

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

4.19 Sprinkler System. Each Building is equipped with a sprinkler system. The heads of the sprinkler system will intrude into the Unit. All pipes, heads and other parts of the sprinkler system (whether located within or outside of the Unit) shall be part of the Common Elements and shall be maintained, repaired and replaced by the Association. If an Owner, Lessee or Occupant or their Invitees causes the sprinkler system to be activated (except in the case of a fire) or damages or destroys any part of the sprinkler system, the Owner of the Unit shall be responsible for the cost of any repairs to the sprinkler system made by the Association and for all other losses or damages resulting from such actions. If any Unit in a Building contains a fire user room containing equipment pertaining to the operation of the sprinkler system for the Building, the City Fire Department and the Association shall have the right to enter the Unit in which the fire user room is located to insert and make any necessary repair, maintenance or replacement of such equipment. Except in the case of an emergency, such entry shall only be made during reasonable hours and upon reasonable notice to the Unit Owner and the Occupants of the Unit.

4.20 Storage. To the extent storage of materials is permitted pursuant to the Condominium Documents, such storage must be in accordance with building, fire, health and safety, and environmental requirements of the Association's insurance carriers, the City, Maricopa County, and any State or Federal agency or governmental entity having jurisdiction over any stored materials.

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

4.22 Trailers, Campers and Boats. No mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, kept, maintained, constructed, reconstructed or repaired on any part of the Condominium; provided, however, such equipment or vehicles may be parked in the Garage of any Unit solely for the purpose of storing (and not to construct, reconstruct or repair) such equipment or vehicles.

4.23 Landscaping. All landscaping of Patio areas included as part of the Limited Common Elements of a Unit shall be subject to the provisions of the Rules.

4.24 Relief/Variances. The Association may, at its option and in extenuating circumstances and for good cause, grant variances from the restrictions set forth in this Article 4 if the Association determines in its reasonable discretion that: (i) a restriction would create an unreasonable hardship or burden on an Owner or Occupant or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete; or (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or

Occupants of the Condominium or the quality of life intended for Owners and Occupants of the Condominium.

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

4.26 Preservation Area. The approximate 150 foot preservation area located along the western boundary of the Condominium and shown on the Plat (the "Preservation Area") is subject to a Deed Restriction recorded May 23, 2003 as Instrument Number 2003-0658897, records of Maricopa County, Arizona. Among other things, the Deed Restriction imposes certain prohibited activities on and uses of the Preservation Area, including but not limited to (a) unseasonal watering, use of herbicides, rodenticides, or weed abatement activities; (b) use of off-road vehicles (other than over permitted road crossings); (c) grazing; (d) erecting of any building, billboard, or sign; (e) depositing of soil, trash, ashes, garbage, waste, bio-solids or any other material; (f) excavating, dredging or removing of loam, gravel, soil, rock, sand or other material; (g) removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, (3) prevention or treatment of disease; or (4) removal of non-native species; (h) establishing any easement or making dedications; or (i) surface entry for exploration or extraction of minerals. The Deed Restriction is incorporated herein and the prohibiting shall be binding upon the Association and all Owners.

ARTICLE 5

MAINTENANCE AND REPAIR OF COMMON ELEMENTS AND UNITS

5.1 Duties of the Association. The Association shall inspect, maintain, repair and replace all Common Elements (including all windows and doors in the perimeter walls of Units and all Motor Courts), but excluding the Limited Common Elements which the Unit Owners are obligated to maintain, repair and replace pursuant to Section 5.2. Subject to the terms of Section 5.3, the Association shall also maintain, repair and replace: (a) the walls and railings enclosing the Patios and the Balconies; (b) the floors and ceilings of all Patios and Balconies (but only to the extent set forth in the Rules and excluding the obligation to periodically sweep, vacuum or clean such floors); and (c) all Garage doors. The level and extent of such maintenance, repair, and replacement by the Association shall be determined at the sole discretion of the Board and shall be deemed a Common Expense; provided, however, as to the maintenance and repair of Common Elements consisting of roofs, windows and exterior stucco of the Buildings, pool and other mechanical systems, and on-site drainage for the Parcel, the Association shall engage one or more qualified inspection companies or contractors to inspect such Common Elements on an annual basis and issue to the Association a written report setting forth recommended maintenance and repair of such Common Elements, and the Association shall promptly act upon and follow the recommendations of such inspection agency or contractor, taking into account

warranties and insurance attributable to the condition and repair of such Common Elements. The cost of all such inspection, maintenance, repairs and replacements shall be a Common Expense and shall be paid for by the Association. The Board of Directors shall be the sole judge as to the appropriate maintenance, repair and replacement of all Common Elements, but all Common Elements shall be maintained in good condition and repair at all times. No Owner, Lessee, Occupant or other Person shall construct or install any Improvements on the Common Elements or alter, modify or remove any Common Elements without the prior written approval of the Board of Directors. No Owner, Lessee, Occupant or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Elements or any components of the Units which the Association is obligated to maintain, repair or replace. The Association shall maintain, repair and replace the Common Elements and the components of the Units which the Association is obligated to maintain, repair and replace in accordance with manufacturers' requirements and in accordance with any maintenance manuals provided to the Association by manufacturers, Declarant or any contractor or subcontractor involved in the construction of the Units or Common Elements. Failure to maintain the Common Elements and the components of the Units which the Association is obligated to maintain will result in the ineffectiveness of manufacturer's and construction warranties for such Improvements.

During the Period of Declarant Control, Declarant reserves the right, without the obligation, to make any alterations to the Common Elements and the Improvements thereon, including without limitation the replacement of originally installed landscaping with other shrubs, plants, or other landscape material of Declarant's choice. By acceptance of a deed for a Unit within the Condominium, each Owner shall be deemed to have agreed that when the Period of Declarant Control ceases, the Condominium and Areas of Association Responsibility shall be accepted by the Owners and the Association subject to reasonable wear and tear and there shall be no obligation of Declarant, or its successors and assigns, to repair, replace, or otherwise cause the Condominium or Common Elements to be placed in like-new condition.

5.2 Duties of Unit Owners. Unless otherwise specified in Section 5.1, each Owner shall maintain, repair and replace, at its own expense, (i) all portions of its Unit (including the Garage) and (ii) all Limited Common Elements allocated to its Unit pursuant to Sections 2.8.1(a) and (b), and the interior of the Balconies and Patios allocated to the Unit and all landscaping within any Patio areas, in a good, clean and sanitary condition.

5.3 Repair or Restoration Necessitated by Owner. Notwithstanding the provisions of Section 5.1, each Owner shall be liable to the Association for any damage to the Common Elements or the Improvements, landscaping or equipment thereon which results from the negligence or willful misconduct of the Owner or of the Owner's Lessees, Occupants or Invitees. The cost to the Association of any such repair, maintenance or replacements required by such act of an Owner or of the Owner's Lessees, Occupants or Invitees shall be assessed against the Owner as provided in Section 7.2.4. The Association may enforce collection of any such amounts in the same manner and to the same extent as provided for in this Declaration for the collection of Assessments.

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

5.5 Manager; Additional Services. The Association may contract with a Manager for the performance of Association management services, maintenance and repair and for conducting other activities on behalf of the Association and may employ such personnel as the Association deems necessary for the effective management, operation and maintenance of the Common Elements, including the employment of legal and accounting services. The Association, Declarant, and their respective successors and assigns shall additionally have the power, but not the duty, to, from time to time, enter into contracts (and to terminate any of such contracts or permit them to expire and to later enter into similar contracts) with Unit Owners or other Persons, including Declarant or its affiliated entities, to maintain and repair Improvements within the Condominium and elsewhere or to provide services which the Association is not otherwise required to provide or maintain pursuant to this Declaration, including, but not limited to, concierge services, valet parking, personal training, dry cleaning and laundry services, catering, grocery and/or food delivery, house cleaning, and shoe and car repair services; provided, however, that any such contract shall provide for payment to the Association for the costs of providing such services or maintenance or for billing a Unit Owner directly for any such service utilized by such Unit Owner, as the Association deems appropriate from time to time, and the Association may levy an Individual Expense Assessment against a Unit Owner for such services as provided in Section 7.5.

5.6 Private Sewer Facilities . As used in this Section, the term "Sewer Facilities" means all sewer lines and appurtenant facilities within the boundaries of the Condominium, except for: (a) any sewer lines and appurtenant facilities which serve only one Unit and which are located within the boundaries of the Unit or are part of the Common Elements but are allocated to the Unit by this Declaration as a Limited Common Element; and (b) any sewer lines and appurtenant facilities which have been accepted by and are the responsibility of a governmental or private sewer company. The Association shall be responsible for the operation, maintenance, repair and replacement of the Sewer Facilities in compliance with all applicable federal, state and local laws, ordinances and regulations. The Association shall file all reports regarding the operation and maintenance of the Sewer Facilities as may be required by federal, state or local laws, ordinances or regulations. If the Sewer Facilities have a design flow of more than 10,000 gallons per day, then the Association shall operate and maintain the Sewer Facilities in accordance with operation and maintenance plan for the Sewer Facilities approved by the Maricopa County Environmental Services Department in connection with the approval of the Sewer Facilities. The Association will advise any utility company or other entity to which the Association gives permission to make additional improvements to the Condominium that the services which are available under Arizona law to locate and mark underground utility lines and facilities within dedicated public rights-of-way are not available to locate the Sewer Facilities, and, therefore, a private person or entity will need to be employed for such purpose. Sewer lines and appurtenant facilities which serve only one Unit and which are located within the boundary

of a Unit or which are part of the Common Elements but are allocated to the Unit by this Declaration as a Limited Common Element shall be maintained, repaired and replaced by the Owner of the Unit served.

ARTICLE 6

THE ASSOCIATION

6.1 Rights, Powers and Duties of the Association. No later than the date on which the first Unit is conveyed to a Purchaser, the Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Unit Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Condominium Documents together with such rights, powers and duties as may be reasonably necessary in order to effectuate the objectives and purposes of the Association as set forth in this Declaration and the Condominium Act. The Association shall have the right to finance capital improvements in the Condominium by encumbering future Assessments if such action is approved by the affirmative vote of Unit Owners holding more than two-thirds (2/3) of the votes in the Association. Unless the Condominium Documents or the Condominium Act specifically require a vote of the Members, the Board of Directors may act in all instances on behalf of the Association. Notwithstanding anything in this Declaration to the contrary, so long as Declarant owns any Unit, the prior written consent of Declarant shall be required for any decision by the Association to establish self-management when professional management previously had been in place.

6.2 Directors and Officers. During the Period of Declarant Control, Declarant shall have the right to appoint and remove the members of the Board of Directors and the officers of the Association, who do not have to be Unit Owners. Upon the termination of the Period of Declarant Control, the Unit Owners shall elect the Board of Directors which must consist of at least three members, all of whom must be Unit Owners. The Board of Directors elected by the Unit Owners shall then elect the officers of the Association. Declarant may voluntarily surrender the right to appoint and remove the members of the Board of Directors and the officers of the Association before termination of the Period of Declarant Control, and in that event Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board of Directors, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

6.3 Rules. The Board of Directors, from time to time and subject to the provisions of this Declaration and the Condominium Act, may adopt, amend, and repeal rules and regulations. The Rules may, among other things, restrict and govern the use of the Units and the Common Elements, including the Limited Common Elements; provided, however, the Rules may not unreasonably discriminate among Owners and shall not be inconsistent with the Condominium Act, this Declaration, the Articles or Bylaws. A copy of the Rules, as from time to time adopted, amended or repealed, shall be mailed or otherwise made available to each Owner and may be Recorded. It is the responsibility of all Owners to properly disclose the Rules to such Owner's Lessees.

6.4 Identity of Members. Each Unit Owner shall be a member of the Association. The membership of the Association at all times shall consist exclusively of the Unit Owners. Membership in the Association shall be mandatory. An Owner shall automatically, upon becoming an Owner, be a member of the Association and shall remain a member of the Association until such time as its ownership ceases for any reason, at which time its membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to each Unit and may not be separately assigned, transferred or conveyed.

6.5 Personal Liability. Neither Declarant nor any member of the Board of Directors or of any committee of the Association, nor any officer of the Association nor any Manager or employee of the Association nor any other Person acting on behalf of the Board of Directors shall be personally liable to the Association, to any Member, or to any other Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence in the discharge of such person's duties and responsibilities under the Condominium Documents provided such person acted in good faith and without intentional misconduct.

6.6 Utility Service. The Association shall acquire and pay for the following: (a) water, sewer, electrical, natural gas (if available) and other utility service for the Common Elements; (b) refuse and rubbish collection for the Common Elements; and (c) water and sewer service and refuse and rubbish collection services for the Units (unless the municipality or rubbish collection provider separately meters or bills the Unit Owners for water and sewer services and refuse and rubbish collection services). If sewer and water service is not separately metered and billed to Unit Owners by the municipality, the Association may (i) charge each Unit Owner a sewer and water hook up fee and a security deposit (in such amounts as may be determined by the Board from time to time) and (ii) bill each Unit Owner for sewer and water services based on a submeter or other basis determined by the Association. If refuse and rubbish collection is not separately billed to the Unit Owners by the collection provider, the Association may bill each Unit Owner for refuse and rubbish collection services. Any such charges for water, sewer and refuse and rubbish collection services may be included as part of a Regular Assessment under Section 7.2 or as an Individual Expense Assessment under Section 7.5 and shall be paid by each Owner of a Unit. Each Unit will be separately metered for electricity and all charges for electricity to a Unit shall be paid by the Owner of the Unit.

ARTICLE 7

ASSESSMENTS

7.1 Preparation of Budget.

7.1.1 For each fiscal year of the Association, commencing with the fiscal year in which the first Unit is conveyed to a Purchaser, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all Common Expenses including, but not limited, to: (a) the amount required to pay the cost of inspection, maintenance, management, operation, repair and replacement of the Common Elements and those parts of the

Units, if any, which the Association has the responsibility of maintaining, repairing and replacing; (b) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance and repair of the Condominium; (c) the amount required to render to the Unit Owners all services required to be rendered by the Association under the Condominium Documents; and (d) such amounts as may be reasonably necessary to provide general operating reserves and reserves for contingencies and replacements. The budget shall separately reflect any Common Expenses to be assessed against less than all of the Units. The Board of Directors is expressly authorized to adopt and amend budgets for the Association from time to time, and no ratification of any budget by the Unit Owners shall be required.

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

7.2 Regular Assessment.

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

7.2.2 The Regular Assessments shall commence as to all Units which have been subjected to the terms of this Declaration on the first day of the month following the conveyance of the first Unit to a Purchaser. The Regular Assessments shall commence as to Units in subsequent phases on the first day of the month following the Effective Date for each such phase. The first Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board of Directors may require that the Regular Assessments or Special Assessments be paid in installments.

7.2.3 Except as otherwise expressly provided for in this Declaration, all Common Expenses, including, but not limited to, Common Expenses associated with the

inspection, maintenance, repair and replacement of a Limited Common Element, shall be assessed against all of the Units in accordance with Section 7.2.1.

7.2.4 If any Common Expense is caused by the misconduct of any Owner, Lessee, Occupant or their Invitees, the Association shall assess that Common Expense exclusively against such Owner's Unit.

7.2.5 Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense Liabilities.

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

7.2.7 The Regular Assessment for any Unit owned by Declarant on which construction has not been substantially completed shall be an amount equal to twenty-five percent (25%) of the Regular Assessment for Units which have been substantially completed. For purposes of this Section, a Unit shall be deemed substantially completed when a certificate of occupancy or equivalent permit has been issued for the Unit by the City. So long as any Unit owned by Declarant qualifies for the reduced Regular Assessment provided for in this Section, Declarant shall be obligated to pay to the Association any deficiency in the amounts necessary for the Association to be able to timely pay all Common Expenses due to Declarant having paid a reduced Regular Assessment; provided, however, such amount paid by Declarant shall not exceed the amounts that otherwise would have been assessed against such Units owned by Declarant had Declarant not received a reduced Assessment. If a Unit ceases to qualify for the reduced twenty-five percent (25%) rate of Assessment during the period to which an Assessment is attributable, the Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment period that the Unit qualified for each rate.

7.3 Special Assessments. The Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Elements, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any Special Assessment (other than a Special Assessment levied pursuant to Section 9.1 as a result of the damage or destruction of all or part of the Common Elements) shall have first been approved by Owners representing two-thirds (2/3) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose. Unless otherwise specified by the Board of Directors, Special Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Special Assessment is given to the Owners.

7.4 User Fee Assessment. The Association may establish and charge fees for the use of certain recreational or other facilities in the Condominium. All such fees shall be assessed to

the Owners as a User Fee Assessment which shall be payable within fifteen (15) days after notice of the Use Fee Assessment is given to the Owner.

7.5 Individual Expense Assessment. The Association may contract with various suppliers of goods or services to provide to the Owners, Lessees and Occupants goods or services which the Association is not required to provide under the Condominium Documents (or for utility or refuse collection services as set forth in Section 6.6). Any such contract may either provide that the Association shall pay for the cost and expense of the goods or services provided to the Owners, Lessees or Occupants under the contract or that the cost and expense shall be billed directly to the Owner, Lessee or Occupant receiving such goods or services. Any such costs and expenses paid by the Association shall be assessed as an Individual Expense Assessment to the Unit receiving such goods or services.

7.6 Enforcement Assessment. The Association may assess against a Unit Owner as an Enforcement Assessment any of the following expenses: (a) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; (b) any attorney fees (whether or not a lawsuit is filed) incurred by the Association with respect to any violation of the Condominium Documents by the Owner or the Owner's Lessees, Occupants or Invitees; (c) any monetary penalties levied against the Owner; or (d) any amounts (other than Regular Assessments, Special Assessments, Individual Assessments and User Fee Assessments) which become due and payable to the Association by the Owner or the Owner's Lessees, Occupants or Invitees pursuant to the Condominium Documents.

7.7 Purposes for which Association's Funds May be Used. The Association may use the funds and property collected and received by the Association (including, but not limited to, all Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Condominium Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Condominium Documents or applicable law; (c) providing or promoting activities and services the Board of Directors deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Condominium and the Owners, Lessees and Occupants; (d) contracting for services (including, without limitation, utilities, trash collection or cable television) to be provided to Owners, Lessees and Occupants; and (e) taking such other action as the Board of Directors deems necessary, appropriate or desirable for the management and administration of the Association or the benefit of the Association or the Condominium.

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

7.8.1 Any Assessment, or any installment of an Assessment, which is not paid within fifteen (15) days after the Assessment first became due shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of interest established from time to time by the Board of Directors. If any Assessment, or any installment thereof, is not paid within fifteen (15) days after the Assessment first became due, the Association may assess against the delinquent Unit Owner a late fee in the amount established from time to time by the Board of Directors.

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

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

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

7.9 Certificate of Payment. The Association on written request shall furnish to a lienholder, Unit Owner or Person designated by a Unit Owner a recordable statement setting forth the amount of unpaid Assessments against its Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner. In addition, upon receipt of written notice from an Owner or other interested Person, the Association shall mail or deliver to a Purchaser within ten (10) days after receipt of a written notice of a pending sale of a Unit, a written statement setting forth the items required under A.R.S. 33-1260. The Association may charge a reasonable fee in an amount established by the Board of Directors for each such statement.

7.10 No Exemption or Offsets. No Owner may exempt himself from liability for payment of Assessments, monetary penalties and other fees and charges levied pursuant to the Condominium Documents by waiver and nonuse of any of the Common Elements and facilities or by the abandonment of its Unit. All Assessments, monetary penalties and other fees and

charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Condominium Documents or the Condominium Act.

7.11 Initial Working Capital Fund. To provide the Association with initial operating funds, each Purchaser of a Unit from Declarant shall pay to the Association, immediately upon becoming the Owner of the Unit, one hundred fifty dollars (\$150.00). Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

7.12 Reserve Contribution.

7.12.1 Except as provided in Section 7.12.2, each Person who purchases or otherwise becomes the Owner of a Unit shall pay to the Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 7.13. The amount of the Reserve Contribution shall be one hundred dollars (\$100.00), but the amount of the Reserve Contribution may be changed from time to time by the Board of Directors; provided, however, that any increase must be approved by Members holding more than fifty percent (50%) of the votes in the Association.

7.12.2 No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741, et seq.

7.12.3 All Reserve Contributions shall be deposited in the Reserve Account established pursuant to Section 7.14. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments.

7.13 Transfer Fee.

Each Purchaser of a Unit shall pay to the Association immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by the Board of Directors to compensate the Association for the administrative cost resulting from the transfer of a Unit. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1260A and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1260C.

7.14 Reserves.

7.14.1 The Board of Directors shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Common Elements which the Association is obligated to maintain, repair and replace. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 7.12 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. The Board of Directors shall obtain a reserve study on or before the second anniversary of the date the first Unit is conveyed to a Purchaser, which study shall at a minimum include: (a) identification of the major components of the Common Elements which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study and projected Reserve Contribution pursuant to Section 7.12. The Board of Directors may update such reserve study or obtain one or more new studies from time to time as determined necessary by the Board of Directors.

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

7.15 Waiver of Exemption. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption laws of the State of Arizona in effect at the time any Assessment or installment becomes delinquent or any lien is imposed upon a Unit.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage.

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

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

(b) Broad form comprehensive general liability insurance, for a limit to be determined by the Board, but not less than \$3,000,000.00 for any single occurrence with an aggregate of \$3,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such policy shall include: (i) a cross liability clause to cover liabilities of the Owners as a group to an Owner; (ii) medical payments insurance and contingent liability coverage arising out of the use of hired and nonowned automobiles; (iii) coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party; and (iv) a waiver of the contractual liability exclusion for personal injury.

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

(d) Directors' and officers' liability insurance in an amount not less than \$1,000,000.00 covering all the directors and officers of the Association.

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

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

(i) Each Unit Owner shall be an insured under the policy with respect to liability arising out of its ownership of an undivided interest in the Common Elements or its membership in the Association.

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

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

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

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

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

(vii) For policies of property insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial change in coverage or cancellation of the policy.

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

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

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

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

8.1.3 The Board of Directors may select deductibles applicable to the insurance coverage to be maintained by the Association pursuant to this Section 8.1 in order to reduce the premiums payable for such insurance. The deductible, if any, on any insurance policy obtained by the Association shall be a Common Expense, but the Association may assess to a Unit Owner any deductible amount necessitated by the negligence, misuse or neglect for which such Unit Owner is responsible.

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

8.1.5 The Association and its directors and officers shall have no liability to any Owner or First Mortgagee or other Person having a lien on a Unit if, after a good faith effort, (a)

the Association is unable to obtain insurance required hereunder because the insurance is no longer available; (b) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances; or (c) the Members fail to approve any increase in the Regular Assessment needed to pay the insurance premiums.

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

8.2 Fidelity Bonds.

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

(a) The fidelity bonds shall name the Association as an obligee;

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

(c) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation from nonpayment of premium) without at least ten (10) days prior written notice to the Association and each First Mortgagee.

8.2.2 The Association shall require the Manager to maintain its own fidelity bond covering the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Section 8.2.1. The fidelity bond maintained by the Manager shall cover funds maintained in bank accounts of the Manager and need not name the Association as an obligee.

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

8.4 **Insurance Obtained by Unit Owners.** Each Unit Owner shall be responsible for: (a) property insurance on its personal property located in its Unit and elsewhere on the Condominium; (b) property insurance on any additions, alterations and improvements to its Unit (whether installed by such Owner or any prior Owner); and (c) comprehensive general liability insurance to the extent not covered by the policies of liability insurance obtained by the Board of Directors for the benefit of all of the Unit Owners. All policies of property insurance carried by an Owner shall be without contribution with respect to the policies of property insurance obtained by the Board of Directors for the benefit of all of the Unit Owners. No Owner shall separately insure its Unit against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of other insurance will be chargeable to and assess them against the Owner who acquired other insurance.

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

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

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

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

9.2 Determination Not to Reconstruct Without Termination. If eighty percent (80%) of the Unit Owners (including every Owner of a Unit or an allocated Limited Common Element which will not be rebuilt) vote not to rebuild, and the Condominium is not terminated in accordance with the Condominium Act, the insurance proceeds shall be distributed in proportion to their interests in the Common Elements to the Owners of those Units and the Owners to which those Limited Common Elements were allocated, or to lienholders as their interests may appear. The remainder of the proceeds shall be distributed to all Unit Owners or lienholders as their interests may appear in proportion to Common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests in the Common Elements and in the Common Expenses shall be automatically reallocated as if the Unit had been condemned under A.R.S. § 33-1206A, and the Association shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

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

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

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

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

ARTICLE 10

EMINENT DOMAIN

10.1 Total Taking of a Unit. If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for its Unit and interest in the Common Elements, regardless of whether any Common Elements are taken. Upon such a taking, unless the decree otherwise provides, that Unit's allocated interests in the Common Elements and in the Common Expenses shall automatically be reallocated to the remaining Units in proportion to their respective allocated interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Condominium Act. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Element.

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

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

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

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

ARTICLE 11

DISPUTE RESOLUTION

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

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

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

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

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

11.3 **Notice of Claim.** Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a

Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Arizona that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members.

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

11.5 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 11.5. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 11.5, the arbitration shall be conducted in accordance with the following rules:

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

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules and A.R.S. § 12-1501, et seq. In the event of a conflict between the AAA Rules and this Section 11.5, the provisions of this Section 11.5 shall govern.

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Section (c) is referred to in this Section 11.5 as the "Arbitrator".

(d) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Section 11.5(c).

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

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

and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

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

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

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

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

11.6 Right to Enter, Inspect, Repair and/or Replace. Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 11.6 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale

of the Units. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

11.7 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. Any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

11.8 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Unit Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 11.3.

11.9 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 11.5. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

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

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE 11 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 11. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 11, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A

DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

ARTICLE 12

RIGHTS OF FIRST MORTGAGEES

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

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

(b) Any delinquency in the payment of Assessments or charges owed by a Unit Owner subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor, which delinquency or default remains uncured for the period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 12.2.

12.2 Approval Required for Amendment to Declaration, Articles or Bylaws.

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

(a) Voting rights;

(b) Increases in Assessments that raise the previously assessed amount by more than 25%, assessment liens or the priority of assessment liens;

- (c) Reductions in reserves for maintenance, repair and replacement of Common Elements;
- (d) Hazard or fidelity insurance requirements;
- (e) Responsibility for maintenance and repairs;
- (f) Expansion or contraction of the Condominium, or the addition, annexation of property to the Condominium;
- (g) Redefinition of any Unit boundaries;
- (h) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (i) Convertibility of Units into Common Elements or of Common Elements into Units;
- (j) Imposition of any restrictions on the leasing of Units;
- (k) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- (l) A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;
- (m) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

12.2.2 Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs must be agreed to by the Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders that represent at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders or Eligible Insurers or Guarantors.

12.2.3 Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium must be approved by Eligible Mortgage Holders holding mortgages on Units the Unit Owners of which have at least

sixty-seven percent (67%) of the votes in the Association allocated to Unit Owners of all Units subject to First Mortgages held by Eligible Mortgage Holders.

12.2.4 Any Eligible Mortgage Holder who receives a written proposal for an amendment to the Declaration, Articles or Bylaws who does not deliver or mail to the requesting party a negative response within thirty (30) days after the Eligible Mortgage Holder receives proper notice of the proposal shall be deemed to have approved the proposed amendment, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

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

12.4 Right of Inspection of Records. Any Unit Owner, First Mortgagee or Eligible Insurer Or Guarantor will, upon written request, be entitled to: (a) inspect the current copies of the Condominium Documents and the books, records and financial statements of the Association during normal business hours; (b) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings. Upon written request of any agency or corporation which has an interest or prospective interest in the Condominium, the Association shall prepare and furnish within a reasonable time an audited financial statement of the Association. The Association, upon request, shall make available for inspection during normal business hours to prospective purchasers of a Unit, copies of the Condominium Documents and the most recent annual audited financial statement, if one has been prepared.

12.5 Prior Written Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Units or the Common Elements, unless at least two-thirds (2/3) of all First Mortgagees (based upon one vote for each First Mortgage owned) or Unit Owners (other than the Declarant or other sponsor, developer or builder of the Condominium) of the Units have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate this Declaration or the Condominium;
- (b) Change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;
- (c) Partition or subdivide any Unit;

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

(e) Use Hazard insurance proceeds for losses to any Units or the Common Elements for any purpose other than the repair, replacement or reconstruction of such Units or the Common Elements.

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

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

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

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

12.9 Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Condominium Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Condominium Documents with respect to the number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (a) an amendment of the Declaration, Articles or Bylaws, (b) a termination of the Condominium, or (c) certain actions of the Association as specified in Sections 12.2 and 12.5, the provision requiring the consent of the greatest number or percentage of Unit Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors shall prevail; provided, however, that the Declarant shall have the right to unilaterally amend this Declaration, the Articles or the Bylaws during the Period of Declarant Control in order to (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner, (b) correct any error or inconsistency in the Declaration, the Articles or the Bylaws if the amendment does not adversely affect the rights of any Unit Owner, or (c) comply with the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments including, without

limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Department of Veterans Affairs.

12.10 Restoration or Repair of Condominium. Any restoration or repair of the Condominium after a partial condemnation or change due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of Eligible Mortgage Holders holding mortgages on Units to which at least fifty-one percent (51%) of the votes in the Association allocated to Units subject to First Mortgages held by Eligible Mortgage Holders is obtained.

ARTICLE 13

GENERAL PROVISIONS

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

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

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

(c) suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing in this Section 13.1 shall authorize the Board to limit ingress or egress to or from a Unit;

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

(e) exercising self-help of taking action to abate any violation of the Condominium Documents in a non-emergency situation;

(f) requiring a Unit Owner, at the Unit Owner's expense, to remove any Improvement installed or constructed in such Owner's Unit or in any Limited Common Element allocated to the Owner's Unit in violation of this Declaration and to restore the Unit or the Limited Common Element to its previous condition

and, upon failure of the Unit Owner to do so, the Board of Directors or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

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

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

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

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

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

Any Unit Owner may enforce the Condominium Documents in any manner provided for in this Declaration or at law or in equity, except that a Unit Owner may not exercise any remedy provided to the Association by this Declaration or enforce payment of any Assessments or other amounts payable to the Association pursuant to the Condominium Documents.

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

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

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

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

13.5 Amendment.

13.5.1 Except in cases of amendments that may be executed by a Declarant in the exercise of its Development Rights or under Section 33-1220 of the Condominium Act, by the Association under Section 33-1206 or 33-1216(D) of the Condominium Act, or by certain Unit Owners under Section 33-1218(B), Section 33-1222, Section 33-1223 or Section 33-1228(B) of the Condominium Act, the Declaration, including the Plat, may be amended only by a vote of the Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

13.5.2 Except to the extent expressly permitted or required by this Declaration or the Condominium Act or as set forth in Section 2.9, an amendment to this Declaration shall not do any of the following without the unanimous consent of the Unit Owners: (a) create or increase Special Declarant Rights; (b) increase the number of Units; or (c) change the boundaries of any Unit, the allocated Interest of a Unit, or the use as to which any Unit is restricted. After the expiration of the Period of Declarant Control, an amendment to this Declaration shall not amend or delete any provisions of this Section 13.5.2 or Article 11 in the absence of the unanimous consent of the Unit Owners.

13.5.3 An amendment to the Declaration shall not terminate or decrease any unexpired Development Right, Special Declarant Right or Period of Declarant Control or revoke any easement granted to Declarant pursuant to Section 3.4, unless the Declarant approves the amendment in writing. In addition, any amendment to this Declaration adopted during the Period of Declarant Control must be approved in writing by the Declarant. No amendment to Section 13.5.2 or Article 11 shall be effective unless the Declarant approves the amendment in writing even if the Declarant no longer owns any Unit at the time of such amendment.

13.5.4 During the Period of Declarant Control, the Declarant shall have the right to amend the Declaration and the Plat, without a vote of the Owners, to: (a) comply with the Condominium Act or any other applicable law if the amendment does not adversely affect the rights of any Unit Owner; (b) correct any error, omission or inconsistency in the Declaration or the Plat if the amendment does not adversely affect the rights of any Unit Owner; or (c) comply with the rules or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including without limitation, the Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

13.5.5 Notwithstanding anything to the contrary herein, no amendment of this Declaration or the Plat will affect or be binding on the Master Association unless the Master Association approves the amendment in writing.

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

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

13.7 Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the

provisions of this Declaration apply either to corporations or individuals, or men or women, shall in all cases be assumed as though in each case fully expressed.

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

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

13.10 Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws or the Association Rules, the provisions of this Declaration shall prevail.

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

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

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

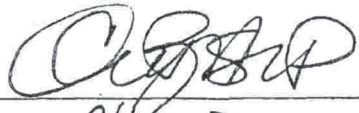
13.14 Number of Days. In computing the number of days for purposes of any provision of the Condominium Documents, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the next day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

13.15 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation.

Within five (5) days after being requested to do so by Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other nonprofit corporation formed or incorporated by Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

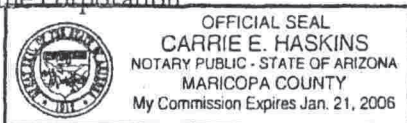
DECLARANT:

**TOLL BROTHERS AZ CONSTRUCTION
COMPANY, an Arizona corporation**

By: 
Name: Charles Bowie As Vice President

State of Arizona)
) ss.
County of Maricopa)

Acknowledged before me this 23 day of AUGUST, 2004,
by CHARLES BOWIE, the VICE PRESIDENT of
TOLL BROTHERS AZ CONSTRUCTION COMPANY, an Arizona corporation, on behalf
of the corporation




Notary Public

My Commission Expires:
1-21-06

BYLAWS
OF
THE VILLAGES AT AVIANO CONDOMINIUM ASSOCIATION,
an Arizona nonprofit corporation

THE VILLAGES AT AVIANO CONDOMINIUM ASSOCIATION

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**BYLAWS
OF
THE VILLAGES AT AVIANO CONDOMINIUM ASSOCIATION**

**ARTICLE 1.
GENERAL PROVISIONS**

1.1. **Principal Office.** The principal office of this corporation shall be located at the place as is designated in the Articles of Incorporation or such other place as the Association may designate from time to time in accordance with the Arizona statutes governing nonprofit corporations, but meetings of members and directors may be held at such other place within the State of Arizona as may be designated by the Board of Directors.

1.2. **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 recorded in the records of Maricopa County, Arizona.

1.3. **Conflicting Provisions.** In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

1.4. **Corporate Seal.** The Association may have a seal in a form approved by the Board.

1.5. **Designation of Fiscal Year.** The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

1.6. **Books and Records.** The books, records and papers of the Association, shall be available for inspection by any Member and his authorized agents during reasonable business hours, except that the Board may withhold from disclosure any books, records and papers relating to any of the following: (i) personnel matters or a person's medical records; (ii) communication between an attorney for the Association and the Association; (iii) pending or contemplated litigation; (iv) pending or contemplated matters relating to enforcement of the Condominium Documents; and (v) meeting minutes or other records of a session of a Board meeting or Association meeting that is not required to be open to all Members pursuant to A.R.S. §33-1804. The Association shall not be required to disclose financial and other records of the Association if disclosure would violate any local, state or federal law. The Condominium Documents shall be available for inspection by any Member during reasonable business hours at the principal office of the Association, where copies may be purchased at reasonable cost. Pursuant to A.R.S. §10-11601(C), the Association shall maintain a record of Members in a form that permits preparation of a list of the names and addresses of all members in alphabetical order

by class of membership showing the number of votes each Member is entitled to cast and the class of membership held by each Member.

1.7. Obligation of Association to Disclose Information. Except for a sale of a Unit from the Declarant to a purchaser or a sale which is exempt pursuant to A.R.S §32-2181.02, the Association shall mail or deliver to a purchaser within ten (10) days after receipt of written notice of a pending sale that contains the name and address of the purchaser, all of the following: (a) a copy of the Condominium Documents; (b) a copy of the current operating budget of the Association; (c) a copy of the most recent annual financial report of the Association, and if the report is more than ten (10) pages, the Association may provide a summary of the report in lieu of the entire report; (d) a copy of the most recent reserve study of the Association, if any; and (e) a dated statement containing: (i) the telephone number and address of a principal contact for the Association, which may be a Managing Agent, an officer of the Association or any other person designated by the Board; (ii) the amount of the Annual Assessment and the unpaid Annual Assessment, or installment thereof, any Special Assessment or other Assessment, fee or charge currently due and payable from the selling Member; (iii) a statement as to whether a portion of the Unit is covered by insurance maintained by the Association; (iv) the total amount of money held by the Association as reserves; (v) a statement as to whether records of the Association reflect any alterations or improvements to the Unit that violate the Declaration. The Association is not obligated to provide information regarding alterations or improvements that occurred more than six (6) years before the proposed sale; and (vi) a statement of case names and case numbers for pending litigation with respect to the Unit filed by the Association against the Member or filed by the Member against the Association. The Association may charge the Member a reasonable fee to compensate the Association for any costs incurred in the preparation of a statement furnished by the Association pursuant to this Section. The Association shall make available to any interested party the amount of any such fee established from time to time by the Association.

1.8. Amendment.

1.8.1. These Bylaws may be amended, at a regular or special meeting of the Board of Directors.

1.8.2. The Declarant, as long as the Declarant owns any Unit, and thereafter, the Board, without a vote of the Members and without the consent of any First Mortgagee, may amend these Bylaws in order to conform these Bylaws 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, the Plat or the Condominium Documents is required by law or requested by the Declarant or the Board.

1.8.3. Should Declarant request approval of the Condominium by the Veterans Administration ("VA") or the Federal Housing Administration ("FHA"), or both, then so long as there is a Class B membership in the Association, any amendment of these Bylaws must be approved by the VA or the FHA. Declarant shall have no obligation to request approval of the Condominium by either or both of such agencies. Unless and until the VA or the FHA have approved the Condominium as acceptable for insured or guaranteed loans and at any time

during which such approval, once given, has been revoked, withdrawn, canceled or suspended and there are no outstanding mortgages or deeds of trust recorded against a Unit to secure payment of an insured or guaranteed loan by either of such agencies, all references herein to required approvals or consents of such agencies shall be deemed null and void and of no force and effect.

1.8.4. So long as the Declarant owns any Unit, any amendment to these Bylaws must be approved in writing by the Declarant.

1.9. Indemnification. To the extent it has the power to do so under the Arizona Nonprofit Corporation Act, A.R.S. §10-3101, et seq., the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, 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 or is or was serving at the request of the Association as a member, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, and against judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted, or failed to act, in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Indemnification of any such person shall be made in accordance with the procedures set forth in the Arizona Nonprofit Corporation Act.

1.10 Notices. All notices, demands, statements or other communications required to be given or served under these Bylaws shall be in writing and shall be deemed to have been duly given and served if delivered personally or sent by United States mail, postage prepaid, (a) if to a Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner, or (b) if to the Association, the Board of Directors or to the Managing Agent, at the principal office of the Managing Agent or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section. A notice given by mail shall be deemed to have been received by the person to whom the notice was addressed on the earlier of the date the notice is actually received or three days after the notice is mailed. If a Unit is owned by more than one person, notice to one of the Unit Owners shall constitute notice to all Unit Owners of the same Unit.

1.11 Captions and Titles. All captions, title or headings of the Articles and Sections in these Bylaws are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof. Unless otherwise specified, all references in these Bylaws to Articles or Sections are to Articles and Sections of these Bylaws.

ARTICLE 2. MEETINGS OF MEMBERS

2.1. **Annual Meeting.** An annual meeting of the Members of the Association shall be held at least once every twelve (12) months at such time and place as is determined by the Board.

2.2. **Special Meetings.** Special meetings of the Members may be called at any time by the president, by a majority of the Board, or upon written request signed by Members having at least one-fourth (1/4) of the total authorized votes in the Association.

2.3. **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting by hand delivering or mailing a copy of each notice, postage prepaid, at least fifteen (15) days but no more than fifty (50) days before such meeting to each Member entitled to vote thereat addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting, including the general nature of any proposed amendment to the Declaration, Articles, changes in Assessments that require approval of the Members and any proposal to remove a director or an officer of the Association. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place of the meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Association may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each member entitled to vote at the meeting. By attending a meeting, a Member waives any right he may have had to object to the meeting on the basis that the proper notice of the meeting was not given in accordance with these Bylaws or the statutes of the State of Arizona. The failure of any Member to receive actual notice of a meeting does not affect the validity of any action taken at that meeting.

2.4. **Quorum.** Except as otherwise provided in the Articles, the Declaration or these Bylaws, the presence in person or by proxy of Members entitled to cast one-tenth (1/10th) of the total authorized votes in the Association shall constitute a quorum at all meetings of the Members. If a quorum shall not be present at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

2.5. **Multiple Owners.** If only one of the multiple Unit Owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Unit Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Unit Owners unless the Declaration expressly provides otherwise. There is majority agreement if any one of the multiple Unit Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Unit Owners of the Unit.

2.6. **Proxies.** At all meetings of the Members a vote may be cast in person or by proxy. A proxy may be granted by any Member in favor of only another Member, the Secretary