

BYLAWS OF THE  
HAVASU COMMERCE CENTER PROPERTY OWNERS ASSOCIATION, INC.

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BYLAWS

OF

HAVASU COMMERCE CENTER  
PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I  
PLAN OF UNIT OWNERSHIP

1.1 Name and Location. These are the Bylaws of the HAVASU COMMERCE CENTER PROPERTY OWNERS ASSOCIATION, INC. (hereinafter the "Association"). The Havasu Commerce Center, a real property development consisting of \_\_\_\_\_, (hereafter the "development") is a subdivision of Lake Havasu City, Mohave County, Arizona. The location of the development is more specifically described as follows:

Tract 2307, Block 1, Lot 1B, Lake Havasu City, Mohave County, Arizona; a.k.a 911 Lake Havasu Avenue, recorded in Book 2 of Parcel Maps, page 78, in the Office of the County Recorder, Mohave County.

1.2 Principal Office. The principal office of the Association shall be located at P.O. Box 5458, Parker, Arizona 85344 or such other address as may be designated by the Board of Directors from time to time.

1.3 Purposes. This Association is formed to serve as the means through which the unit owners may take action with regard to the administration, management and operation of the development's general common elements and the development's common functions.

1.4 Applicability of Bylaws. The Association, all unit owners, and all persons using the development property shall be subject to these Bylaws and to all rules and regulations which may be promulgated hereunder.

1.5 Composition of Association. The Association shall be composed of all the owners of the units ("unit owners"), and Richard K. Armstrong and Sharon L. Armstrong and their successors and assigns (hereinafter, the "Declarant"), and the Association, itself, to the extent any of these own any units of the development.

1.6 Definitions. The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

ARTICLE II



## MEETINGS OF ASSOCIATION

2.1 Place of Meetings. The Association shall hold its meetings at such suitable place convenient to the unit owners designated by the Board of Directors from time to time.

2.2 First Organizational Meeting. The First Organizational Meeting of the Interim Board of Directors shall be on or before the fifth business day after the date of the filing of the approved Declaration, at which time these Bylaws will be reviewed and adopted and an interim board of directors will be appointed, which directors will appoint a manager for the development. Within four (4) years after Declarant has ceased to offer units for sale in the ordinary course of business, or within ninety (90) days after conveyance of seventy-five per cent (75%) of the units which may be created to unit owners other than Declarant, or until Declarant elects to terminate its control of the condominium, whichever shall first occur, the Declarant shall call a meeting of the unit owners to turn over the development as provided in Section 2.7 of this Article. In the event of a lack of quorum at such first organizational meeting, it may be adjourned to the time of the next scheduled meeting where a quorum may be present.

2.3 Expiration of Declarant Control. Upon the expiration of any period of Declarant control reserved by Article IV in the Declaration, such right of control shall automatically pass to the unit owners, including the Declarant if the Declarant then owns one or more units in the development.

2.4 Annual Meetings. The annual meetings of the Association shall be held in the month of March at such hour and on such date as the president may designate, or if the president should fail to designate such date by the first Tuesday in March, then on the last Tuesday in March. The annual meetings shall be for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting.

2.5 Special Meetings. Special meetings of the Association may be called by the president or secretary or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from unit owners having at least twenty-five per cent (25%) of the votes in the Association stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

2.6 Transitional Committee. Unless the turnover meeting provided for in Subsection 2.7 below has been held, the Declarant shall call a meeting of the unit owners for the purpose of forming a transitional committee in accordance with these Bylaws. The Declarant shall call such meeting within 60 days of conveyance to persons other than the Declarant of 50 percent of the units. The transitional committee shall be advisory only and shall consist of at least two but not more than five members selected by unit owners



other than the Declarant and may include not more than one representative of the Declarant. The members shall serve until the turnover meeting. The function of the committee shall be that of enabling ease of transition from control of the administration of the Association of unit owners by the Declarant to control by the unit owners. The committee shall have access to the information, documents and records which the Declarant must turn over to the unit owners as provided for in Subsection 2.7 below. The Declarant shall give notice of the meeting required under this subsection in accordance with the Bylaws of the Association to each unit owner at least seven (7) but not more than fifty (50) days prior to the meeting. The notice shall state the purpose of the meeting and the time and place where it is to be held. If the meeting required under this subsection is not called by the Declarant within the time specified, the meeting may be called and notice given by a unit owner. If the owners other than the Declarant do not select members for the committee under this subsection, the Declarant shall have no further responsibility to form the committee.

2.7 Turnover Meeting. A turnover meeting shall be called by the Declarant within 90 days of the expiration of any period of Declarant control reserved in Article IV of the Declaration. The Declarant shall give notice of the turnover meeting in accordance with the bylaws of the Association to each unit owner at least seven (10) but not more than sixty (60) days prior to the meeting. The notice shall state the purpose of the meeting and the time and place where it is to be held. If the meeting required under this subsection is not called by the Declarant within the time specified, the meeting may be called and notice given by a unit owner or any first mortgagee of a unit. At the turnover meeting the Declarant shall relinquish control of the administration of the Association of unit owners and the unit owners shall assume the control. The unit owners shall then elect a Board of Directors in accordance with the Bylaws of the Association. At the turnover meeting as set forth in Section 2.2 of these Bylaws, above, the Declarant shall deliver to the Association all property of the unit owners and the Association of unit owners held or controlled by the Declarant including, but not limited to, those items as required by Statute.

In order to facilitate an orderly transition, during the three-month period following the turnover meeting, the Declarant or an informed representative shall be available to meet with the Board of Directors on at least three mutually acceptable dates to review the documents delivered under this subsection. If the Declarant has complied with this section, unless the Declarant otherwise has sufficient voting rights as a unit owner to control the Association, the Declarant shall not be responsible for the failure of the unit owners to comply with this subsection and the Declarant shall be relieved of any further responsibility for the administration of the development except as a unit owner of any unsold unit or unit owned by the Declarant.

2.8 Notice of Meetings. Notice of all meetings of the



Association stating the time and place and the objects for which the meeting is being called shall be given by the president or secretary. Such notice shall be in writing and mailed to each unit owner at the unit owner's address as it appears on the books of the Association and to any first mortgagee requesting such notice not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Notice of meeting may be waived by any unit owner before or after meetings. When a meeting is adjourned for less than thirty (30) days, no notice of the adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place.

2.9 Voting. The Association shall have two classes of voting membership.

Class A: Class A members shall be all those owners as defined in Article III of the Declaration. A Class A member shall be entitled to one (1) vote for each lot/unit owned by said member, as provided in the Declaration.

Class B: Class B members shall be the Declarant and, upon termination of the 1031 Exchange Trust and without further act to be performed, the Declarant shall be the beneficiary of the 1031 Exchange Trust as named in the Declaration. The Class B member shall be entitled to three (3) votes for each lot/unit in which it holds the interest required for membership by Article III of the Declaration, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever may first occur:

(a) Ninety days after conveyance of seventy-five per cent (75%) of the units which may be created to unit owners other than the Declarant.

(b) Four years after the Declarant has ceased to offer units for sale in the ordinary course of business.

(c) The election to do so by the Declarant.

The Board of Directors shall be entitled to vote on behalf of any unit which has been acquired by or on behalf of the Association; provided, however, that the Board of Directors shall not be entitled to vote such units in any election of directors.

2.10 Proxies. A vote may be cast in person or by proxy. A proxy given by a unit owner to any person who represents such owner at meetings of the Association shall be in writing and signed by such owner, and shall be filed with the secretary. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy, and every proxy shall automatically cease upon sale of the unit by its owner. A unit owner may pledge or assign his voting rights to a mortgagee. In such a case, the mortgagee or its designated representative shall



be entitled to receive all notices to which the unit owner is entitled hereunder and to exercise the unit owner's voting rights from and after the time that the mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first mortgagee may designate a representative to attend all or any meetings of the Association.

2.11 Fiduciaries and Joint Owners. An executor, administrator, guardian or trustee may vote, in person or by proxy, at any meeting of the Association with respect to any unit owned or held by him in such capacity, whether or not the same shall have been transferred to his name; provided, that he shall satisfy the secretary that he is the executor, administrator, guardian or trustee, holding such unit in such capacity. Whenever any unit is owned by two or more persons jointly, according to the records of the Association, the vote of such unit may be exercised by any one of the owners then present, in the absence of protest by a co-owner. In the event of such protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of such unit shall be disregarded completely in determining the proportion of votes given with respect to such matter.

2.12 Landlords and Contract Vendors. Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a unit shall be exercised by the landlord if the rental agreement or lease has an original term of ten (10) years or less, or by the tenant if the rental or lease has an original term of more than ten (10) years. Unless otherwise stated in the contract, all voting rights allocated to a unit shall be exercised by the vendee of any land sale contract on the unit.

2.13 Quorum of Unit Owners. At any meeting of the Association, members holding fifty percent (50%) of the voting rights, present in person or by proxy, shall constitute a quorum. The subsequent joinder of a unit owner in the action taken at a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a unit owner or owners. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

2.14 Majority Vote. The vote of the holders of more than fifty percent (50%) of the voting rights, present in person or by proxy, at a meeting at which a quorum is constituted shall be binding upon all unit owners for all purposes except where a higher percentage vote is required by law, by the Declaration or by these Bylaws.

2.15 Order of Business. The order of business at annual meetings of the Association shall be:



- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees, if any;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

### ARTICLE III

#### BOARD OF DIRECTORS

3.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors composed of no less than three (3) to no more than six (6) persons, as provided in Sections 2 and 3 of this Article. All directors, other than interim directors appointed by Declarant, shall be owners or co-owners of units of the development. For purposes of this section, the officers of any corporate owner and the partners of any partnership shall be considered co-owners of any units owned by such corporation or partnership.

3.2 Interim Directors. Upon the filing of the Declaration submitting the development to the Uniform Condominium Act, the Declarant hereby appoints the following interim board of three (3) directors, who shall serve until replaced by Declarant or their successors have been elected by the unit owners as provided below:

RICHARD K. ARMSTRONG  
SHARON L. ARMSTRONG  
JOHN FINN

3.3 Election and Term of Office. At the turnover meeting called by Declarant pursuant to Section 2.2 of these Bylaws, the interim directors shall resign and three (3) successors shall be elected, one to serve until the next annual meeting and two (2) to serve until the second annual meeting after their election. Thereafter, at the expiration of the initial term of office of each respective director, his successor shall be elected to serve for a term of two years, so that the term of not less than one-third of

the directors shall expire annually. Directors shall hold office until their respective successors have been elected by the unit owners. Election shall be by plurality.

3.4 Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the Association shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum, or by a sole remaining director. Each person so elected shall be a director until a successor is elected to fill the unexpired term at the next annual meeting of the Association or the next special meeting of the Association called for that purpose. Vacancies in interim directors shall be filled by Declarant.

3.5 Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors, other than interim directors appointed by the Declarant, may be removed with or without cause by a two-thirds vote of the unit owners present in person or by proxy entitled to vote at which a quorum is present, and a successor shall be elected at that meeting to fill the vacancy thus created. The notice of any such meeting shall state that such removal is to be considered, and any director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

3.6 Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the unit owners. The powers and duties to be exercised by the Board of Directors shall include, but shall not be limited to the following:

- (a) Operation, care, upkeep, maintenance and repair of the general and limited common elements.
- (b) Determination of the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.
- (c) Collection of the common expenses from the unit owners.
- (d) Employment and dismissal of such personnel as necessary for the efficient maintenance, upkeep and repair of the common elements.
- (e) Employment of legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association.
- (f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.



(g) Purchasing units of the development at foreclosure or other judicial sales in the name of the Association, or its designee, on behalf of all the unit owners as provided in these Bylaws.

(h) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of directors), or otherwise dealing with units of the development acquired by the Association or its designee on behalf of all the unit owners.

(i) Obtaining insurance or bonds pursuant to the provisions of these Bylaws.

(j) Making additions and improvements to, or alterations of, the common elements; provided, however, that no such project may be undertaken by the board if the total cost will exceed the amount of \$\_\_\_\_\_ unless the unit owners have enacted a resolution authorizing the project by a vote of seventy-five percent (75%) of the voting rights present in person or by proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to repairs or maintenance undertaken pursuant to paragraph (a) above.

(k) Designating one or more committees which, to the extent provided in the resolution designating the committee, shall have the powers of the Board of Directors in the management of the affairs of the Association. At least one member of each committee shall be a member of the Board of Directors.

(l) Enforcement by legal means of the provisions of the Uniform Condominium Act, the Declaration, these Bylaws and any rules and regulations adopted hereunder.

3.7 Managing Agent or Manager. On behalf of the Association, the Board of Directors may employ or contract for a managing agent or a manager at a compensation to be established by the Board of Directors. Any such management agreement shall be terminable by the Association or Board of Directors with or without cause and without penalty upon thirty (30) days' written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. The Board of Directors may delegate to the managing agent or manager such duties and powers as the Board of Directors may authorize. In the absence of such appointment, the Board of Directors shall act as manager.

3.8 Organizational Meeting. Within thirty (30) days following the annual meeting of the Association or following any meeting at which an election of directors has been held, the Board of Directors shall hold an organizational meeting at such place and time as shall have been fixed by the directors at the meeting at which the election was held.

3.9 Regular and Special Meetings. Regular meetings of the



Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Special meetings of the Board of Directors may be called by the president and must be called by the secretary at the written request of at least two directors. Notice of any special meeting shall be given to each director, personally or by mail, telephone or telegraph at least seven (7) days prior to the day named for such meeting, and shall state the time, place and purpose of such meeting. All meetings of the Board of Directors shall be open to unit owners. Only emergency meetings of the Board of Directors may be conducted telephonically. Notice of each Board of Directors' meeting shall be provided by a method reasonably calculated to inform the unit owners of such meeting.

3.10 Waiver of Notice. Any director may, at any time, waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the board shall constitute a waiver by him of notice of the time and place thereof, except where a director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all of the directors are present at any meeting of the board, no notice to directors shall be required and any business may be transacted at such meeting.

3.11 Quorum of Board of Directors. A quorum is present throughout any meeting of the Board of Directors if persons entitled to cast at least fifty per cent of the votes on that board are present at the beginning of the meeting and the votes of fifty per cent of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors less than a quorum should be present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice to directors.

3.12 Compensation. No director shall receive any compensation from the Association for acting as such.

3.13 Liability and Indemnification of Directors, Officers, Manager or Managing Agent. The directors and officers shall not be liable to the Association of the unit owners for any mistake of judgment, negligence, or otherwise except for their own willful misconduct or bad faith. The Association shall indemnify and hold harmless each director and officer and the manager or managing agent, if any, against all contractual liability to others arising out of contracts made by the Board of Directors, officers, manager or managing agent on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these Bylaws. Each director and officer and the manager or managing agent, if any, shall be indemnified by the Association against all expenses and



liabilities, including attorneys' fees, reasonably incurred or imposed upon them in connection with any proceeding to which they may be a party, or which they may become involved, by reason of being or having been a director, officer, manager or managing agent and shall be indemnified upon any reasonable settlement thereof; provided, however, there shall be no indemnity if the director, officer, manager or managing agent is adjudged guilty of willful nonfeasance, misfeasance or malfeasance in the performance of his duties.

3.14 Fidelity Bonds. The Board of Directors shall require that any person or entity, including but not limited to, employees of any professional manager, who handles or is responsible for Association funds shall furnish such fidelity bond as the board deems adequate. The premiums on such bonds shall be paid by the Association.

3.15 Insurance. The Board of Directors shall obtain the insurance required in Article VIII of these Bylaws. In addition, the Board of Directors, in its discretion, may obtain such other insurance as it deems necessary to protect the interests of the Association or unit owners. The Board of Directors shall conduct an annual insurance review which, if appropriate, shall include an appraisal of all improvements contained in the development.

#### ARTICLE IV

##### OFFICERS

4.1 Designation. The principal officers of the Association shall be the president, the secretary and the treasurer, all of whom shall be elected by the Board of Directors. The directors may appoint a vice president, an assistant treasurer, an assistant secretary, and such other officers as in their judgment may be necessary. The president shall be a member of the Board of Directors, but the other officers need not be directors or unit owners.

4.2 Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new board and shall hold office at the pleasure of the board. If any office shall become vacant, the Board of Directors shall elect a successor to fill the unexpired term at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

4.3 Removal of Officers. Upon the affirmative vote of a majority of the directors, any officer may be removed either with or without cause, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.



4.4 President. The president shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the chief executive officer of an association, including but not limited to the power to appoint committees from among the unit owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

4.5 Secretary. The secretary shall keep the minutes of all proceedings of the Board of Directors and the minutes of all meetings of the association. He shall attend to the giving and serving of all notices to the unit owners and directors and other notices required by law. He shall keep the records of the Association, except for those of the treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the directors or the president. In addition, the secretary shall act as vice president, taking the place of the president and performing his duties whenever the president is absent or unable to act, unless the directors have appointed another vice president.

4.6 Treasurer. The treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of required financial statements. He shall be responsible for the deposit of all moneys and other valuable effects in such depositories as may from time to time be designated by the Board of Directors, and he shall disburse funds of the Association upon properly authorized vouchers. He shall perform all other duties incident to the office of treasurer of an association and such other duties as may be assigned to him by the Board of Directors.

4.7 Execution of Instruments. All agreements, contracts, deeds, leases and other instruments of the Association, except checks, shall be executed by such person or persons as may be designated by general or special resolution of the Board of Directors and, in the absence of any general or special resolution applicable to any such instrument, then such instrument shall be signed by the president. All checks shall be signed by the treasurer, or in his absence or disability, by the president or any duly elected assistant treasurer.

4.8 Compensation of Officers. No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the unit owners. The Board of Directors may fix any compensation to be paid to any officers who are not also directors.

## BUDGET, EXPENSES AND ASSESSMENTS

5.1 Budget. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association, estimate the common expenses expected to be incurred, less any previous overassessment, and assess the common expenses to each unit owner in the proportion set forth in the Declaration. The budget shall provide for an adequate reserve fund for maintenance, repairs and replacement of those common elements which must be replaced on a periodic basis.

5.2 Determination of Common Expenses. Common expenses shall include:

- (a) Expenses of administration.
- (b) Expenses of maintenance, repair or replacement of common elements.
- (c) Cost of insurance or bonds obtained in accordance with these Bylaws.
- (d) A general operating reserve.
- (e) Reserve for replacements and deferred maintenance.
- (f) Any deficit in common expenses for any prior period.
- (g) Utilities for the common elements and other utilities with a common meter or commonly billed, such as trash collection, water and sewer.
- (h) Any other items properly chargeable as an expense of the Association.

5.3 Assessment of Common Expenses. All unit owners shall be obliged to pay common expenses assessed to them by the Board of Directors on behalf of the Association pursuant to these Bylaws and the Declaration. No unit owner by the owner's own action may claim exemption from liability for contribution towards the common expenses by waiver by the owner of the use or enjoyment of any of the common elements or by abandonment by the owner of the owner's unit. The Declarant shall be assessed as the unit owner of any unsold unit, but such assessment shall be prorated to the date of sale of the unit. Assessments shall commence as to all units on the first day of the month following the conveyance to an owner. At the time of closing of the initial sale of each unit, the purchaser shall make an initial contribution to the working capital of the Association equal to two (2) month's of Association assessments for the unit. Thereafter, assessments shall be due and payable on the first of each month. Payment shall be mailed or hand delivered to the principal office of the Association as indicated in Article I,



ALLOWS:  
THE ABILITY to chg per sq. FT FOR ASSOCIATION DUE

Section 2 of these Bylaws. The Board of Directors, on behalf of the Association, shall assess the common expenses against the unit owners from time to time, and at least annually, and shall take prompt action to collect from a unit owner any common expense due which remains unpaid by him for more than thirty (30) days from the due date for its payment.

#### 5.4 Special Assessments.

(a) Capital Improvements. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-third (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

(b) Reserves for Replacement. The Declarant shall establish a reserve account for replacement of those common elements all or part of which will normally require replacement in more than three and less than 30 years. The items may be identified as those which are insurable by a common carrier of all purpose risk insurance. The reserve account must be funded by assessments against the individual unit assessed for maintenance of items for which the reserve account is being established. The assessment under this subsection will accrue from the time of the conveyance of the first individual unit assessed. The Declarant may elect to defer payment of the accrued assessment for a unit under this paragraph until the time of conveyance of the unit. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of those items. The reserve account shall be established in the name of the association of unit owners that will be responsible for administering the account and for making periodic payments into it. The amount of the payments shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The reserve account is to be used only for replacement of common elements and is to be kept separate from assessments for maintenance. However, after the individual unit owners have assumed administrative responsibility for the association under subsection 2.7 of these Bylaws, the Board of Directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from special assessments or maintenance fees. Restrictions on the use of the reserve account do not prohibit its prudent investment subject to any constraints on investment of association funds imposed by the Declaration, Bylaws or rules of the association of unit owners. Following the second year after the unit owners have assumed administrative responsibility for the association under subsection 2.7 of these Bylaws, future assessments for the reserve account may be reduced,



eliminated or increased by an affirmative vote of not less than 75 percent of all voting rights. Assessments paid into the reserve account are the property of the association of unit owners and are not refundable to sellers of units. Sellers of units may treat their outstanding share of the reserve account as a separate item in a unit sales agreement.

5.5 Default in Payment of Common Expenses. In the event of default by any unit owner in paying to the Association the assessed common expenses, such unit owner shall be obligated to pay interest on such common expenses from the due date thereof at the rate of twelve per cent (12%) per annum simple interest. In addition, the defaulting unit owner shall pay any reasonable late charge established by the Board of Directors from time to time, together with all expenses incurred by the Association in collecting such unpaid expenses, including attorneys' fees (whether or not suit is instituted, and at trial or any appeal therefrom). The Board of Directors shall have the right and duty to recover for the Association such common expenses, together with such charges, interest and expenses of the proceeding, including attorneys' fees, by an action brought against such unit owner or by foreclosure of the lien upon the unit. The Board of Directors shall notify the holder of any first mortgage upon a unit of any default not cured within thirty (30) days of the date of default.

5.6 Foreclosure of Liens for Unpaid Common Expenses. In any suit brought by the Association to foreclose a lien on a unit because of unpaid common expenses, the unit owner shall be required to pay a reasonable rental for the use of the unit during the pendency of the suit, and the plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect such rental. The Board of Directors, acting on behalf of the Association, shall have the power to purchase such unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the unit. A suit or action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing the liens securing the same.

5.7 Statement of Common Expenses. The Board of Directors shall advise each unit owner in writing of the amount of common expenses payable by him, and furnish copies of each budget on which such common expenses are based to all unit owners and, if requested, to their mortgagees. The Board of Directors shall promptly provide any unit owner who makes a request in writing with a written statement of his unpaid common expenses.

5.8 Priority of Lien; First Mortgages. Any lien of the Association against a unit for common expenses shall be subordinate to tax and assessment liens and any first mortgage of record. Where the purchaser or mortgagee of a unit obtains title to the unit as a result of foreclosure of a first mortgage or by deed in lieu of foreclosure, such purchaser or mortgagee, his successors and assigns, shall not be liable for any of the common expenses



chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser or mortgagee. Such unpaid share of common expenses shall be a common expense and reallocated on a prorata basis to all units, including the mortgaged unit.

## ARTICLE VI

### RECORDS AND AUDITS

6.1 General Records. The Board of Directors or its designee, if any, shall keep detailed records of the actions of the Board of Directors and the managing agent or manager, minutes of the meetings of the Board of Directors and minutes of the meetings of the Association. The Board of Directors or its designee shall maintain a Book of Resolutions containing the rules, regulations and policies adopted by the Association, Board of Directors and the manager. The Board of Directors or its designee shall maintain a list of owners entitled to vote at meetings of the Association and a list of all mortgagees of units.

6.2 Record Maintenance. The association of unit owners shall retain the documents, information and records delivered to the association under Section 2.7 of these Bylaws and shall otherwise keep financial records sufficient for proper accounting purposes.

6.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each unit. Such account shall designate the name and address of the owner or owners, the amounts in which the assessment comes due, the amounts paid upon the account and the balance due on the assessments.

6.4 Payment of Vouchers. The treasurer shall pay all vouchers up to \$1,000.00 signed by the president, managing agent, manager or other person authorized by the Board of Directors. Any voucher in excess of \$1,000.00 shall require the signature of the president.

6.5 Reports and Audits. Within ninety (90) days after the end of the fiscal year, the Board of Directors shall distribute to each unit owner and to all mortgagees of units who have requested the same a copy of the annual financial statement consisting of a balance sheet and income and expense statement for the preceding fiscal year. From time to time the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the owners and such mortgagees. At any time any owner or mortgagee may, at his own expense, cause an audit or inspection to be made of the books and records of the Association.

6.6 Examination of Records. The documents, information and records described in subsections (1) to (5) of this section and all

other records of the association of unit owners shall be reasonably available for examination by a unit owner and any mortgagee of a unit. Upon the written request of an owner or mortgagee of a unit, the association shall make the documents, information and records described in subsections (1) to (5) of this section and other records available for duplication during reasonable hours. The association of unit owners shall maintain a copy, suitable for the purpose of duplication, of the following:

(a) The Declaration, Bylaws, association rules and regulations and any amendments or supplements thereto;

(b) The most recent annual financial statement prepared in accordance with subsection (5) of this section; and

(c) The current operating budget of the association.

6.7 Prospective Purchasers. Upon the written request of a prospective purchaser, the association of unit owners shall make available for examination and duplication during reasonable hours the documents and information specified in subsection (6) of this section.

6.8 Fees. The association of unit owners may charge a reasonable fee for furnishing copies of any documents, information or records described in this section.

6.9 Notice of Sale, Mortgage, Rental or Lease. Immediately upon the sale, mortgage, rental or lease of any unit, the unit owner shall promptly inform the secretary or manager of the name and address of said vendee, mortgagee, lessee, or tenant.

## ARTICLE VII

### MAINTENANCE AND USE OF PROPERTY

7.1 Maintenance and Repair. Except as otherwise provided herein for damage or destruction caused by casualty:

(a) Units. All maintenance of and repairs to any unit shall be made by the owner of such unit, who shall keep the same in good order, condition and repair and shall do all redecorating, painting and staining which at any time may be necessary to maintain the good appearance and condition of his unit. In addition, each unit owner shall be responsible for the maintenance, repair, or replacement of windows and doors and any plumbing fixtures, heating fixtures or air conditioning fixtures, telephones, water heaters, fans, lighting fixtures and lamps, fireplaces, refrigerators, dishwashers, ranges, or other appliances and accessories that may be in or connected with his unit.

(b) Common elements. All maintenance, repairs and



replacements to the general and limited common elements shall be made by the Association and shall be charged to all the unit owners as a common expense as set forth in Article VIII and Section 9.1 of Article IX of the Declaration. The Association shall maintain shrubbery which pertain to the general common elements. Each unit owner shall keep the limited common elements which pertain to his unit in a neat, clean and sanitary condition.

#### 7.2 Additions, Alterations or Improvements.

(a) A unit owner may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems of the development or lessen the support of any portion of the development.

(b) After acquiring an adjoining unit or an adjoining part of an adjoining unit, a unit owner may submit a written request to the Board of Directors for permission to remove or alter any intervening partition or to create apertures therein, even if the partition in whole or in part is a common element. The proposed amendment shall not become effective unless the Board of Directors determines within forty-five (45) days that the proposed change will not impair the structural integrity or mechanical systems of the development or lessen the support of any portion of the development. The board of directors may require the unit owner, at his own expense, to submit an opinion of a registered architect or registered professional engineer that the proposed change will not impair the structural integrity or mechanical systems of the development or lessen the support of any portion of the development. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

(c) A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce its value, impair any easement or hereditament or increase the common expenses of the Association unless the consent of all the other unit owners affected is first obtained.

(d) A unit owner may not attach any awning or trellis or change the appearance of the common elements or the exterior appearance of a unit without permission of the Board of Directors.

#### 7.3 Damage or Destruction by Casualty of Property.

In the case of substantial damage or destruction, timely written notice shall be given to the unit owners and their mortgagees and the provisions of Article XI of the Declaration shall apply.

(a) In the event of damage or destruction by casualty of development property, the damage or destruction shall be repaired, reconstructed or rebuilt unless, within fourteen (14) days of such damage or destruction, the Board of Directors or more than ten percent (10%) of the unit owners shall have



requested a special meeting of the Association. Such special meeting must be held within sixty (60) days of the date of damage or destruction. At the time of such meeting, unless unit owners holding ninety percent (90%) of the voting power, whether in person, by writing or by proxy, vote not to repair, reconstruct or rebuild the damaged property, the damage or destruction shall be repaired, reconstructed or rebuilt. If the damage or destruction is not repaired, reconstructed or rebuilt, then the property shall be removed from development ownership in the manner provided in the Uniform Condominium Act.

(b) The Association shall be responsible for repairing, reconstructing or rebuilding all such damage or destruction to the common elements and, to the extent of the Association's insurance coverage, all such damage or destruction to the units. Each unit owner shall be responsible for such repairing, reconstructing or rebuilding of his unit as is not covered by the Association's insurance.

(c) If, due to the act or neglect of a unit owner, or of a member of his family or his household pet or of a guest or other authorized occupant or visitor of such unit owner, damage shall be caused to the common elements or to a unit owned by others or maintenance, repairs or replacements shall be required which would otherwise be a common expense, then such unit owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association, to the extent not covered by the Association's insurance.

(d) In the event any portion of the insurance proceeds paid to the Association are not used to repair, reconstruct or rebuild the damaged or destroyed property, the Association shall distribute the proceeds among the unit owners and their mortgagees (as their interests may appear) in the same proportion as common expenses are shared, unless the property is removed from unit ownership. If the property is removed from unit ownership, the insurance proceeds, together with the proceeds from the sale of the property, shall be distributed to the unit owners and their mortgagees (as their interests may appear) in the manner described in the Uniform Condominium Act.

7.4 Condemnation. If any portion of the development is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each unit owner and to each mortgagee. All compensation, damages or other proceeds of the taking, other than any award for moving expenses of specific unit owners, shall be payable to the Association and allocated and distributed as provided in this Section 7.4.

(a) Complete Taking. If the entire development is taken, or if unit owners holding ninety percent (90%) of the voting power agree that such substantial portion of the development has



been taken as to make the project obsolete, then the property shall be deemed removed from unit ownership. In such event, any proceeds of the condemnation paid to the Association, together with any other proceeds upon sale of the remaining development, shall be distributed among the unit owners and their mortgagees, as their interests may appear, in accordance with the provisions of the Uniform Condominium Act.

(b) Partial Taking. If less than the entire development is taken and the property is not determined to be obsolete as provided in paragraph (a) above, then as soon as practicable the Board of Directors shall, reasonably and in good faith, allocate the award among the units in accordance with the reduction in the value of each unit and its interest in the common elements, compared to the total reduction in value of all units and their interest in the common elements. In the event any unit owner or mortgagee objects to the allocation determined by the Board of Directors, the matter shall be submitted to arbitration in accordance with the rules of the American Arbitration Association. The cost of such determination shall be paid out of the proceeds of the condemnation. Any portion of the award allocated to a unit owner under this paragraph shall be paid first to all mortgagees and holders of liens on the unit owner's interest in accordance with the existing priorities, and the balance to the unit owner. If any reconstruction and repair is undertaken as a result of the condemnation, the Board of Directors may retain and apply such portion of each unit owner's share of the award as is necessary to discharge the owner's liability for any special assessment arising from such reconstruction or repair.

7.5 Restrictions and Requirements Respecting Use of Development Property. Use of the development property shall be restricted as set forth in Article XIII of the Declaration, and, in addition, shall be restricted as follows:


(a) **Offensive or unlawful activities.** No noxious or offensive activities shall be carried on in any unit nor shall anything be done or placed upon any unit which may become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other owners in the enjoyment of their units, the common elements or the common facilities. Unit occupants shall exercise extreme care not to make noises which may disturb other unit occupants, including the use of musical instruments, radios, televisions and amplifiers. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively to protect the security of the unit and personalty located therein, shall be placed or used within any unit without prior written approval of the Board of Directors of the Association. No unlawful use shall be made of the development nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed.



(b) Animals. No animals or fowls shall be raised, kept or permitted within the development or any part thereof. No such animals or fowls shall be permitted to run at large nor shall be kept, bred or raised for commercial purposes. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof.

(c) Exterior lighting or noise making devices and antennas. Except with the consent of the Board of Directors of the Association or manager, no exterior lighting or noise making devices shall be installed or maintained on any unit and no antennas or transmitting towers shall be affixed to the general or limited common elements.

(d) Windows, courts, patios and outside walls. In order to preserve the attractive appearance of the development the Board of Directors of the Association or the manager may regulate the nature of items which may be placed in or on windows, decks, patios, entry courts, and the outside walls so as to be visible from other units, the common elements, or outside the development, or to the public.

(e) Trailers, campers, automobiles, and boats. Except with the consent of the Board of Directors of the Association or manager: no mobile home, trailer, truck camper, house trailer, motorcycle, boat or boat trailer, or similar vehicle shall be parked on any portion of the development without such prior consent of the Board of Directors of the Association or manager. 

(f) Signs. Unless written approval is first obtained from the Board of Directors, no sign of any kind shall be displayed to the public view on or from any unit or the common elements except signs used by the Declarant to advertise units for sale or lease.

(g) Trash. No part of any unit or any part of the common elements shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. No garbage, trash or other waste shall be kept or maintained on any part of the property except in sanitary containers in the designated areas.

(h) Insurance. Nothing shall be done or kept in any unit or in the common elements which will increase the cost of insurance on the common elements and units. No owner shall permit anything to be done or kept in his unit or in the common elements which will result in cancellation of insurance on any unit or any part of the common elements. In the event any use shall lead to an increase in fire or other insurance premiums otherwise payable on the insurance obtained by the Board of Directors pursuant to Article VIII of these Bylaws or insurance procured by an individual unit owner, the party causing such increase shall be liable for payment of the same to the Board of Directors or individual unit owner, as the case may be. The



party so charged with increasing premium cost shall have the right to contest the validity of such increase. A levy made against such unit owner for such increase in premiums may be enforced by the Board of Directors by adding the same to the common charges allocable to such unit owner.

(i) Condition: Each unit and its respective limited common elements, shall be maintained by the owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at owner's expense.

(j) Sightliness: No improvement which has been partially or totally destroyed shall be allowed to remain on the property in such state for more than one (1) month from the date of such destruction.

(k) General Care. There shall be no use of a common element which injures, erodes, or scars the common element or the vegetation thereon, or increases the cost of maintenance thereof, unless expressly permitted by the Board of Directors and in any event there shall be no use of a common element which causes unreasonable embarrassment, disturbance, or annoyance to owners in the enjoyment of their units.

(l) Association rules and regulations as to use. The Board of Directors from time to time may adopt, modify, or revoke rules and regulations governing the conduct of persons and the operation and use of the units and common elements as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the condominium property. Such action may be modified by a vote of not less than seventy percent (70%) of the unit owners present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of rule or regulations will be under consideration. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the secretary promptly to each unit owner and shall be binding upon all unit owners and occupants of all units from the date of delivery.

7.6 Abatement and Enjoining of Violations. The violation of any rule or regulation adopted pursuant to these Bylaws or the breach of any bylaw contained herein or of any provision of the Declaration shall give the Board of Directors, acting on behalf of the Association, the right, in addition to any other rights set forth in these Bylaws:

(a) to enter the unit in which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass; or



(b) to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings; or

(c) to levy reasonable fines, after giving notice and an opportunity to be heard.

Any expense incurred by the Association in remedying the default, damage incurred by the Association or unit owners, or fines so levied shall be assessed against the offending unit as a common expense and enforced as provided in Article V. In addition, any aggrieved unit owner may bring an action to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

## ARTICLE VIII

### INSURANCE

8.1 Insurance. For the benefit of the Association and the unit owners, the Board of Directors shall obtain and maintain to the extent reasonably available, commencing no later than the time of the first conveyance of a unit to a person other than Declarant, and shall pay for out of the common expense funds, the following minimum insurance coverage:

(a) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against or, as determined by the board of director against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty per cent 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, foundations and other items normally excluded from property policies. To the extent available, the insurance maintained under this subsection, if determined by the board, includes the units or any portion of those units but need not include improvements installed by unit owners or the personal property of unit owners. If the insurance described in this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The Association may carry any other insurance it deems appropriate to protect the association of the unit owners.

(b) Liability insurance in an amount determined by the board of directors but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

Such policy or policies shall name as insured and shall cover

(d) Any unit owner who obtains individual insurance policies covering any portion of the property other than his personal property and fixtures shall file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance.

8.3 Provisions. The Board of Directors shall make every effort to secure insurance policies that will provide for the following:

(a) A waiver of subrogation by the insurer as to any claims against the Board of Directors, the manager, the unit owners and their respective servants, agents and guests.

(b) A provision that the master policy on the development cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual owners and that no act or omission by any unit owner will void the policy or be a condition to recovery.

(c) A provision that the master policy on the development cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors or the manager without prior demand in writing that the Board of Directors or manager cure the defect.

(d) A provision that any "no other insurance" clause in the master policy exclude individual owners' policies from consideration, and a waiver of the usual proration clause with respect to such policies.

(e) A provision that the insurer issue subpolicies specifying the portion of the master policy earmarked for each owner's interest and that until the insurer furnished written notice and a grace period to the mortgagee insured under the loss payable clause thereof, the mortgagee's coverage is neither jeopardized by the conduct of the unit mortgagor-owner, the Association, or other unit owners nor canceled for nonpayment of premiums.

(f) A rider on the master policy patterned after "Use and Occupancy" insurance which will provide relief from monthly assessments while a unit is uninhabitable by the payment of the development expenses thereof and any other fixed costs, including, but without being limited to, taxes, rent, insurance, and mortgage payments. The proceeds from any casualty policy, whether held by the Association or a unit owner, payable with respect to any loss or damage to the common elements, shall be held in trust for the benefit of all insured as their interests may appear.


(g) A waiver of the insurer's right to determine whether the damage should be repaired. If reasonably available, the policy or policies should contain a stipulated amount clause, or



determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild.

## ARTICLE IX

### AMENDMENTS TO BYLAWS

9.1 How Proposed. Amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by unit owners holding thirty percent (30%) of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon. 

9.2 Adoption. A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the unit owners and may be approved by the unit owners at a meeting called for this purpose. Unit owners not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by unit owners holding a majority of the voting rights and by Declarant so long as Declarant owns twenty-five percent (25%) or more of the units in the development. The Bylaws may not be amended to limit or diminish any special Declarant right without the consent of the Declarant. Declarant's prior written consent shall be required but such consent shall not be required after four (4) years after Declarant has ceased to offer units for sale in the ordinary course of business, or ninety days (90) after conveyance of seventy-five percent of the units which may be created to unit owners other than Declarant, whichever in time may first occur. Neither Section 5.8 nor any other provision of these Bylaws which is for the benefit of mortgagees may be amended without the written consent of all mortgagees.

9.3 Execution and Recording. An amendment shall not be effective until certified by the president and secretary of the Association, approved by the Real Estate Commissioner, and recorded as required by law.

## ARTICLE X

### MISCELLANEOUS

10.1 Notices. All notices to the Association or to the Board of Directors shall be sent care of the managing agent, or if there is no managing agent, to the principal office of the Association or to such other address as the Board of Directors may hereafter designate from time to time. All notices to any unit owner shall be sent to such address as may have been designated by him from time to time, in writing, to the Board of

Directors, or if no address has been designated, then to the owner's unit.

10.2 Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

10.3 Action Without a Meeting. Any action which the Uniform Condominium Act, the Declaration or the Bylaws require or permit the owners or directors to take at a meeting may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the owners or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the owners or directors, shall be filed in the records of minutes of the Association.

10.4 Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws. As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

10.5 Conflicts. These Bylaws are intended to comply with the Uniform Condominium Act of Arizona and the Declaration. Except to the extent inconsistent with Chapter Nine, Arizona Revised Statutes, if a conflict exists between the provisions of the Declaration and the other condominium documents, the Declaration prevails. If a conflict exists between the provisions of the Articles of Incorporation and the Bylaws or Rules, the Articles of Incorporation prevail. If a conflict exists between the provisions of the Bylaws and the Rules, the Bylaws prevail. For purposes of this section "Rules" shall mean the provisions, if any, adopted pursuant to the Declaration or Bylaws governing maintenance and use of the units and common elements.

Dated this FEB 19TH day of FEBRUARY, 1992.