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*By ADRE at 8:52 am, Jan 26, 2022*

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AZ CORP COMMISSION  
FILED**EXPEDITED**

AUG 19 2004

## ARTICLES OF INCORPORATION

APPR. Luis Samane

OF

TERM

DATE 8-19-04

## THE VILLAGES AT AVIANO CONDOMINIUM ASSOCIATION

-1148854-4

In compliance with the requirements of § 10-3201, et seq., Arizona Revised Statutes, as amended, the undersigned, states as follows:

**ARTICLE I**  
**NAME**

The name of the Association is The Villages at Aviano Condominium Association <sup>dec</sup>  
(the "Association").

**ARTICLE II**  
**DEFINED TERMS**

Capitalized terms used in these Articles of Incorporation without definition shall have the meanings specified for such terms in the Declaration of Covenants, Conditions and Restrictions for The Villages at Aviano Condominium now or hereafter recorded in the records of Maricopa County, Arizona (the "Declaration"), which Declaration relates or will relate to a condominium in the residential project to be known as "Aviano", which shall be part of the Desert Ridge master planned community, located in Phoenix, Arizona.

**ARTICLE III**  
**PRINCIPAL OFFICE**

The principal office of the Association shall be located at Rossmar & Graham Community Management Association, 9362 East Raintree Drive, Scottsdale, Arizona 85260.

**ARTICLE IV**  
**STATUTORY AGENT**

Michael E. Woolf, whose address is 2901 North Central Avenue, Suite 200, Phoenix, Arizona, 85012, and who has been a bona fide resident of the State of Arizona for more than three (3) years, is hereby appointed and designated as the initial statutory agent for the Association.

**ARTICLE V**  
**PURPOSE OF THE ASSOCIATION**

The object and purpose for which this Association is organized is to provide for the management, maintenance, and care of the Common Elements and other property owned or to be owned by the Association or property placed under its jurisdiction and to perform all duties and exercise all rights imposed on or granted to the Association by the Condominium

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Documents. In furtherance of, and in order to accomplish the foregoing object and purpose, the Association may transact any or all lawful business for which Associations may be incorporated under the laws of the State of Arizona, as they may be amended from time to time.

#### **ARTICLE VI** **CHARACTER OF BUSINESS**

The character of the business which the Association intends to conduct in Arizona is to provide for the management, maintenance and care of the Common Elements for The Villages at Aviano Condominium project and to exercise and perform such other powers and duties as are imposed on or granted to the Association by the Condominium Documents.

#### **ARTICLE VII** **MEMBERSHIP AND VOTING RIGHTS**

Membership in the Association shall be limited to Owners of Units within the Condominium and may only be transferred or terminated in conjunction with conveyance of the Unit. Membership rights may be suspended or limited if a Member is in default under the Declaration. Each Owner shall have such rights, privileges and votes in the Association as are set forth in the Condominium Documents. There shall be two classes of members in the Association: Class A members, which shall include all Unit Owners, and the Class B member, which shall include the Declarant. Transfer of a Class A or Class B membership shall be pursuant to the provisions set forth in the Declaration.

#### **ARTICLE VIII** **BOARD OF DIRECTORS**

The number of directors constituting the initial Board of Directors shall be three (3). The names and addresses of the initial directors of the Association who shall serve until the first annual meeting of the Members or until their successors are elected and qualified are as follows:

| <u>Name</u>     | <u>Mailing Address</u>                                               |
|-----------------|----------------------------------------------------------------------|
| Robert Flaherty | 8901 East Mountain View Road, Suite 200<br>Scottsdale, Arizona 85258 |
| Mark Bailey     | 8901 East Mountain View Road, Suite 200<br>Scottsdale, Arizona 85258 |
| Kevin Rosinski  | 8901 East Mountain View Road, Suite 200<br>Scottsdale, Arizona 85258 |

The number of directors may be changed from time to time by the Board of Directors, but the number of directors may not be less than one (1) nor more than seven (7) and must be an odd number. After the expiration of the Period of Declarant Control, the number of directors must be at least three (3).



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### **ARTICLE IX** **OFFICERS**

The following persons shall be the initial officers of the Association and shall hold the positions opposite their names until the first annual meeting of the Association and until their successors have been elected and qualified:

President - Robert Flaherty  
Secretary - Mark Bailey  
Treasurer - Kevin Rosinski

### **ARTICLE X** **LIMITATION ON LIABILITY OF DIRECTORS AND OFFICERS**

The personal liability of a director or officer of the Association to the Association or its Members for monetary damages for breach of his or her fiduciary duties as a director or officer is hereby eliminated to the extent permitted by the Arizona Nonprofit Association Act, as it may be amended from time to time.

### **ARTICLE XI** **AMENDMENTS**

These Articles may be amended at a regular or special meeting of the Members by the Members representing at least sixty-six and 2/3 percent (66-2/3%) of the total authorized votes entitled to be cast by Members of the Association present in person or by proxy at the regular or special meeting; provided, however, that the Declarant, so long as the Declarant owns any Unit, and thereafter, the Board, without a vote of Members, may amend these Articles in order to conform these Articles to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Condominium or the Condominium Documents is required by law or requested by the Declarant or the Association. So long as the Declarant owns any Unit, any amendment to these Articles must be approved in writing by the Declarant.

### **ARTICLE XII** **INDEMNIFICATION**

The Association shall indemnify any person made a party to any civil suit or criminal, administrative or investigative action, other than an action by or in the right of the Association, by reason of the fact that he is or was a member, director, officer, employee or agent of the Association against expenses, including attorneys' fees, and judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, if he acted, or failed to act, in good faith and he reasonably believed (a) in the case of conduct in an official capacity with the Association, that the conduct was in its best interest, (b) in all other cases, that the conduct was at least not opposed to its best interests and (c) in the case of any criminal action or proceeding, that he had no reasonable cause to believe the conduct was unlawful. Any indemnification of the members, directors, officers, employees or agents of the Association shall



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be governed by and made in accordance with the Arizona Nonprofit Corporation Act. Any repeal or modification of this Article XII shall be prospective only and shall not adversely affect, defeat or limit the right of any person to indemnification for any act, or failure to act, occurring prior to the effective date of such repeal or modification prospective only and shall not adversely affect, defeat or limit the right of any person to indemnification for any act, or failure to act, occurring prior to the effective date of such repeal or modification.

#### ARTICLE XII DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by owners representing not less than eighty percent (80%) of the authorized votes in each class of membership. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be disbursed in accordance with Arizona law for non-profit corporations, or as otherwise agreed to by a unanimous vote of all Members.

#### ARTICLE XIV DURATION

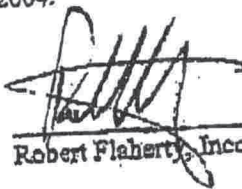
The Association shall exist perpetually.

#### ARTICLE XIV INCORPORATOR

The name and address of the incorporator of the Association is:

| <u>Name</u>     | <u>Address</u>                                                       |
|-----------------|----------------------------------------------------------------------|
| Robert Flaherty | 8901 East Mountain View Road, Suite 200<br>Scottsdale, Arizona 85258 |

Dated this 9 day of July, 2004.



Robert Flaherty, Incorporator

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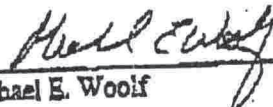
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**ACCEPTANCE OF APPOINTMENT AS STATUTORY AGENT**

The undersigned, having been designated to act as statutory agent for this Association, hereby accepts such appointment and agrees to act in that capacity until removal or resignation is submitted in accordance with applicable provisions of the Arizona Revised Statutes.

Dated this 19<sup>th</sup> day of August, 2004

  
\_\_\_\_\_  
Michael E. Woolf

ARIZONA CORPORATION COMMISSION  
CORPORATION DIVISION

NONPROFIT  
CERTIFICATE OF DISCLOSURE  
A.R.S. Section 10-3202.D

THE VILLAGES AT AVIANO  
CONDOMINIUM ASSOCIATION  
EXACT CORPORATE NAME

- A. Has any person serving either by election or appointment as officer, director, trustee, incorporator in the corporation:
1. Been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?
  2. Been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses, or restraint of trade or monopoly in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?
  3. Been or are subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven-year period immediately preceding the execution of this Certificate wherein such injunction, judgment, decree or permanent order:  
(a) Involved the violation of fraud or registration provisions of the securities laws of that jurisdiction?; or  
(b) Involved the violation of the consumer fraud laws of that jurisdiction?; or  
(c) Involved the violation of the antitrust or restraint of trade laws of that jurisdiction?

Yes ☐ No ☒

B. IF YES, the following information MUST be attached:

1. Full name and prior name(s) used.
2. Full birth name.
3. Present home address.
4. Prior addresses (for immediate preceding 7-year period).
5. Date and location of birth.

6. Social Security Number
7. The nature and description of each conviction or judicial action, date and location, the court and public agency involved and file or cause number of case.

- C. Has any person serving either by election or appointment as an officer, director, trustee or incorporator of the corporation, served in any such capacity or held such interest in any other corporation which has been placed in bankruptcy or receivership or had its charter revoked; or administratively dissolved by any jurisdiction?

Yes ☐ No ☒

IF YOUR ANSWER TO THE ABOVE QUESTION IS "YES", YOU MUST ATTACH THE FOLLOWING INFORMATION FOR EACH CORPORATION:

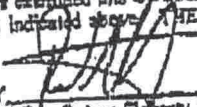
1. Name and address of the corporation.
2. Full name including alias and address of each person involved.
3. State(s) in which the corporation:  
(a) Was incorporated.  
(b) Has transacted business.

4. Dates of corporate operation.
5. A description of the bankruptcy, receivership or charter revocation, including the date, court or agency and the file or cause number of the case.

- D. The fiscal year end adopted by this corporation is \_\_\_\_\_

Under penalties of law, the undersigned incorporators/officers declare that we have examined this Certificate, including any attachments, and to the best of our knowledge and belief it is true, correct and complete, and hereby declare as indicated above. THE SIGNATURE(S) MUST BE DATED WITHIN THIRTY (30) DAYS OF THE DELIVERY DATE.

BY \_\_\_\_\_ DATE \_\_\_\_\_  
TITLE \_\_\_\_\_  
BY \_\_\_\_\_ DATE \_\_\_\_\_  
TITLE \_\_\_\_\_

BY  DATE 7/5/04  
TITLE Robert Flattery, Incorporator  
BY \_\_\_\_\_ DATE \_\_\_\_\_  
TITLE \_\_\_\_\_

DOMESTIC CORPORATIONS: ALL INCORPORATORS MUST SIGN THE INITIAL CERTIFICATE OF DISCLOSURE. (If more than four incorporators, please attach remaining signatures on a separate sheet of paper.)

If within sixty days, any person becomes an officer, director, or trustee and this person was not included in this disclosure, the corporation must file an AMENDED certificate signed by all incorporators, or if officers have been elected, by a duly authorized officer.

FOREIGN CORPORATIONS: MUST BE SIGNED BY AT LEAST ONE DULY AUTHORIZED OFFICER OF THE CORPORATION.

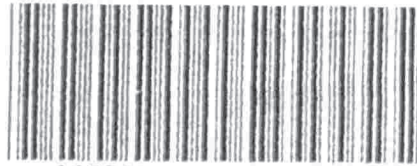
CP: 0001 - Non-Profit  
Rev: 04/04





WHEN RECORDED, RETURN TO:

Michael E. Woolf, Esq.  
Mariscal, Weeks, McIntyre & Friedlander, P.A.  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2004-0990817 08/25/04 16:17

DELROSSA

**CONDOMINIUM DECLARATION**  
**FOR**  
**THE VILLAGES AT AVIANO CONDOMINIUM**

WHEN RECORDED, RETURN TO:

Michael E. Woolf, Esq.  
Mariscal, Weeks, McIntyre & Friedlander, P.A.  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012

**CONDOMINIUM DECLARATION**

**FOR**

**THE VILLAGES AT AVIANO CONDOMINIUM**



CONDOMINIUM DECLARATION  
FOR  
THE VILLAGES AT AVIANO CONDOMINIUM

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CONDOMINIUM DECLARATION  
FOR  
THE VILLAGES AT AVIANO CONDOMINIUM

This Condominium Declaration for The Villages at Aviano Condominium is made this \_\_\_\_\_ day of August, 2004, by TOLL BROTHERS AZ CONSTRUCTION COMPANY, formerly known as EDMUNDS-TOLL CONSTRUCTION COMPANY, an Arizona corporation (the "Declarant").

ARTICLE 1

DEFINITIONS

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

**1.1 "Additional Property"** means the Buildings described on Exhibit B attached to this Declaration together with all Improvements and all easements, rights and appurtenances related thereto.

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

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

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

**1.5 "Association"** means The Villages At Aviano Condominium Association, an Arizona nonprofit corporation, its successors and assigns.

**1.6 "Aviano"** means the master planned development commonly known as Aviano which is a part of the Desert Ridge master planned development.

**1.7 "Aviano Association"** means the Aviano Community Association, an Arizona nonprofit corporation, its successors and assigns, organized pursuant to the provisions of the Aviano Declaration.

1.8 **"Aviano Declaration"** means the Declaration of Covenants, Conditions, and Restrictions for Aviano Recorded at Recording No. 2003-1183982, as amended from time to time.

1.9 **"Aviano Use and Expense Sharing Agreement"** means that certain Use Easement and Expense Sharing Agreement of even date with this Declaration (and Recorded immediately following this Declaration), among Declarant, the Association and the Aviano Association, whereby in consideration of the Association paying a use fee to the Aviano Association, the Aviano Association has granted to Owners, Lessees and their Invitees the right to use the Aviano Recreational Facilities.

1.10 **"Balcony" or "Deck"** means a portion of the Common Elements designated as a deck or balcony on the Plat.

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

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

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

1.14 **"City"** means the City of Phoenix, an Arizona municipal corporation.

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

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

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

1.18 **"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 inspection, 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, cable television, 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;

(i) amounts payable by the Association to the Aviano Association pursuant to the Aviano Use and Expense Sharing Agreement; and

(j) the cost of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in furtherance of the purposes or the discharge of the obligations imposed on the Association by the Condominium Documents.

**1.19 "Condominium"** means the Parcel, together with Buildings 1 through 28, and any part of the Additional Property which is annexed by Declarant pursuant to Section 2.11, together with all Improvements located thereon. The Condominium will consist of three hundred ninety two (392) Units if all Additional Property is annexed to the Condominium.

**1.20 "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.

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

**1.22 "Contract for Sale"** means 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.

**1.23 "Declarant"** means Toll Brothers AZ Construction Company, an Arizona corporation, and its successors and any Person to whom it may transfer any Special Declarant Right by a Recorded instrument.



1.24 **"Declaration"** means this Condominium Declaration for The Villages At Aviano Condominium, as amended from time to time.

1.25 **"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;

(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.

1.26 **"Driveway" or "Motor Court"** means each driveway or motor court area (paved or with other improved surface) leading from a main access street within the Parcel to one or more of the Garages.

1.27 **"Enforcement Assessment"** means an assessment levied pursuant to Section 7.6.

1.28 **"Eligible Insurer or Guarantor"** means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters in accordance with Section 12.1.

1.29 **"Eligible Mortgage Holder"** means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 12.1.

1.30 **"First Mortgage"** means any mortgage, deed of trust or Contract for Sale on a Unit with first priority over any other mortgage or deed of trust on the same Unit.

1.31 **"First Mortgagee"** means the holder of any First Mortgage or the seller in the case of a Contract for Sale.

1.32 **"Garage"** means each portion of a Unit located on the first floor of a Unit and intended for the parking of one or more motor vehicle(s).

1.33 **"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, fountains, sculptures, signs, hedges, plants, trees and shrubs of every type and kind.

1.34 **"Individual Expense Assessment"** means an assessment levied by the Association pursuant to Section 7.5.

1.35 **"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.

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

1.37 **"Limited Common Elements"** means a portion of the Common Elements specifically designated on the Plat or 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.

1.38 **"Manager"** shall mean the Person (including any management company) employed by the Association for the management of the Condominium in accordance with this Declaration.

1.39 **"Master Association"** means Desert Ridge Community Association, an Arizona nonprofit corporation, its successor and assigns organized pursuant to the provisions of the Master Declaration.

1.40 **"Master Association Documents"** means the Master Declaration and the Articles, Bylaws, Association Rules and Design Guidelines (as such terms are defined in the Master Declaration), as amended from time to time.

1.41 **"Master Declaration"** means the Declaration of Covenants, Conditions, Restrictions, and Easements for Desert Ridge Recorded on February 7, 1994 at Recording No. 94-0106341, as amended from time to time.

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

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

1.44 **"Owner" or "Unit Owner"** means: (a) 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; (b) a purchaser under a Contract for Sale; (c) in the case of a Unit subject to a Recorded option, the optionor; (d) in the case of a Unit the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the trustee;



and (e) in the case of a Unit the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Unit. "Unit Owner" shall not include: (i) a Person having an interest in a Unit merely as security for the performance of an obligation; (ii) a Lessee; or (iii) a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction.

**1.45 "Parcel"** means the land described on Exhibit A, together with all Improvements situated on, and all easements and rights appurtenant to, such land; however, to the extent the Improvements consist of one or more Buildings, such Buildings shall not be considered part of the Parcel, unless listed on Exhibit A attached hereto or annexed into the Condominium pursuant to the provisions of Section 2.11.

**1.46 "Patio"** means a portion of the Common Elements designated as a "Patio" on the Plat.

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

**1.48 "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.

**1.49 "Plat"** means the condominium plat for The Villages At Aviano Condominium, a condominium, recorded in Book 699 of Maps, Page 49, in the official records of the County Recorder of Maricopa County, Arizona, and any amendments, supplements or corrections thereto.

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

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

**1.52 "Recreational Facilities"** means the recreation center and all parks, swimming pools, playgrounds and similar recreational facilities and amenities located on the Common Areas (as defined in the Aviano Declaration) of Aviano, excluding any such Common Areas that are restricted by a Recorded document to the use of owners within specific subdivisions which are a part of Aviano.



1.53 "Regular Assessment" means the assessment levied against the Units pursuant to Section 7.2.

1.54 "Rules" means the rules and regulations adopted by the Board of Directors, as amended from time to time, which will be subordinate to the Master Association Documents.

1.55 "Special Assessment" means an assessment levied pursuant to Section 7.3.

1.56 "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, maintenance/service areas, models, signs and advertising for the Condominium;
- (d) Use easements through the Common Elements for the purpose of making Improvements, inspections, repairs and replacements within the Condominium;
- (e) Appoint or remove any officer of the Association or any member of the Board of Directors during the Period of Declarant Control;
- (f) Exercise the rights described in Section 3.4.

1.57 "Unit" means a portion of a Building designated for separate ownership or occupancy, the boundaries of which are described in Section 2.5 and shown on the Plat. No Unit shown on the Plat (other than the Units described in Section 2.4) shall be considered a Unit for purposes of this Declaration until such Unit has been annexed and subjected to this Declaration in accordance with the provisions of Section 2.11.

1.58 "User Fee Assessment" means any assessment levied pursuant to Section 7.4.

## ARTICLE 2

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

2.1 Submission of Property. 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. 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 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 Villages At Aviano Condominium.

**2.3 Name of Association.** The name of the Association is The Villages At Aviano Condominium Association.

**2.4 Identifying Numbers of Units.** The identifying numbers of the Units are 1001 through 1392, inclusive. There are three hundred ninety two (392) Units planned for the Condominium if all Additional Property is annexed into the Condominium.

**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 and any common wall between Units or the Unit and any common hallway or other common area; (b) the lower horizontal boundary for all Unit types other than C or E type Units is the unfinished floor of the ground level of the Unit; and (c) for each C and E type Unit, the lower horizontal boundary for the portion of the Unit located on the ground floor is the unfinished floor of the ground floor of the Unit and the lower horizontal boundary for that portion of the Unit located on the second floor or above shall be the unfinished floor of the second floor of the Unit; and (d) the upper horizontal boundary shall be as follows for the various types of Units as shown on the Plat: (i) for each B1 Unit (a single story Unit) the unfinished ceiling of the Unit, as shown on the Plat; (ii) for each D Unit (a two story Unit) the unfinished ceiling of the second floor of the Unit, as shown on the Plat; (iii) for each C Unit (a two story Unit with a Calestary), the unfinished ceiling of the portion of the Unit located on the first floor and the unfinished ceiling of the portion of the Unit located on the second floor and the unfinished ceiling (or the underside of any skylight) for that portion of the Unit located on the third floor, as shown on the Plat; (iv) for each A, E, F, F1 and F2 Unit (each a three story Unit), the unfinished ceiling of the portion of the Unit located on the first floor and the unfinished ceiling of the portion of the Unit located on the second floor and the unfinished ceiling of the portion of the Unit located on the third floor, as shown on the Plat. All floor slabs for each level of a Building, excluding the finished flooring (carpeting, tile, stone



or other) are part of the Common Elements. 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 units, hot water heaters and gas, cable television, water and electric pipes, lines or meters) within the boundaries of a Unit and which serve only the Unit are part of the Unit, and any such fixtures or improvements located within the boundaries of a Unit but which serve more than one Unit are part of the Common Elements. 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 2.5.1 shall control.

2.5.2 The location and dimensions of the perimeter walls of the Units as shown on the Plat are based on architectural drawings and are approximate. The actual location and dimensions of the perimeter walls of the Units may vary from the location and dimensions of the perimeter walls as shown on the Plat. The actual physical location and dimensions of the perimeter walls of a Unit, as initially constructed, or as reconstructed following any damage or destruction of such walls, shall be considered the location and dimensions of the perimeter walls of the Units for purposes of this Declaration regardless of any variances from the location and dimensions of the perimeter walls as shown on the Plat.

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

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

2.6.1 The undivided interests in the Common Elements are allocated equally among the Units. Initially each Unit's fraction of undivided interests in the Common Elements is 1/28. On each Effective Date (as defined in Section 2.11.2), the allocation of undivided interests in the Common Elements shall be reallocated in the manner set forth in Section 2.11. The fraction of undivided 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 fractions of undivided interest. The ownership of each Unit shall not be conveyed separate from the fraction of undivided interest in the Common Elements allocated to the Unit. The undivided fraction 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. If any part of the Additional Property is annexed by Declarant pursuant to Section 2.11, the fraction of undivided interests in the Common Elements of each Unit shall be reallocated so that each Unit's fraction



of undivided interests is the fraction the numerator of which is one and the denominator is the total number of Units then subject to this Declaration.

2.6.2 Allocation of Common Expenses. Common Expenses of the Condominium shall be allocated equally among the Units.

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.

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 the respective individual Units as follows:

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

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

(c) All doors (including but not limited to Garage doors) and windows in the perimeter walls of a Unit are Limited Common Elements allocated solely to such Unit. The glazing, sashes, frames, sills, thresholds, hardware, flashing and other components of the doors and windows are part of the doors and windows allocated as Limited Common Elements.

(d) Each Unit is allocated the Balcony adjoining the Unit as shown on the Plat, if any. The boundaries of each Balcony shall be as follows: (i) the lower boundary shall be unfinished floor of the Balcony; (ii) the upper boundary shall be a horizontal plane having an elevation equal to the elevation of the highest finished ceiling of the Unit to which the Balcony is allocated or the ceiling located above the Balcony, if any, whichever is lower; and (iii) the

vertical boundaries shall be vertical planes corresponding to the exterior wall of the Building and the inside surface of the wall or railing of the Balcony extended to the upper and lower boundaries.

(e) Each Unit is allocated the Patio adjoining the Unit as shown on the Plat, if any. The boundaries of each Patio shall be as follows: (i) the lower boundary shall be the unfinished concrete floor of the Patio; (ii) the upper boundary shall be a horizontal plane having an elevation equal to the elevation of the highest finished ceiling of the Unit to which such Patio is allocated or the ceiling above the Patio, if any, whichever is lower; 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 interior unfinished surfaces of the wall or railing enclosing the Patio extended to the upper and lower boundaries.

(f) Each Driveway shall be a Limited Common Element for the benefit of the Units which it serves, and shall be maintained as provided in Section 5.1.

2.8.2 Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements allocated to its Unit, subject to shared use rights for Driveways providing access to multiple Units and other Limited Common Elements serving more than one Unit, and subject to the rights granted to 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 Declarant owns any Unit, Declarant shall have the right to allocate as a Limited Common Element any part of the Common Elements 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 Declarant. After 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 Relocation of Boundaries Between Adjoining Units.** The boundaries between or among adjoining Units may be relocated by an amendment to this Declaration. The Owners of the Units affected by the relocation of boundaries shall prepare an amendment to this Declaration and the Plat that identifies the Units involved, specifies the outer boundaries of the Units and their dimensions and includes the Units' identifying number. If the Owners of the adjoining Units have specified a reallocation between their Units of the allocated interests in the Common Elements and in the Common Expenses, the amendment shall state the proposed reallocation in a reasonable manner. The amendment shall be executed by the Owners of those Units, shall contain words of conveyance between or among them and, before recording 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.

**2.10 Relationship to Aviano.** The Condominium is not subject to the Aviano Declaration nor is any Owner to become a member of the Aviano Association by virtue of owning a Unit; however, concurrently with the formation of the Condominium, the Association, Declarant and the Aviano Association entered into the Aviano Use and Expense Sharing Agreement, whereby in consideration of the Association agreeing to pay a use fee to the Aviano Association (such use fee being more fully set forth in the Aviano Use and Expense Sharing Agreement), the Aviano Association has granted to Owners, Lessees and their Invitees, the right to make use of the Recreational Facilities of Aviano.

**2.11 Expansion of the Condominium.**

2.11.1 Declarant hereby expressly reserves the right, but not the obligation, to expand the Condominium created by this Declaration, without the consent of the Association or any other Unit Owner, by annexing and submitting to this Declaration all or any portion of the Additional Property, which Declarant expects to be annexed by separate phases, but not in any particular order, regardless of how designated on the Plat or on an Exhibit to this Agreement. Declarant shall exercise its right to expand the Condominium by executing and Recording an amendment to this Declaration containing the following: (a) a legal description of the portion of the Additional Property being annexed, by reference to the Building(s) being annexed; (b) a description of the Common Elements and Limited Common Elements created and, in the case of Limited Common Elements, a designation of the Unit to which each Limited Common Element is allocated; (c) a reallocation to each Unit of a percentage of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association; and (d) a description of any Special Declarant Rights or Development Rights reserved by Declarant with respect to the Additional Property being annexed. This option to expand the Condominium shall expire seven (7) years from the date of the Recording of this Declaration.

2.11.2 Unless otherwise provided in the amendment adding Additional Property, the effective date of the annexation and the date for reallocating to each Unit a percentage of undivided interests in the Common Elements and in the Common Expenses of the Association and in the votes in the Association (the "Effective Date") shall be the date on which the amendment annexing additional Units is Recorded. An amendment annexing all or any portion



of the Additional Property may divide the Additional Property being annexed into separate phases and may provide for different Effective Dates for the annexation of each phase.

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

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

2.11.5 Declarant makes no assurances as to the exact number of Units which shall be added to the Condominium by annexation of all or any portion of the Additional Property.

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

**2.12 Master Association.** The Condominium is part of a master planned community known as Desert Ridge. The Condominium shall be subject to the terms and conditions of the Master Declaration and the Master Association Documents. Declarant and each Owner will be obligated to pay assessments and other charges to the Master Association in accordance with the Master Association Documents. All Regular Assessments and other charges due to the Association under the Condominium Documents shall be in addition to the assessments and other charges payable to the Master Association. All consents or approvals of the Board of Directors required by this Declaration shall be in addition to any consents or approvals required under the terms of the Master Association Documents. The Master Association shall not be an Owner under this Declaration. The Master Association and its common areas shall be exempt from Assessments and other charges due to the Association under the Condominium Documents. The Master Association is hereby granted a maintenance easement over the Common Elements and the right, but not the obligation, to maintain all or part of the Common Elements and to assess the maintenance costs against the Owners as "Maintenance Assessments" as defined in the Master Declaration, if the Association fails, for a period of forty five (45) days following written notice from the Master Association, to maintain the Common Elements in accordance with the maintenance standard utilized by the Master Association.

**2.13 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, 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.

**2.14 Changes to Civil and Working Drawings.** The civil and working drawings prepared by Declarant's consultants in connection with the development and construction of the Condominium and approved by the City were prepared for construction purposes only. To the extent legally permitted, Declarant, in its discretion, has the authority to make modifications and revisions to such plans and drawings (subject to City approval if required by law) which are consistent with applicable building codes and ordinances and are approved by the applicable governing authorities. Declarant has no obligation to modify or revise the Plat or such plans and drawings to reflect such Declarant changes, or otherwise prepare "as-built" drawings.

**2.15 Restriction on Liability of the Association and Declarant.**

2.15.1 Declarant intends (but is not obligated) to construct electronically activated access gates at one or more entrances to the Condominium to limit access and to provide more privacy for the Owners, Lessees and Occupants; however, there are no guarantees that such gated entries will provide complete security and safety to all Owners, Lessees, Occupants, and their families, guests and other Invitees. Each Owner Lessee and Occupant, for themselves and on behalf of their families, guests and other Invitees: (i) acknowledge and agree that the access gates do not guarantee the safety or security of the Owners, Lessees, Occupants, or their families, guests and other Invitees, or guarantee that no unauthorized person will gain access to the Condominium; (ii) acknowledge that the access gates may restrict or delay entry into the Condominium by the police, fire department, ambulances and other emergency vehicles or personnel; and (iii) agree to assume the risk that the access gates restrict or delay entry into, or access within the Condominium, by police, fire department, ambulances or other emergency vehicles or personnel. Neither Declarant, the Association, the Master Association nor any director, officer, agent or employee of Declarant, the Association or the Master Association shall be liable to any Owner, Lessee, Occupant, or their families, guests or other Invitees, for any claims or damages resulting, directly or indirectly, from the construction, existence, operation,



failure of operation, or maintenance of the gated entries and/or delays caused by reason of restricted access to the Condominium and the Units. The access gates shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association.

2.15.2 Each Owner, Lessee and Occupant hereby releases Declarant, the Association and the Master Association, and their directors, officers and agents, from any and all claims, actions, suits, demands, causes of action, losses, damages or liabilities related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting from activities or occurrences described in this Section 2.15.

2.15.3 Notwithstanding anything contained in this Declaration to the contrary, so long as Declarant is constructing, inspecting, or repairing Units or other Improvements within the Condominium or Common Elements, no restrictions shall be approved by the Board or otherwise imposed upon Declarant which restricts construction traffic or access to the Condominium though the gated entries, restricts the hours when construction work may be performed, or eliminates any easements for construction purposes reserved to Declarant in this Declaration, and each owner acknowledges that Declarant shall have the right to keep such gated entries open until construction within the Condominium is complete. The foregoing shall survive the termination of the Period of Declarant Control and may not be amended without approval of Declarant.

2.15.4 Declarant's construction of the Condominium in phases may require the use of temporary access points for vehicular or pedestrian ingress and egress to the Condominium. These temporary access points are not shown on the Plat. If and as additional Phases are added to the Condominium, the location of vehicular or pedestrian ingress and egress may change. By acceptance of a deed for a Unit within the Condominium, each Owner shall be deemed to have agreed that Declarant has the right to provide an alternate location for vehicular or pedestrian access to the Condominium for Owners, Lessees, Occupants, and their guests and invitees, to accommodate such phased construction, and to erect such construction fencing within the Condominium as Declarant deems necessary to accomplish such construction.

### ARTICLE 3

#### EASEMENTS AND DEVELOPMENT RIGHTS

3.1 **Utility Easement.** There is hereby granted and created an easement upon, across, over, through and under the Common Elements and the Units for reasonable ingress, egress, 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 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 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.**

3.2.1 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. Subject to the provisions and limitations of Sections 3.2.2 and 4.7, there is also granted and created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such streets, drives and 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.

3.2.2 Units which are accessible by a Driveway share the Driveway as a Limited Common Element. Declarant hereby grants an easement in perpetuity to the Owners of such Units over and across the Driveways to the extent necessary for access to their respective Units. As further provided in Section 4.7, no Owner or Occupant (which includes Lessees and Invitees) of any such Unit may park on any Driveway (other than for temporary loading and unloading) or otherwise make use of such Driveway in such a manner as to block ingress and egress to or from any Garage.

### **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 and regulations governing the use of the Common Elements;

(b) The right of the Association to convey the Common Elements or subject the Common Elements to a mortgage, deed of trust, or other security interest, if such action is approved by Owners entitled to cast at least ninety percent (90%) 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 Declarant by Section 3.4; and

(e) The right of the Association to suspend the right of an Owner, Lessee or Occupant to use the Common Elements (except the Association shall have no right to suspend the right of ingress and egress by an Owner to its Unit over 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, nothing in this Section 3.3.1 shall authorize the Board to limit ingress or egress to or 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 members of the Lessee's family residing with the Lessee shall have the right to use the Common Elements during the term of the lease, and the Unit Owner shall have no right to use the Common Elements until the termination or expiration of the lease. Notwithstanding the foregoing, such Owner shall have the right of ingress and egress over Common Elements to such Owner's Unit.

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. 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, sales, management and construction trailers, units for models and for use by prospective purchasers and related facilities throughout the Condominium and to maintain one or more marketing, directional or advertising signs or banners on the Common Elements so long as 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. Upon the relocation of a model, storage area, management office or sales and leasing office constituting a Common Element, Declarant may remove all personal property and fixtures therefrom. 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.

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

3.4.3 Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over and across the Common Elements and the Units to erect and construct the Common Elements and the Units shown on the Plat and all other Improvements Declarant may deem appropriate and to use the Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work in the Condominium.

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

3.4.5 Declarant and its employees, agents, contractors and subcontractors shall have the right and an easement on, over, and through the Common Elements as may be reasonably necessary for the purpose of discharging 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.

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

3.4.7 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) Declarant shall indemnify the Association against any loss or damage resulting from Declarant's use thereof; and (c) Declarant shall return the facilities to the Association in the same condition as existed prior to Declarant's use thereof.



3.4.8 Nothing in this Declaration shall limit the right of Declarant to alter the Common Elements or Units owned by Declarant, or to construct additional improvements as Declarant deems advisable prior to completion of all Improvements within the Condominium. Declarant reserves the right to alter its construction plans and designs as it deems appropriate in its sole discretion.

3.4.9 For so long as Declarant remains liable under any warranty, whether statutory, express or implied, for any act or omission of Declarant, or its consultants, contractors, agents and designees, for the design, development, construction, sale and marketing of all or any part of the condominium, then Declarant and its consultants, contractors, agents and designees shall have the right, in Declarant's sole discretion and from time to time, to enter the Condominium for the purpose of inspecting, testing, and surveying the same to determine the need for repairs, improvements and/or replacements, and effecting the same, so that Declarant and any of its consultants, contractors, agents and designees can fulfill such warranty obligations, if any. Nothing contained in this Section 3.4.9 shall be deemed or construed as Declarant making or offering any warranty. **APPLICABLE WARRANTIES OF DECLARANT OR ITS CONTRACTORS, IF ANY, SHALL BE VOIDED BY VIOLATION OF THE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THIS DECLARATION, INCLUDING, BUT NOT LIMITED TO, DENIAL OF ACCESS BY AN OWNER, OCCUPANT, OR THE ASSOCIATION TO PERMIT DECLARANT, OR ITS CONSULTANTS, CONTRACTORS, AGENTS AND DESIGNEES, TO MAKE REPAIRS.**

3.4.10 By accepting a deed to a Unit, each Person consents to Declarant's construction activities and agrees not to protest such activities or claim such activities are a nuisance or unduly disturb occupancy at the Condominium.

3.4.11 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 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. Without limiting the generality of the foregoing, and although they may not be designated as such on the Plat, one or more of the bearing walls and/or support columns located within a ground floor Unit may provide support for a second floor Unit. No Owner, Lessee or Occupant of a ground floor Unit shall use any bearing wall or support column located within its Unit in any manner which could jeopardize or compromise the support that such wall or column is intended to provide to the second floor Unit which it serves.

**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.

(d) For the drainage of water, leaves and similar natural elements which drain or fall from the roof of adjacent Units.

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 of the Units, or any interior bearing wall or structural column, without the prior written consent of the Board, as any such penetration could damage the soundproofing of the Units and/or drainage pipes, conduit pipes and similar items.

**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, officers, agents, employees and independent contractors:

(a) For inspection of the Units and Limited Common Elements in order to verify the performance by the 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 completion of any renovations, warranty work or modifications or 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.

(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 Occupants of the Unit.

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

**3.9 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 or 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 First Mortgagee or other Person.

## ARTICLE 4

### USE AND OCCUPANCY RESTRICTIONS

**4.1 Use.** The provisions of this Article 4 are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Condominium to be constructed by Declarant. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work contemplated for the development, construction and marketing of the Condominium. The restrictions of this Article 4 shall therefore not be binding upon Declarant in the performance of any development, construction or other work in the Condominium, or Declarant's sales and marketing efforts in connection with the Condominium.

**4.1.1 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; and (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. 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 or making the Unit available for temporary occupancy and use by employees or guests of an Owner shall not be considered a trade or business within the meaning of this Section 4.1.1.

4.1.2 Each Garage shall be used as the primary parking space for the Owners and Occupants of each respective Unit. A Garage shall not be used or converted for living or business use, and shall not be used for storage in lieu of parking an Owner's or Occupant's car(s) or truck(s) within the Garage. It is permissible to store items, including but not limited to, a boat or other recreational vehicle, in a Garage provided such storage does not displace the Unit Owner's car(s) or truck(s) that otherwise would have parked in such Garage. Garage doors shall remain closed except when opening of the Garage is necessary for ingress, egress or cleaning.

4.1.3 The provisions of this Section 4.1 shall not be applicable to Units used by Declarant for storage, models, sales office, manager's apartment, or for the use of prospective Purchasers during construction, sales, and marketing of Units within the Condominium.

4.2 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be installed, used or maintained on any portion of the Condominium whether attached to the Building or otherwise without the prior written approval of the Board of Directors, unless applicable law prohibits the Board of Directors from requiring such prior approval. Even if applicable law prohibits the Board of Directors from requiring prior approval for the installation or use of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with such rules and regulations as the Board of Directors may adopt and the Board of Directors may require such installation to be located so as to be as inconspicuous as possible while still able to reasonably transmit or receive signals.

#### 4.3 Improvements and Alterations.

4.3.1 No Owner, Lessee or Occupant shall make any structural additions, alterations, improvements or modifications within a Unit, or remove, construct, install or modify any wall, partition, flooring (other than carpet) ceiling, fixture or other Improvement situated within a Unit unless prior to the commencement of each addition, alteration, improvement, construction or modification, the Owner, Lessee or Occupant receives the prior written approval of the Board of Directors and, in the case of structural changes, an architect or engineer, licensed in Arizona, certifies that such addition, alteration, improvement or modification will not impair the structural integrity or the mechanical systems of a Building or lessen the support of any portion of the Condominium. No Owner shall make any addition, alteration, improvement or modification to the Common Elements without the prior written approval of the Board of Directors. Approval by the Board of Directors may be withheld in the sole and absolute discretion of the Board of Directors.



4.3.2 The Owner of the Unit shall be responsible for any damage to other Units and to the Common Elements which results from any alterations, additions, improvements, modifications and construction by or on behalf of such Owner.

4.3.3 No Owner, Lessee or Occupant of a Unit 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 of a Unit on a second floor shall overload the floors of such Unit. Water-beds and other furnishings which may cause floor overloads shall not be placed, kept or used in any such Unit, except with advance written approval of the Board of Directors.

4.3.4 The Board of Directors may condition the approval of any proposed additions, alterations, improvements or modifications 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.

4.3.5 Any additions, alterations, improvements and modifications 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, improvements or modifications 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.



4.3.6 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 the officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the Association and their respective directors, officers, agents and employees harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Board of Directors of plans submitted by the Owner or any Lessee or Occupant of the Owner's Unit.

4.3.7. The approval required of the Board of Directors pursuant to this Section 4.3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, or approvals required under the Master Association Documents.

**4.4 Trash Containers and Collection.** 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 bags or sanitary containers of a type, size and style which are approved by the Board of Directors or the City and all trash, garbage and rubbish shall be made available for pickup and disposal in accordance with the Rules. In addition, Owner shall comply with any and all recycling regulations that are promulgated by the Board of Directors or the City, and all recyclable materials shall be disposed of in containers designated as appropriate by the Board of Directors or the City.

**4.5 Animals.** 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. Subject to the limitations that may be set forth in the Rules, 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. 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 dogs and cats shall be kept on a leash when outside a Unit and all dogs and cats shall be directly under the Unit Owner's control at all times. Any person bringing a dog or cat onto the Common Elements shall immediately remove any feces deposited on the Common Elements by the dog or cat. 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. 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. The Board of Directors shall have the right to adopt, amend and repeal rules and regulations governing the keeping of Permitted Pets in the Condominium, and such rules and regulations may include limitations on the height and/or weight of Permitted Pets; provided, however, that any rule placing limitations on the height and/or weight of a Permitted Pet must be approved by the affirmative vote of Members having more than fifty percent (50%) of the votes cast with respect to such proposed rule at a meeting of the Members.

**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 its Unit as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

**4.7 Motor Vehicles.** Except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Condominium, and no inoperable vehicle may be stored or parked on any portion of the Condominium. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Condominium, except in the Garages. No Owner, Lessee or Occupant may park any automobile, motorcycle, motor bike or other motor vehicle owned or leased by such Unit Owner, Lessee or Occupant in any Motor Court except for immediate loading or unloading of said vehicle, and in such a manner that such vehicle does not block ingress and egress to and from other Units served by the Motor Court. An Owner is responsible for notifying Occupants (which includes Lessees), family members and Invitees of this provision and any such violation will be enforced against the Owner whose Occupants (which includes Lessees), family or Invitees violate this provision. The Board of Directors shall have the right to have any vehicle or other item of equipment parked, maintained, kept, reconstructed or repaired in violation of this Section 4.7 towed away at the sole expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association by the owner of the vehicle or equipment or the Owner of the applicable Unit.

**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 or the Owner of the applicable Unit. 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), banners, flags, billboards or advertisements of any kind shall be permitted on the exterior of a Building or in the interior of a Unit if the same 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. If approval is granted, the Board of Directors reserves the right to restrict the size, shape, color, lettering, heights, materials and location of any such sign, banner, flag, bill board or advertisement.

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, or is an annoyance, 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 (except security or other emergency devices used exclusively for security or emergency purposes or such exterior noise abatement systems as Declarant or the Board of Directors may install) 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 (other than window glass as originally installed or similar glass replacement thereof), 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. Enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Unit shall be constructed or installed only in compliance with the Rules. Except for tinting which is part of the original construction of the Building, window tinting is prohibited.

4.13 **Patios and Balconies.** Furniture, furnishings and umbrellas kept and maintained on any Patio or Balcony 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 astro turf, carpet or other floor covering shall be installed in any Patio or Balcony without the prior written approval of the Board of Directors. No Patio or Balcony shall be used as a storage area for items or materials that are not customarily intended for use on a Patio or Balcony, such as but not limited to, bicycles or exercise equipment. No linens, blankets, rugs, swimsuits or similar articles may be hung from any Deck. No barbeque grills, hibachis, fire pits or other similar items (whether charcoal, electric or gas) shall be stored, used or operated on any Patio or Balcony. No Christmas lights or other decorative lights may be installed on any Patio or Balcony.

4.14 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon the Condominium except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings,

improvements or structures which are within the uses permitted by this Declaration, and except that which Declarant or the Association may require for the construction, operation and maintenance of the Common Elements.

**4.15 Rental of Units.** No Owner may lease less than its 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 Units or assignments of leases. 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: (1) the commencement date and expiration date of the lease term; (2) the names of each of the Lessees and each other person who will reside in the Unit during the lease term; (3) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (4) 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 its 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. Notwithstanding anything to the contrary in Section 4.15 or this 4.16, Declarant shall have the right to utilize one or more Units for temporary occupancy from time to time regardless of the length of stay, by employees and business guests of Declarant and its affiliated entities as well as by prospective purchasers.

**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 (other than Declarant) shall install any hard and/or heavy surface floor coverings (including, without limitation, tile, marble, wood and the like) in a second floor Unit without the prior written approval of the Board of Directors. Any flooring to be installed in such a Unit must use a sound control underlayment system. Installation of such sound control underlayment system shall include provisions for a perimeter insulation material which will ensure that impact noises are not 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 to reduce levels of noise emission from Units. Additionally, no loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so