilation of the Association. The audit, review or compilation shall be completed no

later than one hundred eighty days after the end of the Association's fiscal year and shall be made available upon request to the Unit Owners within thirty days after its completion.

**6.11 Conflict of Interest.** If any contract, decision or other action for compensation taken by or on behalf of the Board of Directors would benefit any member of the Board of Directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the Board of Directors or a parent or spouse of any of those persons, that member of the Board of Directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the Board before the Board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this Section is void and unenforceable.

**6.12 Presence at Meetings.** The Declarant has the unwaivable right to receive notice of and to attend all meetings of the Association, and shall be allowed to rebut the allegations of any individual or the Association with respect to the existence and/or prosecution of any Claim (as defined in Article 11). The Declarant is intended to be a third-party beneficiary of this Section 6.12, and as such, any attempt to amend, modify or repeal this Section 6.12 without the prior written consent of the Declarant, which consent Declarant may withhold in Declarant's sole and absolute discretion, shall be VOID and of no force or effect.

**6.13 Reservation of Right to Terminate Contracts.** In addition to the Association's rights pursuant to A.R.S. § 33-1245, neither the Declarant, an Affiliate of the Declarant, the Condominium developer, the sponsor of the project, or any other party, shall directly or indirectly bind the Association to any of the following agreements unless the Association shall have the right to terminate the agreement, without penalty, at any time after the expiration of the Period of Declarant Control, upon not more than 90 days' notice to the other party thereto: (A) any management contract, employment contract or lease of recreational or parking areas or facilities; and (B) any contract or lease, including franchises and licenses, to which the Declarant is a party, provided, however, that this provision does not apply to certain ground leases deemed "acceptable" by HUD. An "Affiliate of the Declarant" shall mean a person or entity which controls, is controlled by, or is under common control with, a Declarant. A person or entity shall be deemed to control a Declarant if that person or entity (a) is a general partner, officer, director, or employee of the Declarant; (b) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of the Declarant; (c) controls in any manner the election of a majority of the directors of the Declarant; or (d) has contributed more than 20 percent of the capital of the Declarant. A person or entity shall be deemed to be controlled by the Declarant if the Declarant (i) is a general partner, officer, director, or employee of that person or entity; (ii) directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing more than 20 percent of the voting share of that person or entity; (iii) controls in any manner the election of a majority of the directors of that person or entity; or (iv) has contributed more than 20 percent of the capital of that person or entity.

## ARTICLE 7

### ASSESSMENTS

#### 7.1 Preparation of Budget.

7.1.1 At least thirty (30) days before the beginning of each fiscal year of the Association commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which is sufficient to pay the amounts set forth in the Reserve Study, any maintenance items set forth in the Maintenance Program (if any), and which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (a) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (b) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (c) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (d) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units. The Board of Directors is expressly authorized to adopt and amend budgets for the Association, and no ratification of any budget by the Unit Owners shall be required.

7.1.2 At least ten (10) days before the beginning of each fiscal year of the Association (except for the first fiscal year), the Board of Directors shall send to each Owner a summary of the budget and a statement of the amount of the Regular Assessment assessed against the Owner's Unit in accordance with Section 7.2. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses as provided in Section 7.2, and each Owner shall continue to pay the Regular Assessment for his Unit as established for the previous fiscal year until notice of the Regular Assessment for the new fiscal year has been given to the Owners by the Board of Directors.

#### 7.2 Regular Assessment.

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

limitation, nonpayment of Assessments by Members, the Board of Directors may increase the Regular Assessment for that fiscal year and the revised Regular Assessment shall commence on the date designated by the Board of Directors.

7.2.2 The Regular Assessments shall commence as to all Units on the date the first Unit is conveyed to a Purchaser or such later date as may be selected by the Board of Directors for the commencement of the Regular Assessments. The first Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Regular Assessments or Special Assessments be paid in installments.

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

7.2.4 If any Common Expense is caused by the misconduct of any Owner, the Association shall assess that Common Expense exclusively against such Owner's Unit. Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liabilities.

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

**7.3 Special Assessments.** The Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment (other than a Special Assessment levied pursuant to Section 9.1 as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by Owners representing sixty-seven percent (67%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Owners.

**7.4 Individual Expense Assessment.** The Association may contract with various suppliers of goods or services to provide to the Owners, Lessees and Occupants goods or services which the Association is not required to provide under the Condominium Documents. Any such contract may either provide that the Association shall pay for the cost and expense of the goods or services provided to the Owners, Lessees or Occupants under the contract or that the cost and expense shall be billed directly to the Owner, Lessee or Occupant receiving such

goods or services. Any such costs and expenses paid by the Association shall be assessed as an Individual Expense Assessment to the Unit receiving such goods or services.

**7.5 User Fee Assessments.** The Association may levy a User Fee Assessment against any Unit Owner for the purposes described in Section 1.45.

**7.6 Enforcement Assessment.** The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (a) any Collection Costs incurred by the Association in attempting to collect Individual Expense or User Fee Assessments or other amounts payable to the Association by the Owner; (b) any attorney fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Condominium Documents by the Owner or the Owner's Lessees, Occupants or Invitees; (c) any monetary penalties levied against a Unit Owner, including, but not limited to, reasonable monetary penalties imposed by the Association pursuant to Section 7.5 upon Unit Owners for violations of the Condominium Documents; (d) damages, expenses and costs assessed by the Association against a Unit Owner pursuant to Sections 5.3, 5.4, 5.6 and 7.2.4, and interest, late fees, Collection Costs and other costs and charges incurred by the Association relative to such damages, expenses and costs; and (e) any amounts (other than Regular Assessments, Special Assessments, Individual Assessments and User Fee Assessments) which become due and payable to the Association by the Owner or the Owner's Lessees, Occupants or Invitees pursuant to the Condominium Documents.

**7.7 Purposes for which Association's Funds May be Used.** The Association may use the funds and property collected and received by the Association (including, but not limited to, all Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Condominium Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Condominium Documents or applicable law; (c) providing or promoting activities and services the Board of Directors deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Condominium and the Owners, Lessees and Occupants; (d) contracting for services to be provided to Owners, Lessees and Occupants; and (e) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Condominium.

**7.8 Effect of Nonpayment of Assessments; Remedies of the Association.**

7.8.1 Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors. Until the Board of Directors establishes a rate, the default rate of interest shall be ten percent (10%) per annum. If any Assessment, or any installment thereof, is not paid within fifteen (15) days after the Assessment first became due, the Association may assess against the delinquent Unit Owner a late fee in the amount established from time to time by the Board of Directors, which shall not exceed the amount prescribed under A.R.S. § 33-1803.



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

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

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

7.8.5 The enforcement of any Assessment Lien shall be subject to the limitations set forth in this Section 7.8 and A.R.S. § 33-1256.

7.8.6 The Association shall have a lien for any Individual Expense Assessment, User Fee Assessment or Enforcement Assessment, and for interest, late fees, Collection Costs and other fees and charges incurred or imposed by the Association relative to such Assessments, only after the Association obtains a judgment and submits that judgment for Recording; provided that the Association's lien for Individual Expense Assessments, User Fee Assessments and Enforcement Assessments, and for interest, late fees, Collection Costs and other fees and charges incurred or imposed by the Association relative to such Assessments may not be foreclosed and is effective only on conveyance of an interest in the Unit against which the lien attaches.

**7.9 Certificate of Payment.** All payments received on account of a Unit Owner shall be applied by the Association in accordance with the provisions of A.R.S. § 33-1256(K). The Association on written request shall furnish to a lienholder, escrow agent, Unit Owner or person designated by a Unit Owner a recordable statement setting forth the amount of unpaid Assessments against his Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner if requested by an escrow agent licensed to do business in the State of Arizona. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

**7.10 No Exemption or Offsets.** No Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of his Unit. All Assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

**7.11 Initial Working Capital Fund.** To provide the Association with initial operating funds, each Purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Unit, an initial working capital fund payment. Until the Regular Assessments have commenced with respect to all Units pursuant to Section 7.2.2, the initial working capital fund payment will be equal to two times the then existing monthly Regular Assessment. After Regular Assessments have commenced, the working capital fund payment will be a sum equal to two monthly installments of the Regular Assessment for the Unit. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

**7.12 Reserve Contribution.**

7.12.1 Except as provided in Section 7.12.2, each Person who purchases or otherwise becomes the Owner of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.13. The amount of the initial Reserve Contribution shall be \$1,000.00. The Board of Directors may from time to time increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the votes in the Association. Developer has previously contributed the sum of \$54,786.31 to the Reserve Account and shall otherwise be exempt from the provisions of this Section.

7.12.2 No Reserve Contribution shall be payable in the following instances:

(a) Conveyance of a Unit to a trust, partnership, corporation, or other entity, provided such entity is and remains wholly-owned by the grantor or by such grantor and

the grantor's spouse and/or children; and any conveyance from such entity to the grantor upon termination or dissolution of any trust, partnership, corporation or other entity;

(b) Conveyance of a Unit between Persons to create or terminate ownership by survivorship or other form of common ownership for no or only nominal consideration; between husband and wife upon divorce or separation, or for no or only nominal consideration; between parent and child for no or only nominal consideration; or upon death of an Owner as a distribution to the heirs of the decedent from a trust or estate;

(c) Conveyance of an undivided interest in a Unit by the grantor to any then existing Co-owners of such Unit for no or only nominal consideration; and

(d) A bona fide transfer of a Unit in lieu of or resulting from the foreclosure of a Mortgage encumbering such Unit or upon forfeiture of a purchaser's interest under a Recorded contract for the conveyance of real property under A.R.S. § 33-741, et seq.

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

7.12.4 The Reserve Contribution shall be in addition to the document preparation fee which the Association is entitled to charge pursuant to A.R.S. § 33-1260C.

### **7.13 Reserves.**

7.13.1 The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements which the Association is obligated to maintain, repair and replace. The reserves shall be funded from Regular Assessments and the Reserve Contributions paid pursuant to Section 7.12, and may also be funded by any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Withdrawal of funds from the Association's reserve account shall require the signatures of either (a) two members of the Board of Directors; or (b) one member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. The Board of Directors shall obtain a reserve study at least once every three years, which study shall at a minimum include (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

7.13.2 Unless the Association is exempt from federal or state taxes, all reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association.

## ARTICLE 8

### INSURANCE

#### 8.1 Scope of Coverage.

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

(a) A special form policy of property insurance with sprinkler leakage, debris removal and water damage endorsements, insuring the Common Elements and Limited Common Elements against all risk of direct physical loss commonly insured against. The policy must include an "Agreed Amount Endorsement", and, if available, an "Inflation Guard Endorsement." The Board of Directors, in its discretion, may elect to have the property insurance also cover the Units, except for: (i) additions, alterations and improvements supplied or installed by the Unit Owners; and (ii) furniture, furnishings or other personal property of the Unit Owners. Such property insurance shall cover the interests of the Association, the Board of Directors and all Unit Owners and their mortgagees, as their interests may appear (subject, however, to the loss payment adjustment provisions in favor of an insurance trustee), in an amount equal to one hundred percent (100%) of the then current replacement cost of the insured property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation. The replacement cost shall be reviewed annually by the Board of Directors with the assistance of the insurance company affording such coverage. The Board of Directors shall also obtain and maintain such coverage on all personal property owned by the Association.

(b) Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$1,000,000 for any single occurrence and Umbrella or Excess Liability Coverage in an amount 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, operation or maintenance of the Common Elements and Limited Common Elements. Such policy shall include (i) a cross liability clause to cover liabilities of the Owners as a group to an Owner, and (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and non-owned automobiles.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona and, if the Association has any employees, a policy

of employer's liability insurance with coverage limits determined by the Board of Directors to cover legal liability arising out of lawsuits related to employment contracts of the Association.

(d) Directors' and officers' liability insurance in an amount not less than \$1,000,000 covering all the directors and officers of the Association.

(e) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association, the members of the Board of Directors, the members of any committee or the Board of Directors or the Unit Owners, including, without limitation, umbrella general liability insurance which would provide general liability coverage in excess of the coverage provided by the policy to be obtained pursuant to Subsection 8.1.1(b).

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

(i) Each Unit Owner, and the Owner's mortgagee, if any, shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements, his right to use Limited Common Elements, or his membership in the Association. Certificates of Insurance shall be issued to each Unit Owner and the Owner's mortgagee, if any, upon request.

(ii) There shall be no subrogation with respect to the Association, its agents, servants, and employees against Unit Owners and members of their household, Lessees, Invitees, and Occupants of a Unit, except for claims against Unit Owners by members of their households for employee dishonesty or forgery.

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

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

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

(vi) The Association shall be the insured for use and benefit of the individual Unit Owners (designated by name if required by the insurer) and of the Owners' mortgagees, if any.

(vii) For policies of property insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association, each Unit Owner and each Eligible Mortgagee named in the policy to who certificate of insurance has been issued at

least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

(viii) Any insurance trust agreement will be recognized by the insurer.

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

(h) Flood insurance in accordance with applicable governmental regulations or the regulations or requirements of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

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

8.1.3 The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 8.1 in order to reduce the premiums payable for such insurance. Provided, however, that the total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundation and other items normally excluded from property policies. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

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

8.1.5 The Association and its directors and officers shall have no liability to any Owner or Eligible Mortgagee or other Person having a lien on a Unit if, after a good faith effort, (a) the Association is unable to obtain insurance required hereunder because the insurance is no longer available; (b) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (c) the Members fail to approve any increase in the Regular Assessment needed to pay the insurance premiums. If the

insurance required by this Declaration is not reasonably available as aforesaid, the Association shall promptly notify the Unit Owners of such fact. Upon any such occurrence, the Association may, in its discretion, obtain and carry any other insurance it deems appropriate to protect the Association or Unit Owners.

8.1.6 The Board of Directors shall determine annually whether the amounts and types of insurance the Association has obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Condominium is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association.

## **8.2 Fidelity Bonds or Insurance.**

8.2.1 The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. Fidelity bonds or fidelity insurance obtained by the Association must also meet the following requirements:

(a) The fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus Reserve Funds.

(b) The bonds or the insurance policies shall contain waivers by the issuers of the bonds or the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

(c) The bonds or insurance policies shall provide that they may not be canceled or substantially modified (including cancellation from nonpayment of premium) without at least ten (10) days prior written notice to the Association and each Eligible Mortgagee to whom a certificate of insurance has been issued.

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

**8.3 Payment of Premiums.** Premiums for all insurance obtained by the Association pursuant to this Article 8 shall be Common Expenses and shall be paid for by the Association.

**8.4 Insurance Obtained by Unit Owners.** To the extent not covered by the policies of liability insurance obtained by the Association for the benefit of all of the Unit Owners, each Unit Owner shall be responsible for obtaining: (a) property insurance on his Unit and all fixtures, furnishings, cabinets and appliances and all personal property of the Owner located in the Unit; and (b) comprehensive general liability insurance covering his Unit.

**8.5 Payment of Insurance Proceeds.** Any loss covered by property insurance obtained by the Association in accordance with this Article 8 shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholder as their interests may appear, and the proceeds shall be disbursed and applied as provided for in the Condominium Act.

**8.6 Certificate of Insurance.** An insurer that has issued an insurance policy pursuant to this Article 8 shall issue certificates or memoranda of insurance to the Association and, on written request, to any Unit Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner, and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**8.7 Conflict with HUD Regulations.** To the extent the insurance requirements set forth in this Article 8 conflict with the requirements of HUD Handbook 4265.1, Appendix 24, Section 14, the provisions of HUD Handbook 4265.1, Appendix 24, Section 14, as amended or superseded from time to time, control.

## ARTICLE 9

### DESTRUCTION OF IMPROVEMENTS

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

**9.2 Determination Not to Reconstruct Without Termination.** If eighty percent (80%) of the Unit Owners (including every Owner of a Unit or an allocated Limited Common Element which will not be rebuilt) vote not to rebuild, and the Condominium is not terminated in accordance with the Condominium Act, the insurance proceeds shall be distributed in proportion to their interests in the Common Elements to the Owners of those Units and the Owners to which those Limited Common Elements were allocated, or to lienholders as their interests may appear.



The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to Common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be automatically reallocated as if the Unit had been condemned under A.R.S. § 33-1206A, and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

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

**9.4 Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed Improvements or any other portion of the Common Elements, and to make settlements with the insurer for less than full insurance coverage on the damage to such Improvements or any other portion of the Common Elements. Any settlement made by the Association in good faith shall be binding upon all Owners and Eligible Mortgagees. Insurance proceeds for any damage or destruction of any part of the Condominium covered by property insurance maintained by the Association shall be paid to the Association and not to any Eligible Mortgagee or other lienholder. The Association shall hold any proceeds in trust for the Unit Owners and lienholders as their interests may appear. Except as otherwise provided in Sections 9.1 and 9.2, all insurance proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged or destroyed Common Elements have been completely repaired or restored or the Condominium is terminated.

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

**9.6 Priority.** Nothing contained in this Article 9 shall entitle an Owner to priority over any lender under a lien encumbering his Unit as to any portion of insurance proceeds allocated to such Unit.

## ARTICLE 10

### EMINENT DOMAIN

**10.1 Total Taking of a Unit.** If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for his Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. Upon such a taking, unless the decree otherwise provides, that

Unit's allocated interests in the Common Elements and in the Common Expenses shall automatically be reallocated to the remaining Units in proportion to their respective allocated interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Condominium Act. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Element.

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

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

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

**10.5 Priority and Power of Attorney.** Nothing contained in this Article 10 shall entitle an Owner to priority over any Eligible Mortgagee under a lien encumbering his Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Elements, or any part thereof. This power of attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns or an Owner.

## ARTICLE 11

### DISPUTE RESOLUTION

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

(a) **"Alleged Defect"** means any alleged defect or deficiency in the planning, design, engineering, grading, construction, maintenance, improvement, or development of the Common Elements or any Unit.

(b) **“Bound Parties”** means: (i) the Declarant; (ii) the Association; (iii) all Unit Owners, Lessees and Occupants; and (iv) any contractor or subcontractor, architect, engineer, consultant or other Person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of the Common Elements or the Units and who agrees in writing to be bound by the provisions of this Article 11.

(c) **“Claim”** means: (i) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Elements, the Units or any other part of the Condominium, including, without limitation, any claim or cause of action that the Common Elements or the Units are defective or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (ii) any claim or cause of action against the Declarant or any employee, agent, director, member, manager or officer of Declarant arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

**11.2 Agreement to Resolve Certain Disputes Without Litigation.** All Bound Parties agree that all Claims shall be resolved in accordance with the dispute resolution procedures set forth in this Article 11.

**11.3 Notice of Claim.** Any Bound Party who contends or alleges to have a Claim (a “Claimant”) against any other Bound Party (a “Respondent”) shall notify each Respondent in writing of the Claim (the “Claim Notice”), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys’ fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Title 20 or Title 32 of the Arizona Revised Statutes (a “Licensed

Professional”), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to A.R.S. § 12-2602B. The Claimant or Respondent may notify all Eligible Mortgagees of the delivery of a Claim Notice which pertains to a Claim for an Alleged Defect. Further, all Unit Owners must notify any prospective Purchaser that such action has been agreed upon by the Association, and a copy of such letter shall be delivered to Declarant within two (2) business days after the same is sent.

**11.4 Right to Enter, Inspect, Repair and/or Replace.** Following the receipt of a Claim Notice with respect to an Alleged Defect, each Respondent and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Respondent, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Respondent shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 11.4 shall be construed to impose any obligation on any Respondent to inspect, test, repair, or replace any item or Alleged Defect for which the Respondent is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Respondent in connection with the sale of the Units. The right of a Respondent and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Respondent. In no event shall any statutes of limitations be tolled during the period in which a Respondent conducts any inspection, testing, repair or replacement of any Alleged Defects.

**11.5 Mediation.** If any Alleged Defect is not fully remedied to Claimant’s satisfaction under the terms of Section 11.4, the Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within ninety (90) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties (“Termination of Negotiations”), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association (“AAA”) or such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation Notice”). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

**11.6 Binding Arbitration.** In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to

submit the Claim to binding arbitration in accordance with this Section 11.6. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 11.6. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 11.6, the arbitration shall be conducted in accordance with the following rules:

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

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

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

(d) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be a practicing attorney or retired judge, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings.

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

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

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

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

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

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

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

**11.7 Use of Funds.** Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect; provided that any portion of an award expressly allocated to the recovery of attorneys fees or expert witness fees may be utilized

by the Claimant to pay such fees or reimburse the Claimant for such fees. Any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's Reserve Account; provided that such amount may not be used to credit any Owner for future Assessments or used by the Association or any Owner for reimbursement of the costs incurred in bringing the Claim.

**11.8 Approval of Action.** The Association shall not deliver a Claim Notice to any Bound Party or commence any action under this Article 11 or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without (i) first obtaining at a duly constituted meeting of the Members under the Bylaws, the affirmative vote of Unit Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings, and (ii) giving the Declarant, if the Declarant would be the Respondent under said Claim, sixty (60) days prior written notice of said meeting, and (iii) permitting Declarant (it's agents, contractors, attorneys and accountants) to give the last presentation at such meeting regarding said Claim before a vote it taken. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use funds held in the Reserve Account or other monies collected for specific Association obligations other than legal fees. Notwithstanding anything to the contrary, the Association shall not, under any circumstances whatsoever, engage the services of legal counsel or a law firm on a contingency fee basis; but shall, in every circumstance, create and collect a Special Assessment for the sole purpose of engaging such legal counsel or law firm, which legal counsel or law firm shall be engaged on an hourly fee basis without any right to receive a bonus or additional fee based upon the outcome of the applicable action.

**11.9 Notice to Prospective Purchasers.** In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify any prospective Purchaser of their Unit of such legal action or arbitration proceeding and must provide such prospective Purchaser with a copy of the Notice of Claim submitted under the terms of Section 11.3.

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

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

**BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE DECLARANT OR ANY OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING**

**TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.**

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

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

## **ARTICLE 12**

### **MORTGAGEES**

**12.1 Rights of Mortgagees.** Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of any Mortgagee under any Mortgage upon one (1) or more Units made in good faith and for value, provided that after the foreclosure of any such Mortgage, such Unit(s) shall remain subject



to this Declaration as amended. For purposes of any provision of this Declaration which requires the vote or approval of a specified percentage of Eligible Mortgagees, such vote or approval shall be determined based upon one (1) vote for each Unit encumbered by each such Mortgagee in a first lien position. In order to induce Eligible Mortgagees to participate in the financing of the sale of Units, the following provisions of this Article 12 are added hereto (and to the extent the provisions set forth in this Article 12 conflict with any other provisions of the Declaration, these added provisions shall control).

**12.2 Right to Notice.** Each Eligible Mortgagee must be given written notification from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Condominium or the Unit(s) in which the holder, insurer or guarantor of an Eligible Mortgagee has a security interest; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Declaration including, without limitation, the payment of Assessments or charges owed by the Owner(s) of the Unit(s) in which the holder, insurer or guarantor of an Eligible Mortgagee has a security interest, which notice each Owner hereby consents to and authorizes; (c) a lapse, cancellation or material modification of any policy of insurance or fidelity bond maintained by the Association; (d) any proposed action of the Association which requires consent by a specified percentage of Eligible Mortgagees; and (e) any Claim or other proceeding proposed to be brought against the Declarant; provided that neither the Association nor any officer, director, agent or employee of the Association shall be liable to any Unit Owner due to the failure of the Association to give notice as prescribed in this Section 12.2.

**12.3 Priority of Assessments.** Each Eligible Mortgagee of a Mortgage encumbering any Unit which obtains title to such Unit, pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to such Unit free and clear of claims for unpaid Assessments or charges against such Unit. However, each such Eligible Mortgagee, upon taking title to a Unit, shall be obligated to pay Assessments just as all other Owners.

**12.4 Written Consent.**

12.4.1 Notwithstanding any other provisions of this Declaration, any termination of the legal status of the Project for reasons other than the substantial destruction or condemnation of the Condominium will not be effective unless approved by Eligible Mortgagees holding at least sixty-seven percent (67%) of the voting rights of all Eligible Mortgagees.

12.4.2 The approval of at least fifty-one percent (51%) of the Eligible Mortgagees will be required to add to or amend any material provisions of the Condominium Documents that establish, provide for, govern, or regulate any of the following:

- (a) Voting rights;
- (b) Assessments, assessment liens, or subordination of assessment liens;
- (c) Reserves for maintenance, repair, and replacement of Common Elements;
- (d) Insurance of the Association or fidelity bonds;

- (e) Responsibility for Common Expenses or for the maintenance and repair of the Common Elements;
- (f) Expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of real property to or from the Condominium;
- (g) Boundaries of any Unit or the exclusive easement rights pertaining thereto;
- (h) The interests in the Common Elements or Limited Common Elements or the rights to the use of the Common Elements;
- (i) Convertibility of Units into Common Elements or Common Elements into Units;
- (j) Leasing of Units;
- (k) Imposition of any restrictions on any Owner's right to sell or transfer the Owner's Unit;
- (l) A decision by the Association to establish self management when professional management had been required previously by the holder, insurer or guarantor of any Eligible Mortgage;
- (m) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;
- (o) Any provisions of the Condominium Documents that expressly benefit First Mortgagees or the holders, insurers or guarantors of Eligible Mortgages;
- (p) Bring any Claim or other proceeding against the Declarant.

Any addition or amendment to the Condominium Documents will not be considered material if it is for the purpose of correcting technical errors or for clarification only. Any Eligible Mortgagee who receives a written proposal for an amendment to the Condominium Documents under this Article 12 who fails to submit a response to the proposal within thirty (30) days after the Eligible Mortgagee receives proper notice of the proposal shall be deemed to have approved the proposed amendment, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

**12.5 Substitute Performance.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**12.6 Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article 12 and any other provision of the Condominium Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners or Eligible Mortgagees that must consent to (a) an amendment of the

Condominium Documents, (b) a termination of the Condominium, or (c) certain actions of the Association as specified in Section 12.4, the provision requiring the consent of the greatest number or percentage of Unit Owners or Eligible Mortgagees shall prevail.

## ARTICLE 13

### GENERAL PROVISIONS

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

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

(b) Suspending a Unit Owner's right to vote;

(c) Suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit the use of a Common Element or ingress and egress to and from a Unit;

(d) Suspending any services provided by the Association to a Unit Owner or the Owner's Unit if the Unit Owner is more than fifteen (15) days delinquent in paying any Assessment or other charge owed to the Association;

(e) Exercising self-help or taking action to abate any violation of the Condominium Documents in an emergency situation;

(f) Requiring a Unit Owner, at the Unit Owner's expense, to remove any Improvement installed or constructed in such Owner's Unit or in any Limited Common Element allocated to the Owner's Unit in violation of this Declaration and to restore the Unit or the Limited Common Element to its previous condition and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the Unit or Limited Common Element, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) Without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other Invitee of a Unit Owner who fails to comply with the terms and provisions of the Condominium Documents from continuing or performing any further activities of the Condominium;

(h) Towing vehicles which are parked in violation of this Declaration or the Rules;

(i) Filing a suit at law or in equity to enjoin a violation of the Condominium Documents, to compel compliance with the Condominium Documents, to recover monetary penalties or money damages or to obtain such other relief as to which the Association may be entitled; and

(j) Recording a written notice of a violation of any restriction or provision of the Condominium Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (i) the legal description of the Unit against which the notice is being recorded; (ii) a brief description of the nature of the violation; and (iii) a statement of the specific steps which must be taken by the Unit Owner to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Unit Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Condominium Documents.

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

Any Unit Owner may enforce the Condominium Documents in any manner provided for in this Declaration, at law or in equity, except that a Unit Owner may not exercise the remedies provided to the Association under Subsection 13.1(a) through (h) and 13.1(j) of this Declaration or enforce payment of any Assessments or other amounts payable to the Association pursuant to the Condominium Documents.

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

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

**13.3 Duration.** The covenants and restrictions of this Declaration, as amended from time to time, shall run with and bind the Condominium in perpetuity unless the Condominium is terminated as provided in Section 13.4.

**13.4 Termination of Condominium.** Except in the case of a taking of all the Units by eminent domain, the Condominium may be terminated only by the agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. An agreement to terminate the Condominium must be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed by the requisite number of Unit Owners.

**13.5 Amendment.**

13.5.1 Except as provided at Sections 12.4.2 and 13.5.3, during the Period of Declarant Control, the Declarant shall have the right to amend the Condominium Documents to: (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (b) correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Unit Owner; (c) exercise its Development Rights; or (d) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

13.5.2 During the Period of Declarant Control, an amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control unless the Declarant approves the amendment in writing. In addition, any amendment to this Declaration adopted during the Period of Declarant Control must be approved in writing by the Declarant.

13.5.3 Notwithstanding any provision of this Declaration or of the Condominium Act to the contrary, the vote of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated will be required to add to or amend any material provisions of the Condominium Documents that establish, provide for, govern, or regulate any of the matters set forth at Section 12.4.2 above.

13.5.4 Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under Section 33-1220 of the Condominium Act (subject to Section 13.5.1), by the Association under Section 33-1206 of the Condominium Act (subject to Section 13.5.1), or by certain Unit Owners under Section 33-1218(B), Section 33-1222 or Section 33-1223 of the Condominium Act, or as provided in Sections 12.4.2 and 13.5.3, the Condominium Documents may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

13.5.5 Any amendment adopted by the Unit Owners pursuant to Sections 13.5.3 or 13.5.4 shall be signed by the President or Vice President of the Association and shall be Recorded within thirty (30) days after the adoption of the amendment. Any such amendment shall certify that the amendment has been approved as required by Articles 12 and 13. Any amendment made by the Declarant pursuant to Section 13.5.1 or the Condominium Act shall be executed by the Declarant and shall be Recorded.

**13.6 Notices.** All notices, demands, statements or other communications required to be given to or served on a Unit Owner under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, return receipt requested, addressed to the Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Association or, if no such address is designated, at the address of the Unit of such Owner. A Unit Owner may change his address on file with the Association for receipt of notices by delivering a written notice of change of address to the Association. A notice given by mail, whether regular, certified, or registered, shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Owners shall constitute notice to all Owners of the same Unit. Each Unit Owner shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

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

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

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

**13.10 Construction.** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws or the Association Rules, the provisions of this Declaration shall prevail. In the event of any conflict between the provisions of the Condominium Act or any other applicable law and this Declaration, this Declaration shall be construed to be revised to comply with such law.

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

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

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

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

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

**13.16 Security Disclaimer.** The Association may, but shall not be obligated to, maintain or support certain activities within the Condominium designed to make the Condominium safer than it might otherwise be.

NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE CONDOMINIUM, AND NEITHER THE ASSOCIATION NOR THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE SECURITY OR THE INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS, THE DECLARANT OR ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR SECURITY SYSTEM NOW OR HEREAFTER DESIGNED OR INSTALLED BY THE DECLARANT OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR SECURITY SYSTEM WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION OR SECURITY SYSTEM WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER OR OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, THE DECLARANT,

OR ANY OTHER SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISK FOR LOSS OR DAMAGE TO PERSONS, UNITS AND THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, THE DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY TO FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR SECURITY SYSTEM RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

**13.17 Nonliability for Square Footage Calculation.** Each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit and that depending on the method of calculation, the quoted square footage of the Unit may vary by more than a nominal amount. Additionally, as a result of in the field construction, other permitted changes to the Unit, and settling and shifting of improvements, actual square footage of a Unit may also be affected. By accepting title to a Unit, the applicable Unit Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Declarant's promotional materials or otherwise. Without limiting the generality of this Section, Declarant does not make any representation or warranty as to the actual size, dimensions (including ceiling heights) or square footage of any Unit, and each Unit Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage of the Unit.

**13.18 Nonliability for Mold Development.** Molds, mildew, toxins and fungi may exist and/or develop within the Unit and/or the Condominium. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released the Declarant from any and all liability resulting from same.

**13.19 Disclaimer of Warranties.** Declarant hereby disclaims any and all and each and every express or implied warranties, whether established by statutory, common, case law or otherwise, as to the design, construction, continuation of any particular view (it being understood and agreed that construction on any adjacent properties may obstruct such view), sound and/or odor transmission, existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Condominium, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute (to the extent permitted by law) and all other express and implied warranties of any kind or character.



ALTA SIERRA INVESTMENTS, LLC,  
an Arizona limited liability company

By: Leo Crowley  
Leo Crowley, Manager

STATE OF ARIZONA        )  
                                  ) ss.  
County of Coconino        )

On this 28 day of October, 2008, before me personally appeared Leo Crowley, who acknowledged himself to be the Manager of Alta Sierra Investments, LLC, an Arizona limited liability company, and that he, in such capacity being authorized to do so, executed the foregoing instrument for the purposes therein contained .

Melanie Richards  
Notary Public

My Commission Expires:



**EXHIBIT A  
LEGAL DESCRIPTION OF  
PROPERTY SUBMITTED TO CONDOMINIUM**

**Exhibit A**

**Units 101 through 104 and 201 through 204, Building 1;  
Units 105 through 108 and 205 through 208, Building 2;  
Units 109 through 112 and 209 through 212, Building 3;  
Units 113 through 117 and 213 through 217, Building 4;  
Units 118 through 121 and 218 through 221, Building 5;  
Units 122 through 126 and 222 through 226, Building 6;  
Units 127 through 131 and 227 through 231, Building 7;  
Units 132 through 135 and 232 through 235, Building 8;  
Units 136 through 139 and 236 through 239, Building 9;  
Units 140 through 144 and 240 through 244, Building 10;  
Units 145 through 149 and 245 through 249, Building 11;  
Units 150 through 155 and 250 through 252, Building 12;  
Units 101 through 105 and 201 through 205, Building 14;  
Units 106 through 109 and 206 through 209, Building 15;  
Units 110 through 113 and 210 through 213, Building 16;  
Units 114 through 117 and 214 through 217, Building 17;  
Units 118 through 121 and 218 through 221, Building 18;  
Units 122 through 126 and 222 through 226, Building 19;  
Units 127 through 130 and 227 through 230, Building 20;  
Units 131 through 134 and 231 through 234, Building 21;  
Units 135 through 138 and 235 through 238, Building 22;  
Units 139 through 142 and 239 through 242, Building 23;  
Units 143 through 146 and 243 through 246, Building 24;  
And Units 147 through 150 and 247 through 250, Building 25,  
The Village at University Heights Condominium, according to  
Condominium Declaration recorded in Instrument No. 06-3389222,  
and as set forth on plat recorded in Instrument No. 06-3389221,  
records of Coconino County, Arizona;**

**TOGETHER WITH the Common elements, as set forth in said  
Declaration and plat.**

**EXHIBIT B  
DESIGNATION OF UNITS AND ALLOCATED INTEREST**

**The Village at University Heights Condominium**

CONDO MAP UNIT NUMBER	BEDROOM/ BATHROOM	CLASS	SQUARE FEET	COVERED PARKING SPACE	ALLOCATED INTEREST	INITIAL MONTHLY ASSESSMENT	BUILDIN G NUMBER	UNIT NUMBER
1-101	2/2	B	800	P101	0.0048178	\$ 120.00	1	101
1-102	2/2	B	800	P102	0.0048178	\$ 120.00	1	102
1-103	2/2	B	800	P103	0.0048178	\$ 120.00	1	103
1-104	2/2	B	800	P104	0.0048178	\$ 120.00	1	104
1-201	2/2	B	800	P201	0.0048178	\$ 120.00	1	201
1-202	2/2	B	800	P202	0.0048178	\$ 120.00	1	202
1-203	2/2	B	800	P203	0.0048178	\$ 120.00	1	203
1-204	2/2	B	800	P204	0.0048178	\$ 120.00	1	204
2-105	2/2	B	800	P105	0.0048178	\$ 120.00	2	105
2-106	2/2	B	800	P106	0.0048178	\$ 120.00	2	106
2-107	2/2	B	800	P107	0.0048178	\$ 120.00	2	107
2-108	2/2	B	800	P108	0.0048178	\$ 120.00	2	108
2-205	2/2	B	800	P205	0.0048178	\$ 120.00	2	205
2-206	2/2	B	800	P206	0.0048178	\$ 120.00	2	206
2-207	2/2	B	800	P207	0.0048178	\$ 120.00	2	207
2-208	2/2	B	800	P208	0.0048178	\$ 120.00	2	208
3-109	2/2	B	800	P109	0.0048178	\$ 120.00	3	109
3-110	2/2	B	800	P110	0.0048178	\$ 120.00	3	110
3-111	2/2	B	800	P111	0.0048178	\$ 120.00	3	111
3-112	2/2	B	800	P112	0.0048178	\$ 120.00	3	112
3-209	2/2	B	800	P209	0.0048178	\$ 120.00	3	209
3-210	2/2	B	800	P210	0.0048178	\$ 120.00	3	210
3-211	2/2	B	800	P211	0.0048178	\$ 120.00	3	211
3-212	2/2	B	800	P212	0.0048178	\$ 120.00	3	212
4-113	2/2	B	800	P113	0.0048178	\$ 120.00	4	113
4-114	1/1	A	600	P114	0.0036134	\$ 85.00	4	114
4-115	1/1	A	600	P115	0.0036134	\$ 85.00	4	115
4-116	1/1	A	600	P116	0.0036134	\$ 85.00	4	116
4-117	2/2	B	800	P117	0.0048178	\$ 120.00	4	117
4-213	2/2	B	800	P213	0.0048178	\$ 120.00	4	213
4-214	1/1	A	600	P214	0.0036134	\$ 85.00	4	214
4-215	1/1	A	600	P215	0.0036134	\$ 85.00	4	215
4-216	1/1	A	600	P216	0.0036134	\$ 85.00	4	216
4-217	2/2	B	800	P217	0.0048178	\$ 120.00	4	217
5-118	2/2	B	800	P118	0.0048178	\$ 120.00	5	118
5-119	2/2	B	800	P119	0.0048178	\$ 120.00	5	119
5-120	2/2	B	800	P120	0.0048178	\$ 120.00	5	120
5-121	2/2	B	800	P121	0.0048178	\$ 120.00	5	121
5-218	2/2	B	800	P218	0.0048178	\$ 120.00	5	218
5-219	2/2	B	800	P219	0.0048178	\$ 120.00	5	219
5-220	2/2	B	800	P220	0.0048178	\$ 120.00	5	220
5-221	2/2	B	800	P221	0.0048178	\$ 120.00	5	221

CONDO MAP UNIT NUMBER	BEDROOM/ BATHROOM	CLASS	SQUARE FEET	COVERED PARKING SPACE	ALLOCATED INTEREST	INITIAL MONTHLY ASSESSMENT	BUILDIN G NUMBER	UNIT NUMBER
6-122	2/2	B	800	P122	0.0048178	\$ 120.00	6	122
6-123	1/1	A	600	P123	0.0036134	\$ 85.00	6	123
6-124	1/1	A	600	P124	0.0036134	\$ 85.00	6	124
6-125	1/1	A	600	P125	0.0036134	\$ 85.00	6	125
6-126	2/2	B	800	P126	0.0048178	\$ 120.00	6	126
6-222	2/2	B	800	P222	0.0048178	\$ 120.00	6	222
6-223	1/1	A	600	P223	0.0036134	\$ 85.00	6	223
6-224	1/1	A	600	P224	0.0036134	\$ 85.00	6	224
6-225	1/1	A	600	P225	0.0036134	\$ 85.00	6	225
6-226	2/2	B	800	P226	0.0048178	\$ 120.00	6	226
7-127	2/2	B	800	P127	0.0048178	\$ 120.00	7	127
7-128	1/1	A	600	P128	0.0036134	\$ 85.00	7	128
7-129	1/1	A	600	P129	0.0036134	\$ 85.00	7	129
7-130	1/1	A	600	P130	0.0036134	\$ 85.00	7	130
7-131	2/2	B	800	P131	0.0048178	\$ 120.00	7	131
7-227	2/2	B	800	P227	0.0048178	\$ 120.00	7	227
7-228	1/1	A	600	P228	0.0036134	\$ 85.00	7	228
7-229	1/1	A	600	P229	0.0036134	\$ 85.00	7	229
7-230	1/1	A	600	P230	0.0036134	\$ 85.00	7	230
7-231	2/2	B	800	P231	0.0048178	\$ 120.00	7	231
8-132	2/2	B	800	P132	0.0048178	\$ 120.00	8	132
8-133	2/2	B	800	P133	0.0048178	\$ 120.00	8	133
8-134	2/2	B	800	P134	0.0048178	\$ 120.00	8	134
8-135	2/2	B	800	P135	0.0048178	\$ 120.00	8	135
8-232	2/2	B	800	P232	0.0048178	\$ 120.00	8	232
8-233	2/2	B	800	P233	0.0048178	\$ 120.00	8	233
8-234	2/2	B	800	P234	0.0048178	\$ 120.00	8	234
8-235	2/2	B	800	P235	0.0048178	\$ 120.00	8	235
9-136	2/2	B	800	P136	0.0048178	\$ 120.00	9	136
9-137	2/2	B	800	P137	0.0048178	\$ 120.00	9	137
9-138	2/2	B	800	P138	0.0048178	\$ 120.00	9	138
9-139	2/2	B	800	P139	0.0048178	\$ 120.00	9	139
9-236	2/2	B	800	P236	0.0048178	\$ 120.00	9	236
9-237	2/2	B	800	P237	0.0048178	\$ 120.00	9	237
9-238	2/2	B	800	P238	0.0048178	\$ 120.00	9	238
9-239	2/2	B	800	P239	0.0048178	\$ 120.00	9	239
10-140	2/2	B	800	P140	0.0048178	\$ 120.00	10	140
10-141	1/1	A	600	P141	0.0036134	\$ 85.00	10	141
10-142	1/1	A	600	P142	0.0036134	\$ 85.00	10	142
10-143	1/1	A	600	P143	0.0036134	\$ 85.00	10	143
10-144	2/2	B	800	P144	0.0048178	\$ 120.00	10	144
10-240	2/2	B	800	P240	0.0048178	\$ 120.00	10	240
10-241	1/1	A	600	P241	0.0036134	\$ 85.00	10	241
10-242	1/1	A	600	P243	0.0036134	\$ 85.00	10	242
10-243	1/1	A	600	P244	0.0036134	\$ 85.00	10	243
10-244	2/2	B	800	P145	0.0048178	\$ 120.00	10	244
11-145	2/2	B	800	P146	0.0048178	\$ 120.00	11	145

CONDO MAP UNIT NUMBER	BEDROOM/ BATHROOM	CLASS	SQUARE FEET	COVERED PARKING SPACE	ALLOCATED INTEREST	INITIAL MONTHLY ASSESSMENT	BUILDIN G NUMBER	UNIT NUMBER
11-146	1/1	A	600	P147	0.0036134	\$ 85.00	11	146
11-147	1/1	A	600	P148	0.0036134	\$ 85.00	11	147
11-148	1/1	A	600	P149	0.0036134	\$ 85.00	11	148
11-149	2/2	B	800	P245	0.0048178	\$ 120.00	11	149
11-245	2/2	B	800	P246	0.0048178	\$ 120.00	11	245
11-246	1/1	A	600	P247	0.0036134	\$ 85.00	11	246
11-247	1/1	A	600	P248	0.0036134	\$ 85.00	11	247
11-248	1/1	A	600	P249	0.0036134	\$ 85.00	11	248
11-249	2/2	B	800	P150	0.0048178	\$ 120.00	11	249
12-150	2/2	B	1000	P151	0.0060223	\$ 120.00	12	150
12-151	1/1	A	650	P152	0.0039145	\$ 85.00	12	151
12-152	2/2	B	1000	P153	0.0060223	\$ 120.00	12	152
12-153	1/1	A	500	P154	0.0030111	\$ 85.00	12	153
12-154	1/1	A	500	P155	0.0030111	\$ 85.00	12	154
12-155	1/1	A	500	P250	0.0030111	\$ 85.00	12	155
12-250	2/2	B	1000	P251	0.0060223	\$ 120.00	12	250
12-251	3/2	C	1100	P252	0.0066245	\$ 150.00	12	251
12-252	2/2	B	1000	P252	0.0060223	\$ 120.00	12	252
14-101	2/2	B	900	CP101	0.0054201	\$ 120.00	14	101
14-102	1/1	A	600	CP102	0.0036134	\$ 85.00	14	102
14-103	1/1	A	600	CP103	0.0036134	\$ 85.00	14	103
14-104	1/1	A	600	CP104	0.0036134	\$ 85.00	14	104
14-105	2/2	B	900	CP105	0.0054201	\$ 120.00	14	105
14-201	2/2	B	900	CP201	0.0054201	\$ 120.00	14	201
14-202	1/1	A	600	CP202	0.0036134	\$ 85.00	14	202
14-203	1/1	A	600	CP203	0.0036134	\$ 85.00	14	203
14-204	1/1	A	600	CP204	0.0036134	\$ 85.00	14	204
14-205	2/2	B	900	CP205	0.0054201	\$ 120.00	14	205
15-106	2/2	B	900	CP106	0.0054201	\$ 120.00	15	106
15-107	2/2	B	900	CP107	0.0054201	\$ 120.00	15	107
15-108	2/2	B	900	CP108	0.0054201	\$ 120.00	15	108
15-109	2/2	B	900	CP109	0.0054201	\$ 120.00	15	109
15-206	2/2	B	900	CP206	0.0054201	\$ 120.00	15	206
15-207	2/2	B	900	CP207	0.0054201	\$ 120.00	15	207
15-208	2/2	B	900	CP208	0.0054201	\$ 120.00	15	208
15-209	2/2	B	900	CP209	0.0054201	\$ 120.00	15	209
16-110	2/2	B	900	CP110	0.0054201	\$ 120.00	16	110
16-111	2/2	B	900	CP111	0.0054201	\$ 120.00	16	111
16-112	2/2	B	900	CP112	0.0054201	\$ 120.00	16	112
16-113	2/2	B	900	CP113	0.0054201	\$ 120.00	16	113
16-210	2/2	B	900	CP210	0.0054201	\$ 120.00	16	210
16-211	2/2	B	900	CP211	0.0054201	\$ 120.00	16	211
16-212	2/2	B	900	CP212	0.0054201	\$ 120.00	16	212
16-213	2/2	B	900	CP213	0.0054201	\$ 120.00	16	213
17-114	2/2	B	900	CP114	0.0054201	\$ 120.00	17	114
17-115	2/2	B	900	CP115	0.0054201	\$ 120.00	17	115
17-116	2/2	B	900	CP116	0.0054201	\$ 120.00	17	116

CONDO MAP UNIT NUMBER	BEDROOM/ BATHROOM	CLASS	SQUARE FEET	COVERED PARKING SPACE	ALLOCATED INTEREST	INITIAL MONTHLY ASSESSMENT	BUILDIN G NUMBER	UNIT NUMBER
17-117	2/2	B	900	CP117	0.0054201	\$ 120.00	17	117
17-214	2/2	B	900	CP214	0.0054201	\$ 120.00	17	214
17-215	2/2	B	900	CP215	0.0054201	\$ 120.00	17	215
17-216	2/2	B	900	CP216	0.0054201	\$ 120.00	17	216
17-217	2/2	B	900	CP217	0.0054201	\$ 120.00	17	217
18-118	2/2	B	900	CP118	0.0054201	\$ 120.00	18	118
18-119	2/2	B	900	CP119	0.0054201	\$ 120.00	18	119
18-120	2/2	B	900	CP120	0.0054201	\$ 120.00	18	120
18-121	2/2	B	900	CP121	0.0054201	\$ 120.00	18	121
18-218	2/2	B	900	CP218	0.0054201	\$ 120.00	18	218
18-219	2/2	B	900	CP219	0.0054201	\$ 120.00	18	219
18-220	2/2	B	900	CP220	0.0054201	\$ 120.00	18	220
18-221	2/2	B	900	CP221	0.0054201	\$ 120.00	18	221
19-122	2/2	B	900	CP122	0.0054201	\$ 120.00	19	122
19-123	1/1	A	600	CP123	0.0036134	\$ 85.00	19	123
19-124	1/1	A	600	CP124	0.0036134	\$ 85.00	19	124
19-125	1/1	A	600	CP125	0.0036134	\$ 85.00	19	125
19-126	2/2	B	900	CP126	0.0054201	\$ 120.00	19	126
19-222	2/2	B	900	CP222	0.0054201	\$ 120.00	19	222
19-223	1/1	A	600	CP223	0.0036134	\$ 85.00	19	223
19-224	1/1	A	600	CP224	0.0036134	\$ 85.00	19	224
19-225	1/1	A	600	CP225	0.0036134	\$ 85.00	19	225
19-226	2/2	B	900	CP226	0.0054201	\$ 120.00	19	226
20-127	2/2	B	900	CP127	0.0054201	\$ 120.00	20	127
20-128	2/2	B	900	CP128	0.0054201	\$ 120.00	20	128
20-129	2/2	B	900	CP129	0.0054201	\$ 120.00	20	129
20-130	2/2	B	900	CP130	0.0054201	\$ 120.00	20	130
20-227	2/2	B	900	CP227	0.0054201	\$ 120.00	20	227
20-228	2/2	B	900	CP228	0.0054201	\$ 120.00	20	228
20-229	2/2	B	900	CP229	0.0054201	\$ 120.00	20	229
20-230	2/2	B	900	CP230	0.0054201	\$ 120.00	20	230
21-131	2/2	B	900	CP131	0.0054201	\$ 120.00	21	131
21-132	2/2	B	900	CP132	0.0054201	\$ 120.00	21	132
21-133	2/2	B	900	CP133	0.0054201	\$ 120.00	21	133
21-134	2/2	B	900	CP134	0.0054201	\$ 120.00	21	134
21-231	2/2	B	900	CP231	0.0054201	\$ 120.00	21	231
21-232	2/2	B	900	CP232	0.0054201	\$ 120.00	21	232
21-233	2/2	B	900	CP233	0.0054201	\$ 120.00	21	233
21-234	2/2	B	900	CP234	0.0054201	\$ 120.00	21	234
22-135	2/2	B	900	CP135	0.0054201	\$ 120.00	22	135
22-136	2/2	B	900	CP136	0.0054201	\$ 120.00	22	136
22-137	2/2	B	900	CP137	0.0054201	\$ 120.00	22	137
22-138	2/2	B	900	CP138	0.0054201	\$ 120.00	22	138
22-235	2/2	B	900	CP235	0.0054201	\$ 120.00	22	235
22-236	2/2	B	900	CP236	0.0054201	\$ 120.00	22	236
22-237	2/2	B	900	CP237	0.0054201	\$ 120.00	22	237
22-238	2/2	B	900	CP238	0.0054201	\$ 120.00	22	238

CONDO MAP UNIT NUMBER	BEDROOM/BATHROOM	CLASS	SQUARE FEET	COVERED PARKING SPACE	ALLOCATED INTEREST	INITIAL MONTHLY ASSESSMENT	BUILDING NUMBER	UNIT NUMBER
23-139	2/2	B	900	CP139	0.0054201	\$ 120.00	23	139
23-140	2/2	B	900	CP140	0.0054201	\$ 120.00	23	140
23-141	2/2	B	900	CP141	0.0054201	\$ 120.00	23	141
23-142	2/2	B	900	CP142	0.0054201	\$ 120.00	23	142
23-239	2/2	B	900	CP239	0.0054201	\$ 120.00	23	239
23-240	2/2	B	900	CP240	0.0054201	\$ 120.00	23	240
23-241	2/2	B	900	CP241	0.0054201	\$ 120.00	23	241
23-242	2/2	B	900	CP242	0.0054201	\$ 120.00	23	242
24-143	2/2	B	900	CP143	0.0054201	\$ 120.00	24	143
24-144	2/2	B	900	CP144	0.0054201	\$ 120.00	24	144
24-145	2/2	B	900	CP145	0.0054201	\$ 120.00	24	145
24-146	2/2	B	900	CP146	0.0054201	\$ 120.00	24	146
24-243	2/2	B	900	CP243	0.0054201	\$ 120.00	24	243
24-244	2/2	B	900	CP244	0.0054201	\$ 120.00	24	244
24-245	2/2	B	900	CP245	0.0054201	\$ 120.00	24	245
24-246	2/2	B	900	CP246	0.0054201	\$ 120.00	24	246
25-147	2/2	B	900	CP147	0.0054201	\$ 120.00	25	147
25-148	2/2	B	900	CP148	0.0054201	\$ 120.00	25	148
25-149	2/2	B	900	CP149	0.0054201	\$ 120.00	25	149
25-150	2/2	B	900	CP150	0.0054201	\$ 120.00	25	150
25-247	2/2	B	900	CP247	0.0054201	\$ 120.00	25	247
25-248	2/2	B	900	CP248	0.0054201	\$ 120.00	25	248
25-249	2/2	B	900	CP249	0.0054201	\$ 120.00	25	249
25-250	2/2	B	900	CP250	0.0054201	\$ 120.00	25	250

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By \_\_\_\_\_ Deputy  
 State of Arizona, County of Coconino  
 COCONINO COUNTY RECORDER  
 CANDACE OWENS  
 Attest \_\_\_\_\_  
 2008